

Viet Nam's Note Verbale No.22/HC-2020: A Commentary

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The note seems to indicate, for the first time, an official Vietnamese position on the legal status of all high-tide features in both the Spratly and Paracel Islands. It implies that all high-tide features in the Spratly Islands, as well as in the Paracel Islands, are rocks that do not generate any entitlement to an EEZ or continental shelf.

On 12 December 2019, Malaysia submitted to the Commission on the Limits of the Continental Shelf (CLCS) information regarding its extended continental shelf in the northern part of the South China Sea.¹ The submission has triggered a note-verbale debate among the South China Sea claimants. After four communications by China² and the Philippines,³ Viet Nam was the last to join the debate with a note verbale issued on 30 March, 2020⁴ to protest China's position.

The Note Verbale No.22/HC-2020 of the Permanent Mission of the Socialist Republic of Viet Nam to the United Nation concisely explains Viet Nam's positions over various matters of the South China Sea dispute. Although the note does not explicitly mention the *South China Sea Arbitration Award*, its main assertions are compatible with the key findings of the Award. Indeed, it objects to China's historic rights in the South China Sea and any other maritime claims that exceed the limits provided in UNCLOS. It also opposes the "Four-shas" doctrine which is an endeavor to claim maritime zones from four groups of islands in the South China Sea as single units. Moreover, the note implies that all high-tide features in the Spratly Islands, as well as in the Paracel Islands, are rocks that do not generate any entitlement to an EEZ or continental shelf.

This paper seeks to provide an analysis on Viet Nam's position presented in the Note Verbale No.22/HC-2020. The first two parts provide a background of the dispute over maritime entitlements of the features in the South China Sea and a summary of recent communications between Malaysia, the Philippines and China. The third part analyzes the key points in Viet Nam's note in comparison

to Viet Nam's previous statements. The last part gives some observatory remarks on the implications of the debate to the dispute in the South China Sea.

Disputes over maritime entitlements of the features in the South China Sea

The South China Sea dispute is not only a dispute over the ownership of maritime features such as islands, reefs, atolls and sand banks... It also contains a dispute over maritime entitlements of those features: how much maritime zone do those (disputed) territories lawfully generate? Maritime entitlements are associated with rights and jurisdiction over natural resources and economic activities, such as fisheries, hydrocarbon exploitation, artificial islands and marine scientific research. Because of their significance to economic growth, the dispute over maritime entitlements has becoming critical over the past decades.

Maritime entitlements of features are provided under relevant articles of the United Nations Convention on the Law of the Sea (UNCLOS), to which all South China Sea claimants are members to. According to UNCLOS, features above water at high tide (high-tide features) can generate maritime zones, while the others cannot.⁵ An "island", which is a naturally formed area of land, surrounded by water and above water at high-tide, has a territorial sea (12 NM), exclusive economic zone (EEZ) and continental shelf (200 NM). However, islands that "cannot sustain human habitation or economic life of their own" are called "rocks". Rocks have neither an exclusive economic zone nor a continental shelf, but they generate an entitlement of 12 nautical miles into the territorial sea.⁶ A low-tide elevation, which is a feature above water at low-tide but under the water at high-tide,⁷ generally has no maritime zone of its own.⁸ Submerged features do not generate maritime entitlements.

The debate on maritime entitlements of features in the South China Sea revolves around two questions. The first is which features, among hundreds of all kinds, are high-tide features that can generate maritime zones? Are those high-tide features "rocks" or fully-entitled islands that can generate entitlements to an exclusive economic zone or continental shelf?

In 2013, the Philippines initiated a case against China before an arbitral tribunal constituted under Annex VII of UNCLOS, known as the *South China Sea*

Arbitration. Among other things, the Philippines requested the Tribunal to declare that no feature in the Spratly Islands can generate entitlements to an exclusive economic zone or a continental shelf. China never participated in the arbitration process, arguing that the essence of the subject matter is territorial sovereignty and maritime delimitation, which was an area that the Tribunal lacked jurisdiction on.⁹

The Tribunal, however, found itself having jurisdiction over the questions submitted by the Philippines. As contended in the Award on Jurisdiction, the Tribunal “is fully conscious of the limits on the claims submitted to it and [...] intends to ensure that its decision neither advances nor detracts from either Party’s claims to land sovereignty in the South China Sea.”¹⁰ “The Tribunal does not see that success on these submissions would have an effect on the Philippines’ sovereignty claims and accepts that the Philippines has initiated these proceedings with the entirely proper objective of narrowing the issues in dispute between the two states.”¹¹ The Tribunal then declared 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”¹² and that “none of the high tide features in the Spratly Islands generate entitlements to an EEZ or continental shelf.”

