Philippines-China Arbitration: How Would Lessons Learned Shape the Future Resolution of Conflicts?

Justice Antonio T. Carpio

1. **Reduce the Area of Actual Conflict to the Minimum**: Avail of existing dispute settlement mechanisms, like UNCLOS
   a. Maritime disputes can be settled under UNCLOS; 167 states plus EU are members of UNCLOS; All ASEAN disputant states are UNCLOS members
   b. Territorial disputes (island/high tide elevation plus territorial sea) only through negotiation or voluntary arbitration;
   c. The arbitral ruling legally reduced the area of dispute from 85.7% of South China Sea (area covered by the nine-dashed line) to less than 5% of the South China Sea;
   d. ASEAN disputant states now accept that no geologic feature in the Spratlys generate an EEZ; Philippines, Vietnam and Malaysia can now delineate their sea boundaries (EEZ and ECS)

2. **ASEAN Should Adopt a Territorial Dispute Settlement Mechanism**: Model can be *Pact of Bogota*
   a. Among ASEAN disputant states, the South China Sea dispute is now only a territorial dispute in the Spratlys
   c. Sabah issue: side agreement between the Philippines and Malaysia
   d. Spratlys territorial dispute can either be submitted to arbitration or subjected to a stand-still agreement
3. **Convert Area of Conflict into Area of Cooperation**: The Spratlys
   as an *International Marine Peace Park*
   a. Suspend territorial claims for next 100 years; declare all the high and low tide elevations, including three nautical miles around them, as marine protected areas
   b. Spratlys are the spawning grounds of fish in the South China Sea; 2 billion people live in coastal states around the South China Sea and hundreds of millions depend on fish from the South China Sea for their protein
   c. Structures in Spratlys converted in marine research centers or tourism areas
   d. No military installations but only civilian facilities
   e. Biggest beneficiary is China which now takes 50%, and growing, of the annual fish catch in the South China Sea
   f. Marine biologists agree, diplomats cannot

4. **Definition of Habitable Island**: Ramifications in other oceans and seas of the world
   a. Habitable Island is one, based on its natural conditions, can sustain a stable community of people; if a borderline case, look into historical evidence of human habitation in the island and if none, it is probably because it could not sustain human habitation
   b. South Pacific islands: Baker, Howard, and Jarvis outlying islands and many others with just little or scrubby vegetation have no history of human habitation
   c. Aves Island in Caribbean
   d. Woody Island and Pratas Island
   e. Effect of ruling: enlargement of the high seas worldwide; biggest beneficiary is China which has the largest fishing fleet in the world and the largest consumer of fish in the world
5. **Freedom of Navigation and Overflight:** Convergence of Interests between US/Other Naval Powers and China as China itself becomes a World Naval Power
   a. The arbitral ruling, by denying any legal effect to China’s nine-dashed line, automatically resulted in high seas in the center of the South China Sea, and EEZs all round these high seas; world naval powers are enforcing this part of the ruling
   b. China’s Position (Minority view): No military activities in China’s EEZ without prior consent of China; no right of innocent passage in Chinese territorial sea without prior notification to China
   c. US/UK Position (Majority View): opposite of China’s position
   d. Recent developments showing China practicing and adopting the US/UK Position
   e. Will China apply this new Chinese practice to the South China Sea?
   f. China’s claim to territorial sea around artificial islands (from fully submerged or LTEs areas)

6. **Alignment of Maritime Claims with UNCLOS**
   b. Taiwan (2014): President Ma’s interpretation of Nine-Dashed Line; Taiwan’s *amicus brief* submitted to arbitral tribunal
   c. China (2017): From the Nine-Dashed Line to the *Four Sha*
   d. From the South China Sea to the South Pacific, the Caribbean and the Arctic Ocean (Russia/US claims to ECS)
   e. Rule of Law (UNCLOS) will prevail in the long term.

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