

When International Law In The South China Sea Is Not Respected What Can Be Done?

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Abstract

Peace settlement in the South China Sea has become a complex and sensitive issue. China's unwillingness to accept the results of the International Arbitration Court's ruling has worsened the situation. Therefore, this research discusses steps that can be taken when international law in the South China Sea is not respected. In this research, we will discuss the use of international arbitration mechanisms, consultation and negotiation, as well as the use of international maritime law to peacefully resolve settlements in the South China Sea.

Keywords

Peaceful Settlement; China Sea

Introduction

The South China Sea has been a source of conflict between states since the late 19th century. Unclear territorial and jurisdictional claims have fuelled the escalation of tensions in the region. In recent years, dispute resolution through international arbitration tribunals has been one of the efforts made by several countries, including the Philippines and China. However, China's unwillingness to accept the judgement of the International Court of Arbitration has exacerbated the situation.

What legal remedies can the Philippines take for China's unwillingness to accept the judgement of the International Court of Arbitration regarding the dispute between the Philippines and China in the South China Sea dispute?

What legal remedies can the Philippines take to resolve the South China Sea dispute with China that does not heed the decision of the International Court of Arbitration?

This research aims to analyse the impact of China's non-compliance with international law, particularly the decision of the International Court of Arbitration regarding the South China Sea dispute, as well as identify and propose measures that can be taken by the Philippines and the international community to uphold international law and maintain regional stability. In more detail, the objectives of this study Identify the Impact of Non-Compliance on International Law Erosion of Trust in International Law Examine how China's non-compliance with the judgement of the International Court of Arbitration undermines the legitimacy of

international law and dispute settlement mechanisms. Regional Instability Analyses how military tensions and territorial rivalries in the South China Sea affect regional stability. Economic and Environmental Impacts: Examines the impact of instability in the South China Sea on international trade, natural resource exploration, and environmental damage.

Methodology

This research aims to analyze the impact of China's non-compliance with international law, especially the decision of the International Court of Arbitration regarding the South China Sea dispute, as well as identifying and proposing steps that can be taken by the Philippines and the international community. To achieve this goal, this research will use a qualitative research method with a case study approach. The case study approach was chosen because it allows an in-depth analysis of the specific situation faced by the Philippines and the international community in responding to China's non-compliance. The case studies enable a detailed exploration of the context, actors and dynamics involved in the South China Sea disputes.

Discussion

The South China Sea has become a region rife with ongoing territorial disputes. These disputes often revolve around issues of maritime rights access to resources and interpretation of international law. Settlements should be easy to reach if international law can be enforced and states respect the applicable laws however, enforcing international law is a very difficult thing to do, unlike enforcing international law within a state. If we look at how law is enforced on a national scale, we will see the rule of law where all citizens whether they want to or not, like it or not, must obey the law. Law enforcement officers in national law also have much greater power and strength when compared to the object of the law, unlike in international law where sometimes the object of the law has much greater power than law enforcement.

The South China Sea case has shown the weakness of international law in the face of strong violators. There has actually been an international court ruling related to territorial division in the South China Sea in the case of the Philippines v China in 2016 which rejected the nine dash line claim which became the basis for China to make territorial claims in the South China Sea area even though there was such a ruling, China remained firm in its stance and refused to recognise the ruling..., china remains firm in its stance and refuses to recognise the ruling. there is not much that can be done by other countries in the region. china's position as one of the world's major economies that has a strong enough army makes international law enforcement against it quite difficult. the inability of international law to regulate china has made countries have to rethink how to deal with china in the region. if you look back at how problems were overcome in various other parts of the world before some of the following ways can be an alternative and international law.

Use of International Arbitration Mechanism

The international arbitration mechanism can be used as one of the legal remedies to resolve disputes in the South China Sea. This mechanism has been used by several countries, including the Philippines, to resolve disputes with China. In recent years, the Philippines has filed a lawsuit against China to the International Court of Arbitration, but China did not heed the decision. In this case, the Philippines can use other international arbitration mechanisms, such as the use of international law of the sea, to resolve the dispute.

Use of the International Law of the Sea

International law of the sea, such as the 1982 UNCLOS, can be used as a reference to resolve disputes in the South China Sea. International law of the sea has been one of the legal bases used in dispute resolution in the region. In recent years, international law of the sea has been used by several countries, including the Philippines, to resolve disputes with China. In this case, the Philippines can use the international law of the sea as a legal basis for resolving disputes with China.

Use of diplomacy and negotiation

Diplomacy and negotiation can be used as one of the legal remedies to resolve disputes in the South China Sea. Diplomacy and negotiation have been used by several countries, including the Philippines, to resolve disputes with China. In recent years, diplomacy and negotiation have been used by the Philippines to resolve disputes with China. In this case, the Philippines can use diplomacy and negotiation as one of the legal remedies to resolve disputes with China.

Use of Security and Stability

Security and stability can be used as one of the legal remedies to resolve disputes in the South China Sea. Security and stability have been one of the legal bases used in dispute resolution in the region. In recent years, security and stability have been used by several countries, including the Philippines, to resolve disputes with China. In this case, the Philippines can use security and stability as one of the legal remedies to resolve its dispute with China.