Aside from maritime entitlements generated from features, China also considers that it has “historic rights” in the South China Sea, in parallel with the sovereign rights and jurisdiction in the EEZ and continental shelf provided by UNCLOS. For instance, in 1998 China promulgated the Law of the Exclusive Economic Zone and Continental shelf of the People’s Republic of China, of which the Article 14 contains its “historic rights” claim. The *South China Sea Arbitration* Tribunal, however, ruled out any historic rights encompassed in the China’s nine-dash-line map, arguing that UNCLOS had “superseded any historic rights or other sovereign rights or jurisdiction in excess of the limits imposed therein”.¹³

China has always protested the arbitration and the Tribunal’s findings. Other claimants in the South China Sea, including Viet Nam and Malaysia, have not made any public statements on the merit of the Tribunal’s final decisions. Malaysia and Viet Nam had observer status during the proceeding; however, they are not indispensable third parties whose absences deprive the Tribunal of

jurisdiction. Note Verbale from the Federation of Malaysia to the Tribunal, No. PRMC 5/2016 (23 June 2016) states that “Malaysia is not bound by the outcome of the arbitral proceedings or any pronouncement on fact or law to be rendered by the Arbitral Tribunal.” The Tribunal agrees with the Malaysia’s statement,¹⁴ arguing that as stated in Article 296 (2) of UNCLOS, the decision has no binding force except between the parties and in respect of that particular dispute. Thus, technically speaking, only China and the Philippines are bound by the decision; other claimants in the South China Sea are not legally bound by the Tribunal’s decision.

Summary of the new note verbale debate

Malaysia’s submission for extended continental shelf in the Northern part of the South China Sea

On 12 December 2019, Malaysia sent a note to the Secretary General of the United Nations informing that Malaysia intended to deposit a submission to CLCS, pursuant to Article 76 of UNCLOS, to claim extended continental shelf beyond 200 NM from their baseline. The communication notes that Malaysia’s submission is “not relating to delimitation of maritime boundaries in the South China Sea between states with opposite or adjacent coasts and their position concerning land and maritime disputes.”¹⁵ The text of Malaysia’s submission, which is pending for consideration by CLCS, can be found on the website of the Division for Ocean Affairs and the Law of the Sea.

China’s position in the Note Verbale CML/14/2019 and the Note Verbale No. CML/11/2020

In response to Malaysia’s submission, China argued that Malaysia seriously infringed upon China’s sovereignty, sovereign rights and jurisdiction in the South China Sea. China requests the CLCS, pursuant to its rules of procedure, to not consider Malaysia’s submission. The Note Verbale No CML/14/2019 dated 12 December 2019 states that “China has sovereignty over Nam Hai 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”. This

assertion could be understood that China treats each group of features in the South China Sea (Pratas [Dongsha], Paracel Islands [Xisha], Macclesfield Bank and Scarborough Shoal [Zhongsha], and Spratly Islands [Nansha]) as single units that can generate maritime entitlements of exclusive economic zones and continental shelves. This is known to scholars as China's "Four Shas" doctrine.¹⁶

China's second Note Verbale No. CML/11/2020 dated 23 March 2020, in response to the Philippines's note of 6 March, focuses on the legal status of the Spratly Islands (Nansha Qundao) and the Scarborough Shoal (Huangyan in Chinese). The note verbale notifies that China "has sovereignty over Nansha Qundao and its adjacent waters and over Huangyan Dao and its adjacent waters" and that China "enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof". It suggests that China claims maritime entitlements to a territorial sea, exclusive economic zone and continental shelf from the Spratly Islands and from Scarborough Shoal.¹⁷ The second note also emphasizes that the *South China Sea Arbitration's* findings are "unjust and unlawful", and China "will never accept any claim or action based on the awards".

