Royal University of Law and Economics

Final Report on

The Enforcement of Interstate Arbitration Award on Territorial Disputes

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ABSTRACT

There are differences definition of arbitration defined by different organizations. This organization defined it, as "Arbitration is a non-judicial process for the settlement of disputes where an independent third party who an arbitrator makes a decision that is binding."[1] "Alternative Dispute Resolution" wrote by Steven Autermiller defined it, as "Arbitration is the third major ADR (alternative dispute resolution) method. In arbitration, the parties submit their dispute to a neutral third party (usually called the "arbitrator" or if more than one, then called the "arbitration panel" or "tribunal"). This third party considers the evidence the disputing parties have submitted and renders a decision called an "award."[2] The popularity of the used arbitration by states are increasing overtime. "The use of international arbitration has grown significantly over the past decade. It has conquered new territories, in particular, in Asia and Africa."[3] There are sovereign states resolved their disputes through arbitration, and there are a several pending interstate cases at the Permanent Court of Arbitration (PCA).[4] Within the Permanent Court of Arbitration acts as a registry to the proceeding of states dispute, state has no worry about the legal procedure whether it is useable or contrary to the international law or not because "the PCA is an intergovernmental organization with 121 contracting states."[5] When formulating an arbitration proceeding, one of the most popular way that state often used is the proceeding can conducted in ad hoc arbitration which parties engaging in ad hoc arbitration are responsible for determining and agreeing on their own arbitration procedures rather than being

[1] "what is Arbitration?", *CIArb*, http://www.ciarb.org/dispute-appointment-service/arbitration/what-is-arbitration (accessed July 20, 2018).

[2] Steven Austermiller, *Alternative Dispute Resolution: Cambodia: A Textbook of Essential Concepts* (Washington DC: JSRC Printing House, 2010).

[3] Stavros Brekoulakis, Julian D.M. Lew, Loukas Mistelis, ed., *The Evolution and Future of International Arbitration*, (The Netherland: Kluwer Law International BV, 2016).

[4] Permanent Court of Arbitration, Case.

[5] Permanent Court of Arbitration, Introduction to PCA.

supervised by the procedures of an arbitral institution.[6] Since the Alabama, case between Great Britain and United States resolved successfully by arbitration, International arbitration has proved its own useful method to resolve territorial disputes between states. "Alabama claims, maritime grievances of the United States against Great Britain, accumulated during and after the American Civil War (1861–65). The claims are significant in international law for furthering the use of arbitration to settle disputes peacefully and for delineating certain responsibilities of neutrals toward belligerents."[7]

Even though many cases have been successfully resolved through arbitration between states, yet some of arbitral awards also noted as the lack of "enforcement"[8]. This fact can attributed to a lack of established enforcement mechanisms for international law, and the resulting difficulty of enforcing international arbitral awards.[9] Within the challenge to the enforcement of Interstate arbitration award, this research will mainly explore the effective on how to make the refusing state to follow the arbitral award, and raise up the unsuccessful cases that states had faced. Then, this research will come up with the recommendations and suggestions on how state should use it as useful tools in order to apply to their disputes.

[6] "what is ad-hoc arbitration", *International Arbitration network and resources*, http://internationalarbitrationlaw.com/about-arbitration/international-arbitration/ad-hoc-arbitration/ (accessed July 20, 2018).

[7] The Editors of Encyclopaedia Britannica , "Alabama claims: UNITED STATES HISTORY", *Encyclopedia Britannica*, https://www.britannica.com/event/Alabama-claims (accessed July 20, 2018).

[8] See List of Glossary.

[9] Christin Leb, "Arbitration", Beyond Intractability, July 2003, https://www.beyondintractability.org/essay/arbitration (accessed July 20, 2018).

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LIST OF ABBREVATIONS

ADR	:	Alternative Dispute Resolution
ASEAN	:	Association of South East Asia Nations
CARICOM	:	Caribbean Community
PCA	:	Permanent Court of Arbitration
PRC	:	The People's Republic of China
ICJ	:	International Court of Justice
UK	:	United Kingdom
UN	:	United Nations
UNCITRAL	:	The United Nations Commission on International Trade Law
UNCLOS	:	United Nations Convention on Law of the Sea
UNGA	:	United Nations General Assembly
UNSC	:	United Nations Security Council

LIST OF GLOSSARY

Ad-Hoc Arbitration	**:**	**"**A procedure that not administered by any Institution which mean that it is a solution that designed for the specific problem or case."[10]
Administered Arbitration	**:**	"An arbitration procedure that conducted under the rule of institution where the parties need the institution to assist throughout the process."[11]
Award	**:**	**"**A written document provided by the arbitrator(s) stating the disposition of the case."[12]
Bilateral	**:**	Having or relating to two side.
Claimant	**:**	**"**A party that initiates an arbitration or mediation for monetary or other relief."[13]
Enforcement	**:**	**"**Making Sure a rule or standard or court order or policy is properly follow."[14]
Multilateral	**:**	Having many side, or involving by more than two parties.
Recognition	**:**	"A Ratification, confirmation, acknowledgement that something done by another person in one's name had one's authority."[15]

[10] "Institutional vs. ad hoc arbitration", *out-law.com*, August 2011, https://www.out-law.com/en/topics/projects--construction/international-arbitration/institutional-vs-ad-hoc-arbitration/ (accessed July 21, 2018).

[11] Paul D. Friedland, *Arbitration Clauses for International Contracts*, 2nd ed. (July 2007).

[12] "Dispute Resolution Glossary", *Finra*, https://www.finra.org/arbitration-and-mediation/dispute-resolution-glossary (accessed July 21, 2018).

[13] Ibid.

[14] "What is Enforcement", The Law Dictionary, https://thelawdictionary.org/enforcement/.

[15] "What is Recognition", The Law Dictionary, https://thelawdictionary.org/recognition/.

Respondent	**:**	**“**A party against whom a statement of claim or third party claim has been filed.”[16]
Use of Force	**:**	“Use of force" refers to the "amount of effort required by police to compel compliance by an unwilling subject.”[17]
State Immunity	**:**	“State cannot be sued in the courts under its jurisdiction by its own citizens. It generally does not cover government officers such as presidents, prime ministers, ministers, etc., and their actions.”[18]

[16] Supra Note 12.
[17] Philip Bulman, “What Is Use of Force, and What Is a Use-of-Force Continuum?”, *National Institute of Justice*, No. 267 (2011).
[18] Businessdictionary.com

INTRODUCTION

1. Background

International Arbitration is a legal process to solve disagreements between parties from different countries without using court. There are three types of International Arbitration including International Commercial Arbitration, Investor-State Arbitration, and Interstate Arbitration. This paper only focus on interstate arbitration. There are many examples of interstate disputes such as the status of disputed territories, energy conflict, and resource disputes, which could be a source of territorial disputes."[19] Interstate arbitration was not a popular choice of dispute resolution, but it has gradually transformed into a high legal system that is functionally as a legal dispute resolution. The Permanent Court of Arbitration which is an intergovernmental organization providing a variety of dispute resolution services to the international community now has about as many active interstate disputes as the International Court of Justice. Solving territorial disputes through arbitration has been popular among other choice of settle the dispute, states will enjoy the incentives through this method without confront with other state parties in the international court. [20]"Arbitration is a procedure for the settlement of disputes between states by a binding award on the basis of law that result of the award is voluntarily accepted."[21] There are some problems related to enforcement award in interstate arbitration, which challenge the arbitration decision. Arbitration is binding upon the parties' decision, which becomes a problem when the parties refused not to follow the final decision from arbitrators. "Enforcement mechanisms fall into two categories, positive and negative. Positive enforcement mechanisms encourage compliance with an agreement by

[19] Janusz Bugajski, "Center for strategic and International studies", *Washington D.C*, https://www.osce.org/cio/80530?download=true.

[20] Dapo Akade, "The Peace Palace Heats Up Again: But Is Inter-state Arbitration Overtaking the ICJ?", *EJIL: Talk*, February 17, 2014, https://www.ejiltalk.org/the-peace-palace-heats-up-again-but-is-inter-state-arbitration-overtaking-the-icj/ (accessed July 20, 2018).

[21] United Nation, "Summary records of the fifth session", *Yearbook of the international law commission 1953*, Volume I (1953).

providing rewards or "incentives". Negative enforcement mechanisms encourage compliance by threatening (and using) punishments or "disincentives." Both approaches have strengths and weaknesses. Effective agreements often utilize both positive and negative enforcement mechanisms in a carrot-and-stick manner. The important thing is to use the appropriate tool for the appropriate situation."[22] There are two kinds of enforcement. The first one is a positive enforcement, which requires state to negotiate in order to enforce the award, yet the second type is negative enforce, which means state needs to use some kinds of violation not specially using military force but some kinds of punishment such as economics sanction that used it to against state parties.[23] The final arbitral award of the cross-border and territorial disputes may become a problem when one party does not recognize the award, which need other steps to enforce. To be precise, there will be some explanations of recommendation methods for a better way to enforce the award effectively.

2. Common Problems

The concern is the enforcement mechanisms of interstate arbitration after parties received the award. State concerns about how to enforce the award if another party refuse to abide by the tribunal's decision. Some cases are successfully resolved because both parties to the proceeding accept to follow the award, yet some cases are having problem respectively to the enforcement with the parties whose refuse to recognize.

[22] Julian Ouellet, "Enforcement Mechanisms", *Beyond Intractability*, September 2004, https://www.beyondintractability.org/essay/enforcement-mechanisms.

[23] M. Cave, R. Baldwin and M. Lodge, "The Oxford Handbook of Regulation, Chapter: Enforcement and Compliance Strategies, Publisher" *Oxford University Press,* https://www.researchgate.net/publication/292476812_Enforcement_and_Compliance_Strategies.

3. Scope of Limitation

This research paper is mainly focus on the effectiveness methods for the enforcement of arbitral award on territorial disputes, but it will discuss about the creation of interstate arbitration forum (The Permanent Court of Arbitration) and the jurisdiction from that institution to the cases. Through this explanation, we will examine a few cases where is unenforceable. By this analysis, the recommendation will be made for the problems, which arose already. In addition, it will state the successful method of this dispute settlement.

4. Research Objectives

The core objective of this research is to demonstrate the essential benefits for states to settle down the disputes through interstate arbitration and the enforcement techniques as the following:

- To figure out the development of arbitration process throughout the period and its influence.
- To figure out the legal procedure of arbitration and how it works.
- To figure out why the dispute has been arising and why state should refer their case to arbitration.
- To figure out mechanisms for enforcement arbitral award regarding to the dispute situation.
- To figure out how state can handle the problems after the controversy been settle and what means to solve it.
- Since there are not many scholars write about the dynamic means to enforce the interstate arbitration award, we would to figure out some of the positive way of using interstate arbitration and some drawbacks that appear along the way in the real cases.

5. Research Methods

In order to fulfill to requirement for this final report, it depends on the additional research that gather from various sources including the legal documents, reports, presentation's slides, relevant data, international news, reliable sources from online. This final report is advising, consulting, reviewing, and revising with an academic adviser to complete this paper.