Use of Asean

ASEAN can be used as one of the legal remedies to resolve disputes in the South China Sea. ASEAN has been one of the regional organisations used by several countries, including the Philippines, to resolve disputes with China. In recent years, ASEAN has been used by the Philippines to resolve disputes with China. In this case, the Philippines can use ASEAN as one of the legal remedies to resolve disputes with China.

Use of Sanctions

Sanctions can be used as one of the legal remedies to resolve disputes in the South China Sea. Sanctions have been used by several countries, including the Philippines, to resolve disputes with China. In recent years, sanctions have been used by the Philippines to settle disputes with China. In this case, the Philippines can use sanctions as one of the legal remedies to resolve disputes with China.

Use of mediation

Mediation can be used as one of the legal remedies to resolve disputes in the South China Sea. Mediation has been used by several countries, including the Philippines, to resolve disputes with China. In recent years, mediation has been used by the Philippines to resolve disputes with China. In this case, the Philippines can use mediation as one of the legal remedies to resolve disputes with China.

Steps that can be taken when international law in the South China Sea is not respected:

Seek a diplomatic solution: Seeking a diplomatic solution can help in resolving the South China Sea dispute. Diplomacy can be bilateral or multilateral involving several countries. Diplomacy can help in reaching a fair and equitable agreement between the parties involved.

Promoting co-operation: Promoting co-operation between the countries involved can help in resolving disputes. Co-operation can be done in several ways, such as negotiation, mediation and arbitration. Cooperation can help in reaching a fair and equitable agreement between the parties involved.

Ensuring Freedom of Navigation: Ensuring freedom of navigation in the South China Sea is essential to maintaining an open and safe maritime environment. States should exercise their right to navigate and conduct lawful activities in accordance with international law, reinforcing the importance of respecting established norms.

Using Dispute Settlement Mechanisms: Using peaceful dispute resolution mechanisms is essential in upholding international law in the South China Sea. Mechanisms such as negotiation, mediation and arbitration can help facilitate fair and equitable solutions. Adhering to internationally recognised processes strengthens the legitimacy of outcomes and increases confidence in the rule of law.

Uphold Freedom of Navigation: Upholding freedom of navigation in the South China Sea is essential to maintaining an open and secure maritime environment. States should exercise their right to navigate and conduct lawful activities in accordance with international law, reinforcing the importance of respecting established norms.

China has a significant impact on regional stability in Southeast Asia. Here are some examples:

Territorial Claims: China has claimed vast areas of the South China Sea, which has led to tensions with several countries, including the Philippines, Vietnam, Malaysia and Indonesia. These claims have affected regional stability as several countries have claimed the same territory and have rejected China's claims.

Maritime Clashes: Maritime clashes in the South China Sea have increased, which has affected regional stability. These clashes have fuelled protests and tensions in the Southeast Asian region, which could impact global security.

Artificial Island Development: China has built several artificial islands in the South China Sea, which has led to tensions with several countries. The development of these artificial islands has affected regional stability as several countries have rejected China's claims over the South China Sea region.

Relationship with the US: The relationship between China and the US has become very sensitive, which has affected regional stability. The US has rejected China's claims to the South China Sea region and has conducted joint naval exercises with several other countries, including Japan and Australia, in the South China Sea.

Defence Spending: The defence spending of several countries in Southeast Asia has increased, which has affected regional stability. These defence expenditures have fuelled suspicions and concerns, prompting some countries to engage in arms races and so on.

Remedies the Philippines Can Take Approaches in International Forums

United Nations (UN): The Philippines can continue to bring the issue to the UN General Assembly and the UN Security Council to increase international pressure on China. Although China has veto power in the Security Council, support from the majority of UN member states can strengthen the Philippines' legal and moral position.

ASEAN Support: Garner support from ASEAN member states to strengthen the regional position against China's actions. ASEAN co-operation can create a stronger and more coordinated front.

Coalition with Other Countries

Alliance Building: The Philippines can work with other countries that also have interests in the South China Sea, such as Vietnam, Malaysia, and Indonesia, to form a strategic alliance to pressure China to comply with international law.

Support from Global Powers: Enhance cooperation with major powers such as the United States, Japan, and the European Union that have an interest in maintaining freedom of navigation in the South China Sea.

Additional Legal Measures

Filing of New Cases: The Philippines may file new cases or report new violations committed by China to the International Court of Justice (ICJ) or other arbitral tribunals to continue to renew international attention to the issue.

Enforcement of the Award: Order the International Court of Arbitration or other judicial body to provide further clarification or additional measures to enforce the 2016 award.

The Role of International Law in Resolving the South China Sea Dispute: Legal Basis

Legal Basis for Resolving South China Sea Disputes

United Nations Convention on the Law of the Sea (UNCLOS)

Article 287 and Annex VII: Provides for dispute settlement procedures that include arbitration. The Philippines used this provision to bring its case against China to the International Court of Arbitration.

Articles 74 and 83: States that disputes concerning the delimitation of the EEZ and continental shelf shall be settled under international law to reach an equitable solution.

