

YOSHIFUMI TANAKA



THE
SOUTH CHINA SEA
ARBITRATION

TOWARD AN
INTERNATIONAL LEGAL ORDER
IN THE OCEANS

THE SOUTH CHINA SEA ARBITRATION

Beyond the scope of the dispute settlement between the Philippines and China, the *South China Sea* arbitral award can be thought to significantly influence the development of international law and the law of the sea. Accordingly, this book seeks to examine the *South China Sea* arbitration from the perspective of the development of public international law and its limitations. Specifically it addresses the issues of jurisdiction of the Annex VII Arbitral Tribunal, the historic rights, the legal status of maritime features, the lawfulness of various activities of China, and the role of the *South China Sea* arbitration in the international dispute settlement. In considering these issues, this book examines the *South China Sea* arbitration in three respects: (i) the clarification of relevant rules and obligations under the UN Convention on the Law of the Sea as well as international law, (ii) the protection of community interests at sea, and (iii) considerations of time elements in international law.

The South China Sea Arbitration

*Toward an International Legal
Order in the Oceans*

Yoshifumi Tanaka

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Yoshifumi Tanaka
Copenhagen

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List of Abbreviations

AFDI	<i>Annuaire français de droit international</i>
AJIL	<i>American Journal of International Law</i>
Art(s)	Article(s)
BYIL	<i>British Yearbook of International Law</i>
CBD	Convention on Biological Diversity
CJIL	<i>Chinese Journal of International Law</i>
CLCS	Commission on the Limits of the Continental Shelf
CSIL	Chinese Society of International Law
CMS	China Marine Surveillance
COLREGS	Convention on the International Regulations for Preventing Collisions at Sea
EEZ	exclusive economic zone
EFZ	exclusive fishery zone
EJIL	<i>European Journal of International Law</i>
GYIL	<i>German Yearbook of International Law</i>
ICJ	International Court of Justice
ICJ Rep	ICJ Reports
ICLQ	<i>International and Comparative Law Quarterly</i>
IJMCL	<i>International Journal of Marine and Coastal Law</i>
ILC	International Law Commission
ILM	<i>International Legal Materials</i>
IMO	International Maritime Organisation
ITLOS	International Tribunal for the Law of the Sea
ITLOS Rep	ITLOS Reports
LJIL	<i>Leiden Journal of International Law</i>

xii *List of Abbreviations*

MPA	marine protected area
NILR	<i>Netherlands International Law Review</i>
NJIL	<i>Nordic Journal of International Law</i>
ODIL	<i>Ocean Development and International Law</i>
PCA	Permanent Court of Arbitration
PCIJ	Permanent Court of International Justice
RCADI	<i>Recueil des cours de l'Académie de droit international</i>
RECIEL	<i>Review of European Community and International Environmental Law</i>
RGDIP	<i>Revue générale de droit international public</i>
RIAA	<i>Reports of International Arbitral Awards</i>
UK	United Kingdom
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNDOALOS	United Nations Division for Ocean Affairs and the Law of the Sea
UNTS	<i>United Nations Treaty Series</i>
US	United States
WTO	World Trade Organization
YILC	<i>Yearbook of International Law Commission</i>
ZaöRV	<i>Zeitschrift für ausländisches öffentliches Recht und Völkerrecht</i>

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