

ANALYSIS OF CHINA'S REJECTION OF THE PERMANENT COURT OF ARBITRATION RULING IN THE SOUTH CHINA SEA DISPUTE

Theofillus Eliezer

Sultan Ageng Tirtayasa University *Kabupaten Tangerang*
theofilluseliezer@gmail.com

Naufal Rafi Hakim

Sultan Ageng Tirtayasa University *Kota Cilegon*
Naufalrafi298@gmail.com

Danial Amir

Sultan Ageng Tirtayasa University *Kota Serang*
danial@untirta.ac.id

Jeremy Budianto

Ritsumeikan Asia Pacific University *Japan*
Je23b1gf@apu.ac.jp

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ABSTRACT:

The Philippines filed a case against China at the Permanent Court of Arbitration (PCA) in 2013. The case concerned territorial disputes in the South China Sea, particularly China's territorial claims over nearly the entire region. The PCA issued a ruling in 2016 rejecting China's claims, referencing Annex VII Article 11 of the 1982 UNCLOS, which states that PCA decisions are final and binding. However, China rejected the PCA ruling for several reasons. The purpose of this research is to examine the reasons behind China's rejection of the PCA ruling and the consequences of this rejection. The research employs a normative juridical method focusing primarily on legal materials, as it considers legal rules of a normative nature. The data used in this study is secondary data. China rejected the PCA ruling for several reasons: first, China considered the decision invalid because they never consented to the arbitration process initiated by the Philippines. Second, China argued that the PCA lacked jurisdiction to adjudicate the dispute. China's rejection of the PCA ruling highlights the weaknesses of international law and poses potential threats to sovereignty and security in the ASEAN region, including opening opportunities for illegal activities in the South China Sea.

Keywords; South China Sea, Spratly Islands, Dispute

A. Introduction

Based on the definition in the Great Indonesian Dictionary, "the sea is a large and vast collection of saltwater that inundates and divides the land above a continent or island." In coastal and marine areas, there are various types of ecosystems, both natural and artificial, as well as marine resources that can be renewed or not. The sea is one of the vital natural resources for human life. In addition to providing food sources, the sea is also a shipping route, trade, and important for defense and security.¹

These various functions of the sea have been utilized by humans, encouraging the control and utilization of the sea by each country based on the conception of law. The sea as a resource encourages countries to secure marine areas that are within their jurisdiction. The history of international maritime law developed because of the role of the sea as the source of human life.² Considering the importance of the influence of the sea on the economic, security, and political fields, it is important to have a foundation that regulates maritime areas between countries. *UNCLOS (United Nations Convention on the Law of the Sea) 1982* is an important foundation for this goal. The Convention is considered essential for maintaining peace, justice and progress for all mankind, emphasizing the need for a new convention on the law of the sea that is universally acceptable after the 1960 Convention.³

The South China Sea, which covers more than 3 million square kilometers, is not only one of the largest maritime areas in the world, but also a significant source of geopolitical tensions. In recent decades, disputes over territorial claims, navigation rights, and the use of natural resources in the South China Sea have attracted international attention. The region has a strategic role in international trade as it connects the Indian Ocean with the Pacific Ocean and provides access to the world's major markets.⁴ The South China Sea is estimated

¹ Mahfud Effendy, "Integrated Management of Coastal Areas: Solutions for Optimal and Sustainable Space Utilization, Resource Utilization and Utilization of Assimilation Capacity of Coastal Areas," *Marine Journal* 2, no. 1 (2009): 81–86, <https://journal.trunojoyo.ac.id/jurnalkelautan/article/viewFile/906/799>.

² Masdin, "Implementation of the Provisions of the United Nations Convention on the Law of the Sea (UNCLOS) 1982 on the Protection and Conservation of the Marine Environment in Indonesia," *Journal of Legal Opinion* 4 (2016): 1–13, <https://www.neliti.com/id/publications/152580/implementasi-ketentuan-ketentuan-United-Nations-convention-on-the-law-of-the-sea>.

³ Pangesti Suciningtyas, "The South China Sea Disputes in International Law Perspective," *The Digest: Journal of Jurisprudence and Legisprudence* 2, no. 1 (2021): 117–42, <https://doi.org/10.15294/digest.v2i1.48634>.

