

CML/32/2021

The Permanent Mission of the People's Republic of China to the United Nations presents its compliments to the Secretary-General of the United Nations and, with regard to the Note Verbale No. 08/21/02 dated 3 August 2021 addressed to the Secretary-General of the United Nations by the Permanent Mission of New Zealand to the United Nations, has the honor to reiterate China's positions as follows:

I. China's territorial sovereignty and maritime rights and interests in the South China Sea are established in the long course of history. They have been upheld consistently by successive Chinese Governments and are consistent with international law, including the Charter of the United Nations and the United Nations Convention on the Law of the Sea (UNCLOS). The essence of the South China Sea arbitration is territorial sovereignty and maritime delimitation. The Arbitral Tribunal in the South China Sea arbitration violates the principle of State consent, exercises jurisdiction *ultra vires*, and obviously errs in ascertaining facts and applying the law. Its awards are illegal, and null and void. China neither accepts nor recognizes the awards. This position is clear and consistent. China's territorial sovereignty and maritime rights and interests in the South China Sea shall not be prejudiced under any circumstances by the aforementioned awards.

II. Being a State Party to UNCLOS, China complies with and applies UNCLOS with a rigorous and responsible attitude. It must be pointed out that UNCLOS is not the whole of the maritime order. The States Parties to UNCLOS affirm that "matters not regulated by this Convention continue to be governed by the rules and principles of general international law". At present, an international instrument is under negotiation on marine biological diversity of areas beyond

national jurisdiction. This also proves that UNCLOS cannot solve all maritime issues.

III. In accordance with international law, all States enjoy the freedoms of navigation and overflight on the high seas and in the exclusive economic zone of other States, and can exercise the right of innocent passage in the territorial sea of other States. However, UNCLOS clearly stipulates that in exercising their rights in the exclusive economic zone, States “shall have due regard to the rights and duties of the coastal State”, and in exercising the right of innocent passage, the passage shall be “not prejudicial to the peace, good order or security of the coastal State”. Foreign warships entering the territorial sea of a coastal State shall respect the relevant laws of the coastal State. It is consistent with international law, including UNCLOS, and international practice. China firmly opposes any country infringing on the sovereignty or undermining the security of a coastal State under the pretext of “freedom of navigation” or “innocent passage”.

IV. UNCLOS does not exclude a coastal State’s historic rights that have been established in the long-term practice. Relevant international judicial cases have recognized the historic rights. The complete denial of the historic rights by the South China Sea arbitration awards seriously distorts international law including UNCLOS. This is extremely wrong.

V. 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 of this regime. China has internal waters, territorial sea, contiguous zone, exclusive economic zone and continental shelf, based on Nanhai Zhudao. It is consistent with international law, including UNCLOS, and international practice.

In view of the above, China does not accept the positions of New Zealand in its Note Verbale as mentioned above.

The Permanent Mission of the People's Republic of China to the United Nations has the honor to request the Secretary-General of the United Nations to circulate this Note Verbale to all States Parties to UNCLOS and all Members of the United Nations.

The Permanent Mission of the People's Republic of China 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, 16 August 2021

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