6. Structure of Research

Within this paper divided into four bodies such as:

- **Chapter I** will give notion about the background of the interstate arbitration that include the history of it, the development of interstate arbitration from the past to the modern day, as well as the benefits and the drawback of arbitration.
- **Chapter II** will focus on the interstate arbitration framework and the enforcement and recognition mechanism of arbitral award.
- **Chapter III** will analysis a several interstate arbitration cases, which include the rule of procedure, award, and the issue after award.
- **Chapter IV** will study about the effective method that can use to enforce the arbitral award if the party refuse to recognize the award that made by arbitrator.

Finally, yet importantly, this paper also discusses how to strengthen the award enforcement and provide the recommendation base on personal perspective.

CHAPTER I: THE BACKGROUND OF INTERSTATE ARBITRATION

1.1 History

Interstate arbitration had a long history from ancient era to present day. “The development of inter-state arbitration of territorial dispute and delimitation of maritime dispute began in the third millennium B.C in Mesopotamia. “The first recorded case of international arbitration occurred during the third millennium B.C in Mesopotamia Lagash, Umma, and Kish were three of about fifteen politically autonomous but economically interdependent Sumerian city-states.”[24] Interstate arbitration makes its appearance very early in the annals of Rome.[25] Yet, the appearance that it shown up was very limited for some common disputes at that time included maritime border, ownership territorial of temples, and some problems related to monetary claims by private citizens. At Roman time, arbitration between states was not legally and formally common, and it agreed upon parties’ decision. The principle at that time was sometime not implement by parties at all-time and sometimes only one party involved and sometimes both. It is definitely truth that there is no permanent institute to submit their claims as well as nowadays, but there was a Rome senate for arbitral decision making from arbitrators or appointment to resolve territorial or other disputes. The thing mostly done by parties agreed to choose some cities for neutral parties and the arbitrators for their claims. “The honor therefore of first formulating the principle of Interstates arbitration and of first putting it into practice lies with the Romans.”[26] Unlike the modern arbitration, the number of arbitrators in ancient interstate arbitration was unusual because it consisted of large number of arbitrators, yet the modern tribunals consist of three member in based. Many ancient arbitrations in city-states of

[24] Gregory A. Raymond, *Conflict Resolution and the Structure of the State System an Analysis of Arbitrative Settlements*, (Brill Archive, 1980).

[25] Westermann, W. L, "Interstate Arbitration in Antiquity." *The Classical Journal* 2, no. 5 (1907): 197-211. http://www.jstor.org/stable/3287241.

[26] Ibid.

Greek used the procedure of presented document evidence and witness, and the award written, reasoned, and signed by arbitrators. In general, the history record of Rome seemed to preferred political or military solution when it comes to enforcement of interstate arbitration or adjudication. That was just the beginning of interstate dispute solving at those eras, and it has been continuing from a very basic rule to legal recognition through time to time. The strong development of this mechanism started at the nineteenth century.[27]

1.2 The development of Interstate arbitration

The evolution of Interstate arbitration came across many periods and each of those period adopted different methods on the same principle, which avoiding states confrontation or going to war. The after Rome period was the Middle age of Europe that procedures used during arbitral proceedings was similar to the use of these days. Both parties to the dispute had to present arguments and evidences through counsel, the tribunal delivered a written award, and if the losing party defy the arbitrator's decision, the arbitrator or another authority impose some kinds of sanctions to enforce the conformity in some cases. One of the most common and interesting types of mediaeval arbitration was that in which some king gave the award.[28] In the time of 16th, 17th, and 18th century, arbitration as a mean for resolving dispute between states tended to declined its popularity, but at the end of 18th century it emerged the significantly again by the Jay's treaty between new United States and Great Britain. The modern generation of arbitral international dispute instrument became visible again in the late of 18th century.[29]

[27] Supra Note 25.

[28] Henry S. Fraser, "Sketch of the History of International Arbitration" , *Cornell University Law Library: Cornell Law Review*, Vol.11 (1926)., http://scholarship.law.cornell.edu/clr/vol11/iss2/3.

[29] "Introduction to International Arbitration", *Law Explorer*, January 22, 2017, https://lawexplores.com/1-introduction-to-international-arbitration/.

1.3 The Modern era of Interstate arbitration

1.3.1. Jay Treaty of 1794

"The modern history of Interstate arbitration started with the Jay's Treaty of 1794, which is Treaty of Amity, Commerce and Navigation, between His Britannic Majesty; and the United States of America. By their President, with the Advice and Consent of their Senate, more commonly known as Jay's Treaty or the Jay Treaty, signed 19 November 1794 in London, is a treaty between the United States and Britain."[30] This treaty named for John Jay who was the Chief Justice of the United States, and it ratified on 28 October 1795. After the American Revolution ended, there were other ongoing issues between the United States and Great Britain. Great Britain did not show any respect to United States' territory and citizens. The aim of this treaty was to avoid war between Great Britain and United States in the time after the American Revolution War. The treaty's twenty-eight articles addressed most of the issues the mission designed to accomplish. This modern arbitral settlement provided three differences means to the dispute counting boundary disputes, claims by British merchants to United States government, and claims by United States citizens to Great Britain. The following legal procedure designed by Permanent Court of Arbitration (PCA) mostly done by looking to this treaty case because the tribunals consisted three or five arbitrators which one appointed by United States and one by Great Britain, with the two arbitrators who represent each party selected the third, which is the same method for chosen five arbitrators.[31] "It is advisable to distinguish between the measures to be taken by the original members, nominated by each Party for purposes of completing each of the three Commissions by selecting the third Commissioner (under Article V) and the fifth Commissioner (under Articles VI and VII), and subsequent

[30] STUARTR.J.SUTHERLAND, revised, GRETCHEN ALBERS and ZACH PARROT, "Jay's Treaty", *Historica Canada*, http://www.thecanadianencyclopedia.ca/en/article/jays-treaty/.

[31] Supra Note 29.

decisions to be made by any of the completed Commissions."[32] This Alabama Claims gave an impact for the 1899 Hague conference to create the Permanent Court of Arbitration (PCA) in order to settle dispute between states peacefully. "International arbitration agreements were major achievements of the Hague conferences."[33] The legacy of this convention established the present-day international arbitration institution, the Permanent Court of Arbitration.

1.3 The Benefits and Drawbacks of Choosing Interstate Arbitration for Resolving Dispute

Arbitration is a form of formal process in Alternative Dispute Resolution (ADR). The used of interstate arbitration was often used resorted to prevent wars and to end wars by legal and diplomatic ways according to the Chapter VI of the UN Charter.

Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.
2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.[34]

Parties can enter into arbitration process only if both of the parties consent or if they have an arbitration clause. As states want to preserve their relationship, arbitration is one of the choice to choose because if the states choose to settle their dispute by international court there is no more amiable procedure like arbitration. State normally wants to solve any dispute between states in legal and formal means and still want to keep good relations with other states

[32] Georg Schwarzenberger, "Present-Day Relevance of the Jay Treaty Arbitrations", University of Notre Dame Notre Dame Law Review, Vol.53 (1978), http://scholarship.law.nd.edu/ndlr/vol53/iss4/3.

[33] "Hague Peace Conferences." The Oxford Companion to American Military History" *Encyclopedia.com*,http://www.encyclopedia.com/history/encyclopedias-almanacs-transcripts-and-maps/hague-peace-conferences-0 (accessed April 9, 2018).

[34] United Nations, "Chapter VI: Pacific settlement of disputes", *UN Charter*, http://www.un.org/en/sections/un-charter/chapter-vi/index.html.

even if they are recently having disputes, but they also want to get their own interest over their disputes. By choosing arbitration, state has to consider the benefits and drawbacks that might happens because of arbitration.

- **The Essential Benefits**
    - **Preservation of Relationship:** Even if states are having dispute, still they want to keep the relations going on that is why they choose to arbitrate. The relations between states might be the same even after the award made. Because arbitration need consent from both states to resolve their dispute, both parties must want to keep their relationship that's why they are not choose international court of justice instead of arbitration.
    - **Expertise of Arbitrator:** "Parties to the dispute may appoint by mutual agreement any arbitrator whom they consider most appropriate for consideration of the dispute."[35] The parties can choose arbitrators that have expertise in their area of disputes. It is one of essential of interstate arbitration that parties can choose the expertise arbitrators for applying to their disputes since they are expert at those areas. For instance, the dispute between Eritrea and Yemen requires the arbitrators who have knowledge about United Nations Convention on the Law of the Sea (UNCLOS) in order to resolve their dispute.
    - **Flexibility:** This called party autonomy. Parties can submit their agreements or any treaties that related to their dispute and choose the rule of procedure to the dispute by their own. The parties may appoint the tribunal which is particularly suitable to resolve a particular dispute.[36]

[35] Yarik Kryvoi, " Arbitration as a Dispute Resolution Mechanism for Interstate Conflicts", *CIS Arbitration forum*, March 14, 2011, http://www.cisarbitration.com/2011/03/14/arbitration-as-an-alternative-dispute-resolution-between-states/ (accessed July 24, 2018).

[36] Ibid.

- **Impartiality of arbitrator:** The parties choose arbitrators, so states is normally find the neutral one in order to have a fairness judgment.
- **Avoids warfare:** The parties are encouraged to resolve their dispute peacefully. War cost life, property, relations between states and other important things, so state will try any methods that avoid going to war.

- **The Drawbacks of Arbitration**
  - **Preservation of Relationship:** Arbitration is one-step close to litigation, so it still adversarial if compare to mediation. Arbitration still need a complicate procedure and cost more time.
  - **Finality:** Final in arbitration is final. It is hard to change the tribunal's decision. Even though the finality of interstate arbitration award is a final award, it depends on states whether they choose to follow or not. "One can argue that finality is more important in interstate arbitration because the continued existence of interstate disputes can lead to serious consequences like the loss of life (e.g., in territorial boundary disputes featuring armed conflict). Nevertheless, Croatia/Slovenia and South China Sea (Philippines v. China) both show that concerns over fairness can also arise, and where these concerns are not addressed, even a "final" award will not be treated as final by all the parties, such that the aforementioned serious consequences can still arise."[37]

[37] Peter Tzeng, "The Annulment of Interstate Arbitral Awards", *Kluwer Arbitration Blog*, July 1, 2017, http://arbitrationblog.kluwerarbitration.com/2017/07/01/the-annulment-of-interstate-arbitral-awards/ (accessed July 23, 2018).

- **Lower Compliance:** The nature of states is to serve their own interest, so if the award is not satisfied for them they will not comply the award. Arbitration is binding upon the parties. Arbitration award is not a compromise product, yet arbitration has no military troops to force state to implement the award. State itself is willing to abide by the ruling.