⁴ Chinese Society and International Law, "The South China Sea Arbitration Awards: A Critical Study," *Chinese Journal of International Law* 17, no. 2 (2018): 207–748, <https://doi.org/10.1093/chinesejil/jmy012>.

to have abundant reserves of natural resources such as oil, gas, and fish. However, the existence of this abundant resource is also a source of disputes between countries that share the territory. Countries such as China, Vietnam, the Philippines, Malaysia, Brunei, and Taiwan all have claims over parts of the South China Sea, with claims often overlapping and contradicting each other.⁵

The People's Republic of China, which can be called the PRC which claims the South China Sea area under the name of the SCS, they always use the *nine-dash line* claim which will be included with the map published by the Geography Department of the Ministry of the Interior of the PRC, namely the People's Republic of China. This claim can cause a lot of public reaction from the international community coming from countries that directly border the SCS territory. The countries that have the most entry into the border with the SCS are the Philippines, Brunei Darussalam, Vietnam, Malaysia, China, and Taiwan. The country has tremendous economic potential that can produce several oil and gas reserves. This raises various important considerations for these countries to defend their sea areas located in the SCS.⁶

In the matter of maritime territorial claims, it has actually been carefully regulated in the rules that have been clearly stated in the *United Nations Convention on the Law of the Sea (UNCLOS)* in 1982 and which is often heard by the public better known as the Convention on the Law of the Sea in 1982. So that this convention has a reason within every coastal state in having their rights, each country to make claims to territorial sea areas as far as 12 nautical miles, 24 nautical miles of additional zones, 200 nautical miles of the Exclusive Economic Zone and 200 miles or more clearly not more than 350 nautical miles of the continental shelf area.⁷

In the past year in 2013, on January 22, there was a minor problem in the settlement of the dispute regarding the SCS that had been submitted to the PCA by the Philippines. In this Philippines, it has chosen to do this because the Philippines and the PRC are widely

⁵ Tia Miranda Tarigan et al., "The Development of International Law of the Sea: An Analysis of the South China Sea Case" 2, no. 5 (2024): 1722–31.

⁶ Taisaku Ikeshima, "China's Dashed Line in the South China Sea: Legal Limits and Future Prospects," *Waseda Global Forum* 10 (2013): 17–50.

⁷ Yulia Wiliawati, Danial Danial, and Fatkhul Muin, "The Existence of UNCLOS 1982 in Efforts to Enforce the Law of the International Sea in the Waters of Coastal States," *Sultan Jurisprudence: Journal of Legal Research* 2, no. 2 (2022): 286, <https://doi.org/10.51825/sjp.v2i2.17064>.

parties to the Law of the Sea Convention in 1982. So that the Philippines can consider bringing its dispute with the PRC to the PCA based on Chapter XV which has been regulated by the 1982 Convention on the Law of the Sea on Dispute Settlement. The Dispute includes the PRC and the Philippines which may be related to the Spratly Islands (part of the SCS). In 1984 the Philippines ratified UNCLOS in 1982 with several islands in the region that have been claimed by the Philippines with the term Kalayaan Island. The Spratly or Kalayaan Islands are a group of coral islands with a land area of less than 4 km², but its territory includes an ocean that has an area of 410,000 km².⁸

In the end, what has been done by the parties to the dispute, including the Philippines and the People's Republic of China, which has been submitted by the Philippines to the PCA, so that it can produce a ruling that shows that the PCA has never supported the reasons that have been claimed by the PRC to control the SCS. In the argument that the PCA has rejected the claim made by the PRC over the SCS territory because the claim is contrary to the provisions of UNCLOS in 1982. However, the PRC rejected the PCA's ruling on the main grounds that the PCA did not have jurisdiction to resolve the dispute.⁹

In this article we have analyzed the rejection of the verdict *Permanent Court of Arbitration* (PCA) carried out by China in the South China Sea dispute with the Philippines. We analyzed the reasons for rejecting the content of the decision *Permanent Court of Arbitration* by China and also as a result of the rejection of the verdict *Permanent Court of Arbitration* by China. This research is very important because it provides a different perspective in international dispute resolution using PCA. Because in the PCA decision that has been issued, it refers to Annex VII Article 11 of the 1982 Convention on the Law of the Sea which states that the PCA decision that has been made is final and binding (*final and binding*).¹⁰

B. Research Method

⁸ Christin Clarita Situmorang and Joko Setiyono, "Dispute Analysis of the South China Sea Based on an International Legal Perspective," *International Journal of Law* 10, no. 1 (2024): 194–97.

⁹ Ana Fatmawati and Elsa Aprina, "The Validity of the People's Republic of China's Refusal of the Permanent Court Arbitration Award on the South China Sea Territorial Claim Dispute between the Philippines and the People's Republic of China Based on International Law," *Veritas et Justitia* 5, no. 1 (2019): 105–29, <https://doi.org/10.25123/vej.3289>.

¹⁰ E. Rebekah and T Wangkar, "Journal of the Faculty of Law, Sam Ratulangi University Lex Privatum Vol.XII/No.2/Jul/2023," *Journal of the Faculty of Law, Sam Ratulangi University Lex Privatum* 12, no. 2 (2023): 1–13.

