Politics played an important role in the prosecution of persons charged with crimes of disrupting the world order. To silence the individuals who opposed his regime, one country leader charged the members of the opposition party with crimes of aggression, prosecuted them, and ensured their conviction. Situations such as this led several erudite criminal defence advocates to raise questions about the legality of the courts that were convened to hear and decide cases of international criminal law. Such courts were said to be farcical because their procedures were tailor-made to ensure the conviction of the indicted. Even the criminal principle of *nullum crimen*, *nulla poena sine lege* had no applicability in many past trials for crimes of aggression.

The phrase "politics in exchange for prosecution" hindered the true dispensation of justice to the victims of crimes of an international character. Peace is always such an expensive commodity to maintain that sometimes charges of atrocities have to be extenuated just to achieve it. Some contributors presented examples of this situation.

Kirsten Sellars has performed a challenging job in arranging the sequence of the presentations and discussions in the book. The book could have been written in many volumes, but the extent of the discussions of the contributors will give their readers a sufficient overview of the international crimes committed in Asia and the result of their trials, as well as the observations of notable legal experts in criminal law. All contributors have rendered well-written accounts of the dynamic character of international criminal law. Their discussions will enable their readers to compare the application, in the past as well as in the present, of international criminal law. The varied styles of presenting their topics will place the readers in an Archimedean standpoint to view international criminal law as academicians, legal scholars, judges, prosecutors, defence advocates, sociologists, political scientists, and politicians. There are sufficient factual backdrops of the topics presented in each chapter for the reader to comprehend the flow of discussions that led to either the conviction, acquittal, or mercy of famous political personalities in many countries of Asia.

The book is an indispensable item in the library of a scholar of international criminal law. There are many books on international crimes and international criminal law, but the cases mentioned in this book are still good accounts to include in the further study of the evolution and unpredictable characterization of international crimes.

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Law of the Sea

Recent Developments in the South China Sea Dispute: The Prospects of a Joint Development Regime
edited by WU Shicun and Nong HONG.
London / New York: Routledge, 2014. xix + 263 pp. Hardcover: US$49.95.

The South China Sea Disputes and Law of the Sea
edited by S. JAYAKUMAR, Tommy KOH, and Robert BECKMAN.
Cheltenham / Northampton, MA: Edward Elgar Publishing, 2014. xiv + 281 pp. Hardcover: £80.

The South China Sea Arbitration: A Chinese Perspective
edited by Stefan TALMON and Bing Bing JIA.
Oxford / Portland, OR: Hart Publishing, 2014. xxiv + 249 pp. Hardcover: US$54.

The China-Japan Border Dispute: Islands of Contention in Multidisciplinary Perspective
edited by Tim F. LIAO, Kimie HARA, and Krista WIEGAND.
Farnham / Burlington, VT: Ashgate, 2015. xii + 202 pp. Hardcover: £70.

https://doi.org/10.1017/S2044251317000200 Published online by Cambridge University Press

Arbitration Concerning the South China Sea: Philippines Versus China
edited by Shicun WU and Keyuan ZOU.
Farnham / Burlington, VT: Ashgate, 2016. xiii + 290 pp. Hardcover: £110.
doi:10.1017/S2044251317000200

In July 2016, after China's claims in the South China Sea [SCS] were shattered by an Arbitral Panel in a case initiated by the Philippines under the United Nations Convention on the Law of the Sea [UNCLOS], some observers welcomed the Award as a reaffirmation of the international rule of law, allowing a relatively small state to stand up to bullying by a regional hegemon. Others were more worried about China's response to legal humiliation, fearing that, after boycotting the proceedings *ab initio*, it might turn away from UNCLOS and international law and jeopardize regional stability.[4] Both responses are overblown, as the consequences of China's growth as a regional and global power cannot be easily contained in such simplistic narratives.

The books under discussion were all published during the *Philippines v. China* proceedings and serve to illustrate this point in different ways. Four are concerned with disputes in the SCS: Wu and Hong and Jayakumar *et al.* are mostly based on papers first presented during events prior to the arbitration; some contributors added some remarks about the case later. Wu and Zou and especially Talmon and Jia were published in direct response to the proceedings, and help to fill in some of the unknowns about Chinese considerations leading to non-participation. As the Arbitral Award has been generating a steady wave of new publications, the present review considers what these works teach us about the Chinese perspective on the SCS disputes and to what extent they remain relevant more than one year after the Award.