CHAPTER II: THE LEGAL FRAMEWORKS OF INTERSTATE OF ARBITRATION

2.1 The Permanent Court of Arbitration

2.1.1 The Creation of PCA

"These treaties are known as "The Hague Conventions" because they were adopted at the Peace Conferences that were held in The Hague, Netherlands, in 1899 and 1907. They establish the laws and customs of war in the strict sense, by defining the rules that belligerents must follow during hostilities."[38] The 1899 convention is important because it created the PCA for state to registry their case even if they choose an ad-hoc arbitration. "The PCA was established by the Convention for the Pacific Settlement of International Disputes, concluded at The Hague in 1899 during the first Hague Peace Conference. The Conference had convened at the initiative of Czar Nicolas II of Russia "with the object of seeking the most objective means of ensuring to all peoples the benefits of a real and lasting peace, and above all, of limiting the progressive development of existing armaments."[39] This convention were the first multilateral treaties that govern the warfare, but the potential effort from 1899 Hague conference was made is the creation of the PCA for arbitration for arbitration forum to settle international disputes. The rules set in PCA that are using today made by this convention. Much of Convention I (1899) is devoted to the policies and procedures of the PCA, and selection of the arbitrators.[40]

[38] "The Hague Conventions of 1899 and 1907", *The Practical Guides to Humanitarian Law*, https://guide-humanitarian-law.org/content/article/3/the-hague-conventions-of-1899-and-1907/

[39] Permanent Court of Arbitration, History.

[40] Betsy Baker, "Hague peace conferences (1899 and 1907)", *Oxford International Law*, April 27, 2018, http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e305.

2.1.2 Overview of PCA

"The Permanent Court of Arbitration (PCA) was the first permanent intergovernmental organization that provide a forum for the resolution of international disputes through arbitration and other peaceful means."[41] The PCA is the oldest worldwide institution for the settlement of international disputes, and it originally established only for interstate arbitration. The convention for the Pacific settlement of International Dispute established the PCA as the global mechanism for settling the dispute between states. In article 16 of the 1899, convention recognized that arbitration is the most effective and equitable of settling dispute when diplomacy fail to settle.[42]

The PCA has a three-part organizational structure consisting of an Administrative Council, the Members of the Court, and the International Bureau, headed by the Secretary-General.[43] For Interstate arbitration based, PCA has provided jurisdiction for disputes based on the Hague Convention for the Pacific Settlement of International Disputes or others bilateral and multilateral treaties based.

2.2 PCA Rule of Procedure

When the states parties submit the disputes in order to initiate the arbitration, state has to make a submission claim about the dispute was arise under breached the agreement, or there is no agreement or treaties between them.

- **Claimant's Submission:** "The claimant makes a written request to arbitrate that include names and contact details of parties; statement of the facts supporting the claim; point at issue; legal ground or agreement supporting to claim."[44]

[41] "History of Permanent court of arbitration". Permanent court of arbitration, https://pca-cpa.org/en/about/introduction/history/ (accessed April 10, 2018).
[42] Ibid.
[43] "Structure in PCA". *Permanent court of arbitration*, https://pca-cpa.org/en/about/ (April 10, 2018).
[44] Ibid article 20.

- **Statement of Defense:** "Respondent submit its statement of defense in writing to the claimant, to the International Bureau, and to each of the arbitrators within a period of time to be determined by the arbitral tribunal."[45]
- **An award:** "The decision of the arbitral tribunal is called an "***Award***"."[46]
    - Several different types of arbitration award can be made:
    - Interim Award – This is a temporary award until the tribunal has given its final decision. A provisional award can only be made if the parties have agreed that "the tribunal may have the power to order on a provisional basis any relief which it would have power to grant in a final award" (s.39 Arbitration Act 1996). This includes; making a provisional order for the payment of money or the disposition of property as between the parties; or an order to make an interim payment on account of the costs of the arbitration.
    - Partial Award – Some elements of the parties' claim have been determined but other issues remain and need to be resolved before the final award is made. Parties can continue arbitrating the remaining issues.
    - Consent Award – Usually the parties have reached a settlement and agreed terms which are then incorporated into an award which can be enforced. (similar to a Judgment by consent).
    - Draft Award -This is not binding on the parties until it has been confirmed by the tribunal.
    - Final Award – This should usually be in writing and signed by all the arbitrators. The award must contain reasons and state where the arbitration took place. It must also be dated (this is important for calculating interest on payments). Once the final award is made this ends proceedings.
    - Additional Award – Usually once the final award it made, the tribunal has no further authority. However, the parties can request an additional award be made on an undecided issue still in dispute.[47]

[45] Ibid article 21.
[46] Thomas Walford, "Type of Award in Arbitration", *LinkedIn*, https://www.linkedin.com/pulse/types-award-arbitration-thomas-walford.
[47] Ibid.

State parties have the autonomy to select their own arbitrators, but if they do not choose, the institution provide the default three arbitrators.

> "Section II. Composition of the arbitral tribunal Number of arbitrators
>
> Number of arbitrators
>
> Article 7
>
> 1. If the parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the notice of arbitration the parties have not agreed on the number of arbitrators, three arbitrators shall be appointed.
>
> 2. Notwithstanding paragraph 1, if no other parties have responded to a party's proposal to appoint a sole arbitrator within the time limit provided for in paragraph 1 and the party or parties concerned have failed to appoint a second arbitrator in accordance with articles 9 or 10, the appointing authority may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided for in article 8, paragraph 2 if it determines that, in view of the circumstances of the case, this is more appropriate."[48]

The following process is the hearing process, which can be private or public depends on parties, and the tribunal shall give parties an advance notice about the date, time and place. The result of the proceeding is an award that made by the arbitrators of the parties chosen. The award made the majority of arbitrators, and the tribunal might make other separate awards on different claims at different times. The award must be in written form and states within binding or non- binding based upon the parties. The arbitral award shall signed by arbitrators, which contain date and the place of arbitration.[49]

[48] "PERMANENT COURT OF ARBITRATION RULES 2012: 2010 UNICTRAL Arbitration Rules", Permanent Court of Arbitration, https://pca-cpa.org/wp-content/uploads/sites/175/2015/11/PCA-Arbitration-Rules-2012.pdf .

[49] Ibid.

2.3 The Recognition and Enforcement of Interstate arbitration

The concerning prominent in Interstate arbitration are the recognition and enforcement where the best solution for these may be difficult to justify in the legal terms. The recognition of arbitration in Dubai International Financial Centre Arbitration Law (DIFC) defines it as, "Where, upon the application of a party for recognition of an arbitral award, the DIFC Court decides that the award shall be recognized, it shall issue an order to that effect."[50] There is no formal mechanism of recognition and enforcement for interstate arbitration if compare to commercial arbitration.

[50] "Arbitration Law", *DIFC Arbitration Law*, No.1: 2018 https://www.difc.ae/files/9014/5449/8249/DIFC_Arbitration_Law_2008_0_1.pdf .

CHAPTER III: CASE ANALYSIS

3.1 The Republic of Croatia versus the Republic of Slovenia

3.1.1 Case Description

Relations between the two European Union members were a friendly until the unresolved border disputes when both countries were not a part of Socialist Federal Republic of Yugoslavia (SFR Yugoslavia) after World War II. In 2009, both countries agreed to submit their disputes to PCA. "The current dispute between Croatia and Slovenia concerns the maritime border controversy along the Bay of Savudrija, as named in Croatia, or the Bay of Piran, as named in Slovenia ("the Bay")."[51] "The Arbitration Agreement was subsequently ratified by Croatia and Slovenia in accordance with their respective constitutional procedures."[52] Both states chose to a binding award.

3.1.2 Rule of Procedure

The arbitral proceedings began on April 13, 2012, and the parties agreed to apply the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two States.[53] Both parties listed the disputes in Arbitration Agreement, and the requested the ruling procedure from both parties on how the tribunal should apply are different. Croatia counsel requested to the tribunal to use the rules and principles of international law, yet Slovenia wanted to apply international law, equity and principle of good neighborly relations in order to reach a fair and just result. The important thing in this case process based on arbitration agreement between these two parties.

[51] Matko Ilic, CROATIA V. SLOVENIA: THE DEFILED PROCEEDINGS, 9 Arb. L. Rev. 347 (2017), http://elibrary.law.psu.edu/arbitrationlawreview.

[52] PCA, Croatia vs Slovenia, https://pcacases.com/web/view/3.

[53] Croatia v. Slovenia, Permanent Court of Arbitration Optional Rules for Arbitrating Disputes Between Two States, https://pca-cpa.org/wpcontent/uploads/sites/175/2016/01/Optional-Rules-for-Arbitrating-Disputes-between-Two-States_1992.pdf.

3.1.3 Award

The Arbitral Tribunal, presided by Judge Gilbert Guillaume, rendered its final award based on an Arbitration Agreement between the Republic of Slovenia and the Republic of Croatia, signed on the 4 November 2009.[54] The final award from the tribunal divided into seven parts such as the course of the Boundary South of Brezovec-del / Murisce, Mouth of the Dragonja and the Bay, Equidistance line, claims of the party, General Coastal Projections, Maritime boundary, and Junction Area. Slovenia has the status of Inland sea and the territorial sea that touches the high sea. The tribunal gave more maritime interests Slovenia on both fisheries and territorial water. In order to enforce it, Slovenia state authorities will exercise the ruling in Slovenian waters, and seeking for Croatia cooperation for applying the award. The land border award will require correspondent with Croatia to avoid conflict happen when Slovenia is trying to implement. Slovenia has sent the proposal to Croatia for implement the award. The tribunal only ruled on those parts in which the controversial parts in the current situation and not mentioned the other land territory.

3.1.4 Issue after ruling

There was an interrupted in July 2015 on the proceedings when Croatia was concerned about the impartial of the Slovenian arbitrator, so it affected to Croatian's decision to obey the ruling. Croatian reaction was negative to the ruling. While Slovenia regards the implementation of the arbitration award an obligation under international law, Croatia continues to reject it. "In response to the ruling, Croatian Prime Minister Andrej Plenkovic said, "We do not consider ourselves obliged by this ruling ...and we do not intend to implement its content." [55] The award was favor most to Slovenia based on UNCLOS method. In accordance with its international

[54] Aceris law LLC, "Final Award in PCA Arbitration Between Slovenia and Croatia", *International Arbitration Law firm*, July 7, 2017, https://www.acerislaw.com/final-award-pca-arbitration-slovenia-croatia/ (accessed July 21, 2018).

[55]Xinhua, "PCA ruling on territorial disputes triggers different reactions in Croatia, Slovenia", *XinhuaNet*, June 30, 2017, http://www.xinhuanet.com/english/2017-06/30/c_136407726.htm.

commitments, Slovenia began enforcing the arbitration award on 30 December 2017.[56] Slovenian claim that Croatia was breaking European and international law by refusing to implement the border arbitration decision.[57] In order to enforce it, Slovenia state authorities will exercise the ruling in Slovenian waters, and seeking for Croatia cooperation for applying the award. The land border award will require correspondent with Croatia to avoid conflict happen when Slovenia is trying to implement. Slovenia has sent the proposal to Croatia for implement the award. The tribunal only ruled on those parts in which the controversial parts in the current situation and not mentioned the other land territory. By 30 December 2017, it is also enforced the commercial fishing in the Slovenia territorial sea, and by the Slovenia adopted the Marine Fisherman Act, Croatian fisherman is enable to access to the Slovenia territorial sea, so Slovenia hopes that Croatia will also adopt the European legislation either so that Slovenian fisherman can access to Croatian territorial sea. In order to implement the award, which means entry into force of the award, Slovenia adopted the law that enable to enforce the award within six-month deadline.

> The entry into force of the arbitration award means the entry into force of a package of four laws which Slovenia adopted within the prescribed six-month deadline. These are:
>
> • The Act Regulating Certain Issues regarding the Final Award of the Arbitral Tribunal on the basis of the Arbitration Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia, which preserves various rights and sets out various new rights of Slovenian citizens affected by the arbitration award, the
>
> • Act on Keeping Records on the National Border with the Republic of Croatia, which also refers to the
>
> • draft Land Register Act

[56]Supra Note 51.

