

## **PROBLEM OF ENFORCEMENT IN INTERNATIONAL LAW IN LIGHT OF SOUTH CHINA SEA DISPUTE**

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### **ABSTRACT**

South China Sea arbitration was a landmark ruling rendered by the International Tribunal for Law of the Sea (ITLOS) over the territorial claims within the South China Sea made by the Philippines. It was held by the tribunal that China had no legal basis for claiming historic rights within its 'nine-dash line'. However, China's denial to oblige with the award rendered by the Permanent Court of Arbitration, under the United Nations Law of the Sea (UNCLOS), highlights a key issue regarding the enforceability of the awards rendered by the International Law. The main problem here is that the International law generally does not have any mechanism for enforcement of awards rendered by the International Tribunals. Similarly, although UNCLOS makes its decision final and binding on the judgement debtor, it has no proper enforcement mechanism, reducing the international awards to merely an ineffective piece of paper. Therefore, this article explores and analyses other enforcement mechanisms in International law, such as the International Center for Settlement of Investment Disputes (ICSID) and the World Trade Organization (WTO) and suggests that the award could be enforced on China if such mechanisms are also brought within the scope of the UNCLOS. Further, the paper critically examines the two ways in which international law is enforced i.e., through the domestic courts of the state and the international organizations. ICSID and ITLOS are the prime enforcement mechanisms in international law wherein the domestic courts of the state enforce the award whereas the award rendered through WTO dispute settlement body and the UNCLOS are enforcement mechanisms via the International Organizations.

**Keywords:** South China Sea, Nine-dash line, UNCLOS, PCA, ITLOS, Enforcement, ICSID, International Arbitration, International Law, WTO, Arbitral Award, ICJ, Law of the Sea, International Organization

## INTRODUCTION

In 2016, the tribunal issued a landmark ruling in the South China Sea (“SCS”) arbitration over territorial claims in the case of *Philippines v. China*.<sup>i</sup> The dispute involves the island and maritime areas of the SCS, including the Spratly Islands, the Paracel Islands, Scarborough Shoal, and various boundaries in the Gulf of Tonkin. For decades, China had been claiming sovereignty rights over all the islands within the nine-dash line.<sup>ii</sup> This prompted the Philippines to file a case before the Permanent Court of Arbitration (“PCA”), under Annex VII to the 1982 United Nations Convention on the Law of the Sea (“UNCLOS”) along with other International agreements between the countries.<sup>iii</sup> China publicly refused to participate in the arbitration proceedings, arguing that there were several bilateral treaties to resolve this dispute and PCA did not have any jurisdiction to interfere in it. However, the tribunal ignored China’s statements and continued with the proceedings in pursuance to Article 287(5) of Part XV of UNCLOS<sup>iv</sup> holding that China had no legal basis for claiming historic rights within its nine-dash line. But even then, China refused to follow PCA’s decision.

China’s attitude towards International Arbitration awards brings to light the problem of unenforceability of its decisions. Therefore, this paper seeks to highlight the problems in enforcing the decisions of the compulsory dispute settlement regime of the UNCLOS. It would, further, examine different enforcement mechanisms that could be adopted by the UNCLOS for delivering enforceable decisions henceforth. Additionally, it discusses how the SCS arbitration award (“**the Award**”) could be enforced through the inclusion of such enforcement measures.

## LITERATURE REVIEW

**The South China Sea Arbitration: Bindingness, Finality, and Compliance with UNCLOS Dispute Settlement Decisions**, *Hao Duy Phan & Lan Ngoc Nguyen, Asian Journal of International Law, Vol 8 No. 1, (2018) Pp. 36-50.*

