

Book Review

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Book Review of Yao Huang, Renyuan Li et al., *Sovereignty and Maritime Rights in the South China Sea: A Jurisprudential Study*

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The book under review is Yao Huang, Renyuan Li et al., *Sovereignty and Maritime Rights in the South China Sea: A Jurisprudential Study*, Intellectual Property Publishing House (Beijing, China), 2023, ISBN 978-7513-0895-31. The book is a collective work comprising the output of nine scholars, produced over a five-year research period. The principal authors are Professor Yao Huang from the School of Law at Sun Yat-Sen University and Associate Research Fellow Renyuan Li from the Institute of International Studies at Guangdong Academy of Social Science. Professor Huang is a distinguished international lawyer in China with over a decade of experience dedicated to the research of South China Sea issues. Dr Renyuan Li is an emerging young scholar of international law. He is the author of *Research on the Historic Rights in International Law* [1], one of the first works in the Chinese international law academia that specifically focuses on the theory and practice of historic rights. Other contributors include junior scholars under Professor Huang's mentorship.

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The book can be regarded as a subsequent piece of research to an earlier work co-edited by Professor Huang, entitled *The South China Sea Arbitration: A Jurisprudential Study of Core Issues* [2], a collection of articles by renowned Chinese international scholars on the key issues surrounding the *South China Sea Arbitration* [3–5]. *The South China Sea Arbitration: A Jurisprudential Study of Core Issues* is exclusively devoted to the *South China Sea Arbitration*, with a particular focus on the rationale behind the so-called “dashed line” [6,7] and the legal status of maritime features in the Spratly Islands (Nansha Qundao). In contrast, this book broadens the scope to encompass the question of title to territory over the South China Sea Islands (Nanhai Zhudao), including the Paracel Islands (Xisha Qundao), a topic not directly addressed by the *South China Sea Arbitration Tribunal*.

The book is divided into five parts with 650 pages, comprising 20 chapters in total. The five parts are logically sequenced to reflect the principle of “land dominates the sea” [8].

The first two parts are dedicated to an in-depth examination of territorial sovereignty issues concerning the South China Sea Islands. Part I, entitled “The Evidentiary Value of the Historical Materials of the Chinese Development and Management of the South China Sea Region”, provides the basis for analysis in subsequent parts. The authors provide an excellent examination of the rules governing the admissibility of historical evidence and the evidential value of historical materials in this Part. The text not only examines and summarizes the international law rules governing the use of evidence from the perspective of the sources of international law (Chapter 1), but it also undertakes comprehensive case studies to examine the evidential value of historical documents, maps, government documents, news media, publications, and expert reports (Chapter 2). Subsequently, the authors apply these rules to analyze the evidential value of relevant Chinese historical materials, government documents, and other Chinese documents pertaining to the South China Sea. Chapter 3 concludes that two major issues are identified with regard to the use of Chinese historical documents as evidence to substantiate Chinese territorial and maritime claims in the South China Sea. Firstly, Chinese scholars of international law overly depend on secondary sources, such as the research findings of Chinese historians. A lack of international law expertise among Chinese historians may lead to misinterpretations and inaccuracies in their findings. It would be beneficial for Chinese international law scholars to critically assess the research findings of Chinese historians before utilizing them. Secondly, many original Chinese historical documents have been lost or are inaccessible. Consequently, the veracity of information recorded and referenced in other materials may be called into question, and their evidential value is relatively low. In light of the above, the authors suggest a collaboration between Chinese historians and international law scholars to evaluate historical evidence and construct a robust “evidence chain” to substantiate China’s claim to territorial sovereignty over the South China Sea and its asserted historic rights in the South China Sea (pp. 125-126).

Part II, entitled “The Historical and Jurisprudential Basis for the Chinese Title to Territorial Sovereignty over the South China Sea Islands”, supplies more concrete historical and legal evidence supporting the Chinese title to territory over the South China Sea Islands. This part comprises five chapters that examine the traditional and modern modes of title to territory. It loosely follows the structure of the classic treatise of Sir Robert Jennings, *The Acquisition of Territory in International Law* [9] and begins with the elaboration of the rules of occupation in Chapter 4 and proceeds to discuss the doctrine of effective control in Chapter 5, treaties as instruments for changing/confirming territorial titles in Chapter 6, and other related doctrines including recognition, acquiescence and estoppel in Chapter 7, and concludes with a succinct and critical analysis of the “dashed line” in Chapter 8. In Part I, the authors concentrate on the theoretical examination of relevant legal rules. In contrast, Part II employs a hybrid approach of integrating doctrinal legal analysis with a comparative examination of the historical evidence and legal assertions of various South China Sea claimants with a focus on Vietnam and the Philippines. Consequently, the historical facts and legal arguments are meticulously examined.

