Editorial Note

Historic Rights and the Law of the Sea

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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 world-renowned law of the sea specialists and 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 United Nations Convention on the Law of the Sea (LOSC); and historic rights in the South China Sea. The above event was 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 LOSC 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;
- 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

1 See, text of the award, 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>.

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 LOSC 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 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 and 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 funded by NSSFC (14A2D126) 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 and I express my sincere gratitude to all the contributors for their respective papers. I also render my sincere thanks to the Korean Journal of International and Comparative Law for accommodating these papers.

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

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

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