The authors in the paper discuss the final award given by the Tribunal in the SCS arbitration, which was rejected by China as “null and void”. Though the Philippines hailed it as a milestone decision, it later changed its stance to dismiss the award as “a piece of paper”. Both the parties can be said to be disrespecting the international law through this non-compliance. The authors delve deeper into the issue regarding the bindingness, finality, and state compliance with UNCLOS dispute settlement decisions. They point out that even though there is a lack of any specific enforcement regime under UNCLOS, it does have few mechanisms that induce states to comply with the award rendered against them. The arbitral awards under UNCLOS in the SCS dispute are final and binding, which means that the parties to a dispute should comply with its decisions. Though China has not and potentially will not comply with the award, the arbitral award reflects upon the essential nature of UNCLOS and how it provides a level playing field for all state parties irrespective of their international power and status. Lastly, the author states that the rule of law in the oceans is upheld in the SCS dispute while answering several legal questions regarding the interpretation and application of UNCLOS.

**Problem of enforcement of an international law – analysis of law enforcement mechanisms of the United Nations and the World Trade Organization**, *Štulajter Matuš, Journal of Modern Science, Vol. 2 No. 33, (2017). Pp. 325 -335*

The author emphasizes the complications with the execution of International law in light of the law enforcement regimes provided for by the World Trade Organization. The author starts the discourse by mentioning that the integrity of international law is at stake due to a lack of compliance mechanisms. The importance of the judgments pronounced by international bodies is jeopardized due to non-compliance by the disputed parties. The principle of “*pacta sunt servanda*” which states that the agreements must be kept, is the oldest principle of international law, is undermined by the unenforceable nature of international decisions. Further, the article explains how there are measures through which compliance can be achieved, however they may not be effective. The author then goes on to discuss the enforcement procedures laid down

by WTO and how the dispute settlement body (DSB) acts as a guardian of enforcement of WTO law. Additionally, the author mentions the sanctions in case a party fails to comply with the ruling. The final leg of the article delves into the implications that arise from the dispute resolution system rule and how such an enforceability system is effective.

**The Persisting Problem of Non-compliance with the Law of the Sea Convention: Disorder in the Oceans**, *Robin Churchill, The International Journal of Marine and Coastal Law, Vol. 27 No. 4, (2012), Pp. 813–820*

The author highlights the negative aspect of the UNCLOS, i.e., there exists a persisting problem of a widespread practice of non-compliance with the awards rendered by a tribunal acting under the UNCLOS. He also discusses various cases where the states did not comply with the decision of the tribunal. Non-compliance at such a high degree undermines the legitimacy and integrity of the convention. Then the author argues that there are mechanisms to compel the states to comply with the award, and UNCLOS itself has three such mechanisms. The problem here is that these mechanisms are not used at their full potential. Additionally, states can rely upon the traditional mechanisms of International Law to enforce the awards. Furthermore, the author argues that enforcement regimes under other treaties can induce states to comply with the awards if those mechanisms are brought under the UNCLOS. The article concludes by saying that the UNCLOS must introduce better restoration and countermeasures through other treaties.

**Enforcing the unenforceable: How to rely on international law to curb china from illegal territorial claims in the south china sea**, *Carly Herosian, Suffolk Transnational Law Review, Vol. 41, (2018), Pp. 335.*

The author begins by discussing the facts of the SCS and delves into the challenges as well as potential solutions to solve maritime disputes through arbitral tribunals. The main challenge to these disputes is that there is no enforcement mechanism in UNCLOS to enforce the award on China, allowing it to defy it. The author then goes on to discuss various implications of non-compliance by dominant states through various cases and states that there is a continuing pattern of dominant states defying the awards rendered against them. Further, he goes on to discuss possible solutions, one of which includes a compromise between the contesting parties.

He explains this by using a case study of a dispute between India and Bangladesh, wherein India voluntarily abided by the arbitral award and willingly handed over the disputed territories to Bangladesh. Then the article analyses China's arguments against the award rendered by PCA and argues that these arguments have no merit and hence, will not stand. Lastly, the author argues that even though China denies complying with PCA's decision, there is still a chance that PCA's decision can be enforced. This is possible if the Philippines takes further action in pursuance of enforcing the award, along with support from the international community.

