




# Arrangements Concerning Reclamation and Their Legal Impacts in View from UNCLOS 1982

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## Abstract

**Introduction:** Continuous development in a country automatically makes the country lack vacant land, and reclamation is one way to overcome this problem. Reclamation in its implementation has not been regulated in detail in the 1982 UNLCOS so it can cause problems in the future, such as what happened in the South China Sea where China carried out reclamation in the Spratly archipelago.

**Purposes of the Research:** To find out and analyze reclamation arrangements in the 1982 UNCLOS and the impact of reclamation laws carried out by countries in terms of the 1982 UNCLOS.

**Methods of the Research:** This study uses a normative juridical research type. By using the statutory approach, case approach, and conceptual approach. Management and analysis of legal material in this study use qualitative analysis.

**Results of the Research:** The results showed that the 1982 UNCLOS did not regulate coastal reclamation, but there were several articles in the 1982 UNCLOS that related to coastal reclamation and could be used as a basis, namely Article 11, Article 12, Article 56, and Article 60. The impact of reclamation for the delimitation of sea areas between countries is that the state will take its own way of understanding and interpreting the contents of the convention for its own benefit, one of which is to carry out reclamation which can lead to delimitation disputes, especially in areas where an agreement on territorial boundaries has not been established as happened in reclamation disputes in the Spratly Islands. in the South China Sea by China.

## 1. INTRODUCTION

Along with the rapid growth of population and technology, development in every country continues to be carried out on an increasingly larger and faster scale Sustainable development in a country automatically causes the country to have a shortage of vacant land. Lack of available land, a country must find new vacant land in order to maintain the sustainability of this development. Reclamation is one way to overcome this problem. Oil Spill Prevention, Administration and Response (OSPAR) define reclamation as the process of adding land from sea soil carried out in coastal wetlands that are used for agricultural, industrial, and port expansion purposes.<sup>1</sup> Reclamation in its implementation certainly has legal implications for the country that implements it and the surrounding countries,

<sup>1</sup> Oil Spill Prevention, Administration and Response Commission, Assessment of the Environmental Impact of Land Reclamation, Biodiversity Series, 2008, p. 4.

therefore there must be international rules that regulate reclamation. The 1982 United Nations Convention on the Law of the Sea (UNCLOS) consisting of 17 Chapters, 320 Articles, and 9 attachments signed in Montego Bay Jamaica in December 1982 and entered into force on November 16, 1994, is an agreement that regulates the utilization of marine resources and maritime area and ensuring the safeguarding and maintenance of the sustainability of marine resources, which has been ratified by 161 countries in the world.<sup>2</sup> However, UNCLOS 1982 did not clearly regulate reclamation.

The unclear and detailed arrangements regarding reclamation in the 1982 UNCLOS will inevitably lead to various interpretations from various countries in understanding these arrangements. However, in UNCLOS 1982 there are several articles that can be used as references in this matter, namely; Article 60 (8), The article states that the structure, reclamation, and artificial islands will not affect the boundaries of the territorial sea, the continental shelf and the Exclusive Economic Zone.<sup>3</sup> So it can be interpreted that the Base Point can only be measured from the outermost islands naturally, not from the results of reclamation, but Article 11 UNCLOS 1982 states that for the purpose of establishing territorial sea boundaries, the outermost permanent port installation is an integral part of the port system considered as part of on the beach. Offshore installations and artificial islands shall not be considered permanent port installations.<sup>4</sup>

In connection with this writing, one can see the case that occurred, namely the dispute over territory in the South China Sea which involved many countries. China is carrying out reclamation activities in disputed waters and maritime features in the South China Sea and claims sovereignty over the area. This naturally occurs because the South China Sea is an area that has a wealth of natural resources and is a strategic area for the maritime industry and national defense for the coastal countries around it, the result is that this dispute becomes very complicated and difficult to resolve.<sup>5</sup>

Criticism and requests to stop reclamation in the area have been made by various countries, both involved and not involved in this dispute through diplomatic channels and dispute resolution, but so far China is the country that has been the most aggressive in carrying out reclamation at seven points in the South China Sea.<sup>6</sup> It was recorded that there were seven coral clusters that were reclaimed by China, the seven coral clusters such as; Mischeif, Gaven, Hughes, Johnson South, Cuarteron, Fiery Cross. Some of these reefs are coral that sinks underwater at high tide, and China is reclaiming this area to expand and change its status to that of an island that does not sink at high tide. Will have an impact on the delimitation of maritime boundaries.

