

THE NORTHERN LIMIT LINE (NLL) AGREEMENT BETWEEN SOUTH AND NORTH KOREA ON THE MARITIME BORDER IN THE YELLOW SEA

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ABSTRACT

The division of Korea into North and South Korea began with the victory of the Allied Powers in World War II, which ended 35 years of Japanese occupation of Korea. The maritime boundaries of the West Sea and East Sea of Korea are not clearly regulated in the Armistice Agreement of 1953. In particular, maritime restrictions on the Yellow Sea are seen as important in relation to the management of the region's large fishery resources. In 1953 the UN Command unilaterally declared the NLL (Northern Limit Line) along the five western islands, as the de facto maritime border in the Yellow Sea. North Korea, which is an NLL farmer, threatens a conflict of legality so that there is a continuous conflict so that efforts are needed to help the conflict between the two countries.

Keywords: Korea, Northern Limit Line, United Nation Security Council

1. INTRODUCTION.

Korea is a peninsula located in East Asia, precisely between China and Japan. Korea was divided into two countries, namely the Republic of Korea (South Korea) and the Democratic People's Republic of Korea (North Korea) after World War II in 1945. South Korea later developed into a democratic country while North Korea was communist. The term Korea is currently defined based on the combination of 2 countries divided by the 38 Parallel Military Demarcation Line, namely North Korea and South Korea. The Korean Peninsula is bounded to the north by the People's Republic of China, and Russia to the northeast, and Japan to the southeast which is separated by the Korea Strait.

The Korean War that took place from 1950 to 1953 left the two Korean countries separated by the Demilitarized Zone, which technically still leaves war through the Cold War to this day. The current conflict between the two countries, namely South Korea and North Korea, is one of the most prominent state conflicts in the world. The ideological war that remained during the Cold War era is still a trigger for the problems of these two countries. Even though the Korean war has ended in 1953

with an armistice agreement, tensions between the two still persist.

Inter-Korean relations after the cessation of the Korean war in 1953 have always had ups and downs. The fundamental differences in the foreign policies of each country, namely North Korea with its socialist ideology (Juche ideology or self-reliance) and South Korea which adheres to liberal democracy, make the interests and goals of each country almost always contradictory.

In fact, international disputes have two elements or aspects that are closely related, namely political elements and legal elements, so that dispute resolution is not easy to distinguish regarding disputes that occur including political or legal aspects. The problem of territorial status and unclear national boundaries are often the core triggers of conflicts or disputes between countries, especially those adjacent to or bordering the region. Disputes on territory or national boundaries can be due to the use of different principles from each disputing country, both in setting territorial boundaries or contingent shelf boundaries between the disputing countries.

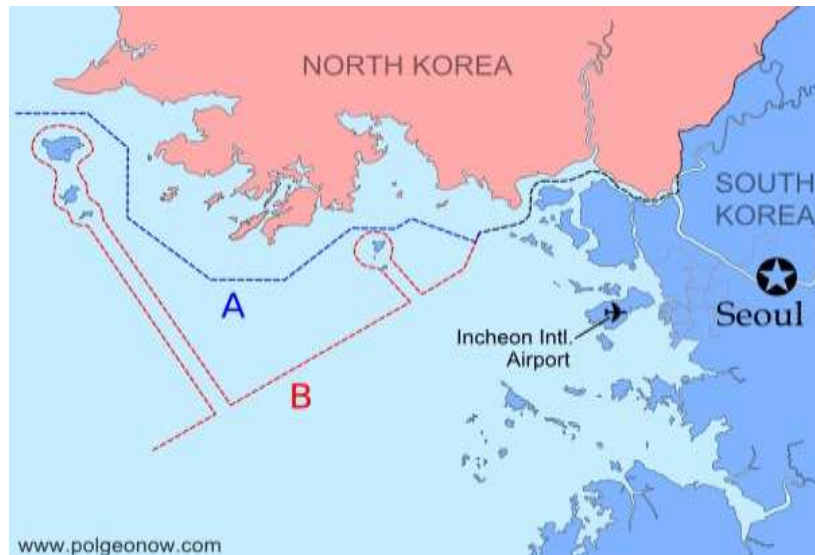


Figure 1. Marine boundary on the west coast of North and South Korea

Here are some conflicts that have occurred between South Korea and North Korea:

