



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