

PRESS RELEASE
KEHADIRAN CHINA COAST GUARD 5204 DI LAUT NATUNA UTARA

Berkenaan dengan kehadiran kapal *China Coast Guard 5204* (CCG 5204) di Laut Natuna Utara pada tanggal 12 – 14 September 2020, kami menyampaikan beberapa hal sebagai berikut:

1. Sebagai bagian dari masyarakat sipil, *Indonesia Ocean Justice Initiative* menyampaikan apresiasi dan terima kasih kepada Badan Keamanan Laut Republik Indonesia (BAKAMLA RI) dan Tentara Nasional Indonesia Angkatan Laut (TNI-AL) yang telah bersama-sama menjaga wilayah yurisdiksi Indonesia dengan mengerahkan kapal KN Nipah dan KRI Imam Bonjol 383 untuk menghalau (*shadowing*) kapal CCG 5204. CCG 5204 berada di dalam Zona Ekonomi Eksklusif Indonesia sejak hari Sabtu tanggal 12 September 2020 dan keluar dari wilayah tersebut pada hari Senin tanggal 14 September 2020.
2. Kehadiran kapal CCG di Laut Natuna Utara merupakan hal yang sudah pernah terjadi sebelumnya antara lain pada Maret 2016¹ dan Desember 2019². Kapal CCG bahkan pernah mengganggu upaya penegakan hukum yang dilakukan oleh Indonesia terhadap kapal-kapal pelaku *illegal fishing* dari China.
3. Personil kapal CCG 5204 menyatakan bahwa keberadaan mereka di Laut Natuna Utara dalam rangka melaksanakan patroli di wilayah *nine dash line*. Berkenaan dengan hal tersebut, sebagaimana telah diuraikan pada kertas posisi kami tanggal 9 Januari 2020³ bahwa *nine dash line* merupakan klaim yang tidak memiliki dasar hukum dan bertentangan dengan *United Nations Convention on the Law of the Sea* (UNCLOS) sebagaimana diputuskan oleh *the Permanent Court of Arbitration* (PCA) pada tahun 2016.
4. PCA pada sengketa Filipina vs. China menyatakan bahwa, “... ***China’s claims to historic rights, or other sovereign rights or jurisdiction, with respect to the maritime areas of the South China Sea encompassed by the relevant part of the ‘nine-dash line’ are contrary to the Convention and without***

¹ <https://bisnis.tempo.co/read/755412/tni-al-pastikan-penangkapan-km-kway-fey-di-wilayah-indonesia/full&view=ok>

² <https://www.cnbcindonesia.com/news/20200104193648-4-127681/ini-kronologis-ri-protes-keras-klaim-china-soal-natuna>

² <https://www.oceanjusticeinitiative.org/wp-content/uploads/2020/06/KERTAS-POSISI-IOJI-LAUT-klaim-china-soal-natuna>

³ <https://oceanjusticeinitiative.org/wp-content/uploads/2020/06/KERTAS-POSISI-IOJI-LAUT-NATUNA-UTARA-4-min.pdf>

lawful effect to the extent that they exceed the geographic and substantive limits of China's maritime entitlements under the Convention. The Tribunal concludes that the Convention superseded any historic rights or other sovereign rights or jurisdiction in excess of the limits imposed therein" (Paragraf 278 PCA Award 12 Juli 2016).

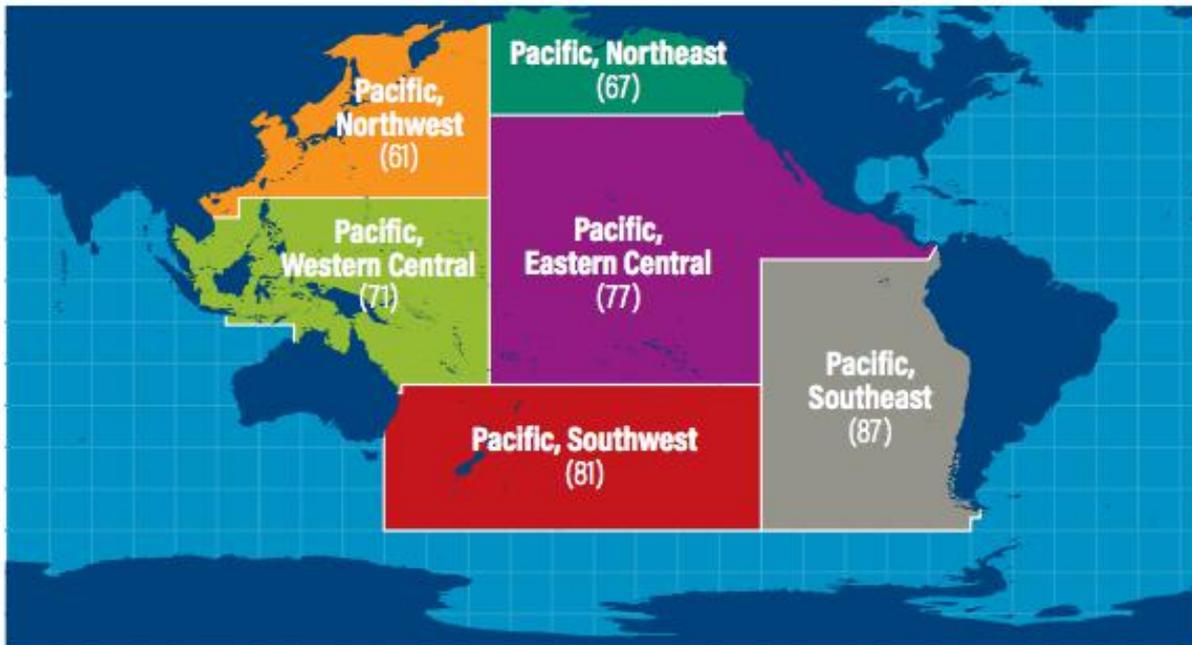
5. Pada Desember 2019, Pemerintah Malaysia menyerahkan berkas mengenai penetapan batas-batas terluar dari perpanjangan landas kontinennya (*extended continental shelf*) kepada Komisi Batas Landas Kontinen (*Commission on the Limit of the Continental Shelf*). Hal ini direspon oleh Pemerintah China yang pada intinya menyatakan keberatan terhadap batas-batas terluar dari *extended continental shelf* Malaysia karena melanggar kedaulatan China atas "pulau-pulau" yang berada di dalam *nine dash line*. Surat keberatan dari pemerintah China tersebut mendapatkan respon dari berbagai negara, termasuk Indonesia (dokumen terlampir), yang pada intinya menyatakan bahwa *nine dash line* dan klaim kedaulatan China bertentangan dengan UNCLOS. Beberapa negara yang telah menyampaikan pernyataan tersebut antara lain:
 - a. *The Republic of the Philippines* pada tanggal 6 Maret 2020;
 - b. *The Socialist Republic of Viet Nam* pada tanggal 30 Maret 2020;
 - c. *The United States of America* pada tanggal 1 Juni 2020;
 - d. *The Republic of Indonesia* pada tanggal 12 Juni 2020;
 - e. *The Commonwealth of Australia* pada tanggal 23 Juli 2020;
 - f. *Malaysia* pada tanggal 29 Juli 2020; dan
 - g. *The France, Germany and the United Kingdom* pada tanggal 16 September 2020.
6. Instansi-instansi keamanan laut Indonesia perlu untuk terus mewaspadaikan keberadaan kapal-kapal ikan atau kapal China lainnya di Laut Natuna Utara, khususnya di wilayah yang berbatasan langsung dengan laut lepas (*high seas*) *South China Sea* agar hak berdaulat (*sovereign rights*) Indonesia di Zona Ekonomi Eksklusif (ZEE) dan Landas Kontinen (LK) tidak dilanggar. Hak berdaulat Indonesia adalah hak atas sumber daya kelautan baik yang hidup maupun yang tidak hidup yang berada di kolom air laut (ZEE) maupun dasar laut dan tanah dibawahnya (LK) yang bersifat eksklusif bagi Indonesia.
7. Selain Laut Natuna Utara, pemerintah RI juga perlu mewaspadaikan potensi *illegal fishing* pada Zona Ekonomi Eksklusif Indonesia yang berbatasan dengan Samudera Pasifik, yaitu Wilayah Pengelolaan Perikanan 716 dan 717.