[57]N1 Zagreb, "Croatia and Slovenia present cases on arbitration before EC", *English Edition*, May 2, 2018, http://hr.n1info.com/a299072/English/NEWS/Croatia-and-Slovenia-present-cases-on-arbitration-before-EC.html.

• draft Marine Fisheries Act.[58]

3.2 The Republic of Philippines vs. The People's Republic of China

3.2.1 Case Description

The South China Sea is the most contentious and explosive diplomatic issue in East Asia. The case of the Philippines and China happens when China took control over a reef about 140 miles from the Philippines coast.[59]

3.2.2 Rule of Procedure

On 22 January 2013, the Republic of the Philippines instituted arbitral proceedings against the People's Republic of China under Annex VII to the United Nations Convention on the Law of the Sea.[60] This arbitration concerns about disputes between the Parties regarding the legal basis of maritime rights and entitlements in the South China Sea.

> "The disputes that the Philippines has placed before the Tribunal fall broadly within four categories including: First: The Philippines has asked the Tribunal to resolve a dispute between the Parties concerning the source of maritime rights and entitlements in the South China Sea, Second: the Philippines has asked the Tribunal to resolve a dispute between the Parties concerning the entitlements to maritime zones that would be generated under the Convention by Scarborough Shoal and certain maritime features in the Spratly Islands that are claimed by both the Philippines and China, Third: the Philippines has asked the Tribunal to resolve a series of disputes between the Parties concerning the lawfulness of China's actions in the South China Sea, Fourth, the Philippines has asked the Tribunal to find that China has aggravated and extended the disputes between the Parties during the course of this arbitration by restricting access to a detachment of Philippine marines stationed at Second

[58] Government of The Republic of Slovenia, *Arbitration award: legal path is the only path to a final resolution of the border issue*, January 5, 2018, http://www.vlada.si/en/media_room/newsletter/slovenia_weekly/news/article/arbitration_award_legal_path_is_the_only_path_to_a_final_resolution_of_the_border_issue_60836/.

[59] Jane Perlez, "Philippine v. China : Q and A on South China Sea Case", *The New York Times*, July 10, 2016, https://www.nytimes.com/2016/07/11/world/asia/south-china-sea-philippines-hague.html. (accessed May 3, 2018).

[60] Permanent Court of Arbitration. Case Number 2013-19.

Thomas Shoal and by engaging in the large-scale construction of artificial islands and land reclamation at seven reefs in the Spratly Islands."[61]

China has rejected the arbitration award and stuck to a position of neither accepting nor participating in these proceedings.[62] Even though China refuse to participate, the proceeding remain, according to the article 9 of Annex VII, stated that "absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings."[63]

3.2.3 Award

On July 12th 2016, according to the tribunal, the award toward the case of South China Sea was release. Due to the Philippine submission, the award declared that, Philippine has exclusive sovereign rights over the West Philippine Sea in the South China Sea and the China's claims to historic rights, or other sovereign rights or jurisdiction with respect of the "nine-dash line" is invalid and breach their obligation under the UNCLOS.

3.2.4 Issue after Ruling

Although the award was made, China refuse to recognize the award and stated that they were the victim of the dispute. Chinese Foreign Ministry spoke person Hua Chunying stated in an official statement posted online that "On issues of territorial sovereignty and maritime rights and interests, China will never accept any imposed solution or unilaterally resorting to a third party settlement". [64]

[61] Permanent Court of Arbitration, "The South China Sea Arbitration Award", *Permanent Court of Arbitration*, July 12, 2016, p.1.2.3, https://pca-cpa.org/wp-content/uploads/sites/175/2016/07/PH-CN-20160712-Award.pdf.

[62] Ibid.

[63] UNCLOS. Annex VII: Arbitration, art.9.

[64] Matikas Santos, "China: We are the victims in dispute; won't heed UN decision", *INQUIRER.NET*, July 15, 2015, http://globalnation.inquirer.net/126097/china-we-are-the-victims-in-dispute-wont-heed-un-decision#ixzz5HBRConuH.

3.3 United Kingdom vs. The Republic of Mauritius

3.3.1 Case Description

After receiving independence from British in 1968, Mauritius have claimed sovereignty over the Chagos Archipelago while the UK stated that it will give the island back to Mauritius when they are no longer needed for defend purposes.[65] The UK declared the area around the Chagos Archipelago as the world's largest Marine Protected Area (MPA) in which fishing and other activities are prohibited on 1 April 2010. However, after the declaration, Mauritius consider that UK, the purpose of doing this is not for conservation but to prevent the rights of returning it back to Mauritius. On 20 December 2010, under the dispute settlement provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), Mauritius initiated proceedings against the United Kingdom.[66] The Permanent Court of Arbitration arbitrated the dispute.

3.3.2 Rule of Procedure

On January 2012, the tribunal drafted the terms of appointment for the proceeding and invited the parties comments also invited the parties to seek an agreement on the procedural rules and on a schedule for the future hearing.[67] On December 13, 2012, the tribunal issued procedural order Number 1, which specify the detail of the whole proceeding. The proceeding conducted based on the Annex VII of UNCLOS.

[65] Irini Papanicolopulu, "Mauritius v. United Kingdom: Submission of the dispute on the Marine Protected Area around the Chagos Archipelago to arbitration", *EJIL:Talk!*, February 11, 2011, https://www.ejiltalk.org/mauritius-v-united-kingdom-submission-of-the-dispute-on-the-marine-protected-area-around-the-chagos-archipelago-to-arbitration/ (accessed May 10, 2018).

[66] Ibid.

[67] United Nation Publication, "Reports of International Arbitral Awards", *UN iLibrary*, Vol. XXXI (2018): p.377.

3.3.3 Award

On 18th March 2015, the award declared that the creation of MPA by United Kingdom breached its obligations under Articles 2(3), 56(2), and 194(4) of the Convention.

3.3.4 Issue after Ruling

Even though the tribunal did not rule on the fundamental issue of sovereignty, this case has nonetheless remains complicated and painful arguments over decolonization all over again.[68]

3.4 Co-operative Republic of Guyana vs. The Republic of Suriname

3.4.1 Case Description

This case is about the maritime territory dispute of Guyana and Suriname called breached of International law by Suriname in maritime boundary mainly over the Courantyne River, but not only this territorial area is a matter. Guyana also submitted case to tribunal arbitration on three particular issues (i) the delimitation of the maritime boundary between the Parties; (ii) Guyana's claim for damages resulting from Suriname's activities with respect to the oil concession holders in the disputed area; and (iii) either Party's alleged breach of its obligations under Article 74(3) and 83(3) of UNCLOS[69]. Both states requested that the PCA as registry to the ad-hoc tribunal.

3.4.2 Rule of Procedure

The PCA is the registering institute to this case, but the parties choose ad-hoc[70] rule of procedure. Guyana is a claimant[71] to this proceeding, and Suriname is a respondent[72]. Based on both parties are the member of UNCLOS, the tribunal used UNCLOS treaty based. Guyana

[68] Nicholas A.Ioannides, "Why Mauritius and the UK are still sparring over decolonization", *The Conversation*, May 28, 2015, https://theconversation.com/why-mauritius-and-the-uk-are-still-sparring-over-decolonisation-40911. (accessed May 15, 2018).

[69] Permanent Court of Arbitration, *Case View*, https://www.pcacases.com/web/view/9 (accessed May 18, 2018).

[70] See list of Glossary.

[71] See list of Glossary.

[72] See list of Glossary.

initiated arbitral proceedings on February 24, 2004, pursuant to Articles 286 and 287 and Annex VII of United Nations Convention on the Law of the Sea ("UNCLOS").[73] Within the delimitation of maritime border, the tribunal used UNCLOS article based which is median line to justify the territorial sea and adjoining states each of party gain more 3 nm to 12 not include the new established territorial sea. For Continental shelf and Exclusive economic zone (EEZ), the tribunal based on ICJ guidance agreed to use Equidistance line. The last concerned which is about breaches the obligation of both states still based on UNCLOS articles. The Tribunal found both Parties to be in breach of their obligations under Articles 74(3) and 83(3) of UNCLOS, to make provisional arrangements of a practical nature pending delimitation.[74]

3.4.3 Award

The issue date of award is on 17 September 2007. The tribunal unanimously decided both states breached their obligation according to UNCLOS article 74(3) and article 83(3). For maritime boundary, "Under terms of a tribunal's ruling announced Sept. 20, Guyana has been granted sovereignty over approximately 12,800 sq. mi (33,152 sq. km) of coastal waters that had been in dispute. Suriname awarded 6,900 sq. mi (17,871 sq. km). This binding ruling, according to terms of the UN Convention of the Law of the Sea, is expected to lead to further offshore oil and gas exploration by both countries."[75] Guyana's government seemed satisfied with this ruling even there was some problems occurred during proceeding period.

> There were six core issues in this case, and Guyana's interests and objectives have been met in each. They were:
>
> 1. To establish that the Rule of International Law, not the rule of force, holds sway in CARICOM waters; and more specifically in the maritime areas of Guyana and Suriname.

[73] Supra Note 65.
[74] Supra Note 65.
[75] Suriname, Guyana offshore border dispute settled**,** September 21,2007, https://www.offshore-mag.com/articles/2007/09/suriname-guyana-offshore-border-dispute-settled.html (accessed June 6, 2018).

2. To draw the boundary between the maritime areas of Guyana and Suriname in a manner that would be binding on both countries for all time and acknowledged by the international community.

3. To confirm that the line of the boundary would be influenced, above all, by the principle of equidistance for which Guyana had long contended and for which Guyana's national law provides.

4. To secure Guyana's sovereignty to the resources of the seabed on its continental shelf on the basis of an internationally recognized maritime boundary.

5. To enable Guyana's licensees to return to the offshore area where they were exploring for oil in June 2000, when they were forced at gunpoint by a Surinamese naval vessel to abandon their activities and evacuate the area.

6. To achieve all this in a manner which allows Guyana and Suriname to cooperate as good neighbors and CARICOM partners in the development of their countries.[76]

3.4.4 Issue after Ruling

"Guyana and Suriname have agreed to abide by the tribunal's ruling."[77]Both nations now can proceed with exploration in their respective territories. It has been a long time dispute since the colonial period of both nations fuel, but luckily settled down by International arbitration. This award is neutral for both parties to accept, so even if the award is not satisfied enough for Suriname, Suriname still agreed to follow the rule. "This is a hugely important win, not only in upholding Guyana's claims to its coastal waters, but in maintaining international law as a peaceful solution to resolving sovereign disputes," Reichler says. "The ruling could become an important model for settling other maritime delimitation conflicts; since the sad fact is that there are more disputed maritime claims around the world than there are settled maritime

[76] Address to the Nation by His Excellency Bharrat Jagdeo, President of the Republic of Guyana, on the Award of the Guyana-Suriname Arbitral Tribunal, September 22, 2007**,** http://www.guyana.org/guysur/jagdeo_tribunal_award.html.

