

Analysis of the Legitimacy of China's Construction of Islands and Reefs in the South China Sea

Xiaoxiao Li¹

¹ China Institute of Boundary and Ocean Studies, Wuhan University

Correspondence: Xiaoxiao Li, China Institute of Boundary and Ocean Studies, Wuhan University.

doi: 10.56397/LE.2022.08.13

Abstract

China has sufficient historical evidence and international law to assert its sovereignty over the South China Sea. China's construction of islands and reefs in the South China Sea is essentially a man-made accretion, and this behavior is legal and reasonable under international law. The nature of the construction in the South China Sea has not changed before and after the artificial accretion, nor does it harm the rights of neighboring countries. On the contrary, the construction of islands and reefs in the South China Sea not only ensures the safety of navigation channels, but also promotes the development of China and regional countries.

Keywords: the South China Sea, artificial accretion, international law

1. Background

In recent years, the South China Sea has been paid great attention, which has a bearing on China's maritime security and national security. From February 2014 to June 2015, China successfully carried out the construction of islands and reefs in the South China Sea, such as the Gaven Reef, Johnson South Reef, and Cuarteron Reef. the islands and reefs after construction will play a pivotal role. However, some countries have hyped up the Theory of China's threat and questioned whether China's behavior conforms to international law. On October 27 2015, the US warship even sailed into the waters of Subi Reef for less than 12 nautical miles, taking the opportunity to publicize its so-called "right to freedom of navigation".

2. China Has Sovereignty over Islands and Reefs in the South China Sea

Looking back at China's long history, it was the Chinese first to discover, name and effectively control islands in the South China Sea. During the Western Han Dynasty, the Chinese sailed in the South China Sea and discovered the Nansha Islands. After the Tang Dynasty, the Chinese increasingly reached this area for fishing activities, and Chinese governments also effectively controlled the Nansha Islands. The "Atlas of the Territory of the Yuan Dynasty" records that the territory of the Yuan Dynasty included the Nansha Islands, and the "History of the Yuan Dynasty" records that the Yuan Dynasty Navy patrolled the Nansha Islands. The Ming government established sovereignty and jurisdiction over the South China Sea. The Qing government divided the South China Sea into four major archipelagos, which are still used today. During the Republic of China period, the Government conducted many naming surveys of the South China Sea and announced China's sovereignty over the South China Sea to the international community, and no country had any objections. After 1949, China still maintained effective rule over the South China Sea.

According to the principle of preemption in international law, China undoubtedly enjoys sovereignty over the South China Sea. However, in the 1970s, scientific research found that the South China Sea is rich in oil, which made countries coveted, Vietnam、Philippines and other countries took the opportunity to encroach on China's islands and reefs and seize marine resources, which is contrary to the spirit of international law and do not produce any legal effect.

Sovereignty is the supreme power of a country to independently handle its own internal and external affairs and to administer its own country. National sovereignty includes both internal and external sovereignty, which means that internal affairs are handled without interference from the outside world, and external sovereignty means that foreign relations are not dominated by the outside world. China's construction of islands and reefs in the South China Sea is the embodiment of a country's exercise of sovereignty. Other countries have no right to dictate our internal affairs.

3. The Construction of Islands and Reefs Is Accretion in International Law

(1) The methods of territorial change in traditional international law include prescription, occupation, accretion, cession, and conquest. accretion refers to the formation of new land due to natural factors or man-made reasons, thereby increasing the national territory. Accretion is divided into natural accretion and artificial accretion. Natural accretion refers to the expansion of a country's territory due to the action of nature. Natural accretion has historically been considered a legitimate way of acquiring territory. Man-made accretion refers to the increase of a country's territory due to man-made reasons. Under normal circumstances, artificial accretion is also a legal way to acquire territory. If a country artificially appends its territory which damages the rights of neighboring countries, it cannot be considered legal.

(2) Countries surrounding the South China Sea are nothing more than excuses that China's construction of islands and reefs in the South China Sea violates international law and threatens maritime security. However, China's construction of islands and reefs in the South China Sea not only does not violate international law but also helps maintain maritime security.

(3) First of all, according to the previous part, it's no doubt that China has sovereignty over the islands and reefs in the South China Sea. China's construction on the islands and reefs in the South China Sea is within the sovereignty of one country, and no other country has the right to interfere.

(4) Secondly, according to Article 121(1) of the United Nations Convention on the Law of the Sea, it is clearly stipulated that an island is a naturally formed area of land, surrounded by water, which is above water at high tide. According to the definition of the United Nations Convention on the Law of the Sea, it can be inferred that an island in the sense of international law needs to meet four criteria: land area, surrounded by water, above the water surface at high tide, and naturally formed. It can be seen from the fourth item "natural formation" that if islands and reefs meet the conditions for forming islands through artificial means, they cannot constitute islands. Only naturally added islands and reefs can constitute islands if they meet the conditions of the Convention.

(5) It can be seen that the legal effect of the construction of islands and reefs depends on the nature of the islands and reefs and the means of accretion. If "islands" or "rocks" are attached naturally, then the attached islands and reefs can enjoy a greater exclusive economic zone and continental shelf. If it's artificial accretion which cannot change the nature of the rock, nor can it bring an exclusive economic zone and continental shelf to the rock. Therefore, the nature of the islands and reefs in the South China Sea under construction by China has not changed before and after the artificial addition.

(6) To sum up, China's construction of islands and reefs in the South China Sea does not violate international law, nor does it damage the rights of neighboring countries. Therefore, this kind of artificial accretion is legal.

References

- Bo Ma. (2015). Examining the three dimensions of international law in the legal rationality of the construction of islands and reefs in the South China Sea. *Legal Review*, (6).
- Guangmei Xing. (2013). Research on China's sovereignty over the South China Sea islands. *Comparative Law Research*, (6).
- Xiguang Li. (2018). *Research on legal countermeasures for the settlement of disputes in the South China Sea*. Jilin University.
- Xuefeng Liao. (2017). Construction of sand islands and reefs in the South China Sea from the perspective of international law. *Legal Expo*, (14).
- Xin Li. (2017). *Research on the International Law of the construction of islands and reefs in the South China Sea*. Nanchang University.
- Xiancheng Shao. (2016). Research on the international discourse power in the construction of islands and reefs in the South China Sea. *Strategic Decision Research*, (2).
- Xin Zhao. (2015). Interpretation of the legal nature of the construction of China's Nansha islands and reefs from the perspective of international law. *Democracy and Legal System*, 06, pp. 158-161.
- Jinghe Chen. (1989). The Xisha islands and the Nansha islands—A review of history. *Chuangda Asia Studies*.

- Marius Gjetnes. (2000). *The legal regime of islands in the South China Sea*. Department of Public and International Law, University of Oslo, p. 54.
- Jon Van Dyke, Dale Bennett. (1993). Islands and the delimitation of ocean space in the South China Sea. *Ocean Yearbook*, (10), p. 79.
- James R Crawford. (2012). *Brownlie's principles of Public International Law*. Eighth edition, Oxford: OUP, p. 262.
- Territorial and Maritime Dispute (Nicaragua v. Colombia)*. (2012). Judgment. Hague: I.C.J., 140.
- A.Soons. (1973). *Artificial islands and installations in International Law*. Law of the Sea Institute. University of Rhode Island, p. 31.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).