UNCLOS 1982 has a significant influence on issues regarding reclamation, which does not clearly regulate the status of reclamation areas, but there are several articles that can be used as benchmarks, namely Article 11, Article 12, Article 56, Article 60, and Article 80.

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<sup>2</sup> Siti Azizah, Pengaturan Tentang Reklamasi Pantai Berdasarkan UNCLOS 1982 dan Impelementasinya di Indonesia, *Jurnal Yuridis*, Vol 3, 2016, p. 4

<sup>3</sup> See Article 60 (8) The United Nation Conference on The Law of The Sea in 1982. Ratification with the Law of the Republic of Indonesia Number 17 of 1985 concerning Ratification of the United Nation Convention Of The Law Of The Sea, Supplement to the State Gazette of the Republic of Indonesia of 1985 Number 3319

<sup>4</sup> See, Article 11 The United Nation Conference on The Law of The Sea in 1982

<sup>5</sup> Nguyen Thu Giang, Land Reclamation In The South China Sea: Possibility Of Invoking Judicial Dispute Settlement Mechanism, Thesis, Universiteit Gent, Ghent, 2016, p. 1 - 2.

<sup>6</sup> *Ibid*, p.12

Based on the description above, this paper will discuss regulations regarding reclamation and the legal impact of reclamation carried out by countries in terms of UNCLOS 1982.

## 2. METHOD

This study uses a normative juridical research type. By using the statutory approach, case approach, and conceptual approach. Management and analysis of legal material in this study use qualitative analysis.

## 3. RESULTS AND DISCUSSION

### 3.1 Reclamation Arrangements At Unclos 1982

Reclamation in its implementation must be regulated by a law to be able to protect the parties involved in it, therefore there must be a global regulatory configuration regarding coastal reclamation. The 1982 United Nations Convention on the Law of the Sea consists of 17 Chapters, 320 Articles, and 9 attachments signed in Montego Bay, Jamaica on December 10, 1982, and entered into force on November 16, 1994, is an agreement that regulates state jurisdiction over sea areas, and the legal framework for the use of marine resources, among others, to ensure the conservation and availability of the utilization of marine resources and the marine environment and to ensure the protection and sustainability of these resources.<sup>7</sup>

UNCLOS does not significantly regulate the reclamation of coastal lands, but UNCLOS provides artificial islands, facilities, and other structures that can be related to reclamation activities, specifically stated in the following articles: Article 11 UNCLOS 1982 regarding ports containing: "For the purpose of delimiting the territorial sea, the outermost permanent harbor installations which are an integral part of the port system are considered as part of the coast. Offshore installations and artificial islands shall not be considered permanent port installations". Article 11 UNCLOS 1982 states that for the purposes of establishing the territorial sea, the outermost permanent port is still an integral part of the coast itself. If referring to the explanation of the Article above, it can be concluded that in the installation of a permanent port, it can be used as the baseline of a beach and this Article does not mention at all if the beach must be natural or the result of reclamation and only explains if the port is an integral part of the beach so that it can be used in measuring baselines, this creates a loophole for a country to use it by building a permanent port installation on a reclamation beach to add to its maritime claims because a reclamation beach is not an artificial island where an artificial island is a human-made structure or part of the land that has been being in the sea and surrounded by seawater and arises above the water during high tide other than that reclamation is not an offshore installation because offshore installations are constructions and facilities in the marine environment, which are useful for the production and transmission of electricity, oil, gas and natural resources other.<sup>8</sup> Judging from the explanation above, reclamation is not included in the exclusion criteria in Article 11, therefore, reclamation can still be considered as an integral part of the beach. UNCLOS Article 12 on roadsteads contains: "Roadsteads which are normally used for loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are including in the territorial sea."

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<sup>7</sup> Siti Aziz, *loc.cit*

<sup>8</sup> Kabir Sadeghi, An Overview of Design, Analysis, Construction and Installation of Offshore Petroleum Platforms Suitable to Cypress/Oil Gas, GAU, J. Soc. & Appl. Sci, 2(4), 2007, p. 1

This article explains that berths in the middle of the sea or often known as roadsteads, whether partly or wholly outside the boundaries of the territorial sea, are still included in the territorial sea of the country that owns the roadstead. If we refer to Article 11 UNCLOS 1982 which writes that a port or port that is built permanently on the coast can be used as a baseline in determining the territorial sea of a country, then this can indirectly apply to roadsteads because the port or port itself has a structure or composing and supporting facilities that make the port function such as wharves, breakwaters, harbors, and roadsteads. In Article 11 UNCLOS 1982 it is not specifically written which parts of the port can be used in determining the baseline so this can lead to the interpretation that all parts that are still included in a single port unit can be used for this, this also includes the use of roadsteads in determining the baseline of a country and can open up the possibility for a country to add to its maritime territorial claims, considering that roadsteads can be located partly or completely outside the territorial sea of the country and are very detrimental to other countries, especially in border areas of countries that have not been agreed upon.

