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## WHY CHINA BUILT IN THE SOUTH CHINA SEA

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**JCSP 45**

***Exercise Solo Flight***

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By Major Faesal AlMannai

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## WHY CHINA BUILT IN THE SOUTH CHINA SEA

### Artificial Islands in the South China Sea

The South China Sea is a controversial international maritime territorial dispute. The United Nations Convention on the Law of the Sea (UNCLOS) describes a semi-enclosed sea as one that is encircled by multiple countries and linked to a different sea or consists entirely or primarily of exclusive economic zones and territorial seas of two or more coastal states<sup>1</sup>. This definition suits the South China Sea because of its geographical location of being encircled by six nations – China, Vietnam, Indonesia, Malaysia, Philippines, and Brunei.

The South China Sea is a significant extension of marine land that covers a region of 648,000 square nautical miles.<sup>2</sup> The sea has many small islands such as shoals, rocks, cays, reefs, and islets which are mainly made up of coral reefs. These features are circulated across the Sea in four underwater and island features, like the Spratly, Paracel, Pratas and Macclesfield Bank Islands. The sea is a source of conflict for its surrounding states due to its political entanglements.<sup>3</sup> Consequently, the paper will explore China's position for building in the South China Sea and the reactions associated with the various bordering nations.

Each group of islands differs geographically and politically from each other. Taiwan controls the Pratas Islands, but China currently claims sovereignty over them. Similarly, Taiwan and China claim control of the Macclesfield Bank while the Paracel Islands are controlled by China and Vietnam contests over it.<sup>4</sup> Since China has firm control over this island, the competition for the island is not as heated as compared to the disputes of the Spratly Islands. The disagreement concerning the Spratly Islets is very intricate because it involves five States –

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<sup>1</sup> Steve Chan, *Enduring Rivalries in the Asia-Pacific*, (Cambridge University Press, 2013):16.

<sup>2</sup> *Ibid.*, 20-24.

<sup>3</sup> Taylor Frayel, "China's strategy in the SCS," *Contemporary Southeast Asia* (2011): 292-319.

<sup>4</sup> *Ibid.*

the Philippines, China, Malaysia, Vietnam, and Brunei. The disagreement over the Spratly Islands is a peace peril posed to the East Asia region.<sup>5</sup>

### **China Claims on the South China Sea**

China asserts territorial dominance of Spratly and Paracel islands and the corresponding nautical privileges; as per a statement issued in 1951 by Chinese premier Zhou Enlai. In an article about the Japanese Peace Treaty Agreement, Enlai declared the sovereignty of China over the two island groups. During the Jinmen crisis in 1958, China reaffirmed this claim and asserted territorial waters rights.<sup>6</sup> Since then, the government of China has subsequently used the same language to describe its stance on the sovereignty of the territorial waters of the two island groups and their adjacent waters.

In addition to this, China has continued to codify these claims of maritime rights by passing domestic legislation contrary to the international marine legal system. These laws are the requirements of the UNCLOS. The National People's Congress (NPC) has continued to modify these laws into a more specific language to reaffirm the 1958 declaration.<sup>7</sup> The latest claims include passing a Contiguous Territorial Zone, an Exclusive Economic Zone (EEZ), and the passing of interior ledge laws to expand China's maritime rights.<sup>8</sup> These maritime rights not only focus on the two island groups but also the whole of the South China Sea.

Through the claims mentioned above, China pursues several interests concerning the maritime rights and dominion over the South China Sea. While the five bordering nations claim a section of the Sea, China claims the entire sea like its traditional fishing line.<sup>9</sup> Again China

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<sup>5</sup> *Ibid.*

<sup>6</sup> Yoshifumi Tanaka. *The international law of the sea*, (Cambridge University Press, 2015): 67-70.

<sup>7</sup> *Ibid.*, 68.

<sup>8</sup> *Ibid.*, 67-60.