Peta Wilayah Pengelolaan Perikanan Indonesia. Sumber: Peraturan Menteri Kelautan dan Perikanan Nomor 18 Tahun 2014.

8. Hal tersebut didasarkan pada kajian dari *Overseas Development Institute* (ODI) yang menyatakan bahwa saat ini armada kapal ikan berjarak jauh (*distant water fishing*) milik China di seluruh dunia diperkirakan terdiri dari 16.966 kapal ikan yang sebagian besar menggunakan alat tangkap pukat (*trawl*) dan melakukan banyak kegiatan penangkapan ikan di *Northwest Pacific*, *Southeast Pacific*, dan *Southwest Atlantic*⁴.

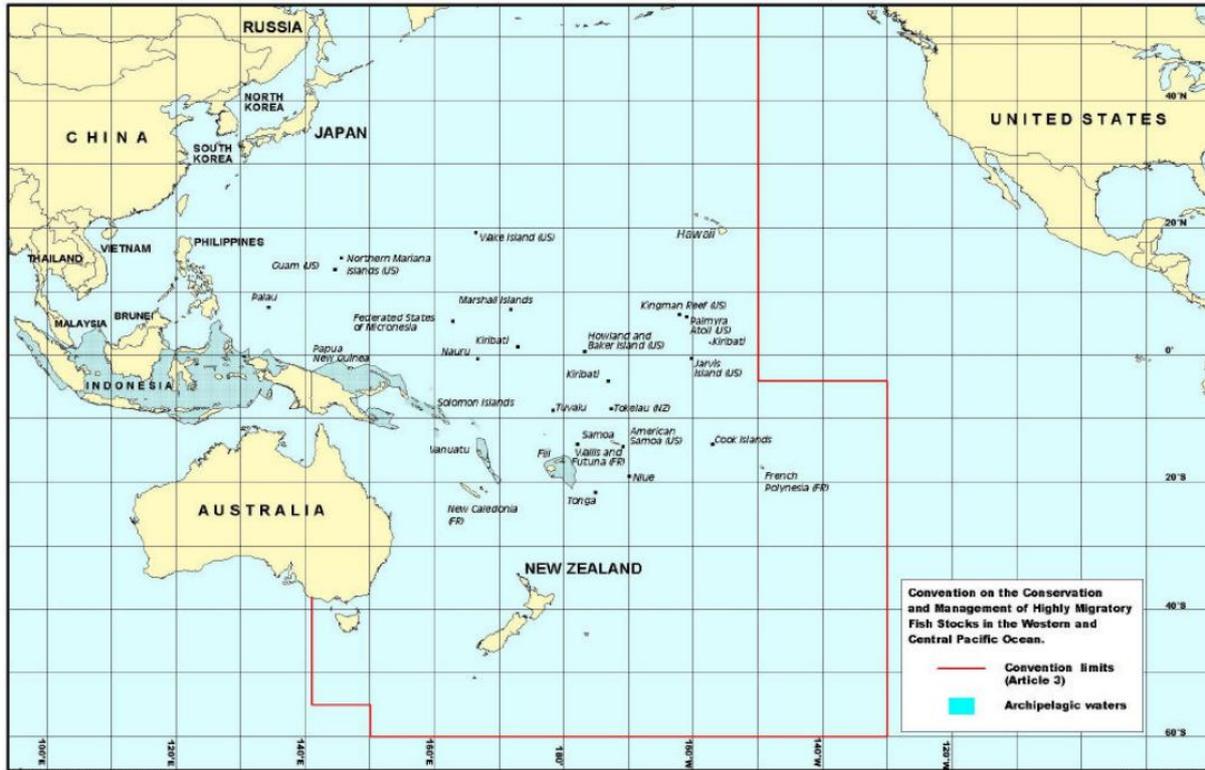
⁴ Miren Gutierrez, Alfonso Daniels, Guy Jobbins, Guillermo Gutierrez Almazor, Cesar Montenegro. China's distant water fishing fleet. Overseas Development Institute (ODI), June 2020.