Furthermore, Article 56 UNCLOS 1982, regarding the rights, jurisdiction and duties of the coastal states in the Exclusive Economic Zone. Explains that the state has jurisdictional rights to build artificial islands or other installations in its Exclusive Economic Zone, jurisdiction itself is power, ability, authority, rights, and formal authority to make decisions on objects, individuals, or take certain actions from legal subjects.<sup>9</sup> If referring to Article 56 UNCLOS 1982, reclamation can be included in the category of other installations mentioned in that Article, then the construction of a reclamation structure can still be said to be a full jurisdictional right of a country and is legal to do, however, in implementing this jurisdictional right, it must still pay attention to the provisions in force at UNCLOS 1982.

In Article 60 UNCLOS 1982 it is explained that the coastal state has exclusive jurisdiction over the construction of artificial islands and other installations in its Exclusive Economic Zone where these artificial islands and other installations cannot affect the determination of territorial sea boundaries. Furthermore, Article 80 concerning artificial islands, installations, and structures on the continental shelf contains: "Article 60 applies mutatis mutandis to artificial islands, installations, and structures on the continental shelf." Article 80 UNCLOS 1982 explains that the regulation regarding Article 60 applies mutatis mutandis, namely the principle which states that basically according to the procedures contained in the provisions of this head regulation, but has the authority to make changes to procedures on things that are necessary or important according to urgent conditions, so the arrangements regarding artificial islands, installations and other buildings on the continental shelf have the same provisions as those in Article 60 but can still be changed depending on the need.

UNCLOS 1982 has technical regulations regarding the implementation of its provisions. The technical regulation is called TALOS or *Manual on Technical Aspect of The United Nations Convention on The Law of The Sea 1982*. TALOS itself is a manual that explains the technical aspects of UNCLOS. In short, UNCLOS as a legal product is filled with technical content that is not easily understood by non-technical people. This technical aspect is so complex that a convention does not even contain additional illustrations or explanations. In order for the understanding of this technical aspect to work properly, a group of technical experts (geodetic, hydrographic) took the initiative to make a manual

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<sup>9</sup> Masyhur Effendi, Moh. Ridwan, Muslich Subandi, *Pengantar dan Dasar-Dasar Hukum Internasional*, IKIP Malang, Malang, 1995, p. 89



that explains. So TALOS is a 'supplement' to UNCLOS which explains all technical matters in UNCLOS.

TALOS as a regulation that explains UNCLOS from a technical point of view can certainly be used as reference material regarding reclamation which has not been regulated with certainty in UNCLOS 1982. If we refer to the fourth edition of TALOS, there are several points that can be used as a basis for studying reclamation, namely in chapter 4.5.1, glossaries 78,101,47. Talos Chapter 4.5.1: "Article 11 states that " permanent harbour works which form an integral part of the harbour system are regarded as forming part of the coast". It has been generally recognized that these include all permanent works, such as harbour jetties, breakwater etc., and also such coast protection works as sea walls which have obscured the natural low-water line. They do not include structures, such as might carry sewage outfalls etc., which are not part of a harbour work and are not associated with coast protection."<sup>10</sup>

The chapter explains that permanent ports are included in an integral part of a unit that forms a coast, the port in question includes all the permanent structures of the port such as piers, breakwaters, and so on that support the operations of a port as well as all structures that function as protection. from the coast such as sea walls that can obscure the natural baseline of a coast, but there are some structures that are not included in it such as sewers and so on.

The existence of this chapter opens an interpretation for countries that carry out development in such a way that their land area increases significantly, so it is possible for these countries to change or add to their maritime claims.<sup>11</sup> This, of course, will affect maritime boundaries with other countries that have not been agreed upon, apart from that chapter 4.5.1 TALOS provides an understanding that permanent ports including all their supporting structures can be used as a reference in measuring the baselines of a country, so all structures that protrude towards sea such as wharves, harbors, and so on can be used as a component in determining the width of the territorial sea of a country which causes ambiguity and obscurity of the natural baselines of the coast.

