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Article 123 of the United Nations Convention on the Law of the Sea and the Practice of Southeast Asian States

The new Law of the Sea as codified in the United Nations Convention on the Law of the Sea 1982 (UNCLOS) – by providing a series of rights and obligations of various kinds for the coastal States – raises a number of issues, especially with reference to the legal regime of marine areas and their boundaries.

The Eastern Sea is the second largest sea in the world, with an area of 648,000 sq. nautical miles. It encompasses vital sea routes linking the Pacific Ocean, the Indian Ocean, Africa, the Middle East, and other regions with East Asia and it represents the route for most of the fuel transported by sea from Middle East and Africato Japan, China, and South Korea. In these waters – where sovereignty and economic interests aregetting together – the issue of the islands regime has significant political connotations for international stability. If a solution to the numerous delimitation claims between the Asian States is not reached, the economic interests of almost all countries in the Asia-Pacific region, will be adversely affected.

This article addresses the question concerning interpretation and possible application of Article 121 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) to the selected disputed offshore islands or rocks that are situated in the Sea of Japan, the East China Sea, and the South China Sea.

It contains a brief summary of the development of the regime of islands in UNCLOS III, focusing in particular on those proposals made by the participating delegations to amend or delete entirely Article 121(3) of UNCLOS. Subsequently, it analyzes the practice of Asian States with regard to the application or interpretation of Article 121(3) which often seems to push forward the recognition of more maritime zones even to small entities. Even if the practice of these States is very extensive to apply the islands regime also to islets and rocks, this article concludes to deny these small entities to generate an EEZ or continental shelf. Therefore, the efforts made by the Asian States to demonstrate human habitation or economic life on the rocks are actually insufficient to guarantee a change of regime from paragraph 3 to paragraphs 1 and 2 of the UNCLOS.