Basically, this research is a discipline of international law, namely international law focused on PCA rulings. In the settlement of disputes in the South China Sea, a normative juridical approach is used. The main focus of research in normative law is because this study considers legal materials that contain normative rules. The data used in this study is secondary data, which in the context of this study is considered as primary legal material. This material is obtained from literature sources, such as books, papers, court decisions, and laws and regulations, which are analyzed to support the problems researched in the research.¹¹

C. Discussion

1. Reasons For Rejecting The Content of Permanent Court of Arbitrations By China

The United Nations Convention on the Law of the Sea (UNCLOS) is an international treaty that regulates various aspects of the law of the sea and oceans. UNCLOS also includes mechanisms for resolving international disputes related to issues of the law of the sea. As stipulated in article 279 of the 1982 UNCLOS Stipulates that the obligation to settle disputes by peaceful means, "States Parties shall resolve any dispute among themselves concerning the interpretation or application of this Convention by peaceful means in accordance with Article 2 paragraph 3 of the Charter of the United Nations and, for this purpose, shall seek a settlement by the means indicated in Article 33 paragraph 1 of this Charter."¹²

In a dispute case in accordance with the provisions of the International Court of Justice, an international dispute is a situation when two countries have conflicting views on whether or not the obligations contained in the agreement are implemented. The settlement of disputes and conflicts regulated in international law has several principles, namely:

- a. The principle of *good faith* is the most basic and most central principle in the resolution of disputes that have occurred between countries. So that this principle has characteristics that seem to be reflected in two stages, namely: First, having a good faith principle so that it is necessary to prevent disputes that can have an impact on good relations between countries, Second, having this good principle must be present when the parties resolve their disputes. So in Article 1 paragraph 5 of the Manila

¹¹ Sigit Sapto Nugroho, *Legal Research Methodology* (Sukoharjo: Oase Pustaka, 2020).

¹² Pasal 279 UNCLOS PART XV "settlement of disputes"

Declaration requires this principle of good faith as an effort to resolve disputes more efficiently.

- b. The second principle has the principle of prohibition of the use of force is a fundamental principle in international relations. This principle has prohibited the parties to the dispute from using violence as a way to resolve their differences. This principle is enshrined in Article 13 of the Bali Concord and the 4th Preamble to the Manila Declaration. Article 13 of the Bali Concord states that: *"In case of disputes on matters directly affecting them, they shall refrain from the threat or use of force and shall at all times settle such disputes among themselves through friendly negotiations"*. The article states that the parties to the dispute are prohibited from using threats or violence to resolve the dispute through peaceful means.
- c. The third principle is about the freedom to choose ways of resolving conflicts. This principle is regulated in article 33 paragraph (1) of the UN Charter and *section 1 paragraph 3 and 10* of the Manila Declaration. The legal instrument emphasizes that "the submission of disputes and dispute resolution procedures or methods of dispute resolution must be based on the free will of the parties. This freedom applies whether disputes occur or disputes that will come."
- d. The fourth principle that there is some freedom to choose the law to be applied is the basic principle of international dispute resolution. The parties have the freedom to determine for themselves what law will be applied if the dispute is resolved by the judiciary. This principle is based on the understanding that the parties are best positioned to assess the circumstances of the dispute and determine the most appropriate legal framework for resolving it.
- e. The fifth principle of having the agreement of the parties is a fundamental principle in the settlement of international disputes. The principle of freedom to determine dispute resolution methods and choose the law to be applied can only be realized if there is an agreement between the parties. This is because the parties are the main stakeholders in the dispute and therefore have the greatest view of its resolution.
- f. The sixth principle has the principles of international law regarding sovereignty, independence and territorial integrity set out in the Manila Declaration, which enshrines these principles in Article 1 paragraph 1. "This principle requires the disputing states to continue to comply with and carry out their international

obligations in relation to each other based on the fundamental principles of territorial integrity of the state."

- g. The seventh principle has the principle of neutrality, which is a principle that must exist in resolving conflicts or disputes involving third parties. According to Bindschedler, the elements of impartiality and neutrality are the keywords for the success of the conciliation function, because only with these two elements can objectivity be guaranteed.¹³

With regard to the South China Sea Dispute, the People's Republic of China's claims, which encompass the entire South China Sea, go beyond the limits of its territorial rights as defined in the 1982 United Nations Convention on the Law of the Sea (UNCLOS). In addition, China's claims violate the territorial rights of various countries around the South China Sea. This is the basis of the current dispute over the islands in the region, which has raised problems in the South China Sea and the division of UNCLOS territory in 1982 can be seen in the following map:



Figure 0-1 South China Sea Map based on PRC and UNCLOS claims¹⁴

Until now, efforts have been made by various parties to resolve conflicts that have existed in the South China Sea, but have not yet found a bright spot. So that mediation efforts

¹³ Huala Adolf, "International Dispute Settlement Law," n.d.