TALOS glossary 78 roadsteads: "An area near the shore where vessels are intended to anchor in a position of safety; often situated in a shallow indentation of the coast. "Roadsteads which are normally used for loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea" (Art. 12). In most cases roadsteads are not clearly delimited by natural geographical limits, and the general location is indicated by the position of its geographical name on charts. If Art. 12 applies, however, the limits must be shown on charts or must be described by a list of geographical coordinates."<sup>12</sup> In TALOS glossary 78 it is explained that a roadstead is an area near the coast where ships are intended to anchor in a safe position; often located in shallow coastal indentations to allow loading and unloading of ships, these areas can lie partially or completely outside the boundaries of the territorial sea in which in most cases roadsteads are not clearly demarcated by natural

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<sup>10</sup> Chapter 4.5.1 TALOS (A Manual on Technical Aspect of The United Nations Convention on The Law of The Sea - 1982) 2006, [https://www.gc.noaa.gov/documents/gcil\\_iho\\_tech\\_aspects\\_los.pdf](https://www.gc.noaa.gov/documents/gcil_iho_tech_aspects_los.pdf), retrieved September 9, 2022

<sup>11</sup> I Made Andi Arsana, *Op. Cit.*, p. 20

<sup>12</sup> Glossary 78 TALOS (A Manual on Technical Aspect of The United Nations Convention on The Law of The Sea - 1982) 2006 [https://www.gc.noaa.gov/documents/gcil\\_iho\\_tech\\_aspects\\_los.pdf](https://www.gc.noaa.gov/documents/gcil_iho_tech_aspects_los.pdf),

geographic boundaries and their location is indicated by the position of their geographical name on the map.

Glossary 78 TALOS does not mention at all the status of roadsteads in determining baselines, but if we refer to Articles 11 and 12 of UNCLOS 1982 the use of roadsteads in determining the baselines of a country can be justified because roadsteads are part of the overall port structure and Article 11 says that a permanent port is an integral part of the coast so that it can be used in determining the baseline of a country. Article 11 UNCLOS 1982 does not specify which parts of the port can be used in determining the baseline, therefore it is clarified in chapter 4.5.1 TALOS the various components and structures included in permanent port buildings such as piers, breakwaters, and others, while those that are not included in the permanent port structure are sewers or the like and all structures that are not included in coastal protection, with the explanation above, roadsteads are included in the permanent port structure so that they can be used in determining the baseline of a country.

The TALOS glossary 101 explains that it emphasizes several articles in the 1982 UNCLOS, namely Articles 2 and 3 concerning the sovereignty of a coastal state, Article 4 concerning territorial sea boundaries, and Article 12 concerning roadsteads and the discussion which says that things that can limit the sovereignty of a coastal state are only limited by crossings peace for foreign countries in their territorial sea. Regarding Article 12 UNCLOS roadsteads can be partly or wholly outside the territorial sea boundaries, there is no limit to how far these roadsteads are, with no defined boundaries regarding roadsteads this can provide space for a country to determine its roadstead unilaterally and can be detrimental to the country other.

In TALOS 47 glossary explains that artificial islands are man-made structures in the territorial sea, Exclusive Economic Zone, or continental shelf usually for the sake of exploration or exploitation of marine resources. They can also be built for other purposes such as marine scientific research, tidal observation, and so on, artificial islands and offshore installations are also not included in the category of permanent ports so they cannot be used in determining the width of the territorial sea and their presence does not affect the determination of sea delimitations territory, the Exclusive Economic Zone and the continental shelf.

The existence of the glossary above further clarifies the intent of Article 11 UNCLOS 1982 by emphasizing that offshore installations and artificial islands are not included in the category of permanent ports and do not have a stake in determining the width of the territorial sea but reclamation and roadsteads are not included in the category of offshore installations or artificial islands, in UNCLOS 1982 did not provide any understanding of artificial islands and offshore installations, it's just that there are several articles that can be used as a reference in understanding offshore installations and artificial islands in UNCLOS, namely Article 121 concerning islands, namely land areas that are formed naturally, surrounded by water and must be above the water level at high tide.<sup>13</sup>

Referring to the explanation above, an artificial island is a man-made structure that has characteristics like an island, which is a land area, is above sea level during high tide, and is surrounded by water, while reclamation is carried out only on half of the island that has been naturally formed and is not a unit that stands alone or is separated from its main

