



General Assembly

Distr.: General
6 December 2024

Original: English

Seventy-ninth session

Agenda item 75 (a)

Oceans and the law of the sea: oceans and the law of the sea

Letter dated 5 December 2024 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General

I have the honour to refer to notes verbales dated 18 September 2020, 16 August 2021 and 25 July 2022, sent to you by the Permanent Mission of the People's Republic of China in connection with the submission by Malaysia to the Commission on the Limits of the Continental Shelf dated 12 December 2019. I also have the honour to refer to the letter dated 1 June 2020 addressed to you by the Permanent Representative of the United States of America ([A/74/874-S/2020/483](#)). As with the letter dated 1 June 2020, the present communication concerns only the views expressed by the People's Republic of China regarding its maritime claims in the South China Sea and does not comment on Malaysia's submission to the Commission.

The United States incorporates by reference the points expressed in its letter of 1 June 2020 and wishes to supplement that communication to address additional statements made by the People's Republic of China in its above-mentioned notes verbales, which were communicated since 1 June 2020. These subsequent statements by the People's Republic of China include the following, which refer to the 1982 United Nations Convention on the Law of the Sea (UNCLOS):

The regime of continental States' outlying archipelagos is not regulated by UNCLOS, and the rules of general international law should continue to be applied in this field. There is sufficient international practice serving as a basis for this regime.

and

... China attaches great importance to the provisions and applicable conditions set force in UNCLOS for the drawing of territorial sea baselines. At the same time, China believes that the long-established practice in international law related to continental States' outlying archipelagos shall be respected. The drawing of territorial sea baselines by China on relevant islands and reefs in the South China Sea conforms to UNCLOS and general international law.

The United States Department of State has published a 44-page legal and technical study, *Limits in the Seas No. 150*, which examines the expansive maritime claims of the People's Republic of China in the South China Sea.¹ *Limits in the Seas*

¹ Available at <https://www.state.gov/limits-in-the-seas/>.



No. 150, among other things, examines the People's Republic of China's assertion that there is a basis under "general international law" (more frequently referred to as "customary international law") for it to draw baselines enclosing four People's Republic of China-designated island groups that it describes as "outlying archipelagos", including the assertion that "[t]he regime of continental States' outlying archipelagos is not regulated by UNCLOS", that "the rules of general international law should continue to be applied in this field" and that "[t]here is sufficient international practice serving as a basis for this regime".

As explained in *Limits in the Seas No. 150*:

This argument disregards the comprehensive scope of the Convention's baseline provisions. As discussed [earlier in this study], baselines are in fact "regulated by th[e] Convention," which provides rules that cover all geographic circumstances, with Article 5 providing that the normal baseline is the low-water line along the coast "[e]xcept where otherwise provided in this Convention." (emphasis added).

Even if one were to assume, despite the clear language in the Convention, that the drawing of baselines pertaining to continental States' outlying archipelagos is not regulated by the Convention and is instead governed by general international law (specifically, customary international law), the existence of such rules would need to be demonstrated. To demonstrate the existence of a rule of customary international law, there must be evidence of a general and consistent practice of States; the practice must be "settled practice," as described by the International Court of Justice. Moreover, the relevant practice must have "occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved."

The PRC has not demonstrated that any such rules exist.²

To more fully examine this issue, including the practice of States that have drawn baselines with respect to outlying groups of islands, *Limits in the Seas No. 150* includes a 94-page State Practice Supplement.

After examining the relevant practice of States, the State Practice Supplement to *Limits in the Seas No. 150* concluded:

In summary, there is no general and consistent practice of continental States drawing straight baselines around their outlying archipelagos as a whole. Practice relating to outlying archipelagos is nuanced and varied, and the practice that could be considered supportive of the PRC position is limited to only a few examples worldwide. . . . [T]he practice observed also evinces efforts by coastal States to implement the baseline provisions in the Convention rather than create alternative rules under customary international law.³

As further explained in the State Practice Supplement:

opinio juris compiled in the Annex to this document and summarized above [comprehensively examining the baseline practice and legal reasoning of States with respect to their baselines pertaining to more than 80 outlying island groups] demonstrates that there is no customary international law that provides an

² United States Department of State, *Limits in the Seas No. 150, People's Republic of China: Maritime Claims in the South China Sea* (2022), pp. 22 and 23. Available at <https://www.state.gov/limits-in-the-seas/>.

³ United States Department of State, *Limits in the Seas No. 150, People's Republic of China: Maritime Claims in the South China Sea, State Practice Supplement* (2022), p. 5. Available at <https://www.state.gov/limits-in-the-seas/>.

alternative legal basis for non-archipelagic States to establish straight baselines around outlying island groups.⁴

In asserting its vast maritime claims in the South China Sea, the People's Republic of China purports to restrict the rights and freedoms, including the navigational rights and freedoms, enjoyed by all States. The United States reiterates its objections to the People's Republic of China's maritime claims in the South China Sea to the extent they exceed the entitlements the People's Republic of China could lawfully claim under international law, as reflected in the Convention.

The United States again urges the People's Republic of China to conform its maritime claims to international law as reflected in the Convention.

I request that you circulate the present letter as a document of the General Assembly under agenda item 75 (a).

(Signed) Linda **Thomas-Greenfield**

Ambassador
Representative of the United States
to the United Nations

⁴ Ibid., p. 10.