**International Treaty Enforcement as a Public Good: Institutional Deterrent Sanctions in International Environmental Agreements**, *Tseming Yang, Michigan Journal of International Law, Vol. 27 No. 4, (2006), 1131 - 1184*

The author initiates the discussion by providing a brief overview of the problem of treaty enforcement in international environmental law and the traditional sanction options. It mentions how the popular belief that existing sanctions for compliance are weak and ineffective is erroneous. The author explores the existing sanctions i.e., countermeasures, membership sanctions, and treaty-based mechanisms, and responds that the problem of enforcement does not lie in the weak nature of the sanctions but lies in the ineffective utilization of such existing sanctions. Then, the author analyses the alternative approaches to the problem of ineffective sanctions. He discusses unilateral sanctions, compliance management and transformation of Identities, interests and norms and concludes that they cannot adequately replace the traditional sanctions. Furthermore, the author's discourse revolves around the treaty enforcement as a public good and the distinct ways in which the enforcement through institutional deterrent sanctions is a public good and how generating the 'enforcement good' is problematic. He mentions some approaches through which enforcement responses to non-compliances be increased: changing the enforcement calculus, promoting entrepreneurial enforcement, and altering treaty design. Beyond these approaches, it ends the paper by examining a case study of the non-compliance mechanism of the Kyoto Protocol and its implications for better analysis of the new enforcement mechanism.

**Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction**, Alan E. Boyle, *The International and Comparative Law Quarterly*, Vol 46, (1997), Pp. 37-54

Mr. Boyle initiates the discussion by mentioning how the creation of a tribunal, i.e., the International Tribunal for Law of the Sea (“ITLOS”) under UNCLOS is an essential development in resolving international sea disputes. He examines the debate between some judges regarding how ineffective ITLOS was, considering it was allowing for ad hoc arbitration in the law of the sea. He highlights the fears of such fragmentation of dispute settlement and how the system is going to affect the litigation of the sea disputes. He mentioned how ITLOS does not have a compulsory enforcement regime and a chamber of ITLOS i.e., International Seabed Authority was unique in the sense it exercised compulsory jurisdiction. It further discusses the dispute settlement regime of UNCLOS and the method in which the parties to a dispute could pick a procedure of dispute settlement. Additionally, it discusses the factors that may influence a choice between ITLOS and the international court whose inherent composition is variant.

**The Enforcement of ICSID Arbitral Awards, Practice and Problems**, Vasily Shubin, *Korea University Law Review*, Vol. 11, (2012), Pp. 11-36

The author discusses the recent cases of enforcement of awards rendered by the ICSID against the contracting states. In the article, the author describes the enforcement mechanism as laid down in the New York Convention and then compares it to the enforcement regime under ICSID. The difference between both is that under the New York Convention, the states have the right to refuse the recognition and enforcement of the awards, at the same time, the ICSID makes it a legal obligation for the states to comply with the award by enforcing it through the municipal courts of the state. The article also discusses the general practice of various states and argues that many states voluntarily enforce the awards rendered against them. The article concludes by saying that even though enforcing the awards given by international tribunals is a complicated process, ICSID has one of the strongest enforcement regimes with a very simplified process, which makes it easier for the states to enforce the awards. Nevertheless, the author says that yet, there have only been four cases where the issue of enforcement has been raised before the tribunal, and all of them have been unsuccessful due

to a lack of careful planning. Therefore, the author argues that careful planning in the process of enforcement will increase the chances of enforcement tremendously.