¹⁴ "South China Sea Disputes," n.d., <https://newstempo.github.io/su/post/sengketa-laut-china-selatan/>.

carried out by international organizations such as ASEAN have still not received a bright spot. The crux of the issue to be clearer about the claim, must be published in this protracted dispute that allows the Philippines to file a case with the Permanent Court of Arbitration in The Hague in 2013, which concerns the interpretation and application of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) regarding the boundaries of the South China Sea. The Philippines' report was accepted by the PCA. The PCA initiates arbitration cases, referred to as *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)*.¹⁵

The Philippines and China are both parties to the 1982 United Nations Convention on the Law of the Sea. The Philippines ratified the 1982 UNCLOS on May 8, 1984, while China ratified it on June 7, 1996, so that both the Philippines and China are bound by the dispute settlement procedures set out in Chapter XV of the Convention with respect to the issue of interpretation and application of the Convention. China did not participate in any arbitration proceedings, did not submit a Counter-Memorandum on the Philippines' claims, did not attend the Judicial Session in July 2015, and did not comply with the Tribunal's request to pay the costs of the arbitration hearing.¹⁶

The Philippines may request the tribunal to proceed with the arbitration proceedings in accordance with Article 9 of Annex VII of the 1982 UNCLOS, but "the tribunal shall also take measures to prevent losses suffered by both parties incurred as a result of China's non-participation in these arbitration proceedings". Article 5 of Annex VII states that "The Tribunal shall self-regulate the necessary steps in the trial and provide both parties to hear their defence and appear before the trial".¹⁷

In accordance with Article 287 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), a state party to the convention may provide a written statement of the settlement procedure they have chosen at the time of ratification, accession or ratification of the convention. Neither the Philippines nor China made any written statements regarding

¹⁵ "This is the ruling of the International Court of Arbitration over the South China Sea," CNN, n.d., <https://nationalgeographic.grid.id/read/13305908/ini-putusan-mahkamah-arbitrase-internasional-atas-laut-cina-selatan>.

¹⁶ Adam Risman Adhimarif, "Analysis Of The People's Republic Of China's Rejection Of The Decision Of The Permanent Court Of Arbitration On The Philippines' Lawsuit In The South China Sea In 2016," *Estuarine, Coastal and Shelf Science* (2019).

¹⁷ Pasal 5 Annex VII UNCLOS 1982: "Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own procedure, assuring to each party a full opportunity to be heard and to present its case."

this article. Therefore, in accordance with paragraph 3 of the same article, that both States are subject to the arbitration procedure provided for in Annex VII of UNCLOS on Arbitration.¹⁸

On 12 July 2016 in the Permanent Court of Arbitration (*Permanent Court of Arbitration*) issued a ruling on the Philippines' lawsuit against the PRC's claims in the South China Sea. The ruling on the PCA states that the PRC has no legal rights over its claims in the waters. The PCA also found that the PRC's historical claims had no solid factual basis. The Chinese government has publicly expressed its rejection of the Permanent Court of Arbitration's ruling (*Permanent Court of Arbitration*) in the South China Sea dispute with the Philippines. The PRC argued that it never approved the Philippines' decision to go through the arbitration route and therefore considered the PCA's decision null and void. In addition, the PRC also stated that the PCA does not have the authority to make such decisions.¹⁹

The background of the PRC in rejecting the results of the Permanent Court Arbitration decision itself. The PRC's ratification of UNCLOS from the beginning was a reason to reject the results of the PCA ruling and stated that the Philippines' lawsuit violated the provisions of the 1982 UNCLOS. In its 2006 declaration the PRC stated that, it did not accept the procedures set out in Part 2 of Chapter XV of the Convention. With regard to all the categories of disputes mentioned in paragraphs 1 (a)-(c) of Article 298 of the 1982 UNCLOS, it should be noted that, as discussed earlier, the Philippines excluded its Article 298 lawsuit with regard to China's declaration.²⁰

This is the reason behind the PRC's rejection of the PCA's ruling on the South China Sea dispute, which was unilaterally filed by the Philippines, as well as the reason behind the PRC's insistence on finding a bilateral solution to the territorial dispute in the South China Sea. This rejection from the PRC has raised concerns among the international community, especially among the countries involved in the South China Sea dispute. The PRC's rejection is contrary to previous ratifications of the United Nations Convention on the Law of the Sea

¹⁸ NI Kadek Sasmita Pramesti, "Settlement Of The Dispute Over The Philippines' Lawsuit Against China Regarding The South China Sea Through The Permanent Court Of Arbitration," *E-Journal of International Organizational Law Ganesha University of Education* 1 (2021): 53–54.