China's access to the high seas depends on the East China Sea [ECS] and the SCS, separated by the island of Taiwan. China has long defined its territorial integrity as a "core interest" in foreign policy, not only because of the aim of "reunification" with Taiwan, but also because of its contested sovereignty claims in both seas. This has led to regularly resurfacing tensions with Japan in the ECS and the Philippines and Vietnam in the SCS, where Brunei and Malaysia also have competing claims. In addition, Barack Obama's "pivot" to Asia highlighted the area's significance as a playground for US-China great power rivalry. China continues to suspect that the US and its allies are looking to contain it, while they are worried about increasing Chinese "assertiveness".

China's infamous "U-shaped" or "nine-dash line" has been a particular bone of contention. As noted across the reviewed volumes, the line was first drawn by the Republic of China in the 1940s and has been revived by the People's Republic of China since the late 1990s. China has claimed "sovereign" or "historic" rights within the area encompassed by the line, covering at least the sovereignty over all maritime features such as islands, shoals, and reefs, and suggesting the existence of further maritime rights. Taiwan, aptly described as an "alter ego" of China in these matters by Mark Valencia in Wu and Hong (p. 4), claims the same, while competing claims over some features exist by the other coastal states named above.

Until 2013, these states had agreed to shelve the sovereignty disputes, given the strong nationalist emotions they stirred up, and to focus on trust-building measures to enable joint exploitation of resources with a view to the resolution of the underlying disputes in the long term. In 2002, China and the ASEAN Member States adopted a Declaration on the Conduct of Parties in the South China Sea. Negotiations for a further Code of Conduct had been proceeding at an extremely sluggish rate. Then, the Philippines threw a proverbial rock in the water by launching its request for arbitration in 2013.

Many editors and contributors in these books are at the diplomatic and legal forefront of the SCS disputes. Koh is known for first describing UNCLOS as a "constitution for the oceans". The volume he

4. For examples of both types of responses, see e.g. "China's Claims in the South China Sea Rejected", *ChinaFile* (12 July 2016), online: <http://www.chinafile.com/conversation/chinas-claims-south-china-sea-rejected>.

https://doi.org/10.1017/S2044251317000200 Published online by Cambridge University Press

co-edited with Jayakumar and Beckman, who responded to the Arbitral Award by calling it a "game-changer",[5] consists of essays written by leading practitioners, including former International Tribunal for the Law of the Sea [ITLOS] judges, and presents a comprehensive overview of open questions about the SCS and the law of the sea in general. It also addresses issues outside the *Philippines v. China* Tribunal's jurisdiction, including sovereign rights and delimitation. The contributions are remarkably prescient about issues which came up in the arbitration and the book remains a very good introduction to current controversies, especially considering the as yet unknown actual impact of the final Award, given the Duterte administration's muted response to the outcome of a case initiated by his predecessor, China's vocal rejection, and criticism from elsewhere. It is also the only volume on the SCS under discussion here which does not favour the Chinese perspective, although neither volumes edited by Wu Shicun are exclusively pro-Chinese. Wu is a leading Chinese expert on the SCS—all (pro-)Chinese authors rely on his earlier research for their historical accounts of China's claims. In *Recent Developments*, he and other authors make passionate pleas for joint co-operation and development efforts in order to overcome and help resolve the antagonisms, although it is also noted that efforts so far have met with mixed results.

The other two SCS books were published specifically to address the arbitration case. Talmon and Jia is a bit of a curiosity. In the "Introduction", the authors explain that, given China's refusal to participate in the proceedings, they felt it necessary "to offer a specifically Chinese perspective on some of the legal issues before the Arbitral Tribunal", presenting the book as "a kind of *amicus curiae* brief". They did not expect China, unlike the US in the ICJ *Nicaragua* case, to make its views known informally. However, the Chinese government subsequently did exactly that through its Position Paper of 7 December 2014, which the Arbitral Tribunal then treated as a plea on jurisdiction. The Paper's arguments against the Arbitral Tribunal's jurisdiction are made along remarkably similar lines to those by Talmon and Jia.

Throughout the proceedings and its "non-participatory participation" through diplomatic and public statements, the Chinese government insisted that the Tribunal lacked jurisdiction because the maritime claims at stake were inextricably intertwined with the sovereignty claims and delimitation issues reserved by China. The innovation of the Philippines legal team was to tailor the case to fit the Tribunal's jurisdiction by focusing only on maritime claims, *inter alia* by asking the Tribunal only to determine the status of certain features without ruling on competing sovereignty claims. The ultimate acceptance by the Tribunal of this approach was no foregone conclusion. Many observers, not always pro-Chinese and including several authors in the reviewed volumes, considered China's position on sovereignty strong, and the Tribunal's acceptance of jurisdiction has been criticised.

