

#38 The International Law of the Sea and the South China Sea Disputes

Authors: L.N. Nguyen, Oude Elferink

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Key Takeaways

- UNCLOS fundamentally reshaped the South China Sea by extending coastal State rights through the EEZ and continental shelf regimes.
- The disputes concern both sovereignty over islands and whether disputed features can legally generate EEZs and continental shelves under UNCLOS.
- China's nine-dash line and claims to historic rights remain highly contested and are widely viewed as incompatible with UNCLOS.
- The 2016 South China Sea Arbitration clarified that historic rights claims beyond UNCLOS are invalid and that disputed Spratly features do not generate EEZs or continental shelves.
- Despite China's rejection of the ruling, UNCLOS remains the central legal framework governing the South China Sea disputes.

Recommendations

- States should continue to reaffirm UNCLOS as the primary legal framework governing maritime rights in the South China Sea.
- Regional and external actors should continue to support the findings of the 2016 South China Sea Arbitration as an authoritative interpretation of UNCLOS.
- Claimant States should exercise greater restraint in disputed maritime areas and strengthen crisis-management and confidence-building mechanisms.
- ASEAN and China should pursue a more substantive and operational Code of Conduct with clear implementation and dispute-management provisions.
- States should expand cooperation on fisheries management and marine environmental protection regardless of unresolved sovereignty disputes.

Executive Summary

The development of the law of the sea in the second half of the 20th century – especially through the creation of the exclusive economic zone (EEZ) and continental shelf regimes under UNCLOS – fundamentally transformed the geopolitical and legal landscape of the South China Sea. Whereas the law of the sea had traditionally been characterized by a distinction between the territorial sea and the high seas, UNCLOS extended coastal State jurisdiction far beyond the territorial sea,

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meaning that approximately half of the ocean is now subject to coastal State rights. The South China Sea illustrates how these developments have generated competing legal interpretations with major geopolitical implications.

All coastal States bordering the South China Sea are parties to UNCLOS, yet they maintain sharply diverging views on maritime entitlements, sovereignty over islands, and the legal basis of maritime claims. China, Viet Nam, the Philippines and Malaysia assert overlapping sovereignty claims over the Paracel Islands, Spratly Islands and Scarborough Shoal. These disputes are critical because islands capable of generating EEZs and continental shelves could radically alter the maritime geography of the South China Sea. Without such entitlements, large areas of the central South China Sea would remain high seas or part of the continental shelves of surrounding mainland coasts. If the disputed features generated full maritime zones, however, the sovereign over those islands could claim rights over much of the South China Sea.

A central legal divide concerns Article 121(3) UNCLOS, which states that rocks incapable of sustaining human habitation or economic life of their own are not entitled to an EEZ or continental shelf. China maintains that all disputed islands are fully entitled islands, whereas other claimant States argue that most features are legally “rocks” or low-tide elevations. China has additionally relied on claims to “historic rights” within the so-called nine-dash line and increasingly invokes international law beyond UNCLOS to justify its position.

The 2013–2016 South China Sea Arbitration between the Philippines and China fundamentally clarified the legal framework. The arbitral tribunal concluded that China’s claims to historic rights within the nine-dash line are contrary to UNCLOS insofar as they exceed Convention-based maritime entitlements. It further held that all disputed features in the Spratly Islands and Scarborough Shoal are either rocks or low-tide elevations and therefore cannot generate EEZs or continental shelves. Combined, these findings substantially limit China’s lawful maritime entitlements in the southern South China Sea. Although China rejects the awards as “null and void,” UNCLOS provides that arbitral awards are final and binding on the parties.

The report concludes that international law – and UNCLOS in particular – remains the principal legal framework governing the South China Sea despite competing interpretations, lawfare narratives and persistent non-compliance. The disputes are not only about sovereignty, but also about the interpretation of maritime entitlements, historic rights, dispute settlement, environmental obligations, and the management of disputed maritime areas. Future stability in the South China Sea will depend on continued reliance on UNCLOS, clearer rules for disputed maritime zones, stronger regional cooperation, and a meaningful Code of Conduct between China and ASEAN States.