## **BINDINGNESS AND FINALITY OF THE AWARD**

In pursuance to Article 296 of UNCLOS, the award rendered by the tribunal is final<sup>v</sup> and binding<sup>vi</sup> upon the parties to the dispute. However, it does not have any precedential value. Hence, Article 11 of Annex VII,<sup>vii</sup> accompanied by Article 296,<sup>viii</sup> confirms the bindingness and finality of decisions pronounced by the tribunal. Such a provision finds its basis under Article 59 and 60 of the International Court of Justice<sup>ix</sup> and Article 94(1) of the UN Charter.<sup>x</sup> Furthermore, In the *LaGrand* case,<sup>xi</sup> the ICJ held that under Article 59 of UNCLOS, the primary purpose and function of the courts is to pronounce binding decisions for judicial settlement of international disputes. Part XV of the UNCLOS provides for various dispute settlement procedures. A state is obliged to choose any one of the procedures laid down under Article 287<sup>xii</sup> by virtue of being a party to the convention. If a state does not pick any of the procedures, it will be deemed to have selected an arbitral tribunal constituted under Annex VII for dispute settlement. Therefore, a state's consent to the UNCLOS serves as a second basis for the bindingness of its decisions.<sup>xiii</sup> China based its refusal to bind itself to the decision predominantly on three arguments: (a) Neither it consented, nor did it participate in the proceedings; (b) the matter was outside the scope of jurisdiction of the tribunal, and (c) the tribunal constituted was not a legitimate international court.<sup>xiv</sup>

Regarding the first issue, China claimed that it has not consented to the jurisdiction of the tribunal by its non-appearance in the proceedings. However, China had ratified the UNCLOS convention and was one of the active members in the UNCLOS negotiations.<sup>xv</sup> This meant that it had consented to the compulsory dispute settlement mechanism of the UNCLOS. Further, its non-appearance was ineffectual since non-appearance cannot be construed as an impediment to proceedings under Article 9 of Annex VII of the UNCLOS. Similarly, when the USA refused to participate in the Nicaragua Case<sup>xvi</sup> proceedings, the ICJ clarified that even if a state refuses to participate, the case will continue in the courts despite its participation, and the states will be bound by whatever decision that court takes.<sup>xvii</sup>

Regarding the second issue, the Tribunal took considerable efforts to explore all the scientific and historical facts to qualify for the threshold set by Article 9 of Annex VII of UNCLOS to confirm its jurisdiction over the matter.<sup>xviii</sup> Further, it also conducted various deliberations with various independent scientific experts, to validate that it had jurisdiction for the same.<sup>xix</sup> Concerning the third issue, the arbitral tribunal is a legitimate dispute settlement body acknowledged under Article 33(1) of the UN Charter. Additionally, Article 287 of UNCLOS bestows upon the state parties, settlement by means of arbitration under Annex VII of UNCLOS.<sup>xx</sup> China is contradicting its viewpoint regarding the legitimacy of such tribunals since it has been actively involved in resolving distinct disputes previously. Hence, from the above discourse, the award pronounced by the tribunal in the SCS dispute is final and binding.

## **PROBLEM OF ENFORCEMENT**

The classic model of International law as separate from the domestic realm reveals the loopholes of the international legal system concerning ineffective enforcement mechanisms.<sup>xxi</sup> John Austin established his theory of law based on a sovereign issuing a command backed by a sanction or punishment.<sup>xxii</sup> This domestic law does fit into the model of what is considered as law since it has a legislature for the creation of rights and obligations, an executive body that implements such decisions, and finally, the law enforcing authority i.e., the judiciary.<sup>xxiii</sup> However, International law does not pass the test of Austin since there is no single body that can create laws that can be internationally binding on everyone and a proper system of courts that can interpret the laws and enforce its decisions.<sup>xxiv</sup> International law has exceptional dispute settlement regimes, however, the lack of a law enforcement machinery diminishes the worth of such valuable judgments. Thus, exposing the vulnerabilities of the state parties who have been affected by the actions of another state. Similarly, in this situation, China disregarded the binding judgment by the tribunal by stating it as ‘a piece of paper’ and further continuing to keep control over all the islands within the nine-dash line. UNCLOS might have the finest dispute settlement systems; however, the absence of an enforcement authority within the provisions of UNCLOS does not allow the injured party to bind the decision on the offender state. Therefore, the legal issue that lies at this juncture is the lack of enforcement mechanisms within UNCLOS.



