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Historic Rights and the Law of the Sea: An Editorial Note

Keyuan Zou

In late October 2017, the Centre for Ocean Law and Governance of Zhejiang University hosted an international symposium on ‘Historic Rights and the Law of the Sea’ where there was a true intellectual exercise engaging worldwide known law-of-the-sea specialists and also young legal scholars discussing a variety of topics including, inter alia, Historic Rights in International Law and Jurisprudence; Historic Rights in State Practice; Historic Rights and the UN Convention on the Law of the Sea; and Historic Rights in the South China Sea. The above event was just held one year after the South China Sea Arbitration.

As we recall, the South China Sea Arbitral Tribunal set up in accordance with Annex VII to the United Nations Convention on the Law of the Sea (LOS) rendered its final award on the merits of the South China Sea case (Philippines v. People’s Republic of China) on 12 July 2016.¹ The award touches upon the concept of historic rights. The deliberations of historic rights in the award was triggered by the Philippine Submissions 1 and 2 in its Memorial, which reads:

- 1) China’s maritime entitlements in the South China Sea, like those of the Philippines, may not extend beyond those permitted by the United Nations Convention on the Law of the Sea (“UNCLOS” or the “Convention”);
- 2) China’s claims to sovereign rights and jurisdiction, and to “historic rights”, with respect to the maritime areas of the South China Sea encompassed by the so-called “nine-dash line” are contrary to the Convention and without lawful effect to the extent that they exceed the geographic and substantive limits of China’s maritime entitlements under UNCLOS.²

The award upheld the Philippine claims and that China’s assumed historic rights in the Philippine exclusive economic zone were invalidated and replaced by the relevant LOS provisions.³ As it is conceded that the concept of historic rights has never been thoroughly explored and assessed in international law studies, different opinions and explanations exist and therefore further clarification is needed. I believe that one positive consequence resulting

¹ The text of the award is available at <http://www.pcacases.com/pcadocs/PH-CN%20-%2020160712%20-%20Award.pdf>.

² The Philippines’ Memorial, 30 March 2014, at 271, available at <http://www.pcacases.com/pcadocs/Memorial%20of%20the%20Philippines%20Volume%20I.pdf>.

³ For details, see the text of the award, particularly Chapter 5.

from the Tribunal's award is its unintended promotion of the studies on the international law for historic rights among international legal scholars and possibly also law/policy makers. The part of the award concerning historic rights no doubt contributes to the development of this legal field of studies and deserves appreciation in this respect.⁴

Following the South China Sea Arbitration, more papers have been published in international journals reflecting different views and thoughts on the concept of historic rights.⁵ The 2017 International Symposium mentioned above is just an addition, as well as contributions, to the ongoing discussion on the concept of historic rights in the international community. The papers in this special issue are selected from the Symposium which was funded by the Chinese National Social Sciences Foundation (Funding Number: 14A2D126). This special issue is divided into three parts: Historic Rights in International Law and Jurisprudence, Historic Rights in State Practice and UNCLOS, and Historic Rights in the South China Sea, and each part consists of three papers. I express my sincere gratitude to all the contributors for their respective chapters. I also render my sincere thanks to this journal to accommodate these papers.

⁴ See Keyuan Zou, 'Historic Rights in the South China Sea Arbitration Case: A Preliminary Reflection', *Asia Pacific Journal of Ocean Law and Policy*, Vol.1 (2), 2016: 268-272.

⁵ For example, Sophia Kopela, 'Historic Titles and Historic Rights in the Law of the Sea in the Light of the South China Sea Arbitration', *Ocean Development and International Law*, Vol.48 (2), 2017, 181-207; Xinmin Ma, 'Merits Award Relating to Historic Rights in the South China Sea Arbitration: An Appraisal', *Asian Journal of International Law*, Vol.8 (1), 2018, 16-23; and Yoshifumi Tanaka, 'Reflections on Historic Rights in the South China Sea Arbitration (Merits)', *International Journal of Marine and Coastal Law*, Vol.32(3), 2017, 458-483.