The Philippines' Note Verbale No. 191/2020 and No.192/2020

On 6 March 2020, the Philippines sent one communication to Malaysia contending its submission. First of all, the Malaysian submission covers features within the Kalayann Island Group claimed by the Philippines. Moreover, parts of Malaysia's submission overlaps with Philippines' extended continental shelf, over which it intends to make a submission in the future. The Philippines also argue that Malaysian submission is projected from portions of North Borneo where the former has sovereignty.

On the same day, another communication – the Note Verbale No. 191/2020 – was directed to China. The Philippines invoked the *South China Sea Arbitration* to challenge China's positions on maritime entitlements of features in the Spratly Islands and on its historic rights. Moreover, the Philippines also sought to challenge the use of four constituent groups of "Nanhai Zhudao" as single units which can generate maritime entitlements. It pointed out that China's attempts to claim maritime entitlements for the Spratly Islands in a similar fashion was

rejected by the Tribunal already. The Tribunal did not agree that the Spratly's should be enclosed within a system of archipelagic or straight baselines, surrounding the high-tide features of the group, and thus accorded an entitlement to maritime zone as a single unit.¹⁸ For the Philippines, the Tribunal "conclusively settled the issue of historic rights and maritime entitlements in the South China Sea".

Viet Nam's Position in the Note Verbale No. 22/HC-2020

Regarding the submission of Malaysia, on 9 January 2020 the spokesperson of the Ministry of Foreign Affairs of Viet Nam asserted that as a party to UNCLOS, Viet Nam enjoys sovereignty, sovereign rights and jurisdiction over maritime zones claimed in accordance with the Convention. "At the same time, Viet Nam reserves sovereign rights over the continental shelf beyond 200 nautical miles from the baseline as indicated in our submission to CLCS in 2009."¹⁹

On 30 March, Viet Nam issued the Note Verbale No.22/HC-2020 to the United Nation in response to China's positions. Viet Nam started by reiterating its consistent position that the country has ample historical evidence and legal basis to assert its sovereignty over the Hoang Sa (Paracel) and Truong Sa (Spratly) Islands. Viet Nam's positions on maritime entitlements in the South China Sea were declared as well:

"Viet Nam affirms that as between Viet Nam and China, the 1982 UN 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 Truong Sa Islands, cannot be drawn by joining the outermost points of their perspective 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."

At the start, Viet Nam reaffirms that UNCLOS is the only, comprehensive and exhaustive legal instrument to define maritime entitlements in the South China Sea. This is to emphasize that the entailing assertions represent Vietnam's interpretation and application of relevant UNCLOS provisions, which opposes Chinese positions.

First, Viet Nam objects to China's positions on maritime entitlements generated from features in the South China Sea.

For high-tide features, the Note Verbale states:

"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 [...]".

Article 121 of UNCLOS provides two principles to delimit maritime entitlements of "islands". Fundamentally, an island enjoys a territorial sea, a contiguous zone, an exclusive economic zone and a continental shelf (Article 121(2)). Meanwhile, a "rock", which is an island that cannot sustain human habitation or economic life of its own, generates no entitlement to an exclusive economic zone or continental shelf (Article 121(3)).

Viet Nam's Note Verbale explicitly refers to the latter principle. In comparison to Viet Nam's previous notes and statements that usually refer to "international law, including UNCLOS" in general, the Note Verbale No.22/HC-2020 specifies an applicable rule. However, it remains unclear whether the statement implies that *all* high-tide features in the Paracel and Spratly Islands are "rocks" as stipulated in Article 121(3).

Viet Nam arguably suggests that all high-tide features in the Paracel and Spratly Islands generate no entitlement to an EEZ or continental shelf. As defined in the Macmillan English Dictionary, "each" is a determiner used for referring to all the people or things in a group, especially considering every one separately. In addition, the language used, i.e. "shall be determined", "in accordance with" which are legal phrases to express mandatory, indicate that Article 121(3) of UNCLOS is the only viable option in determining the maritime entitlements of those features. Thus, the statement could be read as follows: Maritime

entitlements of every high-tide feature in the Paracel Islands (Hoang Sa/Xisha) and Spratly Islands (TruongSa/Nansha) must follow the rule of “hav[ing] no exclusive economic zone or continental shelf”.²⁰