<sup>9</sup> Alexander Proeß, "Law on the Exclusive Economic Zone in Perspective: Legal Status and Resolution of User Conflicts Revisited, The." *Ocean Yearbook* 26 (2012): 87.

wants to have dominance and control over the whole region for both economic and military interests. Economically, there are oil reserves, natural resources and fishing lines that China can exploit in the Spratly Islands. In addition to this, China will be able to use military advantage due to its involvement in the Spratlys which enables it to have an influence on South East Asia as well as influence the US military base in the region.<sup>10</sup>

### **Economic Advantage**

By asserting this jurisdiction, China will have control over the waters and give the nation access to the immense oceanic possessions of the South China Sea such as fish plus hydrocarbons. The Sea is a primary source of fish in China and Spratly has approximately 100 billion barrels of hydrocarbon reserves. Moreover, conferring to the United States' data administration, the South China Sea has an estimate of over 195ft<sup>3</sup> of natural gas and 12 billion barrels of crude oil.<sup>11</sup> The main interest of the Chinese government is natural properties in the Sea.

Beijing uses the guise of deep-sea oil exploration as substantiation for them to be present in the disputed waters through the deployment of the oil rig CNOOC 981 to unilaterally *explore* the South China Sea.<sup>12</sup> The tremendous territorial tension had delayed deep-sea exploration until China decided to break the barrier. For many years neither Beijing nor the claimant states had the equipment and technology for deep-sea oil exploration until China enhanced in this area of exploration. Before China started building these artificial islands, its energy strategy was only

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<sup>10</sup> Yoshifumi Tanaka. *The international law of the sea*, (Cambridge University Press, 2015): 67-70.

<sup>11</sup> Jeffrey Bader, Kenneth Lieberthal, and Michael McDevitt *Keeping the SCS in Perspective* (Brookings, 2014), 26-30.

<sup>12</sup> Taylor Frayel, "China's strategy in the SCS," *Contemporary Southeast Asia* (2011): 292-319.

limited to shallow waters in the coastal region. This oil exploration has shaped the political and security state of the South China Sea.<sup>13</sup>

The South China Sea also is among seas with the most substantial amount of traffic which supports global trade paths. Over a quarter of the global shipping, trade passes through this region. Most of these ships are more significant than the artificial Islands that China is constructing. The international trade over this area has raised vital concerns. This sea supports the passage of goods worth \$5.3 billion annually.<sup>14</sup> China does not want any interruption of these shipping lanes to protect its economic power. According to the International Energy Agency, the area holds an essential role for Japanese and Chinese oil imports with an estimate of 90% and 80% their oil, respectively, passing through this marine territory.<sup>15</sup> As a result, China is building on these Islands to control and dominate this prospect and strategic region.

### **Military Advantage**

Although China argues that the human-made islands serve the purpose of freedom of navigation, reports show Chinese military bases China on these islands. According to satellite images at the Center for Strategic and International Studies, there is evidence of the construction of runways and radar towers on these artificial islands.<sup>16</sup> These human-made islands will serve as a control for aerial surveillance of the marine resources and other mobile missile operations by China. The building of these islands on the South China Sea will also enable China to expand the shipping lanes, and extend their maritime water protection as well as develop strong surveillance capabilities in the Southeast Asia Region.<sup>17</sup>

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<sup>13</sup> Suzanne S. Kimble, "Is China Making Waves in International Waters by Building Artificial Islands in the SCS." *Tul. J. Int'l & Comp. L.* 24 (2015): 263.

<sup>14</sup> Steve Chan, *Enduring Rivalries in the Asia-Pacific*, (Cambridge University Press, 2013): 200.

<sup>15</sup> *Ibid.*, 202.

<sup>16</sup> Brantly Womack, "The Spratlys: from the dangerous ground to the apple of discord" *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* 33, no. 3 (2011): 378.

<sup>17</sup> *Ibid.*, 379.

