

# Who Really Owns the South China Sea? The Legal Battle Over Artificial Islands

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## Abstract

*The South China Sea, being one of the most important maritime regions with resources and trading routes, has become one of the world's most disputed regions in the contemporary world. Central to the conflict are artificial islands constructed by states, particularly China, to declare sovereignty and expand maritime zones. However, do these artificial islands have any legal basis that can be recognized under international law? Can UNCLOS shed light on this issue, or does it fail to address artificial manipulations of nature adequately? This paper thus seeks to analyze the legal nature of artificial islands to determine the validity of territorial claims, international courts' reactions, and impacts on regional stability. Is this a prima facie case of a legal vacuum where some states can indulge in acts of aggression, or are we seeing a new law emerging in international maritime law? The results of this article highlight the complex intersection of technology, international law, and geopolitics, particularly in the South China Sea. It shows how, while legally unrecognized under UNCLOS, artificial islands still play a significant role in sovereignty claims and regional stability. The article also stresses the urgent need for legal reforms to adapt to technological advancements. It suggests practical solutions like multinational monitoring and environmental compensation mechanisms to address the growing tension in the region.*

**Keywords:** South China Sea, Artificial Islands, Maritime Disputes, UNCLOS, Sovereignty Claims, Territorial Waters, Exclusive Economic Zones (EEZ), Geopolitical Conflicts.

## Introduction

The South China Sea, which occupies a total area of 3.5 million square kilometers, is one of the world's most economically and strategically significant regions. (Trier, 2022) Around 40 percent of the world's carry trade, worth over 3.4 trillion USD annually, transits through this channel. (Chang, 2023) The South China Sea has excellent potential for gas hydrate resources, with a probability distribution ranging from 37.6 billion to 117.7 billion tons of oil equivalent (Su et al., 2022).

Along with abundant waters supporting more than three million people as a source of fish, the concerns that may occur in the South China Sea cannot be doubted. Amid these vast economic and geopolitical interests, a new and complex phenomenon has emerged: artificial islands. Artificial islands affect coastal geomorphologic processes by affecting flow, sediment transport, and local complex morphology (Fu et al., 2023). However, this development raises fundamental questions:

1. Can artificial islands change sovereignty claims under international law?
2. Do these constructions expand maritime boundaries, or are they legal anomalies with no territorial effect?

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3. Is the United Nations Convention on the Law of the Sea (UNCLOS) equipped to resolve disputes involving artificial islands?

The key legal framework, UNCLOS, provides a definitive stance: An artificial island cannot establish territorial sea or exclusive economic zone or EEZ (Saunders, 2019). According to Article 121 of UNCLOS, this right is accorded only to naturally formed islands that can support human life or economic activities. However, advancement in technology has made this distinction difficult to make, creating controversies that challenge the principles of international law. China converted over 15 km<sup>2</sup> of submerged coral reef area into artificial islands between June 2013 and December 2015, primarily damaging coral ecosystems. (Barnes & Hu, 2016) China is creating artificial islands with ports, military barracks, and airstrips by pumping millions of tonnes of sand onto reefs, including Mischief and Fiery Cross Reefs in the Spratlys (Stephens, 2015). For instance, Vietnam, Malaysia, and the Philippines have also participated in the reclamation of the land but in a more modest way.

However, these activities highlight deeper issues:

1. Can artificial islands influence sovereignty claims, even without formal legal standing?
2. Are artificial islands contributing to stability or accelerating strategic competition in the South China Sea?
3. If artificial islands are accepted as a basis for expanded maritime rights, does this set a dangerous precedent for other regions?

## Methodology

This article closely examines the legal, political, and environmental issues surrounding constructing artificial islands in the South China Sea. It focuses on the United Nations Convention on the Law of the Sea (UNCLOS), specifically Article 121, which states that artificial islands cannot generate territorial seas or Exclusive Economic Zones (EEZs). The study questions whether modern technological advances, such as artificial islands, should be reconsidered under international law and how these artificial structures influence sovereignty and security. The article uses practical data to emphasize the significance of this issue. For example, the South China Sea is vital for global trade, with over 40% of the world's carry trade passing through it, worth more than 3.4 trillion USD annually (Sadiq & Haider, 2024). The region also accounts for over 12% of the world's fish catch, yet 90% of global fish stocks are entirely or over-exploited. Between 2013 and 2015, China reclaimed over 15 square kilometers of land, disrupting coral ecosystems and raising concerns about environmental damage. These statistics highlight the high economic and environmental stakes involved in the dispute (Ahmad et al., 2023). The article also looks at specific legal cases, such as the Philippines' win against China in 2016, where an international court ruled that China's artificial islands did not hold legal weight under UNCLOS. This case helps demonstrate how international legal systems resolve such issues, though the article points out that powerful nations sometimes bypass legal rulings due to their geopolitical influence (Ahmad et al., 2024). In addition to the legal analysis, the article discusses the environmental impacts of artificial islands, mainly how they harm coral reefs. Reclamation activities have caused extensive damage to these ecosystems, affecting the global environment. Through a combination of legal, political, and environmental analysis, the article calls for updates to international laws to address better the challenges posed by artificial islands and their impact on the South China Sea region.

