

# 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

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- 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

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- 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?

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- 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?

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- 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