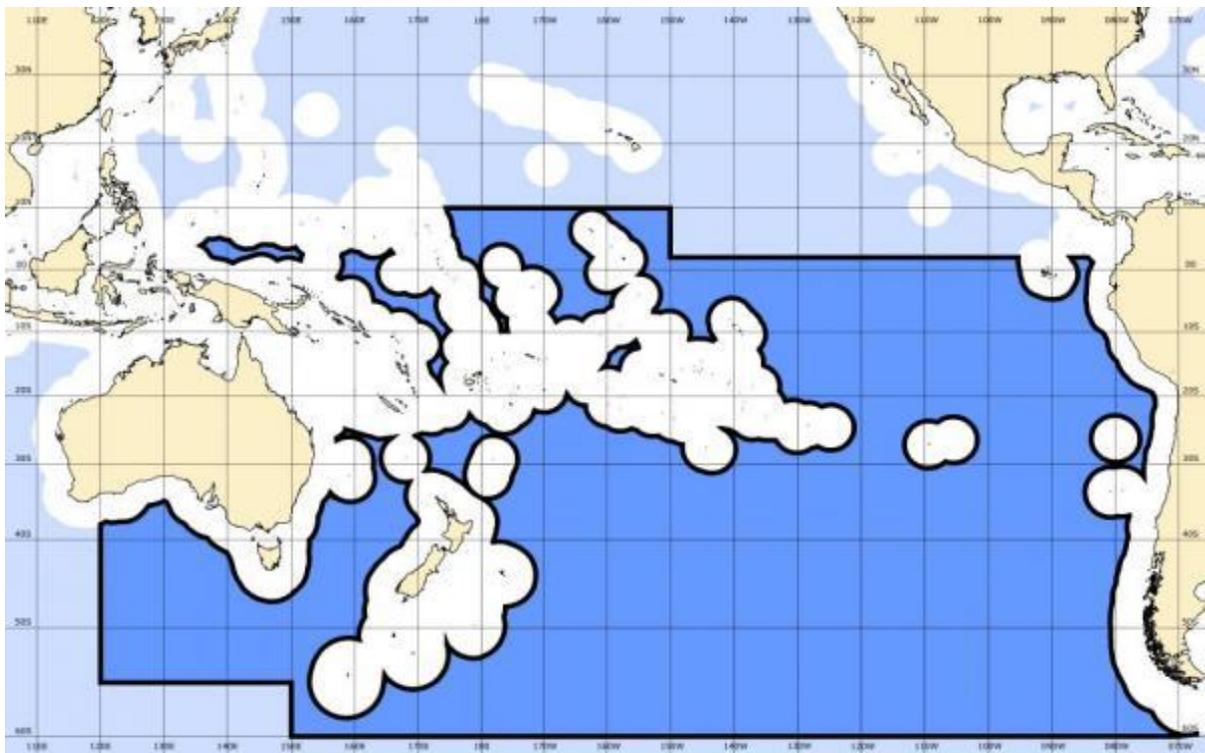
Ilustrasi peta Samudera Pasifik. Sumber: WRI. The Scale of Illicit Trade in Pacific Ocean Marine Resources. October 2019

9. Selain itu, berdasarkan data dari 2 (dua) *Regional Fisheries Management Organization* (RFMO) yang wilayah pengelolaannya berada di Samudra Pasifik yaitu *WCPFC* (*Western & Central Pacific Fisheries Commission*) dan *SPRFMO* (*South Pacific Regional Fisheries Management Organization*) jumlah kapal ikan berbendera China yang terdaftar di 2 (dua) RFMO tersebut pada tahun 2020 adalah 1.305 kapal.⁵

⁵ 605 kapal terdaftar di WCPFC (https://www.wcpfc.int/record-fishing-vessel-database?flag=China&field_vessel_submitted_by_ccm_value=All&type=All&name=&ircs=&win=&vid=&imo=&auth_tranship_hs=All&fishing_methods=All) dan 700 kapal terdaftar di SPRFMO (<https://www.sprfmo.org/Web/Vessels/VesselSearchView.aspx>).



Peta Wilayah Pengelolaan WCPFC



Peta Wilayah Pengelolaan SPRFMO



10. BAKAMLA RI, TNI-AL dan Kementerian Kelautan dan Perikanan (KKP) perlu menyusun Strategi dan Rencana Operasi Bersama (SROB) untuk menjaga wilayah yurisdiksi Indonesia terutama yang berbatasan langsung dengan Laut Lepas maupun wilayah yurisdiksi negara lain. Satuan Tugas Pemberantasan Penangkapan Ikan Secara Ilegal perlu diberdayakan untuk memperkuat kerjasama dan koordinasi antar instansi yang memiliki kewenangan penegakan hukum di bidang perikanan.
11. Mengingat luasnya wilayah yang dijaga dan diawasi yang berakibat pada besarnya biaya operasional, serta beban APBN yang saat ini penggunaannya difokuskan untuk penanganan pandemi COVID-19, maka SROB menjadi elemen yang sangat penting. SROB diperlukan agar tugas pengawasan dapat terdistribusi dengan merata dan berkesinambungan dengan didukung berbagai teknologi pengawasan antara lain: citra satelit, radar, pesawat *maritime surveillance*, pemantauan AIS/VMS, dan lain-lain.