¹⁹ Adhimarif, "Analysis Of The People's Republic Of China's Rejection Of The Results Of The Permanent Court Of Arbitration Decision On The Philippines' Lawsuit In The South China Sea In 2016."

²⁰ Mifta Hanifah, Nanik Trihastuti, and Peni Susetyorini, "Dispute Resolution of Philippine Lawsuit Against China Concerning the South China Sea through the Permanent Court of Arbitration," *Diponegoro Law Journal* 6, no. 1 (2017): 1–9, <http://www.ejournal-s1.undip.ac.id/index.php/dlr/%0Agugusan>.

(UNCLOS) and the PCA. Nevertheless, the PRC had conducted an in-depth study before announcing its rejection, and there are likely strong reasons behind its ruling.²¹

However, based on the 2016 PCA Decision regarding the South China Sea dispute between the Philippines and China, it is considered to be in accordance with the rules of international law, especially based on the *United Nations Convention on the Law of the Sea* (UNCLOS) 1982. The PCA stated that the "nine-dash line" claim put forward by China has no legal basis. According to UNCLOS, littoral states have sovereign rights to an exclusive economic zone (EEZ) 200 nautical miles from their baseline, and China cannot prove the existence of internationally recognized historical rights to the territory.²²

The PCA underlined that geographical features claimed by China, such as the reefs and reefs in the Spratly Islands, do not qualify as "islands" that can produce EEZs or continental shelf. Instead, these features can only grant limited maritime rights such as territorial seas. This is consistent with Article 121 of UNCLOS which defines the criteria for geographical features that can be used for maritime claims.²³ The PCA also asserted that China's actions, such as obstructing Philippine vessels in areas that include the Philippines' EEZ and massively reclaiming the islands, violate the Philippines' sovereign rights. This violates the UNCLOS principle which protects the right of coastal states to exploit resources in their EEZ exclusively.²⁴

Although the PCA decision is final and binding under Annex VII of UNCLOS, the implementation of this decision is contingent on the will of the countries concerned. The PRC refused to recognize the ruling and deemed it invalid. However, under international law, the ruling gives the Philippines a strong legal basis to defend its rights in the South China Sea in accordance with the principles of sovereignty and peaceful settlement of disputes as stipulated in the UN Charter.²⁵

²¹ R Setyasari, *Analysis of China's Rejection of the Permanent Court of Arbitration Award in the Dispute with the Philippines in the South China Sea 2013-2016*, *Repository.Uinjkt.Ac.Id*, 2022, https://repository.uinjkt.ac.id/dspace/handle/123456789/43481%0Ahttps://repository.uinjkt.ac.id/dspace/bitstream/123456789/43481/1/RANY_SETYASARI-FISIP.pdf.

²² Lowell Bautista, "The South China Sea Arbitration and Historic Rights in the Law of the Sea," *Philippine Yearbook of International Law* 1203, no. 2 (2020): 1–40.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

2. Consequences of the Rejection of the Permanent Court of Arbitration Decision By China

Dispute resolution through arbitration has several principles that are considered beneficial. One of them is the principle of agreement, which refers to an agreement between the parties to resolve a dispute peacefully through an arbitrator. The principle of deliberation is also applied to ensure conflict resolution through deliberation between arbitrators and the parties to the dispute. Then, there is a limiting principle that limits the types of conflicts that can be resolved through arbitration only in the fields of trade, business, industry, and/or personal rights. The last principle is the final and binding principle that arbitral awards cannot be submitted to other courts so they must be accepted and enforced by the parties to the dispute. Of all these principles, the final and binding principle appears to be the favorite in conflict resolution through arbitration, as it directly stops the possibility of the parties from filing other remedies against the arbitral award.²⁶

Arbitration is a process in which the dispute is voluntarily submitted to a neutral third party, and the resulting decision is final and binding. Arbitration bodies are now increasingly popular and widely used to resolve international disputes. Submission of a dispute to arbitration can be through the making of a compromise, i.e. an existing dispute is submitted to arbitration, or through the creation of an arbitration clause in an agreement before the dispute arises (*Clause Compromissoire*).²⁷

The selection of arbitrators depends entirely on the agreement of the parties. Usually, the arbitrator chosen is an expert in the subject matter of the dispute and must be neutral. They don't have to be legal experts; They can be engineers, company executives, insurance experts, banking experts, and so on. Once arbitrators are appointed, they set the "*terms of reference*" or rules of the game (procedural law) that become their work guidelines. This document usually contains the subject matter to be resolved, the arbitrator's jurisdiction, and

²⁶ Putri Nabila Kurnia Arsyad, "Problems in the Implementation of the Final and Binding Principles in the Annulment of ICSID International Arbitration Awards on Investment Disputes," *RECTUM JOURNAL: Juridical Review of Criminal Handling* 5, no. 1 (2023): 691, <https://doi.org/10.46930/jurnalrectum.v5i1.2783>.