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<sup>13</sup> I Made Andi Arsana, *Op. Cit.*, p. 65

island, therefore the reclamation is not an artificial island for a roadstead, it clearly does not meet the elements of an island, let alone an artificial island, so the roadstead is not included in this category. Offshore installations in UNCLOS 1982 are not clearly defined, but offshore installations themselves are installations of facilities and facilities in the marine environment which are generally intended for the production and transmission of electricity, oil, gas, and other resources.<sup>14</sup> It is clear that reclamation is not an offshore installation, while the roadstead, as we know, is an integral part of a permanent port and is completely unrelated to the needs of resources, electricity transmission, and so on so roadsteads are also not included in offshore installations.

In addition to alluding to the substance of the 1982 UNCLOS reclamation, it also provides a very creative dispute resolution system which can be a reference in resolving disputes related to reclamation, seen from the development of the international justice system, this convention mechanism for the first time can order countries to accept coercive procedures (must).<sup>15</sup> Under the treaty system, the countries participating in the convention do not have the option to postpone their maritime law disputes by hiding behind the concept of national sovereignty, because in principle the convention requires member countries to resolve their disputes through a treaty mechanism.

The need for and dependence of countries on the sea which is also driven by developments in science and technology has caused the sea to be managed and developed in such a way by countries in the world to meet their needs. This is very likely to have an impact on conflicting views and interests as well as interpretations of regulation and management and use of the sea. The countries party to UNCLOS 1982 realize that it is very important to regulate the settlement of disputes between them based on peaceful settlement of disputes by taking into account the sovereignty of each country.<sup>16</sup> As with other disputes, UNCLOS 1982 has several regulations that can be used as a reference in resolving reclamation-related disputes, that is; Article 280 of UNCLOS 1982 explains that nothing in this chapter reduces the right of any participating countries to agree at any time to resolve disputes between them regarding the interpretation or application of this convention in whatever peaceful way they choose.<sup>17</sup>

Article 283 UNCLOS 1982 explains that in resolving disputes the parties are required to exchange opinions, if a dispute arises between participating countries regarding the interpretation or application of this convention the parties also need to immediately choose between them the method of resolving the dispute peacefully, and if it has not been resolved It is also necessary to determine the dispute settlement procedure.<sup>18</sup>

The 1982 UNCLOS requires the parties involved in a dispute to discuss their interpretation regarding the application of the rules in the 1982 UNCLOS that cause the dispute so that it can be resolved peacefully as soon as possible and prepare other dispute resolution procedures if there has not been an agreement between the parties to the dispute.

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<sup>14</sup> Kabir Sadeghi, *Loc, Cit.*

<sup>15</sup> Boer Mauna, *Hukum Internasional, Pengertian, Peran Fungsi dalam Era Dinamika Global*, Alumni, Bandung, 2000, P. 32

<sup>16</sup> Popi Tuhulele, *Peran ITLOS Dalam Sengketa Reklamasi Pantai Antara Malaysia dan Singapura*, Academia, [https://www.academia.edu/9251797/PERAN\\_ITLOS\\_DALAM\\_SENGKETA\\_REKLAMASI\\_PANTAI\\_ANTIARA\\_MALAYSIA\\_DAN\\_SINGAPURA?from\\_sitemaps=true](https://www.academia.edu/9251797/PERAN_ITLOS_DALAM_SENGKETA_REKLAMASI_PANTAI_ANTIARA_MALAYSIA_DAN_SINGAPURA?from_sitemaps=true), retrieved September 9, 2022

<sup>17</sup> See, Article 280 The United Nation Convention on The Law of The Sea in 1982

<sup>18</sup> See, Article 283 The United Nation Convention on The Law of The Sea in 1982

Reclamation that has not been clearly regulated in UNCLOS 1982 will clearly raise disputes resulting from the interpretation and must have alternative dispute resolution if there has not been an agreement between the disputing parties.

The Convention also regulates several methods of peaceful dispute resolution, such as Conciliation, Arbitration Courts, through the International Court of Justice or the International Court of Law of the Sea. The last three methods of dispute resolution are mandatory procedures that lead to binding decisions. As long as at the time of signing or ratifying the 1982 UNCLOS, the country concerned did not reserve these provisions. Therefore, the court concerned will have jurisdiction to adjudicate any dispute submitted to it.<sup>19</sup> The procedure provided by the convention is regulated in Article 287 paragraph (1) whereby when the parties sign, ratify or accession to the convention, the parties are free to choose by making a written statement one or more of the following ways to resolve disputes, including by submitting it to: 1) The International Tribunal For Law of the Sea which was formed on the basis of; attachment VI; 2) International Court of Justice; 3) An arbitral tribunal established pursuant to Annex VII; 4) A Special Arbitration Court established pursuant to the authority of attachment VIII for one type of dispute or more listed therein.