- a. First Battle of Yeonpyeong (1999)
- b. Second Battle of Yeonpyeong (2002)
- c. On November 1, 2004, three North Korean ships crossed the NLL
- d. Battle of Daecheong (2009)
- e. On January 27, 2010, North Korea fired artillery fire into waters near the NLL and South Korean ships returned fire.
- f. ROKS Cheonan sinking (2010)
- f. Bombardment of Yeonpyeong (2010)

On April 27, 2018, North and South Korea adopted the Panmunjom Declaration for Peace, Prosperity and Unification of the Korean Peninsula, which agreed that the area around the Northern Boundary Line would be converted into a maritime peace zone to prevent accidental military clashes and ensure sustainable fishing activity. safe.14 Mutual claim of territory on the peninsula by the two Korean governments. Various efforts were made to avoid the ongoing conflict between the two countries which is still happening today. After 70 years of the outbreak of the Korean war, the conflict between the two countries has not yet ended. The South Korean government under the leadership of President Moon Jae-in has been trying to resolve the conflict through diplomatic negotiations. The last few years have seen a thaw in relations. Promising diplomacy has succeeded in bringing together North Korean leader Kim Jong Un with South Korean leaders and delegates. One of the pinnacles of this diplomatic effort was the "historic meeting" between US President Donald Trump and Kim Jong Un in Singapore.

Based on the description above, it is known that the dividing line between South

Korea and North Korea is the North Boundary Line or known as the NLL which is legalized by the United Nations. North Korea does not agree to this provision and seeks to abolish NLL. This can be seen from the attitude of North Korea in declaring the EEZ and the 50 nautical mile Military Limit Zone in the West Sea and East Sea. The west sea has always been a source of military tension between the two countries, causing a shootout between the two countries to be inevitable. Therefore, the author feels the need to research further regarding the Northern Limit Line (NLL) agreement between South Korea and North Korea on the maritime border in the Yellow Sea.

2. MATERIAL AND METHODS

2.1 Northern Limit Line (NLL) West Sea

The Korean Armistice Treaty was the armistice that ended the Korean War. The treaty was signed by United States Army Lieutenant General William Harrison, Jr. representing United Nations Command, North Korean General Nam Il representing the Korean People's Army, and the Chinese People's Volunteer Army. The armistice agreement was signed on July 27, 1953, and was designed to ensure a complete cessation of hostilities and all acts of armed forces in Korea until a final peace settlement is reached. The signed armistice established the Korean Demilitarized Zone (a new de facto border between the two countries), the entry into force of the ceasefire, and the eventual repatriation of prisoners of war. The Demilitarized Zone is not far from the 38th parallel, which separated North and South Korea before the war.

The agreement binds the leaders on both sides to ensure the stability of the military ceasefire as well as a facility for achieving a peaceful settlement. The issue of permanent peace and permanent borders was left to the political authorities of the two countries, but the two countries have made very little progress since 1953. The United Nations Command (UNC) itself is a multinational military force that supported the Republic of Korea (South Korea) during and after the Korean War. During the war, 22 countries contributed military or medical personnel to UN Command. After North Korean troops invaded South Korea on June 25, 1950,

the United Nations Security Council adopted Resolutions 82, 83, and 84 calling on North Korea to cease hostilities and withdraw to parallel 38 and recommend members of the United Nations, provide military forces and other assistance to South Korea. NLL is formed when three nautical miles (nm) from the coast is the standard; where the standard has now shifted to 12 nm after UNCLOS, NLL should now be pulled further south even though a country cannot simply declare its zone. This is complicated by the agreement signed by the two Koreas.