²⁷ Ibid.

the rules of the arbitration hearing. Of course, the content of *the terms of reference* must be agreed upon by the parties.²⁸

The dispute in the South China Sea between the Philippines and China has given rise to complex tensions and debates within the Asia-Pacific region. The issues involved include territorial claims, sovereignty and exploration rights as well as drilling claims in these waters, thus raising important issues about the application of international maritime law to resolve the conflict.²⁹ Rules in the international law of the sea have been implemented by the United Nations Convention on the Law of the Sea with the abbreviation UNCLOS in 1982. It has become an important framework for resolving disputes in international waters. UNCLOS establishes as a very basic principle such as maritime territorial boundaries and the rights of states in the Exclusive Economic Zone (EEZ), as well as the right of off-sail. UNCLOS also provides a mechanism for resolving disputes between countries through international arbitration.³⁰

In the country of the Philippines and China have had very overlapping claims in the South China Sea that are contrary to the principles of UNCLOS. The dispute was triggered by the Philippines' claim to natural resources in the region, while China claims sovereignty over most of the territory based on its historical arguments alone.³¹ In resolving the dispute that has been passed, having a legal process is essential to maintain stability and peace in the region and ensure respect for international maritime law. The use of international arbitration as a means of resolving disputes in the South China Sea between the Philippines and China has raised crucial questions about the extent to which this mechanism can strengthen or

²⁸ Cahya Palasari, Ni Putu Rai Yulianti, and Dewa Gede Sudika Mangku, "Peaceful Dispute Resolution in the Perspective of International Law," *Journal of Legal Communication (JKH)* 8, no. 2 (2022): 688–97, <https://doi.org/10.23887/jkh.v8i2.52016>.

²⁹ azlia Amira Putri, "Implementation Of The Principle Of Good Faith In The Permanent Court Of Arbitration Ruling By China In The South China Sea Dispute," *Belli Ac Pacis (International Law Journal)* 9, no. C (2023): 107–25.

³⁰ Marsita Kantjai, "The Authority Of The International Tribunal For The Law Of The Sea In The Settlement Of Maritime Disputes According To The 1982 Un Convention On The Law Of The Sea," *Lex Privatum* 7, no. 1 (2019): 98–104, http://scioteca.caf.com/bitstream/handle/123456789/1091/RED2017-Eng-8ene.pdf?sequence=12&isAllowed=y%0Ahttp://dx.doi.org/10.1016/j.regsciurbeco.2008.06.005%0Ahttps://www.researchgate.net/publication/305320484_SISTEM_PEMBETUNGAN_TERPUSAT_STRATEGI_MELE_STARI.

³¹ Danang Wahyu Setyo Adi, "Analysis of Settlement of South China Sea Disputes by the International Arbitration Agency," *Lex Generalis Law Journal*. 2, no. 1 (2021): 8–11.

weaken international maritime law. Nevertheless, UNCLOS provides an important framework for resolving such disputes.³²

In the use of international arbitration in the settlement of South China Sea disputes between the Philippines and the PRC can be seen as a strengthening of international maritime law from several perspectives. The arbitral award in favor of the Philippines in most of its claims reinforces a wide range of UNCLOS principles, such as the sovereignty of the state over territorial waters and the EEZ, as well as the right to navigation guaranteed by UNCLOS. However, there are some challenges in the enforcement of arbitral awards, especially when one party refuses to recognize or accept the award.³³ According to the definition given by Broches, an arbitral award in the process of resolving disputes through an arbitration forum is as follows:

*“Award means a final award which disposes of all issues to the arbitral tribunal and any other decision of the arbitral tribunal which finally determine any questions of substance or the question if its competence or any other question of procedures but, in latter case, only if arbitral tribunal terms its decision an award”.*³⁴

The success of international arbitration in this case has been referred to by showing that a wide variety of countries can use international legal mechanisms to protect their rights in accordance with the provisions of UNCLOS. However, more attention is paid to ensuring its effectiveness so that continuous diplomatic efforts and cooperation between the disputing countries are needed in reaching a more comprehensive and sustainable solution to the South China Sea dispute.³⁵

In the arbitral award that has been issued regarding the South China Sea case, it can raise uncertainties that have been made, giving rise to several other cases that can involve major countries or with significant geopolitical interests. Some countries that have an

³² *Ibid.*

³³ Suhardi Somomoeljono and Jurisdito Hutomo Hardy, “Arbitration in the South China Sea: Legal and Geopolitical Ramifications,” *Indonesian Journal of Innovation Studies* 25 (2023): 1–15, <https://doi.org/10.21070/ijins.v25i.958>.