Jakarta, 20 September 2020

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No. 000191 - 2020

The Permanent Mission of the Republic of the Philippines to the United Nations presents its compliments to the Secretary-General of the United Nations, and with reference to the People's Republic of China's Note Verbale CML/14/2019 dated 12 December 2019 addressed to the Secretary-General of the United Nations in response to the submission by Malaysia HA 59/19 dated 12 December 2019 to the Commission on the Limits of the Continental Shelf, has the honor to state the position of the Government of the Republic of the Philippines, as follows:

The Government of the Republic of the Philippines considers China's positions as inconsistent with international law, including the United Nations Convention on the Law of the Sea (UNCLOS), which comprehensively allocates maritime rights to States.

On the features in the South China Sea, the Republic of the Philippines has sovereignty and jurisdiction over the Kalayaan Island Group and Bajo de Masinloc.

On the maritime entitlements generated from the features, in the unanimous Award of 12 July 2016 issued by the Tribunal constituted under Annex VII to the UNCLOS in the arbitration case instituted by the Republic of the Philippines against the People's Republic of China (*The South China Sea Arbitration*) it was ruled, *inter alia*, that "none of the high-tide features in the Spratly Islands, in their natural condition, are capable of sustaining human habitation or economic life of their own within the meaning of Article 121 (3) of the Convention;" and "that none of the high tide features in the Spratly Islands generate entitlements to an exclusive economic zone or continental shelf." In its decision, the Tribunal also did not agree with an "assertion that the Spratly Islands should be enclosed within a system of archipelagic or straight baselines, surrounding the high tide features of the group, and accorded an entitlement to maritime zones as a single unit."

The Tribunal conclusively settled the issue of historic rights and maritime entitlements in the South China Sea. The Tribunal ruled that claims to historic rights, or other sovereign rights or jurisdiction that exceed the geographic and substantive limits of maritime entitlements under UNCLOS, are without lawful effect. It further ruled that UNCLOS “superseded any historic rights, or other sovereign rights or jurisdiction, in excess of the limits imposed therein.”

The Permanent Mission of the Republic of the Philippines to the United Nations avails itself of this opportunity to renew to Secretary-General of the United Nations the assurances of its highest consideration.

New York, 06 March 2020

H.E. Mr. Antonio S. Guterres
Secretary-General
United Nations



No. 22/HC-2020

The Permanent Mission of the Socialist Republic of Viet Nam to the United Nations presents its compliments to the Secretary-General of the United Nations and, with reference to Note Verbale No. CML/14/2019 dated 12 December 2019 concerning Malaysia's submission dated 12 December 2019 to the Commission on the Limits of the Continental Shelf and Note Verbale No. CML/11/2020 dated 23 March 2020 addressed to the Secretary-General of the United Nations by the Permanent Mission of the People's Republic of China to the United Nations, has the honour to state the consistent position of the Government of the Socialist Republic of Viet Nam as follows:

Viet Nam protests China's claims as contained in the aforementioned Notes Verbales. These claims seriously violate Viet Nam's sovereignty, sovereign rights and jurisdiction in the East Sea (South China Sea).

Viet Nam has ample historical evidence and legal basis to assert its sovereignty over the Hoang Sa (Paracel) Islands and the Truong Sa (Spratly) Islands in accordance with international law.

Viet Nam affirms that as between Viet Nam and China, the 1982 United Nations Convention on the Law of the Sea (UNCLOS) provides the sole legal basis for and defines in a comprehensive and exhaustive manner the scope of their respective maritime entitlements in the East Sea. Accordingly, the maritime entitlement of each high-tide feature in the Hoang Sa Islands and the Truong Sa Islands shall be determined in accordance with Article 121(3) of UNCLOS; the baselines of the groups of islands in the East Sea, including the Hoang Sa Islands and the Truong Sa Islands, cannot be drawn by joining the outermost points of their respective outermost features; low-tide elevations or submerged features are not capable of appropriation and do not, in and of themselves, generate entitlements to any maritime zones. Viet Nam opposes any maritime claims in the East Sea that exceed the limits provided in UNCLOS, including claims to historic rights; these claims are without lawful effect.

This is the consistent position of Viet Nam which has been enunciated in various documents circulated at the United Nations and submitted to relevant international bodies.

The Permanent Mission has further the honour to request that this Note Verbale be circulated to all States Parties to UNCLOS as well as all Members of the United Nations.

The Permanent Mission of the Socialist Republic of Viet Nam to the United Nations avails itself this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

New York, 30 March 2020

His Excellency Mr. António Guterres
Secretary-General of the United Nations
New York



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Ambassador Kelly Craft
THE REPRESENTATIVE
OF THE
UNITED STATES OF AMERICA
TO THE
UNITED NATIONS

June 1, 2020

His Excellency António Guterres
Secretary-General
United Nations
New York, New York, 10017

Excellency:

I have the honor to convey a letter to you regarding Note Verbale No. CML/14/2019 sent by the Permanent Mission of the People's Republic of China to you on December 12, 2019 in response to the submission by Malaysia to the Commission on the Limits of the Continental Shelf (CLCS) dated December 12, 2019. The United States rejects these maritime claims as inconsistent with international law as reflected in the 1982 Law of the Sea Convention. I request that you circulate the enclosed letter to all UN Member States as a document of the General Assembly under Agenda Item 74(a) and of the Security Council, and that you post it on the web page of the Office of Legal Affairs, Division for Ocean Affairs and the Law of the Sea.

Please accept, Excellency, the renewed assurances of my highest consideration.

Sincerely,

Kelly Craft
Ambassador
United States Representative to the United Nations

Enclosure:

As stated.