The establishment of the artificial Islands is one of its strategies to expand its military power; China could use these waters as a block as well as the lead operations zones during a time of war with rivals such as the United States. According to a CSIS report, the islands' concrete can sustain the landing of twenty-four jet fighters and five bomber planes or an early warning aircraft.<sup>18</sup> Since 1964, after the Gulf of Tonkin incident, the US Navy has dominated the South China Sea. Moreover, United States' commitment to protecting Taiwan from any attack from China and the continual presence of United States Military in the Indonesia, Malaysia, Vietnam, Philippines, and Brunei threatens China and put it under pressure of US surveillance. This pressure forces China to upgrade its military influence through the construction of the artificial islands.<sup>19</sup> Therefore the insufficient naval and coast guard capabilities made Beijing to enhance its physical presence within the maritime territories gradually.

These claims and interests by China have made other neighbours who depend on the territorial waters for their prosperity to view Beijing as a bully. They are against Beijing building on the Sea to control it. Conferring to the UNCLOS, every state can claim an EEZ that extends to 370 kilometres from its shore; enabling Beijing to claim oil, natural gas or fish within the EEZ. Geographically speaking, China holds a small section of the Sea while Vietnam, Malaysia, and the Philippines hold the majority of the EEZ. This contributes to the reason why China is constructing the islands. Once it has Islands on the sea, it believes it will be able to change the dynamics of the EEZ. China will be able to claim much of the marine waters.<sup>20</sup>

### **UNCLOS Perspective on Artificial Islands**

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<sup>18</sup> *Ibid.*,379

<sup>19</sup> Suzanne S. Kimble, "Is China Making Waves in International Waters by Building Artificial Islands in the SCS." *Tul. J. Int'l & Comp. L.* 24 (2015): 263-266.

<sup>20</sup> Alexander Proelss, "Law on the Exclusive Economic Zone in Perspective: Legal Status and Resolution of User Conflicts Revisited, The." *Ocean Yearbook* 26 (2012): 87.

Since 2014, China has constructed infrastructure on the Spratly Islands. Piled sand on a reef or sea bed followed by a large number of rocks and concrete make up the majority of the human-made islands. Since the project requires a large amount of sand, China has obtained it by grinding the materials from the sea bed and turning it to sand and using tubes to suck it up and distribute it. The projects concentrate on shallower areas of the sea<sup>21</sup>

Mostly, China has built these islands at Fiery Cross reef and the Spratly Islands each with an approximate depth of 650ft. Each island where the project takes place is 740 and 500 miles respectively from China's mainland territory. In contrast, the project is located only 170 miles from Vietnam's coastal land.<sup>22</sup> However, according to article 121(3) of UNCLOS, the artificial Islands would not qualify as Islands, and therefore it will not be able to claim the corresponding EEZ.<sup>23</sup>

EEZ entitlements typically do not cover artificial islands. A land mass such as a rock, a reef or an island has different rights for the waters surrounding the features. According to International law, artificial islands have different rights from the natural islands; the definition of an island under section 121 of UNCLOS is thus critical to refuting Beijing's claims.<sup>24</sup> According to this section, an island is a naturally established land area that is above the high tide of the surrounding water; excluding artificial islands in light of their construction by a nation. China's artificial reefs are thus incompatible with the requirements of article 121.<sup>25</sup> China has no rights for EEZ, continent shelf extension, territorial sea nor the right to affect the neighbouring state's zone

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<sup>21</sup> to avoid the islands sinking in the sea, Suzanne S. Kimble, "Is China Making Waves in International Waters by Building Artificial Islands in the SCS." *Tul. J. Int'l & Comp. L.* 24 (2015): 93

<sup>22</sup> Alexander Proelss, "Law on the Exclusive Economic Zone in Perspective: Legal Status and Resolution of User Conflicts Revisited, The." *Ocean Yearbook* 26 (2012): 87.

<sup>23</sup> Nong Hong, *UNCLOS and ocean dispute settlement: Law and politics in the SCS* (Routledge, 2012), 87

<sup>24</sup> *Ibid.*, 87

<sup>25</sup> *Ibid.*, 173.