[77] Supra Note 71.

boundaries."[78] "The great achievement of the Award is to open harmonious cooperation in their economic development and in their relations as good neighbors."[79]

3.5 The State of Eritrea vs. The Republic of Yemen

3.5.1 Case Description

"In late 1995 and 1996 Eritrea engaged in a brief but violent conflict with Yemen over the Ḥanīsh Islands, an archipelago in the Red Sea claimed by both countries but ultimately recognized as Yemeni."[80] Not only the delimitation was a matter, but also claimed the historical sovereignty over the archipelago. The Eritrea-Yemen maritime boundary delimitation established by an ad hoc tribunal registered by PCA and formed by the previous agreement of the two countries. There are two main issue in this case sovereignty over a group of Islands of the Red Sea and delimitation border of maritime boundary. In 1995, there was a brief war between the two countries over the Hanish Islands, and this fighting led killing twelve soldiers from both countries and captured two hundred prisoners of war. In 1996, Eritrea and Yemen renounced the use of force to find a peaceful resolution through Interstate arbitration. The tribunal commenced in 1996 and issued the final award on 17 December 1999.

3.5.2 Rule of Procedure

In 1996, the arbitration between Eritrea and Yemen began which Eritrea was the claimant, and Yemen was the respondent. The State of Eritrea and the Republic of Yemen both claimed sovereignty over a group of islands in the Red Sea and disagreed as to the location of their maritime boundary. The Arbitration Agreement, between the Parties dated October 3, 1996, required the Tribunal to rule on these two issues in separate stages.[81] Because Eritrea is

[78] Supra Note 71.

[79] Staff Writer, "Frontiers: The Guyana-Suriname Maritime Boundary Award", *Stabroek news*, October 30, 2007, https://www.stabroeknews.com/2007/guyana-review/10/30/frontiers-the-guyana-suriname-maritime-boundary-award/.

[80] Geoffrey Charles Last, Jonh Markakis, " Eritrea", *Encyclopedia Britannica*, July 19, 2018, https://www.britannica.com/place/Eritrea (accessed July 21, 2018).

[81] PCA case view, https://www.pcacases.com/web/view/81 (accessed on June 06,2018).

not a member to the UNCLOS, the tribunal used the relevant component customary law that correlated to the provision of UNCLOS regarding to the maritime borderline. The rule of the tribunal on maritime boundary used a single median line to determine the border mainland and coastlines. Within the sovereignty over the archipelagos, the tribunal decided this issue based on ancient evidence and state authority to award both parties.[82]

3.5.3 Award

The award released on 17 December 1999. The award also divided into two stages, which the first stage of the award was territorial sovereignty issue date on 09 October 1998, and the second stage was maritime delimitation issue date on 17 December 1999. [83]"The Tribunal found Yemen to be sovereign over the Zubayr group of islands and the Zuqar-Hanish group on the balance of the evidence from the Parties regarding the exercise of the functions of state authority."[84]

3.5.4 Issue after Ruling

After the award released, Eritrea had to reverse itself 180 degrees from the tribunal's decision to return the Hanish Islands and Zubayr group to Yemen. Yemen was favored the award on territorial island than Eritrea, but Eritrea was favored the award on maritime boundary especially on fishing area. "Both Eritrea and Yemen accepted the ruling, and since then relations between the two countries have been relatively stable in spite of repeated disputes over fishing. "[85]Eritrean angler is enable to enjoy their right fishing entitlement around the islands even if those island belonging to Yemen and used the islands for traditional activities on fishing career. It is one of the successful award from Interstate arbitration because both nations agreed to follow the ruling since it seemed that the awards are appropriate and

[82] Permanent Court of Arbitration, Case 1996-04.
[83] Ibid.
[84] "Eritrea/Yemen", *The Hague Justice Portal,* http://www.haguejusticeportal.net/index.php?id=6153
[85] "Eritrea-Yemen Relations", *Global Security.org,* https://www.globalsecurity.org/military/world/eritrea/forrel-yemen.htm.

acceptable for both nations. Since 2004, the relations between the two became warm and even concluded agreement mainly on trade. Even if there are some problems related to fishing area, but it seems not a big matter to break the amicable relation to both states. [86]

3.6 Analysis the Compare and Contrast of the Enforcement of States had applied

Arbitration has proved its own productive both failed and succeed in many cases as the above cases had shown, so here the analysis the main similarities and differences.

- **Similarities**
    - All states want another state party's acceptance the award before they start to apply the ruling.
    - The Guyana and Suriname case and Eritrea and Yemen case are the same enforce due to all the parties are voluntary and agreed to accept the awards.
    - The giant countries in these cases, which are China and UK, are not willing to abide by the award.
- **Differences**

    There are quite a few differences from one case to another in this paper.

    - The distinction point of the first case **Croatia vs. Slovenia** is that Slovenia adopted four laws in order to enforce the arbitration award without waiting for acceptance from Croatia. Even though Croatia trying to ignore the award's ruling and making some excuses over the impartiality of arbitrator, still the tribunal decided that it was not a big mattered enough to render the proceeding and completed the proceeding successfully.
    - The South China Sea case between **The Republic of Philippines and The People's Republic of China** is a huge different from any other case in Interstate

[86] Ibid.

Arbitration because China didn't even participate in the arbitration proceeding. China has refused to participate any arbitration proceedings due to a few reasons. "Xu Liping, a senior research fellow with the National Institute of International Strategy at the Chinese Academy of Social Sciences, stressed that UNCLOS should never be allowed to serve as a tool for certain interest groups to decide on sovereignty-related disputes". "The award, a typically unfair and arbitrary verdict, represents a huge blow to the world's confidence in the international legal system and the integrity of arbitration proceedings," he said."[87] The territory sovereignty and maritime boundary for both countries are just a formal claims, but the deeply intention for these territorial islands are about political influence of China and natural resources on the ground including oil, gas, and fishing grounds area. The threat to escalate of war could happens anytime if the winner of an award, which is the Philippines or other countries, surrounded the dispute area try to force China to accept award. "Last year, US officials claimed the Chinese had built up an extra 800 hectares (2,000 acres) on their occupied outposts across the South China Sea over the previous 18 months."[88] China prefers to resolve their dispute with its neighbor bilaterally.

- **The United Kingdom and The Republic of Mauritius case** is also different from other cases in this paper. The United Kingdom not follow the ruling from the tribunal due to a reason of Marine Protected Ares (MPA) that the tribunal award that it is illegal. Because the award not included entitle territorial sovereignty to neither one of these countries as the Mauritius claimed, the award

[87] Xinhua, "Law-abusing tribunal issues ill-founded award on South China Sea arbitration", *XinhuanNet*, July 12, 2016, http://www.xinhuanet.com/english/2016-07/12/c_135507964.htm.

[88] Tom Phillips, "Oliver Holmes and Owen Bowcott", *Beijing rejects tribunal's ruling in South China Sea case*, https://www.theguardian.com/world/2016/jul/12/philippines-wins-south-china-sea-case-against-china..

only mentioned that the United Kingdom breached its obligation, so it is hard for Mauritius trying to enforce. Mauritius has no jurisdiction to force UK to follow the award, nor get back the Chagos Archipelago since one of Island named Diego Garcia is where the British-American military based. In the further solution, United Nations General Assembly voted for clarify the legal status for this archipelago to refer this case to ICJ. Even though the case referred to ICJ, still The UK is not willing to obey by it. "The UK argued that the question put to the Court is essentially about a bilateral dispute between States and that it is inappropriate for the ICJ advisory opinion procedure to be used to obtain adjudication of a bilateral dispute between states that have not consented to ICJ jurisdiction over that dispute".[89]

- The award in **Guyana and Suriname** successfully enforced because both countries agreed to be bind by the rule. The reason is so simple that both nations got their interest in this award. Reichler says. "The ruling could become an important model for settling other maritime delimitation conflicts; since the sad fact is that there are more disputed maritime claims around the world than there are settled maritime boundaries."[90]
- The way of enforcement, the award of **The State of Eritrea and The Republic of Yemen** is similar to Guyana and Suriname case because both states agreed to abide the tribunal's decision. The different is these two nations agreed to obey in both territorial sovereignty and maritime boundary even though Eritrea has to

[89] Dapo Akande and Antonios Tzanakopoulos, Can the International Court of Justice Decide on the Chagos Islands Advisory Proceedings without the UK's Consent, June 27, 2017, https://www.ejiltalk.org/can-the-international-court-of-justice-decide-on-the-chagos-islands-advisory-proceedings-without-the-uks-consent/.

[90] Supra Note 52.

return the Hanish Islands to Yemen. There is no surprising because Yemen is one of the main trade partner country to Eritrea.

- **The Model Enforcement of Preah Vihear case:**

As this case is not solved by arbitration, it still could be a model for arbitral enforcement. The enforcement success by the ICJ's interpretation of its 1962 judgment. The court did order Thailand to withdraw their troops from Cambodia.

- **Case description of Preah Vihear Temple:**

For decades, Cambodia and Thailand have been embroiled in a dispute over the control of land on the mountainous borderlands surrounding the temple of Preah Vihear.[91] In 1962, The International Court of Justice ruled that Preah Vihear Temple is in Cambodia sovereignty and the dispute seemed to be silent for a while, but then in 2008 when Cambodia government sought the temple as the World Heritage, the dispute occurred again as a brief fighting.[92] This fighting could lead to a regional threat, so in the United Nations General Assembly in September 2008, United Nations Security Council to ICJ referred this case. Within the tension of both countries, Cambodia asked the ICJ to interpretation on its judgment to clarity entitlement the sovereignty territory, and it did order Thai's military troops to withdraw and shown clearly that Preah Vihear temple is in Cambodia territory.[93] This enforcement in this case took plenty of steps to succeed. States are bind by International law, so does Thailand. International

[91]Traviss, Alexandra C. (2012) "Temple of Preah Vihear: Lessons on Provisional Measures," *Chicago Journal of International Law*, Vol. 13: No. 1, Article 12, http://chicagounbound.uchicago.edu/cjil/vol13/iss1/12 .

[92] Solida Svay, "Analysis of the Preah-Vihear Temple Case, Cambodia v/s Thailand at the International Court of Justice under Common Territorial Claims involving Land Disputes", *Journal of Law, Policy and Globalization*, Vol 36 (2015), p,12.

[93] Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand), Judgment, I.C.J. Reports 2013, p. 281.

Court of Justice is the world's highest court and the United Nations organs, so the judgment from ICJ is much more powerful than arbitration since arbitration has no military force connection to force state to agree.

CHAPTER IV: THE EFFECTIVE METHODS FOR APPLYING FOR THE ENFORCEMENT

It is hard enough to get parties solving their dispute through arbitration, and even harder to make states follow the award or ruling decision since states have different aspect over their disputes. Arbitration is binding upon the parties, which is not a compromise product, yet arbitration has no military troops to force state to implement the award. There are two main types of enforcement. The first one is positive enforcement, which requires states to negotiate in order to enforce the award, yet the second type is negative enforcement which mean state need to use some kind of violation not specifically using the military force but some kind of punishment such as economic sanction, that used to against state parties.

4.1 Sanction

There are many types of sanctions, but this part might discuss only few types. Mainly this strategy is focus on economic sanctions and diplomatic sanction.