His Excellency
António Guterres
Secretary-General of the United Nations,
New York

June 1, 2020

His Excellency António Guterres
Secretary-General
United Nations
New York, New York, 10017

Excellency:

I have honor to refer to the Note Verbale No. CML/14/2019 sent by the Permanent Mission of the People's Republic of China to you on December 12, 2019 in response to the submission by Malaysia to the Commission on the Limits of the Continental Shelf (CLCS) dated December 12, 2019. The present communication concerns only the views expressed by China regarding its maritime claims in the South China Sea and does not comment on Malaysia's submission to the CLCS. As China's note asserts excessive maritime claims that are inconsistent with the international law of the sea as reflected in the 1982 Law of the Sea Convention (hereinafter "the Convention"), and as those claims purport to unlawfully interfere with the rights and freedoms enjoyed by the United States and all other States, the United States considers it essential to reiterate its formal protests of these unlawful assertions and describe the relevant international law of the sea as reflected in the Convention.

In its note, China makes the following assertions:

- China has sovereignty over Nanhai Zhudao, consisting of Dongsha Qundao, Xisha Qundao, Zhongsha Qundao and Nansha Qundao;
- China has internal waters, territorial sea and contiguous zone, based on Nanhai Zhudao;
- China has exclusive economic zone and continental shelf, based on Nanhai Zhudao;
- China has historic rights in the South China Sea.

China made similar assertions immediately following the July 12, 2016 award in *The South China Sea Arbitration (The Republic of the Philippines v. The People's Republic of China)* issued by an arbitral tribunal constituted under Part XV of the Convention (hereinafter "the Tribunal"). The United States objected to those assertions in a demarche and note verbale on December 28, 2016 (enclosed).¹

The United States reiterates its prior objections to China's maritime claims.

¹ The note was subsequently published in the *Digest of United States Practice in International Law (2016)*, at 520-22, available at <https://www.state.gov/wp-content/uploads/2019/05/2016-Digest-United-States.pdf>.

Specifically, the United States objects to China’s claim to “historic rights” in the South China Sea to the extent that claim exceeds the maritime entitlements that China could assert consistent with international law as reflected in the Convention.² The United States notes in this regard that the Tribunal unanimously concluded in its ruling—which is final and binding on China and the Philippines under Article 296 of the Convention—that China’s claim to historic rights is incompatible with the Convention to the extent it exceeds the limits of China’s possible maritime zones as specifically provided for in the Convention.

Additionally, the United States reiterates its prior objections to any claim of internal waters between the dispersed islands China claims in the South China Sea, and to any claim of maritime zones derived from treating island groups in the South China Sea as a collective. The Convention clearly and comprehensively regulates the circumstances under which coastal States can deviate from the normal baseline. Article 5 of the Convention provides, in express and unambiguous terms, that the normal baseline applies “[e]xcept where otherwise provided in this Convention.” No provision of the Convention establishes an applicable exception to the normal baseline that would allow China to enclose within a system of straight or archipelagic baselines the dispersed islands and other features over which China asserts sovereignty in the South China Sea. Moreover, the United States objects to any claimed maritime entitlements based on features that are not islands within the meaning of Article 121(1) of the Convention³ and thus do not generate maritime zones of their own under international law. China may not assert sovereignty over, or claim maritime zones derived from, entirely submerged features like Macclesfield Bank or James Shoal, or features like Mischief Reef and Second Thomas Shoal, which in their natural state are low-tide elevations⁴ that lie beyond a lawfully generated territorial sea entitlement. Such features do not form part of the land territory of a State in a legal sense, meaning that they are not subject to appropriation and cannot generate a territorial sea or other maritime zones under international law.⁵ These positions are consistent with the decision of the Tribunal in *The South China Sea Arbitration*.

In asserting such vast maritime claims in the South China Sea, China purports to restrict the rights and freedoms, including the navigational rights and freedoms, enjoyed by all States. The United States objects to these claims to the extent they exceed the entitlements China could claim under international law as reflected in the Convention. The United States notes that the

² A detailed assessment of China’s South China Sea maritime claims was published in 2014 in the U.S. Department of State publication *Limits in the Seas No. 143—China: Maritime Claims in the South China Sea*, available at <https://www.state.gov/wp-content/uploads/2019/10/LIS-143.pdf>. That publication continues to reflect the views of the United States regarding the unlawfulness of China’s claim of “historic rights” in the South China Sea.

³ An island is defined in Article 121(1) of the Convention as “a naturally formed area of land, surrounded by water, which is above water at high tide.”

⁴ As reflected in Convention Article 13(1), “[a] low-tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide.”

⁵ Thus, with respect to the assertion that “China has sovereignty over Nanhai Zhudao, consisting of Dongsha Qundao, Xisha Qundao, Zhongsha Qundao and Nansha Qundao” the United States observes that while China and other South China Sea claimants assert competing territorial claims to islands situated within the South China Sea, no State could lawfully assert a territorial or sovereignty claim to features that are not islands (within the meaning of Article 121(1) of the Convention) or to maritime areas beyond the territorial sea generated from the normal baseline (or other applicable baseline as reflected in the rules of the Convention) of such individual islands.

governments of the Philippines,⁶ Vietnam,⁷ and Indonesia⁸ have separately conveyed their legal objections to the maritime claims set out in China's Note Verbale No. CML/14/2019. The United States again urges China to conform its maritime claims to international law as reflected in the Convention; to comply with the Tribunal's July 12, 2016 decision; and to cease its provocative activities in the South China Sea.

I request that you circulate the enclosed letter to all UN Member States as a document of the General Assembly under Agenda Item 74(a) and of the Security Council, and that you post it on the web page of the Office of Legal Affairs, Division for Ocean Affairs and the Law of the Sea.

Please accept, Excellency, the renewed assurances of my highest consideration.

Sincerely,

Kelly Craft
Ambassador
United States Representative to the United Nations

⁶ The Philippines Note No. 000191-2020 (March 6, 2020), available at https://www.un.org/Depts/los/clcs_new/submissions_files/mys_12_12_2019/2020_03_06_PHL_NV_UN_001.pdf.