According to UNCLOS, the building of artificial islands should only serve to improve the sea benefit by humanity and enhance the already existing maritime territory. In the past, the development of human-made islands was to help in navigation and fisheries by providing lights. As the naval exploration enhanced, artificial reefs were used for oil exploration as well as aviation, extraction of sand and gravel, exploitation and energy generation. For an island to qualify to be an island, it must sustain economic life and human habitation. The artificial islands of the Chinese have reported deaths of soldiers, something which has raised concerns from the international community.<sup>26</sup>

Any state is allowed to construct an artificial island in its EEZ under section 60 of the UNCLOS. This nation has the privilege to regulate and authorize the use and operations of artificial reefs. However, the regulation forbids the coastal state to exercise military service on an EEZ of another country. Additionally, Article 56 of the UNCLOS asserts that a coastline state with privileges to explore and use the natural resources within its EEZ. Again, an EEZ can be used for the academic purpose as well as for conservation and security of the oceanic region. Therefore, any coastal state is not permitted to build an artificial island beyond its EEZ.<sup>27</sup>

According to the UNCLOS point of view, China's artificial islands do not qualify as islands with EEZ rights. China's military operations on these artificial islands violate the EEZ requirements by the UNCLOS. Moreover, section 60 of the UNCLOS permits coastal states to build human-made islands only within its EEZ territory which is two hundred miles from the coastal baseline<sup>28</sup> in direct contrast with the Chinese artificial islands. These artificial islands have increased their size eleven-fold from 0.08 to 0.96 square kilometres since August 2014.

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<sup>26</sup> *Ibid.*, 174

<sup>27</sup> *Ibid.*

<sup>28</sup>; Ronald O'Rourke, "Maritime territorial and exclusive economic zone (EEZ) disputes involving China: Issues for Congress." (LIBRARY OF CONGRESS WASHINGTON DC CONGRESSIONAL RESEARCH SERVICE, 2015), 28

Again, China has aggressively claimed its rights over the nine-dash line through administrative and military tools. The government has gone ahead and established a governmental unit to guard the region. This unit collects taxes from extraction agencies and fishers.<sup>29</sup>

China's navy has made several trips in the disputed area to threaten its rivals. The islands are densely loaded with military armaments that contradict the UNCLOS clause. This country is using its superpower position to have the full possession of this area regardless of the international regulations. Article 74 of the UNCLOS stipulates that any coastal state disagreements shall be resolved according to international law; pushing involved states towards the acceptance of cooperation and understanding for the provisional agreement of the dispute. In contrast, China has hampered the effort to have an agreement with other disputing states.<sup>30</sup>

### **Artificial Islands as China's Retaliation Program**

The Chinese government maintains that international laws are not fair. Britain and America formulated these laws to create laws that consolidate their dominance on the seas and oceans. China might be correct on this point because Britain and America controlled the sea during the nineteenth and twentieth century respectively.<sup>31</sup> The two nations acquired vital islands such as Guam, Gibraltar, and Hawaii and benefited a great deal from the Islands. Since China is a competing superpower with the US, the building of the artificial islands is one of the strategies to dominate in the way America has control of the Caribbean. However, China is frustrated by the fact that the US has allied its neighbours and developed strong bonds. By contrast, the Caribbean states such as Venezuela and Mexico have no strong allies to fight US dominance.<sup>32</sup>

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<sup>29</sup> *Ibid.*, 29

<sup>30</sup> Nong Hong, *UNCLOS and ocean dispute settlement: Law and politics in the SCS* (Routledge, 2012), 176

<sup>31</sup> Steve Chan, *Enduring Rivalries in the Asia-Pacific*, (Cambridge University Press, 2013): 26.

<sup>32</sup> Taylor Frayel, "China's strategy in the SCS," *Contemporary Southeast Asia* (2011): 300.