- **Economic Sanction**

  Trade is a vital component of economy, so if states lose its trade partner, the economics of their countries become unstable. For example, Guyana's ambassador said, "Guyana is Suriname's fifth largest trading partner. "Especially in relation to Suriname, our borders are not barriers," he said. George noted that between 2014 and the first half of 2017, trade between the two countries was valued at an estimated GY$53 billion; GY$37 billion of which was in Suriname's favor "so we have a huge deficit in spite of the fact that they are claiming our territory". It means that if Guyana stops trading with Suriname for not obey the arbitration's ruling, Suriname will probably lose a big trade partner. Since a state has no jurisdiction to seize arms

embargoes another country, replace for this state could has diplomatic restriction or even end diplomatic relations.

- **Diplomatic Sanction**

This is a type of sanction have been one of the most frequently used which is issued by countries in order to trig or remove the diplomatic tie such as embassies and also mentioned in the article 41 of the UN Charter.[94] In the modern day, diplomatic sanction have been used to target state that have issue related to terrorism, proliferation and for accompanying desire for regime change in some case[95]; however, diplomatic sanction can also be used to enforce the arbitral award. In term of arbitration, if parties to the arbitration do not recognize or implement the arbitral award, they can use diplomatic sanction to enforce the award. In this globalization world, having an embassy in each other country allow the country easy to access the information and track the event in other country yet without an embassy it hard for to access to the certain information. Without an embassy presence in one country, it clearly shows that there will be lack access of the information or event that happen within the country. Similarly, due to the case study above, parties to the dispute hardly enforce or recognize the arbitral award and to do so they must find a better way to enforce the award. It is true that those counties have an embassy in each other country, and they have a good diplomatic relation, which allow them to access with the information and keep track with each other very well. However, when the dispute arises, they need to settle it down and choosing diplomatic sanction since they do not need to use force to threaten another party.

[94] "Diplomatic Sanction", SanctionAlert.com, June 10, 2016, http://sanction.com/glossary/diplomatic-sanctions/ (accessed July 21, 2018).

[95] Tara Maller, "Diplomacy Derailed: The Consequences of Diplomatic Sanctions", *The Washington Quarterly*, volume 33 (2010): p:61-79.

4.2 Use of Force

In international relations, use of force mean directly to be linked to the sovereignty of the states. Force can be used in different purpose such as for intervention, punishment, grabbing territories or suppression the states.[96] However, in this context, force also can be used to enforce the arbitral award. The use of force does not mean war, but closely to war. The implemented party starts implement the ruling, and if another party is not willing to apply, they may seize the ruling place. The use of force might be possible if the compliant party is more powerful than the non-compliant country. It could lead to a brief war if both parties confront their military troops on the same ruling place.

4.3 Diplomatic Negotiation

Diplomatic negotiation is a vital instrument process or how the countries come together to talk about an issue that concerns them.[97] Using diplomatic negotiation allow parties to the dispute sit down and discuss how to set thing done between them. Since each country has ambassador, it can ask its ambassador to meet, talk, and ask to begin the negotiation. The term of diplomatic negotiation is only use to solve the conflict that already arise but also play a role in arbitration. In arbitration, if the parties have conflict regarding to the award enforcement, both parties need to negotiate in order to reach the agreement to apply the ruling. By using negotiation to help enforce the arbitral award will help to save state reputation also a peaceful implementation for both parties.

[96] "The Use Of Force In International Relations International Law Essay", *Lawteacher.net*, July 2018, https://www.lawteacher.net/free-law-essays/international-law/the-use-of-force-in-international-relations-international-law-essay.php?vref=1 (accessed 23 July 2018).

[97] Pawl Meerts, *Diplomatic Negotiation: Essence and Evolution*, (The Hague: Clingendael Institute: 2015).

4.4 Bilateral or Multilateral talk or agreement

The term of bilateral or multilateral talk or agreement is a way that two or more parties promising to do something which can be individuals, groups, business or government and the agreement can be positive or negative – "will do something" or "will not do something".[98] The concept of using bilateral or multilateral talk or agreement is important since it will allow parties or countries to fulfill their contract and it much easier for parties to talk privately in exchange ideas on how they enforce the award**.** For example, China wants to talk privately with the Philippines on the arbitration award and does so the Philippines. "President Rodrigo Duterte wants to solve the Philippines' longstanding maritime dispute with China through bilateral channels."[99]

4.5 Regional Organization

This could help the award secure because regional organization will have specific provision to enforce the award, or the non-compliant party more likely to respond with opinion of the region rather a county. For example, the award of the South China Sea case the Philippines should ask the Association of South East Asia Nations (ASEAN) for any provisions or any advisories on how to enforce the award.

4.6 Retorsion and Reprisal

These two methods are self-help for state to enforce the award. "Retorsion is retaliation or reprisal by one state identical or similar to an act by an offending state, such as high tariffs or discriminating duties." [100]The other method is not far different from it. "Reprisal means the

[98] J. Hirby, "What is bilateral agreement?", *The Law Dictionary*, 2nd ed, https://thelawdictionary.org/article/what-are-bilateral-agreements/ (accessed July 21, 2018).

[99] "Duterte now prefers bilateral talks with China on sea dispute" *Philstar Global*, November 16, 2017, https://www.philstar.com/headlines/2017/11/16/1759510/duterte-now-prefers-bilateral-talks-china-sea-dispute (accessed July 23, 2018).

[100] Dictionary.com

retaliation for an injury with the intention of inflicting as much injury in return."[101] State can act accordingly to recalcitrant party who refuses the award. These both are self-help to enforce the award if one party does not want to enforce another party may starting apply for self-help enforcement.

[101] "Reprisal Law and Legal Definition", *US legal*, https://definitions.uslegal.com/r/reprisal/ (accessed July 23, 2018).

HOW TO STRENGTHEN THE ENFORCEMENT OF THE AWARD

The submission dispute of the parties implies that they will agree to carry out the award immediately, but in some real cases state trying to refuse the award by made some arguments that arbitration procedure or arbitrator made mistakes over their case when the award is not favor their interest. One thing in common that states are seeking for arbitration because they cannot solve their dispute by negotiation. The implementation of international arbitration award is impossible in cases where parties decide not to abide by the decision. Interstate arbitration most often lacks of establishment of enforcement mechanisms.

To strengthen the enforcement of interstate arbitration, states itself must understand the nature of dispute, the value of the territory issue why states are having conflict over that territory, so they can accept the ruling's award by acknowledge the reason. For example, maybe it is not only about territory, but about also including other causes such as political implication or resources in the ground on the territory or any other impact reasons. In addition, the parties should be willing to abide the award if they chose to be binding award. This does not mean that states have to avoid arbitration if they are not willing to abide by the decision of the tribunal, but it means state should be willing to accept if they chose a binding award because they should have understood that arbitration is legal and formal process including international recognition for its appearance.

Arbitration has shown the most fruitful relatively to apolitical cases where the parties' claims to the land based on historical arguments and documentary evidence so it is much easier than the disputes that implies political interest.[102] In the real example of Preah Vihear case, this dispute happened between two countries in ASEAN Cambodia and Thailand over the control

[102] Carla S. Copeland, *The Use of Arbitration to Settle Territorial Disputes*, 67 Fordham L. Rev. 3073 (1999).

vicinity area Preah Vihear temple. This case at first was crossed one of the Alternative Dispute Resolution (ADR) process is mediation by Indonesia president and still not resolve, but at least both countries tried a peaceful mean in Alternative Dispute Resolution (ADR) process. Here are some of positive means that states need to consider in order to strengthen the Interstate arbitration award enforcement.

- **Need to be recognized:** Because states have immunity from any jurisdiction, it is impossible to file a law sue against state. "Sovereign immunity, or state immunity, is a principle of customary international law, by virtue of which one sovereign state cannot be sued before the courts of another sovereign state without its consent."[103] The correlate in interstate arbitration is the recognition from states who prefer to resolve their cases in arbitration that will consider arbitration one of the successful legal process to solve their dispute confidentially. For instance, Slovenia and Croatia case over maritime boundary. Even though Croatia annulled the award, Slovenia cannot sue Croatia for not recognize the award. This method needs state to cooperate.
- **Specific Enforcement Mechanisms:** The enforcement of Interstate award is only regulated by principles of public international law with no specific steps to enforce award completely. Interstate arbitration needs to create a specific enforcement for states to follow not just made an award and find nowhere to enforce. There are some keys point that interstate arbitration need to add and change in order to make it more effective. "Interstate arbitral awards should be subject to a compulsory control mechanism."[104] First, the rule of choosing a

[103] Xiaodong Yang, "Sovereign Immunity", *Oxford Bibliographies*, http://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0018.xml.

[104] Supra Note 33.

binding or non-binding award or compulsory control mechanism should change to compulsory award that help to strengthen the power of the award. Second, create a bilateral or multilateral treaty among parties before commerce the proceeding. Third, Create the International Institution to where party can pursue the claim that party refuse to obey the award. For example, Croatia and Slovenia case, first if both know that arbitration is a compulsory decision award, they would be willing to abide by the tribunal decision since they can choose not to obey. Second, both countries should create a bilateral agreement stated that they abide by the award, and this agreement should be support by the arbitration tribunal. The last one is the place to pursue the claim if they still not satisfy the award or want to pursue their case, the interstate arbitration should set an International institute for enforcement award and pursuing case.

CONCLUSION AND RECOMMENDATION

This paper has represented Interstate Arbitration as resolutions toward territory, boundary, as well as maritime disputes. It has given clear definition, and also has shown the development of interstate arbitration throughout the history. The modern day Interstate Arbitration was drawn from the resolution to the dispute between Great Britain and United States citizens, which was also known as Jay Treaty. This treaty has updated to the 1899 and 1907 Hague convention of Pacific settlement of International disputes which established the Permanent Court of Arbitration.

There are three types of Interstate arbitration which include Ad-hoc where parties select a group of arbitrators to resolve the conflict, Formal where parties submit their dispute to Permanent Court of Arbitration, and International Claim Tribunals where parties select a group of people from tribunal to resolve the complex dispute.[105] However, in this paper only presented the formal type of solving dispute through Permanent Court of Arbitration that provide jurisdiction toward the dispute based on the Hague Convention also adopted the UNCLOS that has jurisdiction over the water dispute. In PCA, solving the dispute is based PCA rule of procedure.

This paper studied the cases that arise between states and have some issue after the ruling, such refuse to recognize the award or to implement it. Although solving interstate arbitration through PAC are commonly used by states, yet after the analysis of each case, the parties are likely not satisfied with the result which can cause a problem with their state relationship.

[105] Lecture, July 12, 2017.

It is clear that, before the interstate arbitration, solving the dispute were very hard for the party, but it become more convenience. Yet, the central problem that addressed in this thesis paper is lack of enforcement of arbitral award and what to do in order to strengthen it. Respond to the central problem based on this paper, we can see that arbitration is a way for state to solve the dispute but we cannot predict that the arbitral award will always accept by the party to the dispute. This paper reflected that, in order to give the effectiveness to the award using others effective method could help. After the studied on each problem and each state condition, the effective methods that allow the parties of the dispute accept and implement the award are sanction, use of force, negotiation or bilateral talk agreement. Those methods not only the effective way to enforce the award but also a better to save the relationship between state and state's reputation.