³⁴ Agustini Andriani, “Legal Consequences of Annulment of Arbitral Awards in Relation to the Final and Binding Principle,” *AL-MANHAJ: Journal of Islamic Law and Social Institutions* 4, no. 1 (2022): 25–36, <https://doi.org/10.37680/almanhaj.v4i1.1528>.

³⁵ Adi, “Analysis of Settlement of South China Sea Disputes by the International Arbitration Agency.”

influential nature in political and economic power may feel that they can ignore arbitral decisions that are not in their favor, threatening the integrity of the international arbitration system. It could also potentially jeopardize the integrity of international law of the sea, especially if major states feel that they can evade their obligations in accordance with the provisions of UNCLOS.³⁶

The South China Sea case, which has been in the spotlight, also highlights the need to strengthen international maritime law enforcement mechanisms. Therefore, the obligation to make an arbitral decision cannot be applied effectively and thus. The international maritime law system poses weaknesses and is ineffective in maintaining peace and stability in the international maritime area. It is therefore important to consider ways to improve the enforcement of international maritime law, including the possibility of a greater role for international organizations such as the United Nations. These efforts are essential to ensure that the international law of the sea is respected and adhered to by all countries, so that conflicts can be avoided and peace can be maintained around the world.³⁷

On 12 July 2016, the Permanent Court of Arbitration (PCA) announced a series of decisions, which included among other things the following:

1. It asserts that the PRC has no historical claims to the South China Sea, and according to the 1982 Convention on the Law of the Sea, the concept of the nine-line has no legitimate legal basis.
2. Declaring that no one has granted the PRC the right to an Exclusive Economic Zone in the Spratly Islands.
3. Stated that the PRC has interfered with the traditional right of Filipinos to catch and take fish, especially in Scarborough Shoal.
4. Declaring that exploration in oil by the PRC near Reed Bank constitutes a violation of Philippine sovereignty.
5. Acknowledging that the PRC has damaged the ecosystem in the Spratly Islands through activities such as overfishing and artificial island building.
6. Stated that the PRC's actions have exacerbated the conflict with the Philippines.³⁸

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

An award on a particular dispute issued by an international arbitration body such as the Permanent Court of Arbitration (PCA) is the final result of the dispute resolution process through arbitration. The PCA was established based on the Hague Peace Conference I in 1899 and the Hague Conference II in 1907. The purpose of its establishment was to facilitate immediate access to arbitration for international differences that could not be resolved through diplomacy.³⁹

The PCA is domiciled in the Peace Pala Building Search Indonesian law journals that are in accordance with the paragraph below include the download linkce, The Hague, Netherlands, and is the first permanent arbitral body to resolve disputes between countries. The basis of the PCA's authority is contained in article 42 of the 1907 Convention for the Pacific Settlement of International Disputes, which states that the PCA has jurisdiction over all arbitration cases, unless the parties agree to establish a special Tribunal. Thus, the PCA award is the result of an arbitration process that covers various types of international disputes, affirming the role and authority of the PCA in resolving differences between countries.⁴⁰

The decision issued by the PCA is indeed final and binding, however, in Annex VII of the 1982 Convention on the Law of the Sea, there is no provision that specifically regulates the implementation of the award. In other words, the PCA does not have the power to directly enforce the losing party in a dispute to comply with the award. Finally, the implementation of the decision depends on the willingness and good faith of the parties involved.⁴¹ In the context of the dispute between the Philippines and China, there is a lot of dependence on the Philippines to ensure law enforcement, as China rejects the results of the PCA ruling. The Philippines should consider whether it is ready to take firm action against China based on such refusals. This involves complex political, legal, and strategic considerations, and the Philippines' choice can be influenced by a number of factors, including bilateral relations with China, international support, and national interests.⁴²

³⁹ Adi, "Analysis of Settlement of South China Sea Disputes by the International Arbitration Agency."

⁴⁰ Steve Michael Massie, "The Role of Indonesian Diplomacy in Dispute Resolution in the South China Sea Region after the Permanent Court of Arbitration Decision, 2016," *Lex Et Societatis* 8, no. 2 (2020): 176–86, <https://doi.org/10.35796/les.v8i2.28563>.

