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BOOK REVIEWS

The South China Sea Arbitration: Jurisdiction, Admissibility, Procedure

by Stefan TALMON. Leiden/Boston: Brill Nijhoff, 2022. 407 pp. Hardcover: €160.00; eBook (PDF): €160.00. doi: 10.1163/9789004381193.

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Recent literature on the United Nations Convention on the Law of the Sea (UNCLOS) dispute settlement has expressed nervousness about UNCLOS tribunals' apparent preference to exercise jurisdiction, especially when applicants have seemingly sought to use such proceedings to influence territorial sovereignty disputes. In this context, the 2016 final award in the *South China Sea* arbitration is an important case study. Notoriously, the Philippines won a notable legal victory by disputing the status of various maritime features and their entitlements rather than sovereignty over them. The key to this result was the tribunal's narrow interpretation of what constitutes an island under UNCLOS.

While undeniably important, a great deal has already been written on the *South China Sea* award, including much by Talmon himself. Why write such a book, particularly one that focuses on jurisdiction, admissibility, and procedure? Talmon notes that while this case considered numerous legal questions, the most "technically highly complex and legally extremely challenging" were those concerning jurisdiction and admissibility (p. xi) and concludes that "the case was decided wrongly" (p. xii). Talmon underlines that he does not question the "binding force" of the award but aims instead to point out "weaknesses" and "flaws" in a decision with significant precedential implications (p. xii). While his conclusions will, no doubt, be deployed by those supporting the untenable view that jurisdictional error renders a final UNCLOS award void (for example, the Chinese Society of International Law), Talmon himself examines only the doctrinally orthodox means by which the finality of an award may eventually be overturned (by subsequent treaty practice etc.) (Chapter 5.2).

Talmon is a prominent and thoughtful critic of the award, and the wholly new Chapter 4 valuably conducts a closely argued and exhaustively documented examination of the drafting history surrounding UNCLOS's definition of "rocks" (entitled only to a territorial sea) and "islands" (having a full suite of maritime zones), and the subsequent state practice of twenty states regarding eighty-six "islets". At the least, the chapter demonstrates that a lot of state practice runs contrary to the award.

Further, an argument previously made by Talmon is that the Spratly Islands are treated as a unit by China, and the Tribunal misrepresented this position. Previously, I found this baffling. How can a respondent create gaps in UNCLOS by asserting idiosyncratic legal theories? This book better spells out, at least for me, Talmon's chain of logic. The argument runs that China has both ancient and historic title to the Spratly Islands, and it – alongside

other states claiming the group – has treated it as an "archipelago". This pre-UNCLOS usage indicates a legal category - offshore archipelagos of continental states – capable of generating historic titles, not merely historic rights, in their surrounding waters. Talmon concludes that UNCLOS provisions on archipelagic states did not extinguish such historic titles and that they are preserved as a subset of historic waters. All of this is, of course, contestable. It is, nonetheless, interesting.

On some questions, the book may change minds or set a high bar that opposing arguments must meet. At least in respect of some of the Philippines' claims, Talmon makes a good case that there was not always a pre-existing legal dispute, although the forensic attention to every possible error made by the tribunal at times risks seeming tendentious. Overall, this book valuably provides a definitive statement of the case for China put at its highest.

Competing interests. The author declares none.

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International Investment Law and Investor-State Disputes in Central Asia: Emerging Issues

edited by Kiran Nasir GORE, Elijah Putilin, KABIR, A.N. DUGGAL, and Crina BALTAG. Alphen a/d Rijn, The Netherlands: Wolters Kluwer, 2022. 528 pp. Hardcover: €175.00.

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This book opens with the intriguing assertion that the Central Asian region is of "global interest" due to its immense potential to develop as a dispute settlement harbour. The Central Asian countries – Kazakhstan, the Kyrgyz Republic, Tajikistan, Turkmenistan, and Uzbekistan – have been prominent recipients of foreign direct investment (FDI) in the previous two decades, particularly in the fields of energy and natural resources. To attract and provide legal support to foreign investors, all five nations have been swiftly improving their legal and institutional FDI frameworks by signing international investment agreements (IIAs), establishing modern arbitration centres, and modernising their national investment legislation. Central Asian countries have extensive experience in Investor-State Dispute Settlement (ISDS) proceedings, frequently acting as respondent States. Overall, this comprehensive volume on international investment law in Central Asia makes the compelling case that the region's emerging approaches to treatymaking and FDI policies should be closely monitored, particularly in the context of investment reform led by the United Nations Commission on International Trade Law (UNCITRAL) Working Group III and modernization discussions.

The volume contains seventeen chapters divided into five parts on investment law and arbitration in Central Asia, authored by leading experts in the field. The first part opens with three introductory chapters on the origins and legal history of foreign direct investment in Central Asian countries, as well as the prospects and limitations of the global arbitration law system in the region. The book's main body (Parts Two and Three) focuses on substantive and procedural ISDS issues in the Central Asian context. In a logical and