## The Legal Paradox

On paper, international law is clear: Artificial Islands cannot be used to expand maritime zones. However, in the real sense, these structures provide the states with a strategic and operational platform to deploy and assert their sovereignty in the disputed waters. For instance, Media construction of military-grade airstrips and radar systems on artificial islands exponentially improves China's sway in the region. The Asia Maritime Transparency Initiative AMTI reveals that these islands are now home to missile systems surveillance radars and naval deployments (Haider, 2024).

At the same time, smaller states face a dilemma:

1. How can nations like the Philippines or Vietnam challenge major powers when their resources and technological capabilities are limited?
2. Does international law provide effective enforcement mechanisms, or is it powerless in the face of geopolitics?

The Philippines' legal victory against China in the 2016 Permanent Court of Arbitration (PCA) ruling shows one attempt to resolve these disputes. The tribunal held that China's reclamation efforts had no legal effect under UNCLOS (Schofield, 2016).

## A Broader Challenge to International Law

The South China Sea conflict is not unique; it reveals a global challenge where law, power, and technology intersect:

1. Melting ice in the Arctic has created opportunities for international territorial claims, with five countries competing for territory: Russia, Norway, Canada, the United States, and Denmark (Paulson, 2009)
2. In the East China Sea, disputes over islands like the Diaoyu/Senkaku have raised similar sovereignty questions (Krickel-Choi & Chen, 2024).
3. If artificial islands are left unchecked, will this set a global precedent where maritime boundaries are no longer determined by natural geography but by engineering prowess?

## Statistics to Consider

To truly grasp the magnitude of the issue, consider these striking figures:

1. 90% of global fish stocks are either fully or over-exploited, with South China Sea fisheries accounting for over 12% of global catches. Overlapping claims threaten sustainable management.
2. China's reclamation activities cover four times more land area than all other claimants combined.
3. Between 2013 and 2020, the U.S. Navy conducted more than 20 Freedom of Navigation Operations (FONOPs) to contest China's claims reflecting growing international concern.

Figure (a) illustrates the comparative values of different categories related to global fish stocks, their contributions, and related activities