Although UNCLOS does not provide for a specific enforcement mechanism, it does have mechanisms that would promote the states to comply with the decision of the convention. Paragraph (3) of Article 33 of Annex VI of Statute of ITLOS allows ITLOS to interpret the meaning or scope of the decision it has given if a party requests to do so. This will enable ITLOS to determine the method of implementation of the award indicated by the ICJ.<sup>xxv</sup> In the case of *Cambodia v Thailand*,<sup>xxvi</sup> Cambodia reappeared at the ICJ arguing that Thailand has not entirely implemented the judgment that has been declared by the court. The court accepted Cambodia's appeal and issued an order that was eventually executed by both the parties.<sup>xxvii</sup> This indicates that bringing a dispute relating to execution to the same court that framed the initial decree can aid in compliance of such decrees. Furthermore, under Article 12 of Annex VII of UNCLOS, parties to the dispute can submit to the arbitral tribunal any controversy which may arise regarding the interpretation or manner of implementation of the award. This can create pressure on the non-complying party to comply with the award, but such a request under Article 12 is yet to be submitted.<sup>xxviii</sup>

Despite these mechanisms within UNCLOS, China has not yet complied with the award rendered by the tribunal. This reflects upon a more significant issue of enforcement of international law through tribunals. When the outcome of a case jeopardizes the national interest of a dominant state, they tend to circumvent the judgments of these tribunals. The possible solution to this is that there needs to be a robust enforcement regime in place, which not only makes the award binding and final for the parties but also makes enforcement of the award legally binding. Therefore, it would be much relevant to consider other enforcement regimes. International law is generally enforced in two ways: through municipal courts of the State or International Organizations (“IOs”). International Center for Settlement of Investment disputes (“ICSID”) has one of the strongest enforcement regimes in International law; wherein municipal courts have enforced many awards given by the tribunal.<sup>xxix</sup> The enforcement mechanism of the World Trade Organization (“WTO”) can be considered while understanding the enforcement through IOs.

## ENFORCEMENT THROUGH DOMESTIC COURTS OF STATES

### *International Centre for Settlement of Investment Disputes*

An award rendered, under article 53 of the ICSID, is final and binding on the parties to the dispute.<sup>xxx</sup> The difference here is that article 54 of ICSID makes it an applied legal obligation on the parties involved to comply with the final award and execute the award like a final domestic judgment of the state.<sup>xxx</sup> Therefore, any resistance in implementing the award will be a clear violation of international obligations on the part of the non-complying state.<sup>xxxii</sup> ICSID follows certain procedures, while enforcing a binding decision, as enumerated hereunder.

Firstly, ratifying the ICSID convention does not essentially mean that a country agrees to grant ICSID jurisdiction over disputes.<sup>xxxiii</sup> A country needs to sign a separate written agreement for granting the dispute settlement powers to the ICSID.<sup>xxxiv</sup> China has limited its scope of consent to the jurisdiction and stated that it would only submit to ICSID's jurisdiction in specified matters in pursuance to Article 25(4) of the convention.<sup>xxxv</sup> Secondly, ICSID requires the member states to provide for a domestic law enforcement system, which would ensure that ICSID awards be enforced in the same manner as domestic court judgments. For instance, USA granted ICSID awards an equivalent status to that of a municipal state court judgment by implementing this provision by a federal statute.<sup>xxxvi</sup> Unlike USA, China has not framed any legislation that specifically mentions that the People's Republic of China ("PRC") would be obligated to enforce ICSID awards. However, articles 269 and 238 of the Civil Procedural Law of China together states that ICSID awards should be treated in the same manner as its domestic judgments and that no domestic law could override China's ICSID's obligations.<sup>xxxvii</sup> Further, it is also true that Chinese courts have hardly applied such treaty obligations unless a specific legislation provides for such implementation.<sup>xxxviii</sup> Hence, this ambiguity in the implementation of a treaty in China means that even articles 269 and 238 do not warrant that ICSID awards will be enforced by the PRC courts. Therefore, lower court authority to execute awards can be necessarily clarified by the judicial interpretation of the Supreme People's court.