Besides, the wording of the statement is unlikely to denote exceptions to claim EEZ or continental shelf from high-tide features in the Paracel and Spratly Islands. If Viet Nam had anticipated that certain features were to be fully-entitled islands in the future, Viet Nam could have opted for a less affirmative and more qualified statement such as: “Maritime entitlements of high-tide features in the Hoang Sa Islands and the Truong Sa Islands which cannot sustain human habitation or economic life of their own shall be determined in accordance with Article 121(3)”, or “Maritime entitlements of high-tide features in the Hoang Sa Islands and the Truong Sa Islands shall be determined in accordance with Article 121.” Based on such statements, one could then argue that high-tide features which *can* sustain human habitation or economic life of their own are fully-entitled islands for the purpose of Article 121(2) of UNCLOS. The Note Verbale No.22/HC-2020, however, is drafted in a fairly clear-cut language, which gives an impression that Viet Nam applies Article 121(3) *in an exhaustive manner* to all high-tide features in the Paracel and the Spratly Islands.

With regards to low-tide elevations and submerged features, Viet Nam considers those features not capable of being appropriated thus they do not generate any maritime entitlement of their own. The statement is in line with the decisions of the International Court of Justice and the *South China Sea Arbitration* Tribunal.²¹ China holds an opposite view. For instance, China claims to have sovereignty, sovereign rights and jurisdiction over Macclesfield Bank (Zhongsha) which is a submerged feature. China also occupied Mischief Reef. The *South China Sea Arbitration* Tribunal found that Mischief Reef, as a low-tide elevation, is not capable of appropriation.²²

Second, Viet Nam opposes to maritime entitlements claimed from offshore archipelagos by drawing straight or archipelagic baseline joining the outermost points of the archipelagos. The Note Verbale No. 22/HC-2020 states: “[T]he baselines of the groups of islands in the East Sea, including the Hoang Sa

Islands and Truong Sa Islands, cannot be drawn by joining the outermost points of their perspective outermost features.”

China is of the view that each group of islands in the South China Sea should be enclosed within a system of archipelagic or straight baselines drawn by joining the outermost points of the group and accorded an entitlement to maritime zones. For instance, China’s Note Verbale No. CML/11/2020 and numerous previous instruments indicate that China has maritime entitlements to a territorial sea, EEZ and continental shelf off the Spratly Islands “*as a whole*” (a singular unit).²³ In 1996, China drew a system of baseline joining the outermost features of the Paracel Islands²⁴ which had been taken over from Viet Nam by force in 1974. Meanwhile, the Note Verbale CML/14/2019 indicates that “Nanhai Zhudao” consists of 4 groups of islands forming single units each entitled to maritime zones (the “Four-shas”).

The application of straight or archipelagic baseline in that fashion is incompatible with the Convention. UNCLOS allows archipelagic states which meet certain geographical criteria to draw straight baselines to enclose their constituent islands (Article 46, UNCLOS). However, UNCLOS does not allow other continental states to use straight baselines to lay claims of maritime zones surrounding their offshore archipelagos. In the *South China Sea Arbitration*, the Tribunal rejected maritime entitlements claimed from the Spratly Islands as a whole.²⁵ As explained in the Award, “[t]he Tribunal considers that the grant of permission in Article 7 concerning straight baselines generally, together with the conditional permission in Articles 46 and 47 for certain States to draw archipelagic baselines, excludes the possibility of employing straight baselines in other circumstances, in particular with respect to offshore archipelagos not meeting the criteria for archipelagic baselines.”²⁶

From the outset, the Note Verbale No.22/HC-2020 asserts that UNCLOS is the sole legal basis for defining maritime entitlements. The assertion probably aims to reject a so-called customary international law that allows defining maritime entitlements from offshore archipelagos by drawing straight or archipelagic baselines joining the outermost points of the archipelagos. Recently, a group of Chinese scholars attempted to justify this point. They argued that there was a customary rule of international law apart from UNCLOS allowing *an outlying*

archipelago of the continental state to generate entitlements to a territorial sea, EEZ and continental shelf.²⁷ Therefore, China has maritime rights and entitlements based on Nansha Qundao which is continental State's outlying archipelago.²⁸ However, international law scholars either hold skeptical view on or deny this argument.²⁹

Third, Viet Nam objects to China's historic rights as well as any maritime claim that is not based on UNCLOS. China claims to have historic rights in the South China Sea. However, the *South China Sea Arbitration* Tribunal found that China's historic rights, as embodied in China's laws, statements and the nine-dash-line map, were contrary to the Convention. They are without lawful effect to the extent that they exceed the geographical and substantive limits of China's maritime entitlements under the Convention.³⁰ As observed by the Tribunal, UNCLOS "superseded any historic rights [...] in excess of the limits imposed therein."³¹