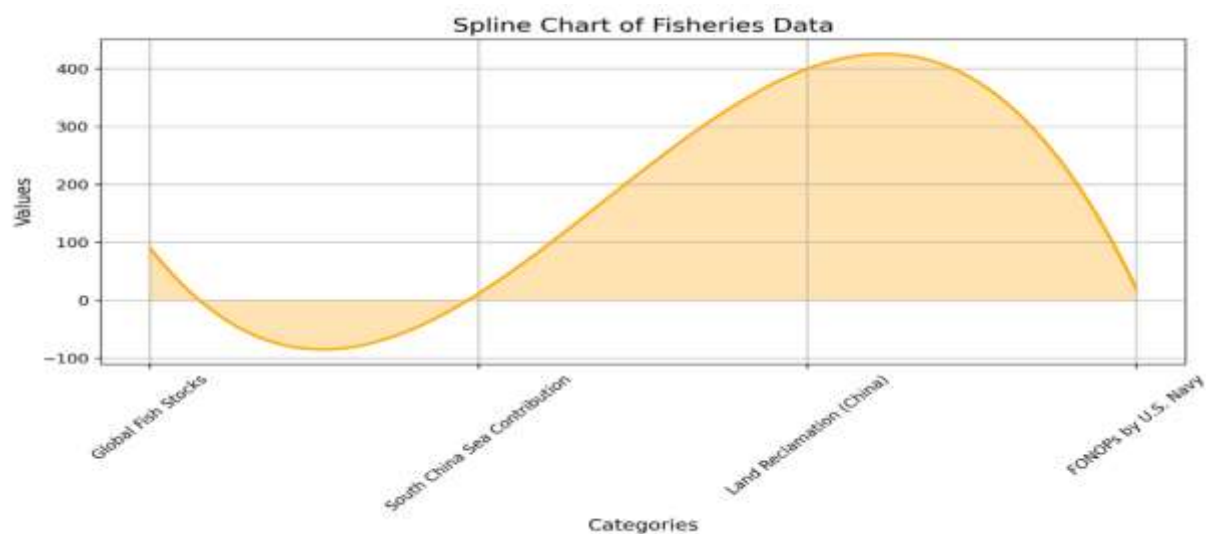
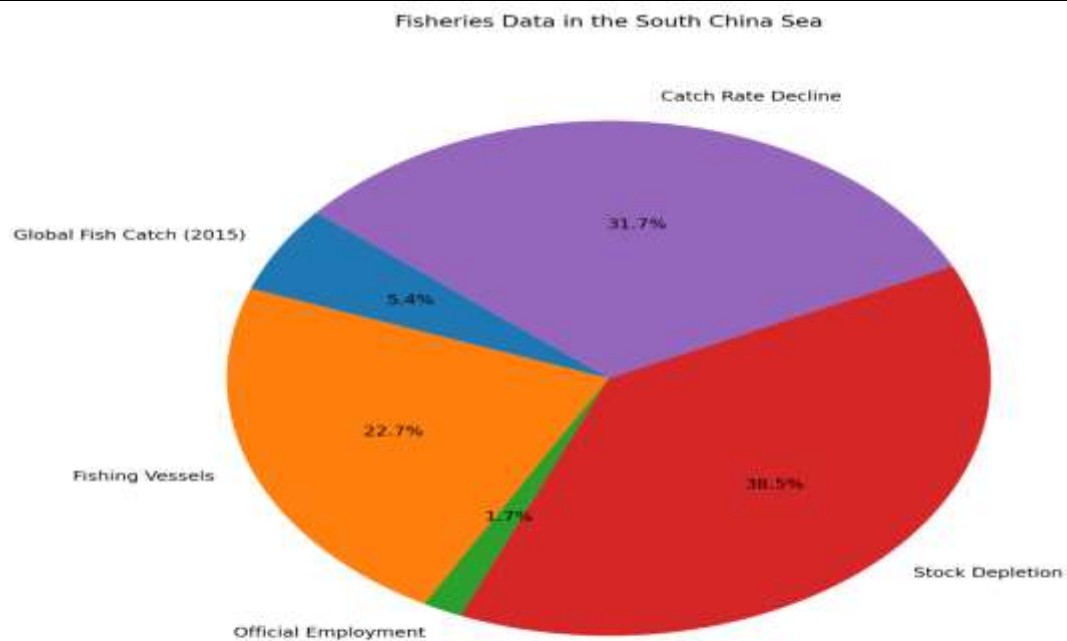


Fig (b) visualizes the fisheries data in the South China Sea



Source: Authors/Gregory-B-Poling.Md. "Illuminating the South China Sea's dark fishing fleets". Stephenson Ocean Security Project, January 9, 2019.

The figure above illustrates the proportions of global fish catch, fishing vessels, official employment, stock depletion, and catch rate decline.

### **A Call for Balance**

1. How can international law accommodate technological advancements while preserving fairness for all nations?
2. Can diplomatic dialogue reduce regional tensions while respecting the legitimate interests of all states?

Rather than viewing artificial islands as a purely legal problem, they should be seen as an opportunity for regional cooperation:

1. Multilateral agreements on land reclamation and environmental protection.
2. Strengthening dispute resolution mechanisms under UNCLOS.
3. Encouraging confidence-building measures among claimant states.

The South China Sea dispute is not just over the reefs or territories; it is about the principles governing international law (Seo, 2024). With advancement in technology and uses of the seas, comes the necessity to update the laws that deal with the seas. The question is: Will the international community respond to the challenge or will power continue to dictate the rules?

### **Commentary/Analysis**

Artificial islands raise a major concern against the principles of the current maritime laws causing concern due to their lack of cover within the UN Convention on the Law of the Sea (UNCLOS). (Chen, 2015) While UNCLOS provides clear definitions for natural features—like islands, rocks, and submerged reefs (Chen, 2015), its silence on man-made structures raises an important question: It is imperative to acknowledge how unprecedented technological advancements alter maritime geography and how such changes could be accommodated under international law. It is not only one state that has encountered this issue; many countries of the world have built artificial islands for various purposes either for strategic or economic or for environmental objectives. For example, reclamation activities have been registered in the Middle East, some parts of Southeast Asia, and even Europe for business and infrastructural purposes. However, the problem with such artificial features is when they are constructed in the disputed area, it raises the stakes of regional rivalry and claims on the area in question. In these cases, a critical legal question arises: Is it possible for artificial structures of any size and complexity to create maritime jurisdiction like the territorial sea or EEZs?