While the first two parts address legal issues pertaining to land territory, Part III to V focus on analyzing China’s maritime rights in the South China Sea. In Part III, entitled “The Unity of the Sovereignty and Maritime Rights of the Archipelagos within the South China Sea Islands”, the authors concentrate on a key issue of the Chinese claims, the “unity of archipelago” theory advocated by numerous distinguished Chinese international law scholars [10,11] as well as Chinese officials. For example, Xinmin Ma, Director-General of the Treaty and Law Department, Ministry of Foreign Affairs of China, elaborated that “legal status of each archipelago and its maritime entitlements should be considered in perspective of the Islands as a whole, rather than in view of its constituting part—the individual island, rock and low-tide elevation” [12]. The authors also take a similar stance. In the four chapters comprising Part III, both the theories of the archipelagic regime in general (Chapter 9) and the unique theory of “unity of archipelago” (Chapters 10 and 11) are thoroughly examined. Moreover, supported by extensive historical evidence, the authors detail the rationale behind China’s claims that the four South China Sea Islands (Dongsha, Xisha, Nansha, and Zhongsha) should be treated as forming “an intrinsic geographical, economic and political entity” under Article 46 of the UNCLOS (Chapter 12).

Part IV, entitled “China’s Historic Rights in the South China Sea” further addresses another key issue in China’s claims. Part IV begins with an overview of the legal regime of “historic rights” within the legal framework of contemporary international law (Chapter 13). The authors effectively utilize State practice to illustrate the legal value and contemporary relevance of the concept. Subsequently, the authors provide a comprehensive analysis of the interplay between historic rights and the UNCLOS, a pivotal argument in the *South China Sea Arbitration* (Chapter 14). Finally, the authors substantiate China’s claims in the South China Sea by demonstrating that both

historically and legally, China has more legitimate grounds for claiming historic rights. More crucially, China's official stance on this issue has remained consistent, before and after the founding of the People's Republic of China government (Chapter 15). The authors present ample evidence to prove that other South China Sea claimants and even several European States including the Netherlands, recognized Chinese claims prior to the 1970s (pp. 478-482). In light of the above, the authors assert that subsequent challenges by other claimants in the South China Sea do not alter the fact that Chinese historic rights were well crystallized by the 1970s.

In Part V, entitled "The Challenge of the South China Sea Dashed Line by Other Countries and the Proposed Chinese Jurisprudential Response", the authors continue the discussion of Chinese historic rights in the South China Sea from various perspectives. In the five chapters comprising Part V, the authors examine the legal status of the "dashed line" and its implications in the South China Sea. The authors assert that in the first place, the "dashed line" can be properly interpreted as an "island ownership line", which denotes that the territorial sovereignty of all islands and other maritime features within the maritime areas enclosed by the line belongs to China. Historical evidence and China's consistent official stance support this interpretation. In addition, based on long-time Chinese practice, the "dashed line" can also be interpreted as a "line of historic rights", which means that China enjoys historic rights within the maritime areas enclosed by the line. Furthermore, this line can serve as map evidence to support Chinese territorial sovereignty over islands in the South China Sea (Chapter 16). The authors also utilise historical evidence to rigorously refute the claims of Vietnam, the Philippines, Malaysia, and Brunei (Chapter 17). In Chapters 18 and 19, the authors critically assess the *South China Sea Arbitration Awards'* findings related to Chinese historic rights and the theory of "unity of archipelago". The authors contend that China's historic rights in the South China Sea are not superseded by UNCLOS (Chapter 18), and the Arbitral Tribunal's conclusion that the Spratly Islands cannot be legally regarded as an integral unity is not well founded (Chapter 19). In the final chapter, the authors offer recommendations for China's future approach (Chapter 20).