The jurisdiction of any court or tribunal regulated in article 288 of this convention shall have jurisdiction over any dispute concerning the interpretation or application of the conventions submitted to it pursuant to this chapter, this court shall also have jurisdiction over any dispute concerning the interpretation or application of agreements relating to the convention if any disputes regarding the jurisdiction of a court or tribunal, the case must be resolved by that court or tribunal. This convention must be the basis for the process of resolving disputes between the parties, but this convention does not change the rights and obligations of the participating countries that arise as a result of other agreements that are aligned with this convention. Bilateral agreements or more can issue agreements that suspend the entry into force of this convention but only apply between them, they are obliged to notify the participating countries about the agreement.

Apart from the International Court of Justice, there is also the Court of Arbitration which is implied in Article 287 where each party can submit their dispute to the arbitration procedure by means of a written notification addressed to the parties accompanied by demands and reasons. The arbitrator is appointed by the parties. The parties have the right to appoint four arbitrators. If the participating countries then appoint less than four arbitrators, then these participants have the right to appoint additional arbitrators according to their abilities. The designated arbitrator must be competent in the field of maritime affairs and justice.

The function of the Arbitration Court established pursuant to article (3) Annex VII must function in accordance with this annex. Unless the parties desire their own procedures which guarantee each party a full opportunity to be heard and to bring proceedings. The obligations of the parties in Article 6 Appendix VII to assist the arbitral tribunal and in particular in accordance with their law, in addition to efforts to provide relevant documents, facilities, and information and enable the court if necessary to summon witnesses or experts and receive evidence of visiting the place that is the object of the dispute. Seeing the articles above, international dispute resolution has several phases and procedures made to reach a mutual agreement between the parties to the dispute, including reclamation disputes,

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<sup>19</sup> Endang Purwaningsih, *Retooling Litigasi Internasional*, Fakultas Hukum Gadjah Mada, Yogyakarta, 2005, p. 32



because reclamation-related disputes arise due to a country's interpretation and application of the 1982 UNCLOS provisions, so that even though the settlement is not specifically stated, the articles above can be used as a reference in resolving the dispute.

### 3.2 Impact of State Reclamation Laws Reviewed From UNCLOS 1982.

Reclamation as we know is one of the ways for a country to obtain new territories which are generally carried out in the coastal areas of the country. Reclamation in its implementation has an impact on the geographical shape of the area being reclaimed, namely the land area of a country becomes wider and juts out towards the ocean. The existence of this activity can cause problems where whether the reclamation activity can affect the determination of the territorial sea area of a country or not, this is because in determining the territorial sea area of a country, the method of measurement used is to use geographical features as reference points such as baselines. (Baseline) and Low-Tide Elevation. The existence of this beach reclamation activity can cause its geographical features to change so that it can obscure the territorial determination of the sea area of the country.

UNCLOS 1982 as a source of international law in the maritime field has not been clear and explicit in regulating the legal impact of reclamation, especially on the determination of territorial seas, but several articles in UNCLOS 1982 that can be used as references, namely Article 11, Article 12, Article 56, Article 60, Article 80. Article 11 states that the outermost permanent harbor installation which is an integral part of the port system must be considered as part of the coast so that it can be used as a starting point. Offshore installations and artificial islands are not considered permanent harbor installations.<sup>20</sup> Article 11 can be a legal basis for the country that carries out the reclamation so that it can use the area as a result of its reclamation as a reference in determining the territoriality of its sea area, namely by building permanent port facilities over the area resulting from the reclamation so that they become an integral part that can be used in the measurement. because firstly, reclamation is not an artificial island because reclamation is not a stand-alone entity but is the addition of land from an island that previously existed and was formed naturally, secondly, reclamation is not an offshore installation because it does not reflect the characteristics of the described offshore installation at all in TALOS, namely man-made structures that are usually used in maritime resource exploitation activities.<sup>21</sup> While reclamation is not the case reclamation can be interpreted as a legal area in building permanent port installations and has an influence on area delimitation.