The Note Verbale No.22/HC-2020 not only systematically consolidates Viet Nam's previous positions but also makes further clarifications to it. On the one hand, the note is "consistent with Viet Nam's position enunciated in various documents circulated at the United Nations and submitted to relevant international bodies". For instance, regarding China's historic rights, Viet Nam sent a Note Verbale dated 6 August 1998 to the United Nations Secretary-General in which Viet Nam clearly affirmed that it shall not recognize "historical interests" which are not consistent with international law.³² In addition, Viet Nam protested China's establishment of straight baseline in the Paracel Islands and maritime entitlements measured from the baseline in 1996 and in 1998.³³ With respect to the legal status of features in the South China Sea, Viet Nam expressed partial position in its statement to the *South China Sea Arbitration* Tribunal dated 14 December 2014.³⁴ The statement, which was published in full only after the *South China Sea Arbitration*, holds the view that none of the nine features mentioned by the Philippines³⁵ can enjoy their own EEZ and continental shelf or generate maritime entitlements in excess of 12 nautical miles since they are low-tide elevations or rocks under Article 121(3) of the Convention.

On the other hand, as discussed above, the Note Verbale No.22/HC-2020 specified Article 121(3) UNCLOS as an applicable rule to define maritime

entitlements of high-tide features in the Spratly and the Paracel Islands, compared to previous statements that usually referred to international law in general. Meanwhile, Viet Nam's objection to straight baselines enclosing the outermost points of offshore archipelagos is formulated in a more generalized language, indicating objection to any use of those baselines in the South China Sea, whether in the Paracel Islands, the Spratly Islands or any other constituent group of the "Four Shas".

Implications on the South China Sea Dispute

The note verbale debate, which is initiated by China in an attempt to prevent Malaysia's submission to be considered by CLCS, has elucidated positions of parties in the South China Sea dispute. For China, the claims of historic rights in the South China Sea as well as of the EEZ and the continental shelf from the features therein remain intact. Meanwhile, the Note Verbale CML/14/2019 also reveals that China claims the EEZ and continental shelf from "Nanhai Zhudao" (the "Four shas"). Simultaneously, the Philippines' Note Verbale No.192/2020 continues to defend its position against China with words extracted from the *South China Sea Arbitration Award*.

On the other hand, like a key missing piece of a jigsaw puzzle, the Note Verbale No. 22/HC-2020 has elucidated the claims of Viet Nam in the South China Sea against its neighbors. It is observed that the positions of Viet Nam are largely based on the reasonings and findings in the *South China Sea Arbitration Award*. Viet Nam's objection to China's historic rights is likely to be backed by Tribunal's decision to dismiss China's historic rights embodied in the nine-dashed-line. Moreover, in rejecting maritime entitlements generated from the Spratly Islands as a whole, the Tribunal provided detailed explanations on the application of various UNCLOS articles related to baselines. Viet Nam might have applied those reasonings in forming its objection to the "Four shas" claim. With regards to the dispute between Viet Nam and the Philippines, the two countries now share certain common view regarding the legal status of features in the Spratly Islands, even though their disagreement on sovereignty over the Spratly Islands still exists.

Furthermore, as discussed above, Viet Nam implies that all features in the Paracel and Spratly Islands cannot generate entitlements to an EEZ or continental shelf. Thus, Viet Nam probably implies that a certain part of the South China Sea - aside from 12 NM areas surrounding individual disputed high-tide features and from the EEZ and the continental shelf of coastal states lawfully claimed within UNCLOS - is devoted to the High Seas. In the High Seas, all member states exercise and enjoy freedoms under the conditions laid down by the Convention and by other rules of international law. The implication, therefore, is worth the attention of all states inside and outside of the region.

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A shorter version of this article was previously published at the Asia Maritime Transparency Initiative <https://amti.csis.org/vietnams-note-verbale-on-the-south-china-sea/>.