If a domestic enforcement mechanism like the ICSID is inculcated in the UNCLOS, then the judgment pronounced by the arbitration in the SCS can be enforced. In the SCS arbitration, the award is final and binding on China. Since the ratification of the UNCLOS treaty is equivalent

to consenting to its dispute settlement regime, China does not require a separate written agreement to grant jurisdiction to UNCLOS. China essentially needs to form a specific legislation that would give UNCLOS awards an equivalent status to that of its state court judgment. Once such a provision is inducted by Chinese courts, the awards could be enforced effectively, and the objective of such an enforcement regime can be attained. In this way, the SCS arbitration award can be enforced by the UNCLOS and the Philippines.

### ***International Tribunal for the Law of the Sea:***

The decisions of the ITLOS are final and binding, and the parties to the dispute are required to comply with them. Nonetheless, the Tribunal has no means of enforcing its decisions. However, the decisions of the Seabed Disputes Chamber, an expert body of ITLOS, are enforced.<sup>xxxix</sup> The Seabed Disputes Chamber settles disputes concerning activities in the deep seabed mining. Article 39 of Section 4 of Annex VI of UNCLOS provides that decisions pronounced by the chamber shall be enforceable in the same manner as the domestic court judgments in whose territory such enforcement is deemed.<sup>xl</sup> The State Party acting as a sponsoring State enjoys the power of enforceability and must consider whether this provision will require the enactment of domestic legislation for its implementation.

If an enforcement mechanism like the Seabed disputes chamber is incorporated in UNCLOS for all the courts and tribunals formed under UNCLOS, China can be forced to follow the arbitral award. Since China has ratified the UNCLOS, the Chinese government will be required to enforce and comply with SDC judgments in the same manner as it would enforce and adhere to a decision of the Supreme People's Court under Article 39 of Annex VI. The Chinese court system will serve not as an avenue for appeal from UNCLOS tribunals, but rather as an enforcement mechanism for their judgments.

## **ENFORCEMENT THROUGH INTERNATIONAL ORGANIZATIONS**

### ***United National Convention on Law of the Sea***

Article 214 of Section 6 of UNCLOS postulates that states can enforce laws through competent international organizations or diplomatic conference to prevent and control pollution of marine

environment arising from seabed activities.<sup>xli</sup> This is another enforcement measure mentioned in the UNCLOS. However, since this deals with marine pollution, such a measure cannot be applied in the South China Sea arbitration award. The dispute in SCS is related to sovereignty rights within the nine-dash line. If such an enforcement mechanism is adopted by the UNCLOS for all violations at sea, then the SCS award could be enforced. Accordingly, an international organization could control and enforce the binding decisions of the dispute settlement bodies of UNCLOS.

### ***World Trade Organization***

A similar enforcement system is being followed by the World Trade Organization (WTO). Annex 2 of “Understanding on Rules and Procedures governing the settlement of disputes” provides rules relating to dispute settlement and enforcement of WTO.<sup>xlii</sup> WTO Dispute settlement body (DSB) is the principal body for enforcing the WTO law.<sup>xliii</sup> DSB acts as a guardian while overseeing the implementation of the decisions while setting an adequate time limit for the same purpose.<sup>xliv</sup> Further, it checks if the disputed parties are following the obligations and restrictions imposed on them by the courts.<sup>xlv</sup> In enforcing the decree, the DSB mandates the contentious parties to submit reports of the implementation measures that are undertaken by the obligated parties.<sup>xlvi</sup> However, there is some flexibility provided to the parties to submit the report during DSB negotiations as well.

