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THE EXTRATERRESTRIAL IMPACT OF THE SOUTH CHINA SEA DISPUTE

Abstract

On July 12, 2018, the Permanent Court of Arbitration (the “PCA”) issued a unanimous ruling in the dispute between the Philippines and China, a landmark decision under the United Nations Law of the Sea Convention (“UNCLOS”). The arbitration concerned the role of historic rights and the source of maritime entitlements in the South China Sea, the status of certain maritime features, and the lawfulness of certain actions by China in the South China Sea that the Philippines alleged to be in violation of UNCLOS. In its award, the PCA strongly rebuked China’s actions and expansive claims to maritime territory in the South China Sea, including in the high seas and international airspace above.

China refused to formally participate in the arbitration and rejected the PCA’s award. Instead, China has dramatically expanded the scope and functionality of its land reclamation activities in the South China Sea. This artificial island-building includes the militarization of the isolated outposts and the development of airstrips capable of landing advanced military aircraft. These actions also caused irreparable harm to the marine environment. Moreover, Beijing has interfered with Manila’s economic rights, such as fishing and petroleum exploration, in the Philippine exclusive economic zone, a maritime entitlement established under UNCLOS.

The response of the claimants in the South China Sea dispute will shape state practice regarding activities in the global commons. Indeed, although under the UNCLOS regime, the Philippines vs. China provides important lessons for potential disputes relating to outer space activities. This includes applications regarding the content of space law such as rules concerning the use and occupation of space and celestial bodies, militarization of space, enforcement of economic rights, and limiting the environmental impact of space activities. The PCA proceedings also provide insight into whether international arbitration can serve as an effective procedure and technically-capable means for the peaceful settlement of disputes involving outer space activities. This paper examines the extraterrestrial lessons offered by the South China Sea dispute in relation to the prospective crafting of the Outer Space Treaty under a fluctuating geopolitical landscape.