Upon reading the contributions to Talmon and Jia (and in China's Position Paper), it becomes strikingly clear how China's arguments would have benefited from the honing and sharpening that is inherent in actual participation in litigation. The book reads as a good first draft of preliminary objections. There are also some more absurd arguments which might have warranted a paragraph in a pleading but lack the plausibility needed even in an academic publication, most notably the suggestions that the mere act of the Philippines to engage in litigation constitutes an abuse of procedure (p. 128) and assertions that the Philippines sought to "mislead" international public opinion and the Tribunal (p. 148). These allegations foreshadow the more unfortunate and hysterical reactions by Chinese officials and state media both immediately before and after the Final Award was issued.

Talmon and Jia's exclusive focus on possible preliminary objections means that their book is, at this point, primarily of interest to students of the history of the case. Its information about the background of the SCS disputes and China's positions is made in more depth and detail elsewhere, including the other books under review. Wu and Zou's book is also sympathetic to the Chinese position, but its contributors are more critical about the Chinese government's refusal to participate and some of its

5. Robert BECKMAN, "Tribunal Ruling a Game Changer" *The Straits Times* (14 July 2016), online: <http://www.straitstimes.com/opinion/tribunal-ruling-a-game-changer-south-china-sea>.

https://doi.org/10.1017/S2044251317000200 Published online by Cambridge University Press

specific legal positions. In a thought-provoking piece, Tony Carty asks: "If China is so convinced that its substantive legal arguments and claims against the Philippines are sound, why should it be so unwillingly [sic] to allow international legal authority to adjudicate in its favor." Referring to China's insistence on bilateral negotiations and discussions, he notes that to "persist in inviting a small country [...] in endless, fruitless discussions, may appear to be a form of bullying" (p. 24). Carty's piece, based on as-yet-incomplete archival research, also demonstrates the relevance of colonial history in assessing the claims of the various actors in the SCS. It raises questions that continue to be relevant, not least through its argument that time is not yet ripe to settle these claims.

Other authors explore various other aspects of the SCS disputes and the arbitration. Even though some contributions have been superseded by subsequent events, they remain of interest. For example, in an otherwise superficial analysis of the *Arctic Sunrise* case, in which Russia refused to participate in an arbitration case initiated against it by the Netherlands under UNCLOS, the authors call for China to develop more legal capacity (p. 124), reflecting the insecurity which has been noted as a factor in China's decision not to participate. In a very good chapter on China's historic rights claims, Zou Keyuan and Liu Xinchang also criticise China's decision not to participate in the proceedings despite agreeing to its substantive position, and suggest that China and the Philippines could decide in the future to bring their sovereignty disputes before the International Court of Justice [ICJ] as a more suitable venue to resolve them (p. 146). Another chapter by Beckman (co-editor of one of the other volumes) and Bernard explores the ambiguities of Article 121 of UNCLOS, a controversial and crucial topic in the final Award. The importance of Itu Aba / Taiping Island is noted by several authors, although none seems to anticipate its relegation from island to rock by the Arbitral Tribunal.

Wu and Zou also sheds most light on the mysterious "nine-dash line". Most Chinese authors downplay its importance, particularly to counter Philippine assertions that China's claims derive from the line, and present it as mainly indicative of where China's sovereignty and historic claims are located. What these historic rights are remains unknown in the absence of official Chinese elaboration. The final Arbitral Award has strongly diminished this question's relevance by reducing the extent to which any historic rights may still be relevant. Even though it will not formally accept the Award, China's reluctance in specifying its claim, together with historical research carried out by scholars who cannot be found in the books under review, suggest that the line will formally remain on the agenda but increasingly lose meaning, unless China would opt to find a solution solely based on its growing power. None of the contributors to any of these volumes suggests that this outcome is likely. What they do show is that China's lack of confidence in its own legal capacity played a crucial role in staying away from the proceedings and is a better explanation of its refusal to participate than a lack of interest in resolving the SCS disputes in accordance with the rule of international law.

China will likely skill up soon in the law of the sea, as it did in the World Trade Organization [WTO]. To achieve this, it should, however, allow a greater diversity in its voices; even in these academic publications, scholars from the Chinese mainland adhere to the official government position. Only those based outside China express even the mildest forms of criticism. In addition, all parties involved in the SCS will benefit from the further historical research which has been triggered by the arbitration case and the Award. Carty's chapter and the chapters by some Chinese authors demonstrate that further investigations should not only focus on the "nine-dash line", to which China seems to be giving decreasing prominence, but also on the other claimants. In that respect, the contributions to Liao *et al.*'s *China-Japan Border Dispute* may lead the way. Maybe because of its bilateral nature, these show more depth and awareness of the history and emotions underlying the realpolitik of the Diaoyu/Senkaku and related disputes. It is suggested here that this kind of understanding will do most to take the heat out of the competition between the claimants in both seas.

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https://doi.org/10.1017/S2044251317000200 Published online by Cambridge University Press