Once a decree is pronounced, the unsuccessful party may reform its domestic legal system to satisfy the ruling or accept sanctions after changing the domestic legal system. In case, the state fails to respect the court’s decision, the benefits arising from the agreements or the court’s orders may be withdrawn.<sup>xlvii</sup> This withdrawal has a repressive and a double preventive effect that discourages such non-compliance by the parties.<sup>xlviii</sup> Such a suspension of benefits also refrains other WTO members from such non-compliance with the court’s orders.<sup>xlix</sup> The degree of sanctions depends upon the profundity of the breach of the WTO law by the infringing state and the essence of the complainant’s injuries.<sup>1</sup>

Till now, DSB has resolved eight cases against China.<sup>li</sup> Chinese domestic law was found to be inconsistent with the WTO measures in all such cases. However, the surprising part was China revised its inconsistent laws and addressed the complainant’s concerns in five such cases.<sup>lii</sup> In the other three cases, China neither obeyed the reasonable time period, nor did it annul the

provisions that were inconsistent with WTO agreements.<sup>liii</sup> Further, in two cases, China failed to submit the implementation report. China's discretion,<sup>liv</sup> while enforcing WTO rulings, suggests that there is still a legal lacuna in the enforcement mechanism of WTO. Though such a regime resulted in better compliance by the States, some authoritative regulations are required in order to remove the minor non-compliances.

Incorporating such an enforcement system in UNCLOS would mean that an international organization must oversee the compliance of the arbitration awards. In the case of UNCLOS, the dispute enforcement body of the International Maritime Organisation can enforce the arbitral awards. In the enforcement of the SCS award, UNCLOS could mandate the submission of implementation reports by China. Since China has chosen to ignore the award, sanctions can be imposed on China (retaliation or withdrawal of some benefits from China) to ensure its compliance. Regulations should further be introduced in the UNCLOS for strict compliance of the awards. This is another way of enforcing the SCS arbitration award on China.

## CONCLUSION

The problem of enforcement in International law is as old as the international law itself. Time and again states have denied to comply with the rulings pronounced by the international courts and arbitral tribunals. The main cause of such non-compliance is often connected with the idea of weak and ineffective sanctions in International law; however, some scholars have argued that it has more to do with the inefficient implementation of such sanctions. The most recent case where the state denied the enforcement of the international court judgment (UNCLOS) was the South China Sea Arbitral Award. China dismissed the award by declaring it as 'a piece of paper', and it could do so because of the unenforceable nature of the awards. The paper identified this problem of enforcement and, further, went on to suggest different enforcement mechanisms that could be adopted by UNCLOS to enforce its decisions henceforth. It discussed the two methods in which enforcement could be achieved: one, through competent International Organisations and another, through the domestic courts of the state. The former was explained through the enforcement regime followed by WTO while the latter was explored through the enforcement systems followed by ICSID and Seabed Dispute Chambers of the ITLOS. The South China Sea arbitral award could be enforced on China if such mechanisms

were adopted by the UNCLOS. Though no enforcement mechanisms are entirely adequate and without any loopholes, but the aforementioned mechanisms could lead to better development and more satisfactory enforcement in UNCLOS.