Coming to the end, the future of Interstate arbitration will be improved due to its succeed and failure on many cases that gave experiences on how to make their decision more powerful in correspond to the need of state disputes. To make the arbitral award become more effective and recognize by party of the dispute, both side of the party play an important role. The main actor in the arbitration not arbitrator but the parties themselves since they need to implement after the award was made.

Arbitration is one of many choices, and state should prefer it from other International courts. It gives both some benefits and drawbacks. As the above mentioned, state has to consider the helpful means to solve their disputes peacefully and confidentially. Arbitration is binding upon the parties' decision, which is a weakness of arbitration. State has to understand that arbitration has no International Military Force to enforce the award or ruling. State itself has to

agree upon the ruling and willing to enforce the award itself if they choose to be binding award. Arbitration is still a helpful model for states to predict the possibility of win in the further court jurisdictions if they want to pursue their dispute through other International methods. Even state chooses ad hoc or administered, they still can choose binding or non-binding. Arbitration is a voluntary process that needs states involvement. Interstate arbitration seems to have no power to make giant countries to follow its decision and makes arbitration looks weak, as the above case analysis had mentioned. Arbitration is amiable process that state could try to solve their dispute peacefully, but when it comes to enforcement state needs to consider that arbitration is the party autonomy procedure, so the award came out because their choice either. The further discussion of Interstate arbitration should have be done by not only scholar, but also International organization, which observe the production of arbitration

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APPENDIX

Arbitration Between the Republic of Croatia and the Republic of Slovenia

Case name	Arbitration Between the Republic of Croatia and the Republic of Slovenia
Case description	On 4 November 2009, the Prime Ministers of Croatia and Slovenia signed an Arbitration Agreement, by which Croatia and Slovenia submitted their territorial and maritime dispute to arbitration. The Arbitration Agreement was subsequently ratified by Croatia and Slovenia in accordance with their respective constitutional procedures. Article 3 of the Arbitration Agreement tasks the Arbitral Tribunal to determine (a) "the course of the maritime and land boundary between the Republic of Slovenia and the Republic of Croatia"; (b) "Slovenia's junction to the High Sea"; and (c) "the regime for the use of the relevant maritime areas." Article 4 of the Arbitration Agreement mandates that the Tribunal apply (a) "the rules and principles of international law" for the determinations in respect of the course of the maritime and land boundary, and (b) "international law, equity and the principle of good neighbourly relations in order to achieve a fair and just result by taking into account all relevant circumstances" for the determinations in respect of "Slovenia's junction to the High Sea" and the regime for the use of the relevant maritime areas. Following a first procedural meeting on 13 April 2012, Croatia and Slovenia exchanged three rounds of extensive written submissions, which were accompanied by over two thousand documentary exhibits and maps. From 2 to 13 June 2014, a hearing was held at the Peace Palace, in the course of which both Parties presented their positions. On 29 June 2017, the Tribunal rendered a Final Award at a public sitting at the Peace Palace, The Hague. The Permanent Court of Arbitration acted as Registry in this arbitration.
Name(s) of claimant(s)	
Name(s) of respondent(s)	

Names of parties	The Republic of Croatia (State) The Republic of Slovenia (State)
Case number	2012-04
Administering institution	Permanent Court of Arbitration (PCA)
Case status	Concluded
Type of case	Inter-state arbitration
Subject matter or economic sector	Border delimitation
Rules used in arbitral proceedings	Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two States
Treaty or contract under which proceedings were commenced	Bilateral treaty Arbitration Agreement Country A: Croatia Country B: Slovenia
Language of proceeding	English
Seat of arbitration (by country)	Belgium
Arbitrator(s)	Judge Gilbert Guillaume Professor Vaughan Lowe QC Judge Bruno Simma Ambassador Rolf Einar Fife (since 25 September 2015) Professor Nicolas Michel (since 25 September 2015) Judge Ronny Abraham (until 3 August 2015) Professor Budislav Vukas (until 30 July 2015) Dr. Jernej Sekolec (until 23 July 2015)
Representatives of the claimant(s)	

Representatives of the respondent(s)

Representatives of the parties

REPUBLIC OF CROATIA

Agent

Professor Maja Seršić, Head of the Department of International Law, University of Zagreb, Faculty of Law (until 31 July 2015)

Co-Agent

H.E. Ms. Andreja Metelko-Zgombić, Ambassador, Director-General, Directorate for European Law, International Law and Consular Affairs, Ministry of Foreign and European Affairs
(until 31 July 2015)

Counsel and Advocates

Professor Zachary Douglas, Matrix Chambers (until 31 July 2015)
Mr. Paul Reichler, Foley Hoag LLP (until 31 July 2015)
Professor Philippe Sands QC, Matrix Chambers (until 31 July 2015)
Ms. Anjolie Singh (until 31 July 2015)
Professor Davor Vidas (until 31 July 2015)

REPUBLIC OF SLOVENIA

Agent(s)

Professor Mirjam Škrk, Head of the Chair of International Law, Faculty of Law, University of Ljubljana
H.E. Ms. Simona Drenik, Minister Plenipotentiary, Legal Advisor, Cabinet of the Minister, Ministry of Foreign Affairs (until 23 July 2015)

Co-Agent

H.E. Ms. Nataša Šebenik, Minister Plenipotentiary, Ministry of Foreign Affairs (as of 7 March 2016)

Counsel and Advocates

Mr. Rodman R. Bundy, Eversheds LLP
Dr. Daniel Müller
Professor Alain Pellet
Sir Michael Wood, 20 Essex Street

Assistants to Counsel

Ms. Natasha Harrington, Eversheds LLP
Dr. Maja Menard

	Ms. Alina Miron Mr. Eran Sthoeger
Number of arbitrators in case	5
Date of commencement of proceeding [dd-mm-yyyy]	2012
Date of issue of final award [dd-mm-yyyy]	29-06-2017
Length of proceedings	More than 4 years

The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)

Case name	The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)
Case description	On 22 January 2013, the Republic of the Philippines instituted arbitral proceedings against the People's Republic of China under Annex VII to the United Nations Convention on the Law of the Sea (the "Convention"). The arbitration concerned the role of historic rights and the source of maritime entitlements in the South China Sea, the status of certain maritime features in the South China Sea, and the lawfulness of certain actions by China in the South China Sea that the Philippines alleged to be in violation of the Convention. China adopted a position of non-acceptance and non-participation in the proceedings. The Permanent Court of Arbitration served as Registry in this arbitration.
Name(s) of claimant(s)	The Republic of Philippines (State)
Name(s) of respondent(s)	The People's Republic of China (State)
Names of parties	
Case number	2013-19
Administering institution	Permanent Court of Arbitration (PCA)
Case status	Concluded
Type of case	Inter-state arbitration
Subject matter or economic sector	Law of the sea
Rules used in arbitral proceedings	- Other -
Treaty or contract under which proceedings were commenced	Multilateral treaty Treaty: UNCLOS

Language of proceeding	English
Seat of arbitration (by country)	Netherlands
Arbitrator(s)	Judge Thomas A. Mensah (President) Judge Jean-Pierre Cot Judge Stanislaw Pawlak Professor Alfred H. Soons Judge Rüdiger Wolfrum
Representatives of the claimant(s)	**Agent** Solicitor General Jose. C. Calida (replacing Solicitor General Florin T. Hilbay as of 30 June 2016, who replaced Solicitor General Francis H. Jardeleza, as of 2 March 2015) Office of the Solicitor General, Makati, Republic of the Philippines **Counsel** Paul S. Reichler Lawrence H. Martin Andrew B. Loewenstein Foley Hoag LLP Professor Bernard H. Oxman University of Miami School of Law Professor Philippe Sands QC Matrix Chambers Professor Alan Boyle Essex Court Chambers
Representatives of the respondent(s)	China did not appoint an agent. In a Note Verbale to the PCA on 1 August 2013, and throughout the arbitration proceedings, China reiterated "its position that it does not accept the arbitration initiated by the Philippines."
Representatives of the parties	
Number of arbitrators in case	5
Date of commencement of proceeding [dd-mm-yyyy]	22-01-2013

Date of issue of final award [dd-mm-yyyy]	12-07-2016
Length of proceedings	3-4 years
Additional notes	In accordance with Article 15(2) of the Rules of Procedure, at the request of the Arbitral Tribunal, the Registry is making arrangements for the preparation of unofficial Chinese translations of the awards rendered by the Arbitral Tribunal.

Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)

Case name	Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)
Case description	Pursuant to Article 287 and Annex VII, Article 1 of the United Nations Convention on the Law of the Sea, on 20 December 2010 the Republic of Mauritius instituted arbitral proceedings concerning the establishment by the United Kingdom of a Marine Protected Area around the Chagos Archipelago. The Permanent Court of Arbitration acted as Registry in this arbitration.
Name(s) of claimant(s)	The Republic of Mauritius (State)
Name(s) of respondent(s)	The United Kingdom of Great Britain and Northern Ireland (State)
Names of parties	
Case number	2011-03
Administering institution	Permanent Court of Arbitration (PCA)
Case status	Concluded
Type of case	Inter-state arbitration
Subject matter or economic sector	- Other -
Rules used in arbitral proceedings	- Other -
Treaty or contract under which proceedings were commenced	Multilateral treaty Treaty: UNCLOS
Language of proceeding	

Seat of arbitration (by country)	
Arbitrator(s)	Professor Ivan Shearer (President) Judge Sir Christopher Greenwood CMG QC Judge Albert Hoffmann Judge James Kateka Judge Rüdiger Wolfrum
Representatives of the claimant(s)	**Agent** Mr. Dheerendra Kumar Dabee SC Solicitor-General of Mauritius **Deputy Agent** Ms. Aruna Devi Narain Parliamentary Counsel **Counsel** Professor James Crawford AC, SC, FBA University of Cambridge Professor Philippe Sands QC Ms. Alison Macdonald Matrix Chambers Mr. Paul S. Reichler Mr. Andrew Loewenstein Foley Hoag LLP
Representatives of the respondent(s)	**Agent** Ms. Alice Lacourt Legal Counsellor Foreign and Commonwealth Office *Replacing* Mr. Christopher A. Whomersley CMG Deputy Legal Adviser Foreign and Commonwealth Office **Deputy Agent** Ms. Nicola Smith Assistant Legal Adviser Foreign and Commonwealth Office *Replacing* Ms. Margaret Purdasy Assistant Legal Adviser Foreign and Commonwealth Office **Counsel** The Rt. Hon. Dominic Grieve QC, MP Her Majesty's Attorney General

Representatives of the parties	Professor Alan Boyle University of Edingurgh and Essex Court Chambers Ms. Penelope Nevill 20 Essex Street Chambers Ms. Amy Sander Essex Court Chambers Sir Michael Wood KCMG 20 Essex Street Chambers Mr. Samuel Wordsworth QC Essex Court Chambers
Number of arbitrators in case	5
Date of commencement of proceeding [dd-mm-yyyy]	20-12-2010
Date of issue of final award [dd-mm-yyyy]	18-03-2015
Length of proceedings	More than 4 years

GUYANA V. SURINAME

Case name Guyana v. Suriname

Case description This case concerned the delimitation of Guyana's maritime boundary with Suriname and the alleged breaches of international law by Suriname in disputed maritime territory. The dispute arose in relation to the activities of holders of oil concessions granted by Guyana in the maritime area claimed by both countries. An oil rig and drill ship were ordered to leave and escorted from the area by the Surinamese navy in June 2000 and a similar incident followed in September 2000.

