

The Role of the *South China Sea* Arbitrators in Interpreting Article 121(3) of UNCLOS

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Interpreting and Applying UNCLOS

JURISDICTION AND SUBSTANTIVE CLAIMS

- Approach to jurisdiction
 - Two possible models
 - Westphalian model
 - Regime-building model
 - Entitlement and maritime boundary disputes
- Interpreting UNCLOS where the language is unclear
 - Eg Art 121(3)
- Elaborating on broad obligations
 - Eg Art 192 and 197
- Renvoi to other areas of international law
 - Eg Art 94(5) and the COLREGS
- Law interacting with UNCLOS
 - Eg historic rights

Deciding questions of fact

ASSESSING EVIDENCE

- Fact finding through use of evidence reports
 - Schofield Report
- Variety of evidence for rocks v islands
- Lasting significance of factual determinations?



Resolving the particular disputes

WERE THE CLAIMS PRESENTED RESOLVED?

- Findings and declarations
- No further reparations ordered



Resolving a broader dispute

ASSESSING THE ARBITRATORS PERFORMANCE

- How siloed are the arbitrators from the broader dispute?
- Assessing performance
 - Immediate reaction of parties
 - Longer term responses to findings by parties
 - Responses of other state stakeholders
 - Commentators
 - Future of the arbitrators
 - Future decisions and law-making activities
- Scorecard for *South China Sea* arbitrators?
 - Many elements in the judgment to judge



What was the role of the arbitrators?

DOES IT MATTER?

- Developing the law? ‘Making law visible’
- Alter: ‘Scholars disagree as to whether international courts should be seen as agents of states or as trustees of the law they oversee...’





Questions?

THANK YOU FOR YOUR ATTENTION