Article 12 stipulates that berths in the middle of the sea which are usually used to load, unload, and moor ships are included in the territorial sea.<sup>22</sup> In UNCLOS 1982 there is no mention of the relationship between roadsteads and their influence in determining the territorial sea area so the only connection is to use Article 11 of UNCLOS 1982 as an argument where if a permanent port can influence the determination of the territorial sea area then the roadstead as part of the permanent port can use in measuring the sea area, but in UNCLOS 1982 it only explains that this is also reinforced in Article 12 which states that roadsteads, even though part or all of them are located outside the territorial sea area, are still the territorial sea of the country, with a lack of explanation regarding the boundaries of port

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<sup>20</sup> Chairul Anwar, *Hukum Internasional : Horison baru Hukum Laut Internasional*, Djambatan, Jakarta, 1989 p. 22

<sup>21</sup> See TALOS glossary 47

<sup>22</sup> Chairul Anwar, *Op.Cit*, p. 22

installations whichever can be used as a determinant of port baselines both in UNCLOS 1982 and TALOS, it can lead to the interpretation that as long as the installation is still within the port unit then it can be used in determining delimitation in this case including roadsteads. Article 56 explains that the state has the jurisdictional right to build artificial islands or other installations in its Exclusive Economic Zone. Jurisdiction itself is the power, ability, authority, rights, and formal authority to make decisions on objects, individuals, or take certain actions from legal subjects, in this case, reclamation can be categorized as other installations alluded to in Article so that reclamation is a jurisdictional right of a country in EEZ and UNCLOS 1982 agreed to this, with the provisions stipulated in UNCLOS 1982, UNCLOS 1982 did not mention the prohibition on the implementation of reclamation and the use of the reclamation results area, but UNCLOS 1982 requires that the implementation and use of the reclamation results must pay attention to the rights -the rights of other countries.

Article 60 (8) explains that artificial islands, installations, and buildings do not have island status so they do not have their own territorial sea. Its presence also does not affect the delimitation of the territorial sea, the Exclusive Economic Zone, or the continental shelf. The meaning of this paragraph is that reclamation does not affect the determination of territorial sea boundaries and the territorial boundaries of the two countries are determined by natural boundaries. So it can be interpreted that the base point can only be measured from the natural outer islands, not from the reclamation land. Article 80 states that regulations regarding artificial islands, installations, and other structures apply *mutatis mutandis* with Article 60 meaning that all regulations regarding artificial islands, installations, and other structures regulated in Chapter IV namely regarding the continental shelf apply the same as the head regulation. Namely Article 60, so if we examine reclamation with Article 80, the result is the same as Article 60, namely the reclamation area cannot be used in determining the territorial sea area. UNCLOS 1982 does not yet regulate reclamation and its legal implications in detail, but at least it provides some implied meaning regarding issues related to this reclamation, one of which is its influence on the determination of territorial sea areas which is still unclear due to imbalances in regulations in UNCLOS 1982 itself. Reclamation in areas that do not yet have territorial boundaries can have a legal impact which will lead to conflicts regarding the delimitation of boundaries between the countries involved in the reclamation. On the other hand, UNCLOS 1982 has not accommodated this problem, making the settlement related to reclamation disputes still seem to be a venue for negotiations between the countries involved.

An example of the legal impact related to delimitation caused by reclamation is the dispute between China and the Philippines, namely in 2013, the Philippines filed an objection to China's claims and activities in the South China Sea to the 1982 UNCLOS Arbitration Court in The Hague, Netherlands. The Philippines accuses China of encroaching on its territory by fishing and reclamation to build artificial islands. The Philippines argues that China's claim to territorial waters in the South China Sea, marked by the nine-dash line, contravenes Philippine sovereignty and international law of the seas.<sup>23</sup>

It was only in 2016 that the International Court of Arbitration based in The Hague, Netherlands, ruled that China had violated Philippine sovereignty in the South China Sea.

