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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).<sup>1</sup>

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

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<sup>1</sup> 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.<sup>2</sup> 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 Convention<sup>3</sup> 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 elevations<sup>4</sup> 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.<sup>5</sup> 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

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<sup>2</sup> 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.

<sup>3</sup> 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.”

<sup>4</sup> 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.”

<sup>5</sup> 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,<sup>6</sup> Vietnam,<sup>7</sup> and Indonesia<sup>8</sup> 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

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<sup>6</sup> 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](https://www.un.org/Depts/los/clcs_new/submissions_files/mys_12_12_2019/2020_03_06_PHL_NV_UN_001.pdf).

<sup>7</sup> 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](https://www.un.org/Depts/los/clcs_new/submissions_files/mys_12_12_2019/VN20200330_ENG.pdf).

<sup>8</sup> 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](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.”<sup>1</sup> 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.

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<sup>1</sup> 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.