1. Definitions of Artificial Islands, Installations and Structures
2. Maritime Zones of Artificial Islands, Installations and Structures
3. Applicable Legal Regime under UNCLOS
4. South China Sea Arbitration
1. Definitions

No definition of "Artificial Islands, Installations and Structures" in UNCLOS

Have been defined as man-made structures usually for the exploration or exploitation of marine resources and can be built for other purposes such as MSR tide observations (IMO)

Possible distinction between "Artificial Islands" and "Installations & Structures"

⇒ Artificial Islands: Area of land above water at high tide that is not naturally formed
⇒ Installations and Structures: Do not have to be above water at high tide

2. Maritime Zones of Artificial Islands, Installations and Structures

Art 60 (8): Do not possess the status of Islands and have no territorial sea of their own

Art 60 (8): Their presence does not affect the delimitation of the territorial sea, the EEZ or the continental shelf

Art 11: Offshore installations and artificial islands along the coast are not “permanent harbor works which form an integral part of the coast” when determining the applicable baseline

BUT

Art 7 (4): If a lighthouse or similar installation which has been constructed on a low-tide elevation and is permanently above sea level, that low-tide elevation can be used to draw straight baselines

3. Applicable Legal Regime

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3a. Artificial Islands and Installations in ABNJ

Art. 87 (1) (d): All States have freedom to construct artificial islands and other installations permitted under international law, subject to Part VI (Continental Shelf).

SUBJECT TO

Obligation of due regard for the interests of other States in the exercise of the freedom of the high seas Art. 87 (2)

Sovereign Rights & Jurisdiction of coastal States in the Extended Continental shelf Art 87 (1) (d)

Installations used for carrying out Activities in Area subject to conditions in Article 147

There is no obligation in UNCLOS to register artificial Islands and installations constructed in ABNJ under any flag (unlike ships).

But certain Articles in UNCLOS envisage that installations could be registered under a flag State.

Art. 109 refers to the 'State of Registry of the Installation'

Article 209 refers to 'vessels, installations, structures and other devices flying their flag or of their registry or operating under their flag or authority, as the case may be.'

3b. Artificial Islands, Installations and Structures in EEZ/Continental Shelf

Coastal State Rights in the EEZ (Art. 56)

Sovereign Rights

Production of Energy from Wind, Water & Currents

Artificial Islands, Installations and Structures

Marine Scientific Research

Protection of the Marine Environment

Jurisdiction

Living & Non-Living Resources of Water Column & Seabed
3b. Artificial Islands, Installations and Structures in EEZ/Continental Shelf

Rights of Other States in the EEZ (Art 58)

All States, enjoy, subject to the relevant provisions of this Convention, the high seas freedoms referred to in article 87 of:

- Navigation
- Overflight
- Laying of Submarine Cables & Pipelines
- Other internationally lawful uses of the oceans related to these freedoms

Coastal State Rights (Article 60/80)

CONSTRUCTION/OPERATION
Exclusive right to construct and to authorize and regulate the construction, operation and use of:

Artificial Islands, Installations and Structures for the purposes provided for in Art 56/ economic purposes

EXCLUSIVE JURISDICTION
Exclusive jurisdiction including jurisdiction with regard to customs, fiscal, health, safety, immigration laws and regulations

SAFETY ZONES
Right to establish safety zones of up to 500 m except as authorized by international regulations or international organization

Coastal State Obligations

DUE NOTICE: Due notice of the construction of artificial islands, installations or structures + due notice of breadth of safety zones

REMOVAL: Any installations or structures which are abandoned or disused shall be removed to ensure safety of navigation

NON-INTERFERENCE WITH NAVIGATION: Cannot interfere with the use of recognized sea lanes essential to international navigation

Artificial Islands, Installations and Structures for the purposes provided for in Art 56/ economic purposes

Artificial Islands, Installations and Structures which may interfere with the exercise of the rights of the coastal State
### 3b. Artificial Islands, Installations and Structures in EEZ/Continental Shelf

#### Obligations of Other States

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- All ships must respect the safety zones and comply with generally accepted international standards regarding navigation.
- All States must have due regard to the rights and duties of the coastal State and comply with the laws and regulations adopted by the coastal State in accordance with UNCLOS.

#### Marine Environmental Obligations in Relation to Artificial Islands, Installations and Structures (Art. 208)

- Coastal States shall adopt laws and regulations on pollution of the marine environment arising from or in connection with seabed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction pursuant to Articles 60/80.

  States, acting through competent international organizations or diplomatic conferences, shall establish global and regional rules to prevent pollution of marine environment from or in connection with seabed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction pursuant to Articles 60/80.

  Must be no less effective than international rules, standards and recommended practices and procedures.

#### 3b. Military Installations and Structures in EEZ/Continental Shelf

- Coastal State has exclusive jurisdiction over:
  - Artificial Islands
  - Installations and structures used in connection with the exercise of the coastal State’s sovereign rights or which are used for economic purposes
  - Installations and structures which may interfere with the exercise of the rights of the coastal State

- Article 58: All States enjoy freedoms referred to in Article 87 of navigation, overflight and...other internationally lawful uses of the sea related to those freedoms

- Thus, the US view is that installations and structures constructed on the seabed of a coastal State which is not used in connection with Article 56 sovereign rights, or economic in purpose and which does not interfere with the exercise of the rights of the coastal State is permissible under UNCLOS.
3c. Artificial Islands, Installations and Structures in Territorial Waters

- Coastal State has sovereignty over artificial islands, installations and structures located in territorial seas and archipelagic waters

4. South China Sea Arbitration

(1) Philippines' argued that China's construction of artificial islands, installations on 7 features in the Spratly Islands was a breach of its' marine environmental protection obligations in Part XII of UNCLOS

(2) Philippines' argued that China's construction of artificial islands, installations on Mischief Reef was a breach of Articles 60 and 80 of UNCLOS

5. South China Sea Arbitration

Reclamation on Gaven Reef
5. South China Sea Arbitration

China's artificial island-building program on 7 features

- Has and will cause environmental harm to coral reefs located at these features and has caused "devastating and long-lasting damage to the marine environment"*
- China has breached its obligation to co-operate in the protection of the marine environment under Articles 123 and 197 of UNCLOS because there is no evidence of China attempting to cooperate or coordinate with the other States bordering the SCS
- China has breached its obligation to communicate an Environmental Impact Assessments under Article 206

China's construction of installations and artificial islands at Mischief Reef

- Mischief Reef was a low-tide elevation within the Philippines' 200 nm EEZ
- Article 60 and 80 endow the coastal State with exclusive decision-making and regulatory power over the construction and operation of artificial islands, installations and structures covered by Article 60 (1)
- China's initial structures on Mischief Reef were installations or structures which had an economic purpose (provide shelter for fishermen), had the potential to interfere with Philippines' rights in its EEZ. Its evolution into an artificial island was a breach of Article 60.

Thank you
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