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<sup>23</sup> Danang Wahyu Setyo Adi, Analisis Penyelesaian Sengketa Laut China Selatan Oleh Badan Arbitrase Internasional (Analysis of Settlement of South China Sea Disputes by The Internasional Arbitration Agency), *Rewang Rencang: Jurnal Hukum Lex Generalis*, Vol. 2 No. 1, 2021, p. 8

The United Nations Court of Arbitration has ruled that China has no legal basis to claim territorial waters in the South China Sea. However, the Chinese government did not accept the decision. This decision is binding but the arbitral tribunal has no power to impose it on the Chinese side. The disputes in the South China Sea handled by this Court were registered unilaterally by the government of the Republic of the Philippines to check the legitimacy of China's claims, including claims based on the 1982 UNCLOS.<sup>24</sup>

China maintains that the agency has no jurisdiction, regardless of a court decision, China will not accept, recognize, or exercise. However, if the Court's decision goes in favor of the Philippines, China's credibility will be tarnished, and it will be seen as a country that ignores international law. Tensions are also expected to increase between China and the Philippines, or the US which has military assets in the South China Sea. The position of the Philippines, as indicated by President Rodrigo Duterte, is to be willing to share natural resources with Beijing in the South China Sea, even if a court decision is in favor of the Philippines. According to the author, one of the reasons China did not accept the Arbitration Tribunal award was because the 1982 UNCLOS did not have provisions related to claims, thus leading China to argue that there is no definite legal force that court arbitration can be used to resolve disputes.

Still related to the impact above, another legal impact of reclamation is that it will create uncertainty in resolving disputes related to reclamation and there will also be neglect in it, as happened in disputes related to reclamation between China and the Philippines, namely on Monday, July 25 2016, the Philippines finally agreed withdrew its demand that the ASEAN meeting continue to trigger a joint pledge. The Southeast Asian nations finally reached a deal on Tuesday after the Philippines withdrew its complaint to an international tribunal over the South China Sea dispute in a joint statement.<sup>25</sup> In a joint statement that was finally ratified, ASEAN called for a peaceful settlement of the South China Sea dispute in accordance with international law including the UN Law of the Sea, which is used as a benchmark for international arbitration. The parties seek to resolve their territorial and jurisdictional disputes peacefully without using violence through peace negotiations and direct negotiations with sovereign states directly, in accordance with the recognized principles of international law namely UNCLOS 1982.

The countries agreed to refrain from activities that could exacerbate disputes or affect peace and stability in the East Sea region. This includes the restraint of inhabited islands, atolls, artificial islands, and other features in the territorial sea. However, this statement did not refer to the decision of the International Court of Arbitration on July 12, 2016, regarding the South China Sea in The Hague, Netherlands. The absence of mentioning the decision of the International Arbitration Court in the agreement raises the implication that the decision is not binding and does not give way to this dispute.

In this decision also the ASEAN countries and China agreed to refrain from occupation activities in the disputed area and it is not known when the settlement of this dispute will be continued, this is contrary to the spirit of the 1982 UNCLOS in resolving disputes as stated in Article 283 of the 1982 UNCLOS namely countries the disputing countries must immediately exchange opinions regarding dispute resolution and its procedures.<sup>26</sup> The delay in resolving this dispute has made the settlement of disputes related to reclamation

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<sup>24</sup> *Ibid*

<sup>25</sup> *Ibid*

<sup>26</sup> *Ibid*

even more vague and does not have a definite format. The impacts above are certainly dangerous and detrimental to the international community due to the lack of a legal basis and binding force regarding reclamation disputes which makes countries disobedient and seem to want to take advantage of the shortcomings of existing regulations, as is done by China as a "superpower" country. and disobedience to International Law which does not rule out the possibility that this attitude will be followed by other countries in the world. The postponement of the settlement of the dispute also provides China with the opportunity to further strengthen its influence in the South China Sea Area which will benefit them in the future if this dispute is continued.

#### 4. CONCLUSION

The 1982 UNCLOS has not regulated beach reclamation, but there are several articles in the 1982 UNCLOS that relate to coastal reclamation and can be used as a basis, namely Article 11 concerning Ports, Article 12 concerning Roadsteads, Article 56 concerning Rights, jurisdiction, and obligations of coastal states within the economic zone. exclusivity and Article 60 concerning artificial islands, installations, and buildings in the exclusive economic zone and the impact of reclamation for the delimitation of interstate sea areas, when viewed from UNCLOS 1982, is that countries will take their own way of understanding and interpreting the contents of the convention for the benefit of the state, and one of them is carrying out reclamation which can lead to delimitation disputes, especially in areas where an agreement on territorial boundaries has not been established, as happened in the reclamation dispute in the Spratly Islands in the South China Sea by China. For this reason, it is necessary to have arrangements regarding the reclamation of beaches bordering other countries which are in more detail in the provisions of UNCLOS 1982, as well as international provisions that are bilateral and regional in nature related to reclamation activities in sea border areas where boundaries have not been determined.

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