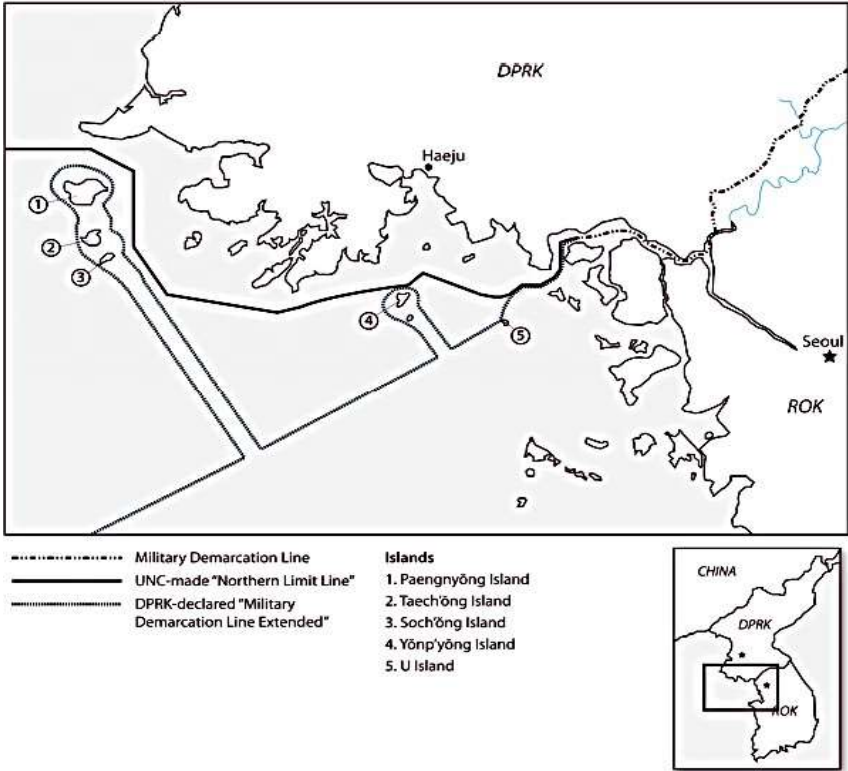


Figure 2. NLL imposed by the United Nations and North Korea

After the NLL was formed on August 30, 1953, the DPRK did not reject the NLL until October 1973 because it benefited the DPRK which was used as a protective fence for the country which at that time did not have a proper naval force. In December 1973, the DPRK claimed that the waters north of the extension of the provincial boundary were its territorial waters, and ships arriving and departing from the five islands required DPRK approval. The DPRK vessel crossed the NLL about 200 times during the four months from November 1973 to February 1974, the DPRK protested the NLL for the first time since its founding. During the first 20 years of the existence of the NLL, North Korea did not dispute the validity of the line.

2.2 International Dispute

Humans as social beings have various kinds of differences from one another, be it religion, ethnicity, thoughts, desires, interests and goals. It is these differences that can lead to conflict, ranging from conflicts that can be resolved to conflicts that get bigger and lead to war. Likewise with relations between countries which initially went well, but sometimes a problem occurred. This is because there are parties who commit violations, which results in conflict. Thus, the conflict needs to be resolved, in order to build good relations again. In terms of legal doctrine and international institutions, international recognition has always been a concern for scholars of international law and the

ministry of foreign affairs whose main attention is on the formation of systems in practice.

2.3 State Recognition Theory

International law scholars argue that "recognition" is a forum that plays an important role in inter-state relations. In the 20th century, technological developments have had an effect on creating a close interdependence between countries in the world. However, before a new country establishes cooperation in various fields with other countries, the new country must first pass recognition.

Recognition is a statement from a country that recognizes another country as a subject of international law. Recognition means that furthermore, between the recognizing country and the recognized country, there is an equal relationship and can enter into all kinds of cooperative relations with each other to achieve their respective national goals regulated by the provisions of international law.

2.4 Territorial Sovereignty Theory

New countries that were born from the process of liberating themselves from their colonizers have emerged as stakeholders in international relations and international organizations of the United Nations. The process of empowerment through self-independence from this colonial state has received strengthening and affirmation from the United Nations.

The principle of state sovereignty is an important principle in the UN Charter, as in Article 2 paragraph 1 which reads "The organization is based on the principle of the sovereign equality of all its members". The principles contained in the UN Charter are reaffirmed in General Assembly Resolution No. 2625 of 1970 (General Assembly Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations) states that every country enjoys equality of sovereignty and every country has the same rights and obligations as members of the international community without distinguish between economic, social and political systems.

2.5 International Organization Theory

Differences that cause disputes between countries can generally be resolved by peaceful means, but there are times when dispute resolution ends in violence. Therefore, an international organization was formed as a means of communication, interaction and cooperation between countries that have the same goal. International organization is an art

of creating or administering a general and regional social community consisting of independent (sovereign) countries to provide convenience and realize common and objective goals.

