



**British Institute of  
International and  
Comparative Law**

# **Force and coercion in the South China Sea:**

## **Why does it matter in international law?**

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# 'Sovereignty'

- The ultimate authority over a territory (continental or island)
- Freedom to act freely on a territory
- Ability to exclude other states from acting upon a territory

But what if the sovereignty status of a territory is disputed?



The dispute must be resolved for sovereignty to be fully and finally attributed

## Question:

**Can a claimant state legitimately establish a military presence on a disputed territory at the exclusion of other claimant states and what other claimant states can do in response?**

1. International law on the use of force and territorial disputes
2. Establishing a military presence on a disputed territory as a means of coercion
3. Implications, as a matter of law, of qualifying coercive conduct as a prohibited use of force

# 1. The rules of international law on the use of force apply to territorial disputes

- Article 2(4) of the United Nations Charter:

“All members shall refrain in their international relations from the threat or use of force...”

- 1970 United Nations GA Declaration on Friendly Relations:

“States shall refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, **including territorial disputes and problems concerning frontiers of States.**”

- ASEAN 1992 Declaration:

“Necessity to resolve all sovereignty and jurisdictional issues pertaining to the South China Sea by peaceful means, **without resort to force**”

- ASEAN-China 2002 Declaration on the Conduct of Parties in the South China Sea:

“The Parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means, **without resorting to the threat or use of force**”

## 2. Military build-up on a disputed territory as a means of coercion

- Défense Ministers of Australia, Japan and the United States Joint Statement, 3 June 2018:

*“...strong opposition to the use of force or coercion as well as unilateral action to alter the status quo, and to the use of disputed features for military purposes in the South China Sea”*

- United States Défense Secretary Jim Mattis, Statement 2 June 2018:

*“...the placement of these weapons systems is tied directly to military use for the purposes of intimidation and coercion”*

# 'Coercive Intent'

- Forcing the will of another state to accept a new *status quo* by military means.

## Examples

- Takeover of Goa by India in 1961 (condemned by the majority of members of the Security Council)
- Annexation of Crimea by Russia in 2014 (condemned by the majority of members of the Security Council)
- ICJ Advisory Opinion, Israeli Wall case (2004)
- ICJ Judgment, Costa Rica v Nicaragua (2015)

- *Judge Robinson (Costa Rica v Nicaragua):*

“No shots need be fired, no heavy armaments need be used and certainly no one need be killed before a state can be said to have violated the prohibition [of the use of force].”

**Nicaragua's coercive intent evidenced by:**

- Prolonged presence of Nicaragua's military camps and personnel in the disputed territory
- Its refusal to withdraw its troops from the disputed territory
- Pointing of weapons at the Costa Rican aircraft
- Readiness to apply force whenever necessary to challenge Costa Rica's sovereignty



### 3. Legal implications of finding a use of force

a) Forcible action in self-defense? - Requires higher threshold of breach.

b) Third-party countermeasures?

- Where a breach of an **erga omnes** obligation occurs, all other states are entitled to take countermeasures to bring the breach to an end, just as if they were directly injured by that use of force.

#### Examples:

- Sanctions by the United States against the Soviet Union (when amassed its troops along the Polish border threatening international peace)
- Sanctions by the European Community against Argentina (when invaded the Falkland Islands)

- Sanctions imposed by the European Union and the United



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Thank you for your  
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