⁷ Vietnam Note No. 22/HC-2020 (March 30, 2020), available at https://www.un.org/Depts/los/clcs_new/submissions_files/mys_12_12_2019/VN20200330_ENG.pdf.

⁸ Indonesia Note No. 126/POL-703/V/20 (May 26, 2020), available at https://www.un.org/Depts/los/clcs_new/submissions_files/mys_12_12_2019/2020_05_26_IDN_NV_UN_001_English.pdf.

United States Note Verbale to People's Republic of China
December 28, 2016

The United States has the honor to refer to the following three documents circulated by China on July 12-13, 2016: the “Statement of the Government of the People’s Republic of China on China’s Territorial Sovereignty and Maritime Rights and Interests in the South China Sea” (hereinafter the “PRC Government Statement”); the “Statement of the Ministry of Foreign Affairs of the People’s Republic of China on the Award of 12 July 2016 of the Arbitral Tribunal in the South China Sea Arbitration Established at the Request of the Republic of the Philippines”; and the paper entitled “China Adheres to the Position of Settling Through Negotiation the Relevant Disputes Between China and the Philippines in the South China Sea” (hereinafter the “PRC White Paper”).

The United States welcomes efforts by China to adjust or clarify its maritime claims in accordance with international law as reflected in the 1982 Law of the Sea Convention, but has a number of concerns with China’s articulation in these three documents of its South China Sea maritime claims. In this regard, the United States takes particular note of paragraph III of the PRC Government Statement, which reads:

“Based on the practice of the Chinese people and the Chinese government in the long course of history and the position consistently upheld by successive Chinese governments, and in accordance with national law and international law, including the United Nations Convention on the Law of the Sea, China has territorial sovereignty and maritime rights and interests in the South China Sea, including, inter alia:

- i. China has sovereignty over Nanhai Zhudao, consisting of Dongsha Qundao, Xisha Qundao, Zhongsha Qundao and Nansha Qundao;
- ii. China has internal waters, territorial sea and contiguous zone, based on Nanhai Zhudao;
- iii. China has exclusive economic zone and continental shelf, based on Nanhai Zhudao;
- iv. China has historic rights in the South China Sea.

The above positions are consistent with relevant international law and practice.”

The United States further notes paragraph 70 of the PRC White Paper, which appears under the heading “[t]he development of the international law of the sea gave rise to the dispute between China and the Philippines over maritime delimitation,” and which reads:

“Based on the practice of the Chinese people and the Chinese government in the long course of history and the position consistently upheld by successive Chinese governments, and pursuant to China’s national law and under international law, including the 1958 *Declaration of the Government of the People’s Republic of China on China’s Territorial Sea*, the 1992 *Law of the People’s Republic of China on the Territorial Sea and the Contiguous Zone*, the 1996 *Decision of the Standing Committee of the National People’s Congress of the People’s Republic of China on the Ratification of the United Nations Convention on the Law of the Sea*, the 1998 *Law of the People’s Republic of China on the Exclusive Economic Zone and the Continental Shelf*, and the

1982 *United Nations Convention on the Law of the Sea*, China has, based on Nanhai Zhudao, internal waters, territorial sea, contiguous zone, exclusive economic zone and continental shelf. In addition, China has historic rights in the South China Sea.”

These statements appear to assert expressly, for the first time, a Chinese maritime claim in the South China Sea that would include “historic rights.”¹ For a number of reasons, including those set forth in the Department of State publication *Limits in the Seas #143—China: Maritime Claims in the South China Sea* (which is appended to this note), the United States objects to such a claim as unlawful, insofar as it would be inconsistent with international law as reflected in the Law of the Sea Convention.

Furthermore, to the extent China’s claim to “internal waters” contemplates waters within straight baselines around any South China Sea islands, the United States objects for reasons including but not limited to those set forth in the Department of State publication *Limits in the Seas #117—Straight Baseline Claim: China* (which is also appended to this note). Consistent with international law as reflected in the Law of the Sea Convention, including Articles 5, 7, 46, and 47, China cannot claim straight or archipelagic baselines in the Paracel Islands, Pratas Island, Macclesfield Bank, Scarborough Reef, or the Spratly Islands. Similarly, China’s claims related to what it calls “Nanhai Zhudao (the South China Sea Islands),” and to “Dongsha Qundao (the Dongsha Islands), Xisha Qundao (the Xisha Islands), Zhongsha Qundao (the Zhongsha Islands) and Nansha Qundao (the Nansha Islands)” would be unlawful to the extent they are intended to include any maritime claim based on grouping multiple islands together as a single unit for purposes of establishing internal waters, territorial sea, contiguous zone, exclusive economic zone and continental shelf or any other maritime claim. Moreover, Macclesfield Bank is an entirely submerged feature; it and other features in the South China Sea that are not “islands” under international law as reflected in Article 121(1) of the Law of the Sea Convention are not subject to appropriation and do not generate any entitlement to a territorial sea, contiguous zone, exclusive economic zone or continental shelf under the international law of the sea.

These objections are without prejudice to the views of the United States concerning other aspects of the three above-referenced documents or concerning other Chinese maritime claims and activities. The United States reiterates that it takes no position on competing sovereignty claims to naturally formed land features in the South China Sea, or on maritime boundary delimitation in the South China Sea. The United States respectfully reiterates its longstanding request, however, that the People’s Republic of China adjust or clarify its maritime claims in the South China Sea to be consistent with the international law of the sea as reflected in the Law of the Sea Convention, in particular its provisions pertaining to baselines and maritime zones. The United States is ready to discuss this and other related issues with China in order to maintain consistent dialogue on law of the sea issues.