⁴¹ *Ibid.*

⁴² Muhammad Rafi Darajati And Huala Adolf, "Sengke Decision Of Chin Ut Sea Dispute Decision South China And Its Implications A Legal Implication On Countries Seized By Countries Around The Region," *Journal of Law & Development* 48, no. 1 (2018): 22–43, <https://doi.org/10.21143/jhp.vol.48.no.1.1594>.

It can be concluded by the researcher that the consequences arising from the rejection of the Permanent *Court of Arbitration* decision by China show that the weak implementation of international law in a dispute settlement between countries. In addition, if the Philippines does not act decisively against China's actions in the South China Sea, it will not only have an impact on the Philippines in losses but can also have an impact on countries around the Philippines such as Indonesia, Malaysia, and Vietnam. Neighboring countries will be affected, especially countries in the ASEAN Region because China rejects the results of the PCA, which means that China can continue to carry out its illegal activities in the South China Sea. China's rejection of the PCA ruling brings a number of benefits to China in the context of its national interests in the South China Sea. By rejecting the ruling, China can maintain its claims and presence in the region in accordance with what it considers to be its national interest. This allows China to maintain control over natural resources, trade routes, and security in the South China Sea.

However, the settlement of South China Sea disputes through the *Permanent Court of Arbitration* (PCA) is considered appropriate compared to other mechanisms such as the *International Court of Justice* (ICJ) or the *International Tribunal for the Law of the Sea* (ITLOS). The PCA was chosen because the arbitration mechanism used refers to Annex VII of the 1982 UNCLOS, which is relevant to disputes related to the interpretation and application of UNCLOS. The PCA offers greater flexibility than other courts allowing for faster proceedings and focusing on specific legal issues such as territorial claims or natural resource exploration rights. In addition, the PCA arbitration procedure can still run even if China does not participate, as provided for in Article 9 of Annex VII of UNCLOS. The decision resulting from the PCA is final and binding, providing a strong legal basis for the Philippines' claim to the South China Sea, although its implementation is contingent on the willingness of the parties concerned.⁴³

On the other hand, the use of ICJ or ITLOS faces limitations. The ICJ can only deal with disputes if the two parties agree to bring the case, which in this case did not happen because China rejected the forum. In addition, the ICJ adjudicates various international disputes so that the process can be longer and more complex. ITLOS, although it is a forum dealing with the law of the sea, has limited jurisdiction to certain cases, such as shipping

⁴³ Fatmawati & Aprina, *Op.Cit.*, p.124.

activities or exploitation of marine resources. ITLOS also requires an agreement between the two parties, which is difficult to achieve without China's participation.⁴⁴

Thus, PCA is a more appropriate choice to resolve this dispute. However, the downside is that the implementation of the PCA ruling relies on good faith, so that China can still ignore the decision without effective direct sanctions. This reflects weaknesses in the implementation of international law in the settlement of disputes between countries.⁴⁵

D. Conclusion

The main reason for China's rejection of the Permanent Court of Arbitration (PCA) ruling in the South China Sea dispute with the Philippines is based on several factors. First, China considers the PCA award invalid because it has never approved the arbitration proceedings filed by the Philippines, thus considering the decision null and void. Second, China argued that the PCA did not have the authority to adjudicate the dispute. In addition, despite having ratified UNCLOS, China refers to a 2006 declaration that exempts certain disputes from arbitral jurisdiction as per Article 298 of the 1982 UNCLOS. This stance shows China's preference for resolving disputes through bilateral negotiations rather than multilateral channels. This rejection raises international concerns because it is considered contrary to previously agreed principles of international law.

The consequences of China's rejection of *the Permanent Court of Arbitration's* ruling highlight the weakness in the implementation of international law in the settlement of disputes between countries. In addition, the Philippines' failure to act decisively against China's actions could have negative consequences not only for the Philippines but also for neighboring countries such as Indonesia, Malaysia, and Vietnam. Especially for countries in the ASEAN Region, China's rejection of the PCA ruling could open the door to illegal activities in the South China Sea, threatening the region's sovereignty and security. China's rejection of the PCA ruling also provides a number of benefits for China in safeguarding its national interests in the South China Sea. By rejecting the ruling, China can maintain its territorial claims and existence there, allowing it to control the region's natural resources, trade routes, and security in accordance with its national policy.

⁴⁴ Hanifah, *Loc.Cit.*

⁴⁵ Suciningtyas, *Op.Cit.*, p.138.

E. Suggestion

The suggestion that the researcher can give is that the Philippines should conduct bilateral negotiations together with China to get a mutual agreement. If China does not agree to conduct bilateral negotiations, the Philippines must act firmly against China that does not have good faith in the results of the *Permanent Court of Arbitration* ruling in order to enforce international law and also reduce losses caused by China, such as controlling natural resources.

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