Notes

¹ Note dated 12 December 2019 from the Permanent Mission of Malaysia to the Secretary-General of the United Nations transmitting the submission Division for Ocean Affairs and the Law of the Sea <https://www.un.org/Depts/los/clcs_new/submissions_files/submission_mys_12_12_2019.html>

² Note Verbale CML/14/2019 dated 12 December 2019 from the People's Republic of China to the United Nations Division for Ocean Affairs and the Law of the Sea <https://www.un.org/Depts/los/clcs_new/submissions_files/mys85_2019/CML_14_2019_E.pdf>; Note Verbale CML 11/2020 dated 23 March 2020 from the People's Republic of China to the United Nations Division for Ocean Affairs and the Law of the Sea <https://www.un.org/Depts/los/clcs_new/submissions_files/mys_12_12_2019/China_Philippines_ENG.pdf>

³ Note Verbale No 192-2020 dated 6 March of the Republic of the Philippines to the United Nations Division for Ocean Affairs and the Law of the Sea <https://www.un.org/Depts/los/clcs_new/submissions_files/mys_12_12_2019/2020_03_06_PHL_NV_UN_002.pdf>; Note Verbal No 191-2020 dated 6 March of the Republic of the Philippines to the United Nations Division for Ocean Affairs and the Law of the Sea <https://www.un.org/Depts/los/clcs_new/submissions_files/mys_12_12_2019/2020_03_06_PHL_NV_UN_001.pdf>

⁴ Note Verbal No.22/HC-2020 dated 30 March 2010 of the Socialist Republic of Viet Nam to the United Nations Division for Ocean Affairs and the Law of the Sea <https://www.un.org/Depts/los/clcs_new/submissions_files/mys_12_12_2019/VN20200330_ENG.pdf>

⁵ S. Murphy, *International Law Relating to Islands*, (Brill/Nijhoff, 2017) 47

⁶ Article 121 UNCLOS

⁷ Article 13(1) UNCLOS

⁸ Article 13(2). However, where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.

⁹ Ministry of Foreign Affairs of China, *Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines* (7 December 2014) <https://www.fmprc.gov.cn/nanhai/eng/snhwtlcwj_1/t1368895.htm> [4]

¹⁰ *South China Sea Arbitration (Jurisdiction and Admissibility)* [153]

¹¹ *Ibid*

¹² *The South China Sea Arbitration (Philippines v China) (Merits)* (UNCLOS Arbitral Tribunal, 12 July 2016) [626]

¹³ *Ibid* [278]

¹⁴ *The South China Sea Arbitration (Philippines v China) (Merits)* (UNCLOS Arbitral Tribunal, 12 July 2016) [626]

¹⁵ *Note dated 12 December 2019 from the Permanent Mission of Malaysia to the Secretary-General of the United Nations transmitting the submission* Division for Ocean Affairs and the Law of the Sea

<https://www.un.org/Depts/los/clcs_new/submissions_files/submission_mys_12_12_2019.html>

¹⁶ Julian Ku and Chris Mirasola, *The South China Sea and China's "Four Sha" Claim: New Legal Theory, Same Bad Argument* Lawfare <<https://www.lawfareblog.com/south-china-sea-and-chinas-four-sha-claim-new-legal-theory-same-bad-argument>>; *ibid*; Lucio Blanco Pitlo III, *Drivers and risks of China's pressure on Viet Nam* AMTI CSIS <<https://amti.csis.org/drivers-and-risks-of-chinas-pressure-on-vietnam/>>; Richard Javad Heydarian, *China's 'New' Map Aims to Extend South China Sea Claims* National Interests

<<https://nationalinterest.org/blog/the-buzz/chinas-new-map-aims-extend-south-china-sea-claims-25628>>; >.

¹⁷ For China's position on the legal status of Scarborough Shoal, see discussion in *The South China Sea Arbitration (Philippines v China) (Merits)* (UNCLOS Arbitral Tribunal, 12 July 2016) [462]. The Tribunal analyzes the *Chinese Foreign Ministry Statement Regarding Huangyandao (22 May 1997)* to conclude that China claims the Scarborough Shoal possesses an entitlement to an EEZ and continental shelf.

¹⁸ *The Not Verbale No 191-2020 dated 6 March of the Republic of the Philippines* cites paragraph 573 of *The South China Sea Arbitration (Philippines v China) (Merits)* (UNCLOS Arbitral Tribunal, 12 July 2016)

¹⁹ Ministry of Foreign Affairs of Viet Nam, *The 1st Regular Press Conference (9 January 2020)*

<http://www.mofa.gov.vn/vi/tt_baochi/pbnfn/ns200109180343>.