One of the international organizations that has the authority to resolve disputes is the United Nations. In addition to using dispute resolution by peaceful means, the United Nations also has the authority to take collective actions needed to resolve a dispute, if the dispute can threaten international peace and security. Wider powers to maintain world peace and security are vested in the Security Council.

3. RESULTS AND DISCUSSION

3.1 Current Condition of the Northern Boundary

NLL is important to both North and South Korea for several reasons. First, the sea is a valuable fishing ground for a number of types of catch, especially blue crabs that migrate through the area. Second, the NLL has a significant impact on regional trade, especially for North Korea. As a result of the NLL, North Korean merchant ships had to take a detour northward which added extra miles and increased fuel costs for their journey. NLL also complicates shipping between North and South Korean ports in the West Sea. The third and most important issue at stake with NLL is security. For South Korea, any shift from NLL further south jeopardizes security. The NLL shift will allow North Korean naval vessels to patrol closer to the mouths of the Han River and Seoul, reducing warning times for defense and making it easier for the North Korean Navy to deploy special operations forces. For North Korea, NLL is an equally serious security issue. NLL currently allows the ROK warship to sail very close to the coast of North Korea and its military bases in the region.

On April 27, 2018, the leaders of South and North Korea adopted the Panmunjom Declaration for Peace, Prosperity and Unification of the Korean Peninsula, declaring the beginning of a new era of peace. The Armistice Agreement and the previous inter-Korean military agreement held several high-level military talks and exchanged documents more than 10 times. On September 19, 2018, in the presence of the leaders of the two Koreas, namely the defense ministers of South and North Korea, signed the Agreement on the Implementation of the Panmunjom Historic Declaration (hereinafter referred to as the Comprehensive Military Agreement (CMA)) as an additional agreement to the Pyongyang Joint Declaration. The CMA consists of 6 articles and

5 annexes, one of which is Article 3 which states that “both parties agreed to take military action to prevent accidental military clashes and ensure safe fishing activities by turning the area around the Northern Limit Line (NLL) in the West Sea into a maritime peace zone.” To this end, both parties agreed to restore and implement existing agreements relating to “prevention of unintentional military clashes in the West Sea” and establishing a maritime peace zone and a joint fishing zone in the West Sea.

The most recent incident occurred in the NLL Region in 2020 where the South Korean Ministry of Defense confirmed that North Korea had shot dead and burned the body of an official they previously reported missing. South Koreans also condemned the action and demanded an explanation and punishment for those responsible. It was reported that the 47-year-old official was affiliated with the Ministry of Maritime Affairs and Fisheries. He reportedly disappeared on the afternoon of September 21, 2020 while on duty aboard an inspection vessel in waters off the western border island of Yeonpyeong. (NLL). The South Korean military said the man was trying to defect to North Korea when he was reported missing from a fishing boat just south of the Northern Limit Line (NLL). North Korean leader Kim Jong Un apologized for the deaths days after the incident, saying the move was to prevent the COVID-19 outbreak from entering North Korea. Although North Korea's KCNA News Agency accused South Korean opposition lawmakers of sparking controversy over the issue. Besides, blaming them for failing to stop him from crossing the maritime border into North Korea.

South Korean President Moon Jae-in offered his condolences for the death of a South Korean civil servant in a shooting by North Korean troops. He called it a regrettable and unfortunate incident. However, the South Korean president noted North Korean leader Kim Jong-un's very unusual apology for the incident. This apology shows that the North Korean leader is taking this case seriously and is also a confirmation of his desire that inter-Korean relations will not go downhill. The South Korean president himself hopes to rekindle the embers of dialogue and pave the way for cooperation that begins with solving this case (together). This is because in June 2020, North Korea cut ties between the two countries by blowing up the liaison office at the border. This happened after Pyongyang defectors in South Korea sent anti-government leaflets at the border.

3.2 International Dispute Resolution within the United Nations Framework

International relations that are held between countries, countries with individuals, or countries with international organizations are not always well established. International Relations often lead to disputes or conflicts. Disputes can be initiated from various sources of potential disputes. Potential sources of disputes between countries can be in the form of borders, natural resources, environmental damage, trade and others, if that happens, international law plays no small role in its resolution.