The book offers a thorough analysis of Chinese territorial and maritime rights in the South China Sea. It has several noteworthy strengths. First and foremost, the book's coverage of legal themes is exceptionally comprehensive. Western works on the South China Sea such as Marwyn S. Samuels' *Contest for the South China Sea* [13] and Bill Hayton's *The South China Sea: The Struggle for Power in Asia* [14] focus primarily on the dispute's historical and political aspects, and recent English publications have predominantly focused on the *South China Sea Arbitration* [15,16], often neglecting issues related to the territorial sovereignty of South China Sea Islands. Previous Chinese scholarships on South China Sea disputes such as Professor Cuibai Yang's excellent work *Jurisprudence Research on the Sovereignty over Nansha Islands* [17] and Dr Shicun Wu's *Origin and Development of Nansha Disputes* [18] only focused on the historical and legal aspect of territorial sovereignty of Nansha

Islands, but have given insufficient attention to China's maritime rights and pertinent law of the sea issues. Hence, this book marks the first significant effort by Chinese international law scholars to analyze China's territorial sovereignty and maritime rights in the South China Sea. It is also worth reiterating that the book also offers substantial insights into key contentious issues of the *South China Sea Arbitration*, including the relationship between China's historic rights and the UNCLOS, and the validity of "unity of archipelago" theory, which have been insufficiently explored in previous Chinese research. The authors provide compelling arguments for these critical issues and robustly challenge the flawed reasoning in the Arbitral Awards of July 12, 2016.

Secondly, concerning the book's principal arguments, it broadly encapsulates the prevailing Chinese academic viewpoints on the South China Sea, while introducing novel perspectives and critical recommendations. For example, in key themes such as historical evidence of Chinese territorial sovereignty in the South China Sea Islands, the authors strive to avoid merely reiterating the official Chinese position and prior conclusions. Indeed, the authors make good use of credible historical materials to delineate the historical and legal underpinnings for China's territorial claims and sidestep the critique often directed at some Chinese scholars known as the "good lawyers write bad history syndrome" frequently highlighted by Western academics [19]. Regarding recommendations and suggestions, the authors provide incisive advice that China should prepare for potential legal confrontations in the South China Sea and engage in modest consultation on critical issues with internationally renowned lawyers and institutions (Chapter 20), such advice is seldom found in Chinese academic publications.

Thirdly, the book's methodology ensures legal discussions are independent of government rhetoric and propaganda. Throughout the book, international law case studies meticulously substantiate the legal arguments. For instance, in Chapter 2, the authors examine six cases of the International Court of Justice (ICJ) to demonstrate the evidential value of historical documents, ten cases to illustrate the evidential value of maps, six more to show the evidential value of media publications in international judicial bodies. In Chapter 11, the authors assess the practices of eight States to determine the validity of the "unity of archipelago" theory. In Chapter 12, the authors further analyze the practices of multiple States to advocate for the full-fledged island status of certain Chinese islands in the South China Sea. In Chapter 13, the authors discuss nine arbitration and judicial cases to underscore the ongoing relevance of historic rights in contemporary international law. The bibliography's "List of Cases" includes 44 cases from the ICJ, 1 case from the International Tribunal for the Law of the Sea, 15 international arbitral awards, and 9 other decisions. The cases and decisions listed are carefully examined throughout this book.

Regrettably, the book has a few shortcomings. The first is the absence of map illustrations. Whereas classic works on South China Sea territorial disputes contain an appendix full of map illustrations [13], the book lacks

them, despite providing textual descriptions of historical maps in Chapter 3. The South China Sea issues are intricate, and official maps serve to aid understanding and interpretation of the claims by South China Sea claimants. The evolution of historic rights claims is also reflected in the various editions of official maps [20]. Thus, in this review, it is believed that map illustrations are crucial for a comprehensive understanding of the South China Sea's geography and legal implications, particularly for historically significant maps like the "Map of Geographic Locations of South China Sea Islands" (1948). The second is the omission of some key and up-to-date secondary sources in the bibliography. Although the book's bibliography lists 23 pages of primary sources, it includes fewer than 15 pages of secondary sources. Given the book's extensive thematic coverage, it would have benefited from consulting a broader range of legal and historical authorities. Specifically, the book includes only 31 English and 20 Chinese treatises and monographs, which is unexpected given the wealth of published works on the subject in recent decades.

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