¹ As discussed in *Limits in the Seas #143—China: Maritime Claims in the South China Sea*, pages 17-19, previous Chinese assertions, such as those in the *1998 Exclusive Economic Zone and Continental Shelf Act*, have not claimed “historic rights” in the South China Sea.

(unofficial translation)

No. 148/POL-703/VI/20

The Permanent Mission of the Republic of Indonesia to the United Nations presents its compliments to the Secretary General of the United Nations and has the honor to refer to the circular note of the Permanent Mission of the People's Republic of China No. CML/46/2020 dated 2 June 2020 concerning the response of the Government of the People's Republic of China toward Indonesia's note verbale of 26 May 2020.

The Government of the Republic of Indonesia wishes to take this opportunity to reiterate Indonesia's view with respect to the South China Sea as governed by the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982) and subsequently confirmed by the arbitral tribunal award of 12 July 2016, as follows:

1. No feature in the Spratly Islands is entitled to an Exclusive Economic Zone or Continental Shelf of its own, hence no feature therefrom will generate overlapping maritime entitlement with Indonesia's Exclusive Economic Zone or Continental Shelf.
2. No historic rights exist in Indonesia's Exclusive Economic Zone and Continental Shelf vis-à-vis the People's Republic of China. Should there be any historic rights existing prior to the entry into force of UNCLOS 1982, those rights were superseded by the provisions of UNCLOS 1982.

Consequently, the Government of the Republic of Indonesia sees no legal reasoning under international law, particularly UNCLOS 1982, to conduct negotiation on maritime boundaries delimitation with the People's Republic of China or on any other matters pertaining to maritime rights or interests' claims made in contravention to international law.

The Permanent Mission of the Republic of Indonesia to the United Nations has further the honor to request that this note be circulated to all members of the Commission on the Limits of the Continental Shelf (CLCS), all State Parties to the United Nations Convention on the Law of the Sea and all member States of the United Nations.

The Permanent Mission of the Republic of Indonesia to the United Nations avails itself of this opportunity to renew to the Secretary General of the United Nations the assurances of its highest consideration.

New York, 12 June 2020



H.E. Mr. António Guterres

Secretary General

United Nations

CC:

Division on Ocean Affairs and Law of the Sea

(DOALOS)

Office of Legal Affairs – United Nations

New York



N° 20/026

The Permanent Mission of the Commonwealth of Australia to the United Nations presents its compliments to the Secretary-General of the United Nations and, with reference to Note Verbales: No. CML/14/2019 dated 12 December 2019, No. CML/11/2020 dated 23 March 2020, No. CML/42/2020 dated 17 April 2020, No. CML/46/2020 dated 2 June 2020, and No. CML/48/2020 dated 18 June 2020, and the Annex to the letter dated 9 June 2020 from the Permanent Representative of China to the United Nations addressed to the Secretary-General, concerning Malaysia's submission HA 59/19 dated 12 December 2019 to the Commission on the Limits of the Continental Shelf, has the honour to state the position of the Commonwealth of Australia.

The Australian Government rejects any claims by China that are inconsistent with the 1982 United Nations Convention on the Law of the Sea (UNCLOS), in particular, maritime claims that do not adhere to its rules on baselines, maritime zones and classification of features.

Australia rejects China's claim to 'historic rights' or 'maritime rights and interests' as established in the 'long course of historical practice' in the South China Sea. The Tribunal in the 2016 South China Sea Arbitral Award found these claims to be inconsistent with UNCLOS and, to the extent of that inconsistency, invalid.

There is no legal basis for China to draw straight baselines connecting the outermost points of maritime features or 'island groups' in the South China Sea, including around the 'Four Sha' or 'continental' or 'outlying' archipelagos. Australia rejects any claims to internal waters, territorial sea, exclusive economic zone and continental shelf based on such straight baselines. The Australian Government notes that States may draw straight baselines only in certain circumstances. Principally, Article 7(1) of UNCLOS provides that straight baselines may be employed '[i]n localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity'. Furthermore, Article 47(1) of UNCLOS limits the use of archipelagic straight baselines to archipelagic States, as defined in Article 46. In the absence of meeting these requirements, States must draw normal baselines in accordance with Article 5, including in relation to islands.

Australia also rejects China's claims to maritime zones generated by submerged features, or low tide elevations in a manner inconsistent with UNCLOS. Land building activities or other forms of artificial transformation cannot change the classification of a feature under UNCLOS. There is no legal basis for a maritime feature to generate

maritime entitlements beyond those generated under UNCLOS by that feature in its natural state. In this respect, the Australian Government does not accept that artificially transformed features can ever acquire the status of an island under Article 121(1) of UNCLOS. Moreover, Article 60(8) of UNCLOS provides that artificial islands ‘do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf’.

The Australian Government does not accept China’s assertion in its note of 17 April 2020 that its sovereignty claims over the Paracel Islands and the Spratly Islands are ‘widely recognized by the international community’ (noting the protests by Vietnam [No. 22/HC-2020, No. 24/HC-2020 and No. 25/HC-2020] and the Philippines [No. 000192-2020] in this respect). The Australian Government also wishes to express its strong concern in relation to China’s claims of ‘continuously and effectively’ exercising sovereignty over low-tide elevations given that they do not form part of the land territory of a State.

The Australian Government also disputes China’s claim that it is not bound by the Arbitral Award. The rationale put forward by China as an explanation of why the Arbitral Award is not binding on China is not supported by international law. Pursuant to Article 296 and Article 11 of Annex VII of UNCLOS the Tribunal’s decision is final and binding on both parties to the dispute.

The Australian Government encourages all claimants in the South China Sea, including China, to clarify their maritime claims and resolve their differences peacefully, in accordance with international law, particularly UNCLOS.

The Australian Government reserves its position with respect to other aspects of the claims made by China in the three notes identified above.

The Permanent Mission of the Commonwealth of Australia to the United Nations has the honour to request the Secretary-General of the United Nations circulate this note to the State Parties to the United Nations Convention on the Law of the Sea and member States of the United Nations.