Resolution efforts have become a fairly important concern in the international community since the early 20th century. These efforts are aimed at creating better relations between countries based on the principles of international peace and security. The role played by international law in the resolution of international disputes is to provide a way for the parties to the dispute to resolve their disputes according to international law. The example that can be given is that Napoleon Bonaparte used war to control territories in Europe in the nineteenth century. War is also used by countries to enforce their rights and understanding of the rules of international law, and has even made it a form of sovereign state action.

Currently, it is recommended that international dispute resolution be pursued peacefully. This is stated in the United Nations Charter, precisely in article 2, paragraphs 3 and 4, namely:

- a. “All Members shall resolve international disputes by peaceful means in such a way that international peace and security, and justice, are not threatened.”
- b. “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other way inconsistent with the Goals of the United Nations.”

Such dispute resolution was reinforced by the resolution of the General Assembly (UN MU No. XXV) 1970 “Approves the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the text of which is annexed to the present resolution”, the point of which is to take into account good relations, friendly relations and cooperation in countries in accordance with the United Nations Charter or the Friendly Relations Declaration. UN MU resolution No.2625/XXV was strengthened by

UN MU resolution No. 44/21/1989, namely "Enhancing international peace security and international co-operation in all its aspects in accordance with the Charter of the United Nations." The resolution explained that countries need to promote international peace, security and international cooperation in all its aspects in accordance with the Charter of the United Nations.

3.3. Remedies to North Korean Actions Against NLL

The dispute between South Korea and North Korea caused by the never ending war coupled with the NLL status in the Yellow Sea which since 1973 has not yet met a bright spot has caused the relations between the two countries to experience ups and downs. Based on the UN Charter, it is hoped that South Korea and North Korea can resolve the West Sea dispute by peaceful means, and in accordance with the principles of justice and international law. Settlement of international disputes contained in the United Nations Charter, Chapter VI, article 33, includes:

- a. Negotiation
- b. Enquiry
- c. Mediation
- d. Conciliation
- e. Arbitration
- f. The International Court of Justice

If the parties involved in the dispute cannot resolve it by peaceful means, it can be submitted to the UN Security Council. The UN Security Council will submit to make recommendations suggesting ways of settlement that it deems appropriate. If the Security Council considers that the continuation of the dispute may jeopardize the maintenance of international peace and security, then in accordance with Article 41 of the United Nations Charter:

"The Security Council can decide what actions other than the use of force must be implemented in order for its decisions to be enforced. and may request Members of the United Nations to carry out these measures. Including actions starting with the complete or partial severance of economic relations, including rail, sea, air, post, telegraph, radio and other means of communication. and to the severance of diplomatic relations."

It is further explained in Article 42 of the UN Charter that:

"If the Security Council considers that the measures provided for in Article 41 are insufficient or have proven insufficient, the

Council may take such action using air, sea or land forces as may be necessary to maintain or restore international peace and security. This action also includes demonstrations, blockades and other actions using the air, sea or land forces of the Members of the United Nations.

The settlement of disputes between North and South Korea needs to be carried out by peaceful means. A peaceful settlement is deemed necessary by both countries in order to maintain international peace and security. According to the author, steps that can be taken by disputing parties regarding NLL include:

- a. Negotiations / Negotiations

Negotiation is the most basic and oldest method of dispute resolution used by mankind. Settlement through negotiation is the most important way. The main reason is because in this way, the parties can monitor the dispute resolution procedure and any settlement is based on the agreement or consensus of the parties.

- b. International Arbitration

The 1982 Law of the Sea Convention does not reduce the rights of the two countries as participating countries to agree at any time related to the settlement of the dispute they are facing by means of a peaceful settlement according to the choice of the parties where this is stated in Chapter XV Article 280 of UNCLOS 1982, namely: in this Chapter diminishes the right of any State Party to agree at any time to settle disputes between them concerning the interpretation or application of this Convention by any peaceful means of their own choosing."

Arbitration is a way of resolving disputes outside the court. Disputes will be resolved by one or more persons (arbitrator, arbitrator or arbitration tribunal), which renders the arbitration award. Arbitration decisions are legally binding on both parties and are enforced in court. Arbitration can be carried out if the conflicting parties cannot reach a compromise on their own. 108 The most important prerequisite in the dispute resolution process through this arbitration body is an agreement or consensus from the disputing countries. Agree is a reflection and logical consequence of the attributes of a sovereign state. Sovereignty of a state states that a state is not subject to other international law subjects without any agreement or will from that state. Without an agreement from one of the countries, the arbitration body never functions.