Article 298: Gives states the option to declare exceptions to the mandatory dispute settlement procedure. China relied on this article to reject arbitral jurisdiction, although the Court of Arbitration ruled that some claims were not covered by the exception.

United Nations (UN) Charter:

Article 2(3): Requires member states to settle international disputes by peaceful means so as not to jeopardise international peace, security and justice.

Article 33: States that parties to a dispute shall seek settlement through negotiation, mediation, arbitration and other peaceful means.

The Impact of Disrespect for International Law in the South China Sea and What Can Be Done:

Erosion of Trust in International Law

Legitimacy of International Law: China's non-compliance with the judgement of the International Court of Arbitration undermines the legitimacy of international law and dispute resolution mechanisms.

Negative Precedent: Creates a precedent for other countries to ignore international decisions that are unfavourable to them, weakening the international legal system as a whole.

Regional Instability

Military Tensions: China's military activities in the South China Sea raise tensions with neighbouring countries and increase the risk of military conflict.

Territorial Rivalry: Overlapping claims and aggressive actions exacerbate territorial rivalries in the region, hampering regional cooperation efforts.

Economic Impact

Trade Disruption: Instability in the South China Sea could disrupt international trade routes, given that the region is one of the busiest shipping routes in the world.

Resource Exploration: Disputes hamper the exploration and exploitation of natural resources, including oil and gas, which are important to the economies of countries in the region.

Environmental Damage

Development Activities: Reclamation and construction of artificial islands by China damage marine ecosystems and coral reefs, threatening biodiversity.

Overfishing: Unauthorised territorial claims encourage overfishing in disputed areas, threatening the sustainability of fisheries resources.

Steps the Philippines and the international community can take:

In the face of China's non-compliance with the judgement of the International Court of Arbitration regarding the South China Sea dispute, the Philippines and the international community can take various strategic steps to uphold international law and maintain regional stability. Here are the steps that can be taken:

Bilateral and Multilateral Diplomacy

Bilateral Negotiations: The Philippines may continue to seek direct dialogue with China to reach an amicable solution based on international law.

ASEAN Cooperation: The Philippines can strengthen ASEAN's role in responding to this dispute, encouraging unity and solidarity among ASEAN member states to confront China.

International Coalition: Form alliances with countries with similar interests in the region, such as Japan, Australia, India and the United States, to pressure China through collective diplomacy.

Use of international organisations

United Nations (UN): Bring the issue to the UN General Assembly or UN Security Council to gain wider international support.

International Maritime Organisation (IMO) Engage the IMO to assert the importance of freedom of navigation and maritime security in the South China Sea.

International legal action

International Court of Justice: The Philippines may consider filing additional cases at the International Court of Justice (ICJ) or the International Tribunal for the Law of the Sea (ITLOS) to gain further affirmation of international law.

Economic and Diplomatic Sanctions: Cooperate with other countries to impose economic and diplomatic sanctions against China if it continues to disobey international judgements.

What legal remedies can the Philippines take for China's unwillingness to accept the judgement of the International Court of Arbitration regarding the dispute between the Philippines and China in the South China Sea dispute:

File an additional case with the International Court of Justice:

Adjudication Process: The Philippines may file an additional case with the International Court of Justice (ICJ) to substantiate its claims under UNCLOS (United Nations Convention on the Law of the Sea) and the judgement of the International Court of Arbitration.

Declaration of Jurisdiction: Ask China to accept the jurisdiction of the ICJ in resolving this dispute. While this is difficult as it requires consent from both parties, international pressure can be used to encourage China to accept this process.

Leverage International Organisations

UN General Assembly: Seek a resolution from the UN General Assembly in favour of the International Court of Arbitration's decision and pressure China to comply with the ruling.

International Debate: Use the forum of the UN General Assembly to raise international awareness and support for the Philippines' legal claim.

International Maritime Organisation (IMO): Engage the IMO to emphasise the importance of freedom of navigation and maritime security in the South China Sea, etc.

Conclusion

The South China Sea dispute highlights significant challenges in enforcing international law against powerful nations. Despite the International Court of Arbitration ruling against China's territorial claims, China's refusal to accept this judgement exacerbates tensions and undermines the legitimacy of international law. The Philippines, alongside other affected nations and the international community, must explore various legal, diplomatic, and cooperative strategies to address this non-compliance. The Philippines can utilize international arbitration mechanisms, the law of the sea, and diplomatic negotiations to resolve the dispute.

Engaging ASEAN and forming alliances with other countries with interests in the South China Sea can strengthen their position. Additionally, bringing the issue to international forums such as the United Nations and pursuing further legal actions through the International Court of Justice can help uphold international law. China's non-compliance erodes trust in international legal mechanisms, leading to regional instability and economic and environmental repercussions. Military tensions and territorial rivalries heighten, while disruption to international trade and natural resource exploitation poses significant economic challenges. The Philippines and the international community must adopt a multi-faceted approach, combining legal actions, diplomatic efforts, and coalition-building to navigate the complexities of the South China Sea dispute and uphold the rule of law.

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