The Permanent Mission of the Commonwealth of Australia to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.



NEW YORK
23 July 2020



HA 26/20

The Permanent Mission of Malaysia to the United Nations presents its compliments to the Secretary-General of the United Nations and, with reference to the Note Verbale CML/14/2019 dated 12 December 2019 by the Permanent Mission of the People's Republic of China to the United Nations to the Secretary-General, has the honour to state the position of the Government of Malaysia as follows:

The Malaysia Partial Submission to the Commission on the Limits of the Continental Shelf ("the Commission") for the remaining portion of the continental shelf of Malaysia beyond 200 nautical miles, in the northern part of the South China Sea, from its baselines from which the breadth of its territorial sea is measured ("the Submission") constitutes legitimate undertakings in implementation of the obligations of States Parties to the United Nations Convention on the Law of the Sea 1982 ("UNCLOS 1982") which conforms to the pertinent provisions of UNCLOS 1982 as well as the Rules of Procedure of the Commission.

The Government of Malaysia wishes to state that the Submission is consistent with Malaysia's rights and obligations for the delineation of the outer limits of its continental shelf where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured in accordance with Article 76 (7) of UNCLOS 1982.

With regard to the People's Republic of China's assertion in the second and third paragraphs of its Note Verbale, the Government of Malaysia rejects China's claims to historic rights, or other sovereign rights or jurisdiction, with respect to the maritime areas of the South China Sea encompassed by the relevant part of the 'nine-dash line' as they are contrary to the Convention and without lawful effect to the extent that they exceed the geographic and substantive limits of China's maritime entitlements under the Convention.

In this respect, the Government of Malaysia considers that the People's Republic of China's claim to the maritime features in the South China Sea has no basis under international law. Therefore, the Government of Malaysia rejects in its entirety the content of the Note Verbale of the People's Republic of China.

In view of the foregoing, the Government of Malaysia respectfully requests the Commission to consider the Submission.

The Permanent Mission of Malaysia has further the honour to request that this Note Verbale be circulated to all members of the Commission, all States Parties to UNCLOS 1982 as well as all Members of the United Nations.

The Permanent Mission of Malaysia to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.



H.E. Mr. António Guterres
Secretary-General
United Nations



Note Verbale

UK NV No. 162/20

New York, 16 September 2020

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations presents its compliments to the Secretariat of the United Nations and has the honour to refer to views expressed by the People's Republic of China regarding its maritime claims in the South China Sea in its Notes Verbales No. CML/14/2019 dated 12 December 2019, No. CML/11/2020 dated 23 March 2020, No. CML/42/2020 dated 17 April 2020, No. CML/46/2020 dated 2 June 2020, No. CML/48/2020 dated 18 June 2020, No. CML/54/2020 dated 29 July 2020, and No. CML/56/2020 dated 7 August 2020, as well as the annex to the letter dated 9 June 2020 from the Permanent Representative of China to the United Nations addressed to the Secretary-General, concerning the submission by Malaysia HA 59/19 dated 12 December 2019 to the Commission on the Limits of the Continental Shelf.

1. France, Germany and the United Kingdom, as States Parties to the 1982 United Nations Convention on the Law of the Sea (UNCLOS), wish to reaffirm their legal position as follows:

- France, Germany and the United Kingdom recall the universal and unified character of UNCLOS that sets out the legal framework within which all activities in the oceans and seas must be carried out, and underscore that the integrity of the Convention needs to be maintained, as reaffirmed by the United Nations General Assembly in its annual resolution on oceans and the law of the sea.
- France, Germany and the United Kingdom underline the importance of unhampered exercise of the freedom of the high seas, in particular the freedom of navigation and overflight, and of the right of innocent passage enshrined in UNCLOS, including in the South China Sea.
- France, Germany and the United Kingdom emphasise the specific and exhaustive conditions set forth in the Convention for the application of straight and archipelagic baselines which are defined in Part II and Part IV of UNCLOS. Therefore there is no legal ground for continental States to treat archipelagos or marine features as a whole entity without respecting the relevant provisions in Part II of UNCLOS or by using those in Part IV applicable only to archipelagic States.
- France, Germany and the United Kingdom also emphasise the specific and exhaustive conditions set forth in the Convention for the application of the regime of islands to

naturally formed land features. Land building activities or other forms of artificial transformation cannot change the classification of a feature under UNCLOS.

- France, Germany and the United Kingdom also highlight that claims with regard to the exercise of “historic rights” over the South China Sea waters do not comply with international law and UNCLOS provisions and recall that the arbitral award in the Philippines v. China case dating to 12 July 2016 clearly confirms this point.
- France, Germany and the United Kingdom hold that all maritime claims in the South China Sea should be made and peacefully resolved in accordance with the principles and rules of UNCLOS and the means and procedures for the settlement of disputes provided for in the Convention.

2. This position is reaffirmed without prejudice to competing claims of coastal states over disputed territorial sovereignty to naturally formed land features and to areas of the continental shelf in the South China Sea on which France, Germany and the United Kingdom take no position.

3. This joint Note Verbale reflects our long-standing legal positions and is complementary and without prejudice to any further positions that France, Germany and the United Kingdom have stated in the past, both bilaterally and together with other States Parties to UNCLOS.

4. As States Parties to UNCLOS, France, Germany and the United Kingdom will continue to uphold and assert their rights and freedoms as enshrined in UNCLOS and to contribute to promoting co-operation in the region as set out under the Convention.

The Permanent Mission of the United Kingdom to the United Nations has the honour to request that this Note Verbale be circulated to all States Parties to UNCLOS and all Member States of the United Nations by publication on the DOALOS website.

The Permanent Mission of the United Kingdom to the United Nations avails itself of this opportunity to renew to the Secretariat of the United Nations the assurances of its highest consideration.

16 September 2020