Guyana initiated arbitral proceedings on February 24, 2004, pursuant to Articles 286 and 287 and Annex VII of United Nations Convention on the Law of the Sea ("UNCLOS"). The three issues submitted to arbitration concerned: (i) the delimitation of the maritime boundary between the Parties; (ii) Guyana's claim for damages resulting from Suriname's activities with respect to the oil concession holders in the disputed area; and (iii) either Party's alleged breach of its obligations under Article 74(3) and 83(3) of UNCLOS to make every effort "to enter into provisional arrangements of a practical nature" pending delimitation and "not to jeopardize or hamper the reaching of the final agreement."

In respect of the delimitation of the maritime boundary in the territorial sea, the Tribunal applied the approach prescribed by Article 15 of UNCLOS, which places primacy on the median line as the delimitation line between the territorial sea of adjacent states, subject to "special circumstances". The Tribunal found that special circumstances of navigation justified deviation from the median line. It found that the Parties' colonial predecessors had agreed upon an N10°E line in the territorial sea, starting from the mouth of the Corentyne River in order to provide the Netherlands with appropriate navigational access, the Corentyne River being on the Surinamese side of the land boundary. Upon gaining independence, the Parties had each extended their territorial sea from 3nm to 12nm, without addressing the boundary of the territorial sea in the newly established limits. The Tribunal found that the need to prevent Guyana's territorial sea from cutting across the approach to the Corentyne River at 3nm was a further special circumstance, which justified departure from the median line.

	As regards the delimitation of the continental shelf and the exclusive economic zone pursuant to Articles 74 and 83 of UNCLOS, the Tribunal found clear guidance in the jurisprudence of the International Court of Justice ("ICJ") and arbitral tribunals that this process should begin by positing a provisional equidistance line, which may be adjusted in light of relevant circumstances in order to achieve an equitable solution. Contrary to the submissions of both Parties, the Tribunal found that there were no relevant circumstances requiring adjustment to the provisional equidistant line. Concerning the incidents in the disputed area, the Tribunal ruled that the Surinamese naval actions constituted a threat of use of force, contrary to international law, but denied Guyana's request for monetary compensation. The Tribunal found both Parties to be in breach of their obligations under Articles 74(3) and 83(3) of UNCLOS, to make provisional arrangements of a practical nature pending delimitation.
Name(s) of claimant(s)	Guyana (State)
Name(s) of respondent(s)	Suriname (State)
Names of parties	
Case number	2004-04
Administering institution	Permanent Court of Arbitration (PCA)
Case status	Concluded
Type of case	Inter-state arbitration
Subject matter or economic sector	Maritime boundary delimitation
Rules used in arbitral proceedings	Ad Hoc Rules of Procedure

Treaty or contract under which proceedings were commenced	Multilateral treaty Treaty: UNCLOS
Language of proceeding	English
Seat of arbitration (by country)	- N/A -
Arbitrator(s)	H.E. Mr. Dolliver Nelson (President) Professor Thomas Franck Professor Hans Smit Professor Ivan Shearer Dr. Kamal Hossain
Representatives of the claimant(s)	Hon. S.R. Insanally, O.R., C.C.H., M.P. Minister of Foreign Affairs; Hon. Doodnauth Singh, S.C., M.P., Attorney General and Minister of Legal Affairs; Ambassador Elisabeth Harper, Director General, Ministry of Foreign Affairs; Mr. Keith George, Head, Frontiers Division, Ministry of Foreign Affairs; Ambassador Bayney Karran, Ambassador of Guyana to the United States; Ms. Deborah Yaw, First Secretary, Embassy of Guyana, Washington; Mr. Forbes July, Second Secretary, Embassy of Guyana, Washington; Sir Shridath Ramphal, S.C., Co-Agent; Mr. Paul S. Reichler, Foley Hoag LLP, Co-Agent; Professor Payam Akhavan, Associate Professor, Faculty of Law, McGill University, Co-Agent; Professor Philippe Sands, Q.C., Professor of Law, University College London; Professor Nico Schrijver, Professor of Public International Law, University of Leiden; Mr. Lawrence Martin, Foley Hoag LLP; Mr. Andrew Loewenstein, Foley Hoag LLP; Ms. Sarah Altschuller, Foley Hoag LLP; Ms. Nienke Grossman, Foley Hoag LLP; Ms. Clara Brillembourg, Foley Hoag LLP; Ms. Blinne Ní Ghrálaigh, Matrix Chambers, London; Dr. Galo Carrera, Scientific/Technical Expert; Mr. Scott Edmonds, International Mapping Associates; Mr. Thomas Frogh, International Mapping Associates.

Representatives of the respondent(s)	Hon. Lygia L.I. Kraag-Keteldijk, Minister of Foreign Affairs and Agent; Mr. Caprino Allendy, Deputy Speaker of Parliament; Mr. Henry Iles, Ambassador of Suriname; Mr. Winston Jessurun, Member of Parliament; Ms. Jennifer Pinas, Ministry of Foreign Affairs; Mr. Krish Nandoe, Ministry of Justice and Police; Mr. Hans Lim A Po, Co-Agent; Mr. Paul C. Saunders, Co-Agent, Attorney, Cravath, Swaine & Moore LLP; Professor Christopher Greenwood, CMG, QC, Professor of Law, Essex Court Chambers; Mr. Stephen S. Madsen, Attorney, Cravath, Swaine & Moore LLP; Mr. David A. Colson, Attorney, LeBoeuf, Lamb, Greene & MacRae LLP; Professor Sean D. Murphy, Professor of International Law, The George Washington University Law School; Professor Bernard H. Oxman, Professor of International Law, University of Miami School of Law; Professor Donald M. McRae, Professor of International Law, University of Ottawa; Professor Alfred H. A. Soons, Professor of Public International Law, Utrecht University; Professor Alex Oude Elferink, Professor of Public International Law, Utrecht University; Mr. Coalter Lathrop, Cartography Consultant, Sovereign Geographic, Inc. Boundary Consultation and Cartographic Services; Mr. David Swanson, Cartography Consultant, David Swanson Cartography; Mr. Brian J. Vohrer, Attorney, LeBoeuf, Lamb, Greene & MacRae LLP; Ms. Michelle K. Parikh, Attorney, Cravath, Swaine & Moore LLP; Ms. Rebecca R. Silber, Attorney, Cravath, Swaine & Moore LLP; Mr. Matthew Pierce, Technology Consultant, Trial Team One; Ms. Elaine Baird, Manager of Courtroom Systems, Cravath, Swaine & Moore LLP; Ms. Brittany Olwine, Legal Assistant, Cravath, Swaine & Moore LLP; Ms. Anika Rappleye, Legal Assistant, Cravath, Swaine & Moore LLP.

Representatives of the parties	
Number of arbitrators in case	5
Date of commencement of proceeding [dd-mm-yyyy]	24-02-2004
Date of issue of final award [dd-mm-yyyy]	17-09-2007
Length of proceedings	3-4 years

Eritrea/Yemen - Sovereignty and Maritime Delimitation in the Red Sea

Case name Eritrea/Yemen - Sovereignty and Maritime Delimitation in the Red Sea

Case description The State of Eritrea and the Republic of Yemen both claimed sovereignty over a group of islands in the Red Sea and disagreed as to the location of their maritime boundary. The Arbitration Agreement, between the Parties dated October 3, 1996, required the Tribunal to rule on these two issues in separate stages.

In its award in the first stage dated October 9, 1998, the Tribunal found that neither Party made a significantly more convincing case for ownership of any of the islands based on ancient title, as argued by Yemen, or a succession of title, as asserted by Eritrea. After reviewing the evidence, the Tribunal decided that Eritrea had sovereignty over the Mohabbakhs, the Haycocks, and the South West Rocks, because of their proximity to the Eritrean mainland. The Tribunal found Yemen to be sovereign over the Zubayr group because of its installation and maintenance of lighthouses on certain of these islands and the inclusion of the Zubayr group in two oil production agreements contracted by Yemen with private firms. Yemen was also found to be sovereign over the Zuqar-Hanish group on the balance of the evidence regarding the exercise of the functions of state authority.

In the second award dated December 17, 1999, the Tribunal effected its delimitation of the maritime boundary between Eritrea and Yemen. While Eritrea was not a party to the United Nations Convention on the Law of the Sea 1982 ("UNCLOS"), the Tribunal found that many of the relevant elements of customary international law were incorporated into the corresponding provisions of UNCLOS and that Eritrea had accepted the application of these provisions by reference to UNCLOS in the Arbitration Agreement.

The Tribunal ruled that the international maritime boundary between the Parties "shall be a single all-purpose boundary" that "should, as far practicable, be a median line between the opposite mainland coastlines." This solution was not only in accord with precedent but was also familiar to both Parties and reflected by offshore petroleum agreements entered into by Yemen, Eritrea, and Ethiopia. The Tribunal then calculated the boundary line resulting from the application of these principles and set out the geographical coordinates of

	the international maritime boundary in the *dispositif* of the award.
Name(s) of claimant(s)	Eritrea (State)
Name(s) of respondent(s)	Yemen (State)
Names of parties	Eritrea (State) Yemen (State)
Case number	1996-04
Administering institution	Permanent Court of Arbitration (PCA)
Case status	Concluded
Type of case	Inter-state arbitration
Subject matter or economic sector	Maritime boundary delimitation
Rules used in arbitral proceedings	- Other -
Treaty or contract under which proceedings were commenced	Other Agreement to Arbitrate Dated 3 October 1996
Language of proceeding	English
Seat of arbitration (by country)	United Kingdom
Arbitrator(s)	Professor Sir Robert Y. Jennings (President) Judge Stephen M. Schwebel Dr. Ahmed Sadek El-Kosheri Mr. Keith Highet Judge Rosalyn Higgins
Representatives of the claimant(s)	

Representatives of the respondent(s)	
Representatives of the parties	**Representatives of Eritrea** First Stage of Proceedings His Excellency Mr. Haile Weldensae (Agent) Professor Lea Brilmayer and Mr. Gary B. Born (Co-Agents) Second Stage of Proceedings His Excellency Haile Weldensae (Agent) His Excellency Haile Saleh Meky Professor Lea Brilmayer and Mr. Jan Paulsson (Co-Agents) **Representatives of Yemen:** First Stage of Proceedings His Excellency Dr. Abdulkarim Al-Eryani (Agent) His Excellency Mr. Abdullah Ahmad Ghanim, Mr. Hussein Al-Hubaishi, Mr. Abdulwahid Al-Zandani and Mr. Rodman R. Bundy (Co-Agents) Second Stage of Proceedings His Excellency Dr. Abdulkarim Al-Eryani (Agent) His Excellency Mr. Abdullah Ahmad Ghanim, Mr. Hussein Al-Hubaishi, Mr. Abdulwahid Al-Zandani and Mr. Rodman R. Bundy (Co-Agents)
Number of arbitrators in case	5
Date of commencement of proceeding [dd-mm-yyyy]	1996
Date of issue of final award [dd-mm-yyyy]	17-12-1999
Length of proceedings	3-4 years