## ENDNOTES

- <sup>i</sup> Philippines v. China (2016) PCA case number 2013–19
- <sup>ii</sup> Thomas J. Schoenbaum, *The South China Sea Arbitration Decision and a Plan for Peaceful Resolution of the Disputes*, 47 J. Mar. L. & Com. 451 (2016).
- <sup>iii</sup> Maximo Paulino T. Sison III, *Universalizing the Law of the Sea in the South China Sea Dispute*, 49 No. 2 Ocean Development & International Law 157, 157-158 (2018)
- <sup>iv</sup> United Nations Convention on Law of the Sea (1982) Article 287(5), Section 2, Part XV
- <sup>v</sup> United Nations Convention on Law of the Sea (1982) Article 296(1), Section 2, Part XV
- <sup>vi</sup> United Nations Convention on Law of the Sea (1982) Article 296(2), Section 2, Part XV
- <sup>vii</sup> United Nations Convention on Law of the Sea (1982) Article 11, Annex VII
- <sup>viii</sup> *Supra* note 5
- <sup>ix</sup> Statute of the International Court of Justice (1945)
- <sup>x</sup> Charter of the United Nations (1945)
- <sup>xi</sup> Germany v. United States of America (2001) I. C. J. Reports 466
- <sup>xii</sup> *Supra* note 4
- <sup>xiii</sup> Hao Duy Phan & Lan Ngoc Nguyen, *The South China Sea Arbitration: Bindingness, Finality, and Compliance with UNCLOS Dispute Settlement Decisions*, 8 Asian Journal of International Law 36, 38-40 (2018)
- <sup>xiv</sup> *Id* at 40-41
- <sup>xv</sup> Jerome A. COHEN, *Like It or Not, UNCLOS Arbitration is Legally Binding for China*, East Asia Forum (2016)
- <sup>xvi</sup> Nicaragua v. United States (1986) I.C.J. Rep. 14
- <sup>xvii</sup> *Id*
- <sup>xviii</sup> Phan & Nguyen, *Supra* note 13 at 41-42
- <sup>xix</sup> *Id*.
- <sup>xx</sup> *Id* at 42-43
- <sup>xxi</sup> Alan E. Boyle, *Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction*, The International and Comparative Law Quarterly, Vol 46, 42 (1997),
- <sup>xxii</sup> MALCOLM N SHAW, INTERNATIONAL LAW (7<sup>th</sup> ed. Cambridge, UK, Cambridge University Press)
- <sup>xxiii</sup> *Id*.
- <sup>xxiv</sup> *Id*.
- <sup>xxv</sup> Phan & Nguyen, *Supra* note 13 at 44 - 46
- <sup>xxvi</sup> Cambodia v. Thailand (2013) I.C.J. Rep. 281 at 21
- <sup>xxvii</sup> *Id*.
- <sup>xxviii</sup> Phan & Nguyen, *Supra* note 13 at 47
- <sup>xxix</sup> MARC BUNGENBERG & AUGUST REINISCH, FROM BILATERAL ARBITRAL TRIBUNALS AND INVESTMENT COURTS TO A MULTILATERAL INVESTMENT COURT 156 (1<sup>st</sup> ed. Springer International Publishing, 2018).
- <sup>xxx</sup> International Centre for Settlement of Investment Disputes (1966), Article 53.
- <sup>xxxi</sup> Vasily Shubin, The Enforcement of ICSID Arbitral Awards, Practice and Problems, 11 Kor. U. L. Rev. 11 (2012).
- <sup>xxxii</sup> Bungenberg and Reinisch, *supra* note 27.
- <sup>xxxiii</sup> Julian G. Ku, *The Enforcement of ICSID Awards in the People's Republic of China*. 6 No. 1 Contemporary Asia Arbitration Journal, 38 (2013).
- <sup>xxxiv</sup> *Id* at 38.
- <sup>xxxv</sup> *Id* at 38.
- <sup>xxxvi</sup> Foreign Relations and Intercourse, 22 U.S.C. §§ 1650a(a) (2000).

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xxxvii Shubin, *Supra* note 31

xxxviii *Id*

xxxix United Nations Convention on Law of the Sea (1982) Article 39, Section 4, Annex VI.

xl *Id*.

xli United Nations Convention on Law of the Sea (1982) Article 214, Section 6.

xlii World Trade Organization (1995), Annex 2

xliii Donald C. Clarke, *China's Legal System and the WTO: Prospects for Compliance*, 2 WASH. U. GLOBAL STUD. L. REV. 097 117, 118 (2003).

xliv Slujater Matus, *Problem of enforcement of an international law – analysis of law enforcement mechanisms of the United Nations and the World Trade Organization*, 2 No. 33 Journal of Modern Science, 325, 331 (2017).

xlv *Id* at 331.

xlvi *Id* at 331-332.

xlvii *Id* at 331.

xlviii *Id* at 331.

xlix *Id* at 331 – 332.

<sup>1</sup> *Id* at 332.

li Timothy Webster, *Paper Compliance: How China Implements WTO Decisions*, 35 MICH. J. INT'L L. 555 (2014).

lii *Id* at 556.

liii World Trade Org. Dispute Settlement Body, Minutes of Meeting, 90, WT/ DSB/M/273 (Nov. 6, 2009).

liv *Id*.