The “century of national humiliation” is another factor that makes China fight for these islands. As a nation, China used to be among the World's most powerful and wealthiest countries. The country's prestige was overthrown in the 1840s by Britain because it resisted the request of Britain to transact opium in their territory. For almost a century, China was under the exploitation of foreign forces until 1949 when there was a communist revolution in the nation. China wants its position back, particularly on the Asian continent. China believes that some of the United Nation laws are aimed to undermine its rise again and on the other hand protects the global power of the US. The control of the South China Sea is under the will of the United States; evident by the presence of huge US battleships to protect its allies but more specifically its interests. This is one of the reasons China is adamant in its disagreement with the International Maritime laws.<sup>33</sup>

Some scholars argue that the claims of China about the sovereignty of the sea have historical reasons. For example, China claims that Islets were non-owned territory that was discovered by Chinese ancestors and the ancestors used them as fishing grounds since the time in memorial. They argue that the Chinese occupied these water territories since the Western Han Dynasty Era. These claims are to strengthen the position of China and have dominance over the South China Sea. However, a majority of the interpretation of these laws by China remains ambiguous.<sup>34</sup> First, most of the land features its claims do not qualify to be islands according to the UNCLOS and therefore cannot serve to extend an EEZ.<sup>35</sup> Thus in 2016, the permanent court of arbitration disputed the Chinese historical claims.

### **International Community Concerns on China’s Program**

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<sup>33</sup> Ronan Tse-min Fu, David James Gill, Eric Hundman, Adam P. Liff, and G. John Ikenberry, "Correspondence: Looking for Asia's Security Dilemma." *International Security* 40, no. 2 (2015): 188.

<sup>34</sup> Brantly Womack, "The Spratlys: from the dangerous ground to the apple of discord." *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* 33, no. 3 (2011): 376.

<sup>35</sup> Nong Hong, *UNCLOS and ocean dispute settlement: Law and politics in the SCS* (Routledge, 2012), 38.

Building the artificial islands is one of the strategies to win its neighbours by intimidation and huge investments on the projects. The situation replicates the resentment of Germany against Britain in the 1900s. Germany challenged the global advantage held by Britain. Britain had built an empire and advanced in industrialization and then suppressed the growth of other nations such as Germany.<sup>36</sup> The rivalry between the two nations caused the rise of World War II. The current conflict between the US and its allies and China can lead to another war which can be an economical or political war. There is fear when two superpowers like China and the United States confront each other since a war that threatens the economies of the world can happen. There are reported warships of China trying to drive out battleships of the US from this territory; a sign that a big war can arise from the confrontations.

According to a study, the anxiety of a possible military boom in Asia or the binder to treaties with its allies is not America's concern regarding the Sea instead of containing the skyrocketing growth in China. The growth of China to global recognition is a threat to America's hegemony. To prohibit this power for China, America is strategizing to limit her status only to the region, thus achieving its higher geopolitical objectives. In response to this China is not willing to succumb to the tricks of the US. The superpower conflict of the two nations is making them restless, and each country strategizes on new techniques to silence each other.<sup>37</sup>

In conclusion, the Chinese government is resolute to building the South China Sea for both military and commercial purposes. Economically, Beijing is determined to control the enormous global trade path along the South China Sea. The Sea is rich in natural resources, and China wants to secure the area and regain the economic power it used to have in the 1840s before

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<sup>36</sup> Suzanne S. Kimble, "Is China Making Waves in International Waters by Building Artificial Islands in the SCS." *Tul. J. Int'l & Comp. L.* 24 (2015): 263.

<sup>37</sup> Alexander Proelss, "Law on the Exclusive Economic Zone in Perspective: Legal Status and Resolution of User Conflicts Revisited, The," *Ocean Yearbook* 26 (2012): 87.

Britain conquered it. Also, China wants also to establish active military bases with aerial surveillance over the disputed sea as well as to influence the whole East and Southeast Asian region. This dominance and control are established through the construction of the artificial islands.

However, according to the UNCLOS regulations, these human-made islands are irrelevant and fails to qualify as an example of an island. According to these regulations, the artificial reefs are built beyond the EEZ of China which violates international law. The law allows the construction and installation of the islands only within a state's own EEZ territory. Again, artificial reefs do not have rights for exploitation and exploration of natural resources and the islands are prohibited from having any military bases. This move by China causes other neighbouring nations like the Philippines and Vietnam to seek action from the Permanent Court of Arbitration. Therefore, China is aiming to gain economic and military advantage by building on the Spratly and Paracel Islands.

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