From a legal perspective, article 121 of UNCLOS prohibits artificial islands from being awarded rights to generate a maritime zone (Hamid, 2022). However, in real-world scenarios, states have been aspiring to exercise more authority over such structures, thus, more concern has been raised regarding de facto authority instead of legal sovereignty. This blurs the distinctions between lawful development and the claim of sovereignty. When artificial islands were established and if they are used as strategic tools, do they undermine the principle of maritime law where rights are exercised based on natural geography and not engineering prowess?

Besides this, the negative effects of big-scale reclamation activities add more problems to it. The marine environment is significantly impacted, especially coral reefs, which are essential for species and food sources. It has been documented that land reclamation practices have caused significant impairment of more than 40% of the world's coral reefs in some regions and pose a threat to food security and coastal economies. In Southeast Asia only, the reclamation works have affected hundreds of square kilometers of marine environment, which cannot be easily repaired and restore the continental shelf and seafloor habitats. This raises a broader question: Is it appropriate for such activities to be treated under international environmental law? If so, are there ways to ensure such accountability?

Another issue that remains in international law is the issue of enforcement. Even though legal rules and procedures for arbitration provided by the UNCLOS are in place, their enforceability is based on consent (Yee, 2015). This enforcement deficit was underlined when in the PCA's 2016 award the tribunal invalidated certain claims but it lacked the means to compel compliance. This situation causes doubt about the effectiveness and competence of international courts and institutions to solve the conflicts regarding artificial islands and their claims. If legal rulings are not enforceable, are they therefore ornamental rather than offering practical solutions?

The artificial islands also have implications for security and stability in the region and not merely in the legal and environmental demesnes. As countries' reclamation activities in the disputed area increase, they may bring military structures that can increase tensions between the states. Which methods used by international law can contribute to the resolution of conflict and the promotion of cooperation in the maritime field while preventing the military utilization of artificial structures?

### **Suggestions**

To address these challenges, a sum of legal, diplomatic, and environmental solutions is necessary.

#### **Reform UNCLOS to Include Artificial Islands**

From this standpoint, creating a new amendment or protocol under UNCLOS to more specifically address the status of artificial islands as well as their civil and military application would be the best course of action. For example, specific artificial islands that will be utilized only for scientific purposes, environmental tracking, or cooperation within a particular region would be allowed a restricted legal status (as a restricted zone of radius). On the other hand, militarized artificial islands should be prohibited from creating maritime rights to prevent their strategic misuse.

#### **Formulate a MSSCMA: Multinational South China Sea Claimants Monitoring Authority**

These include the South China Sea Monitoring and Coordination Authority which has not been put into place and should be created by the international community with cooperation from ASEAN states and other stakeholders. There could be an independent body that can supervise reclamation activities guarantee adherence to international standards in the environment and also encourage free disclosure of information. In our system, member states may also decide to impose economic or diplomatic sanctions on the violators making it even more effective.

#### **Environmental Compensation Mechanisms**

There is a need for states that indulge in land reclamation activities to be charged with responsibility for environmental rehabilitation activities based on the extent of harm done. For example, member states could provide for a regional marine restoration fund that seeks to restore coral reefs, fisheries, and other affected systems. This mechanism will help return the burden of the problem to the states that were causing the environmental issues in the first place while promoting cooperation for a sustainable future.

#### **Introduction of Arbitration with Binding Economic Consequences**

Due to the lack of enforcement of existing maritime rulings, international arbitration processes under UNCLOS should provide for economic sanctions. For instance, the following penalties are likely to be automatically imposed; states that are found in breach of these maritime laws may be barred from exporting or accessing international maritime corridors. Although this approach may



be rather questionable it would provide more credibility to legal decisions and guarantee obedience.

### Technological Agreements for Non-Militarized Development

The claimant states should engage in bilateral agreements that restrict the use of artificial islands for safety and rescue marine stations, meteorological observation posts, or scientific research centers in the region. It would also be possible for states to cooperate to ‘soft-occupy’ reclaimed features so that such developments enhance stability rather than add to conflicts.

### Conclusion

The construction of artificial islands in the South China Sea has revealed a significant weakness in international maritime law: its failure to adapt to new issues created by technological advancement and competition strategy. Although UNCLOS has a clear legal prescription, enforcement mechanisms are lacking, and this is why powerful states effectively impose de facto control. This problem is further compounded by environmental degradation and the absence of adequate regional integration. To address this, progressive changes to UNCLOS must be accompanied by actionable measures including International monitoring organizations, environmental indemnity structures, and effective systems of arbitration that invoke punitive measures. The South China Sea issues should not be a platform for conflict but a way through which stakeholders seek common ground and solve the problems amicably. In this way, it is possible to work on legal reforms, environmental accountability, and regional diplomacy to make maritime law meet the requirements of the 21st century. The final query is whether or not the states will be able to transcend the realpolitik and assume collective responsibility for the oceans, which are part of the global commons.

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