Since 1994, arbitration has been the most popular means of resolving maritime disputes. In Annex VII to the Law of the Sea Convention, the arbitral tribunal consists of 5 arbitrators, each party to the dispute appoints one arbitrator and they jointly appoint three

others. In that case, it is the President who serves as the appointing authority. The arbitral tribunal decides its own procedure which provides a great deal of flexibility.

One of the arbitration institutions is the Permanent Court of Arbitration (PCA) which is an international organization based in The Hague, Netherlands. The PCA was founded in 1899 at the beginning of the Hague Peace Conference. The PCA promotes dispute resolution that involves not only states but also state bodies, intergovernmental organizations, and private parties by assisting in the establishment of arbitration courts and facilitating legal matters between them. The PCA differs from the International Court of Justice which is housed in the same building, the Peace Palace in The Hague. The Permanent Court of Arbitration (PCA) is considered to be able to resolve the NLL dispute in the Yellow Sea because this dispute not only involved the two countries, namely North and South Korea but also UNC as the institution that determined the NLL at that time. The PCA's decision is final and without appeal. The decisions obtained must be obeyed by all parties to the dispute, both countries and international organizations in dispute.

4. CONCLUSION AND SUGGESTION

4.1 Conclusions

Based on the above discussion, the authors can draw the following conclusions

a. NLL is not contained in the Armistice Agreement, UN Security Council Resolution, or General Assembly Resolution. The 1953 Truce Treaty did not specify the maritime boundaries between the two countries and only stipulates that the five islands remain under the control of the UNC and South Korea. UNC leader Mark Clark, an American four-star general, drew the northern boundary line or NLL to reduce the possibility of military clashes at sea, initially to prevent South Korea from entering North Korea. North Korea argued that NLL was illegal because the UNC Commander unilaterally drew it but this was done by North Korea after 20 years of the line being drawn. At that time North Korea did not have a large navy and benefited from the stability provided by the NLL's role as the de facto maritime demarcation line in the Yellow/West Sea. This is an important issue because in the concept of international law there is customary law and "consensus". North Korea's inaction in responding implying that they waive the right to challenge decisions regarding NLL.

b. international law recognizes 2 (two) methods of settlement, namely peaceful and violent dispute resolution, but Article 51 of the United Nations Charter states that the use of armed force is justified, only in self-defense in the event of a weapon attack against the country. Based on Article 33 of the UN Charter and Resolutions, the method of resolving disputes is peaceful. So, it is hoped that South Korea and North Korea can resolve the West Sea dispute peacefully. The Permanent Court of Arbitration (PCA) is considered to be able to resolve the NLL dispute in the Yellow Sea because this dispute not only involved the two countries, namely North and South Korea but also UNC as the institution that determined the NLL at that time. The PCA's decision is final and without appeal. If the parties involved in the dispute cannot resolve it in these ways, it can be submitted to the UN Security Council. The UN Security Council will recommend ways of settlement that it deems appropriate and take action if the dispute is deemed to endanger international peace and security.

4.2 Suggestions

Based on the conclusions obtained above, it can be suggested that:

a. The Korean War (1950-1953) left two Koreas increasingly separated by the Demilitarized Zone, which technically still leaves war through the Cold War until now. Relations between South Korea and North Korea basically experience ups and downs where one of the triggers for clashes between the two countries is a maritime dispute regarding the status of the Northern Limit Line (NLL) in the West Sea. This is complicated because NLL is not contained in the Armistice Agreement, Resolution UN Security Council, or General Assembly Resolutions.

b. The two countries, namely South Korea and North Korea, which have their own opinions regarding the status of the NLL, should use peaceful means to resolve the issue. During the first 20 years of the existence of the NLL, North Korea which does not dispute the validity of the line should carry out joint negotiations with South Korea on the line. If there is no good agreement, this matter should be brought to court through arbitration using PCA (Permanent Court of Arbitration) so that it does not reduce the right of the two countries as participating countries to agree at any time related to the resolution of the dispute they are facing and the decisions obtained. fair and legally binding on both parties.

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