²⁰ Article 121(3) "Rocks which cannot sustain human habitation or economic life have no exclusive economic zone and continental shelf."

²¹ *The Territorial and Maritime Dispute (Nicaragua v. Colombia) (Judgment)* ICJ Reports 2012, p. 624 [26].; *The South China Sea Arbitration (Philippines v China) (Merits)* (UNCLOS Arbitral Tribunal, 12 July 2016) [309]

²² *The South China Sea Arbitration (Philippines v China) (Merits)* (UNCLOS Arbitral Tribunal, 12 July 2016) [1043]

²³ Ministry of Foreign Affairs, People's Republic of China, *Foreign Ministry Spokesperson Hua Chunying's Remarks on Relevant Issue about Taiping Dao* (3 June 2016)

<www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1369189.shtml> "China has, based on the Nansha Islands as a whole, territorial sea, exclusive economic zone and continental shelf". See also *Note Verbale from the People's Republic of China to the Secretary -General of the United Nations, No. CML/8/2011 (14 April 2011)*. In its Position Paper of 7 December 2014, China objected that "in respect of the Nansha Islands, the Philippines selects only a few features and requests the Arbitral Tribunal to decide on their maritime entitlements. This is in essence an attempt at denying China's sovereignty over the Nansha Islands as a whole." For discussion, see *The South China Sea Arbitration (Philippines v China) (Merits)* (UNCLOS Arbitral Tribunal, 12 July 2016) [571] - [576]

²⁴ For discussion, see generally United States Department of State, *Limits in the Sea No 117 Straight baselines claim: China* <<https://www.state.gov/wp-content/uploads/2020/01/LIS-117.pdf>>

²⁵ *The South China Sea Arbitration (Philippines v China) (Merits)* (UNCLOS Arbitral Tribunal, 12 July 2016) [573]

²⁶ *Ibid*.

²⁷ See Chinese Journal of International Law, Volume 17, Issue 2, June 2018 (207–748), para 557-613. For opposite view, see J. Ashley Roach, 'Offshore Archipelagos Enclosed by Straight Baselines: An Excessive Claim?' (2018) 49(2) *Ocean Development & International Law*

²⁸ For example, see also Chinese Society of International Law, *Letter to President of Vietnam Society of International Law* CSIL <<http://www.csil.cn/News/Detail.aspx?Aid=284>>

²⁹ Douglas Guilfoyle, *A new twist in the South China Sea Arbitration: The Chinese Society of International Law's Critical Study* (25 May 2018) Blog of the European Journal of International Law <<https://www.ejiltalk.org/a-new-twist-in-the-south-china-sea-arbitration-the-chinese-society-of-international-laws-critical-study/>>; Roach, above n 27; Nguyen Thi Lan Anh, 'Critical Study on the South China Sea Arbitration: A Novel Development in Legal Studies or a Fallacy in the Name of Science' (2018) 39 (December 2018) *International Studies*

³⁰ *The South China Sea Arbitration (Philippines v China) (Merits)* (UNCLOS Arbitral Tribunal, 12 July 2016) [278]

³¹ Ibid

³² Ministry of Foreign Affairs of Viet Nam, *Note Verbale No. 771/HC-98 dated 6 August 1998 of the Permanent Mission of the Socialist Republic of Viet Nam to the United Nations addressed to the United Nations Secretary-General*

³³ Ibid

³⁴ Ministry of Foreign Affairs of Viet Nam, *Statement of the Ministry of Foreign Affairs of the Socialist Republic of Viet Nam Transmitted to the Arbitral Tribunal in the Proceedings between the Republic of the Philippines and the People's Republic of China* The Philippines' Supplemental Documents in the South China Sea Arbitration – Volume II (Annexes 608-709) <<https://files.pca-cpa.org/pcadocs/The%20Philippines%27%20Supplemental%20Written%20Submission%20-%20Volume%20VIII%20%28Annexes%20466-499%29.pdf>>

³⁵ Those features are Cuarteron Reef, Fiery Cross Reef, the Gaven Reefs, Johnson Reef, McKennan Reef, (including Hughes Reef) Mischief Reef, Scarborough Shoal, Second Thomas Shoal, and Subi Reef.