

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
 - b. History of submitting territorial disputes to arbitration in ASEAN: *Ligitan & Sipadan* (2002) Islands dispute between Malaysia and Indonesia; *Pedra Branca* (2008) dispute between Singapore and Malaysia; *Preah Vihear* Temple border dispute (1962 & 2013) between Cambodia and Thailand
 - 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**
 - a. Philippines (2009): Treaty of Paris lines to archipelagic baselines
 - 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.
