

Reply to the Open Letter by President of the
Viet Nam Society of International Law

19 September 2019

Distinguished President Nguyen Ba Son,

I took note of your Open Letter to me published on 24 August 2019. I am willing to engage in academic exchange of views with you on issues of international law. As a scholar of international law, I would like to share with you the following views with respect to your Open Letter:

1. The description regarding the Nansha Qundao (Nansha Islands) issue contained in your Open Letter is incorrect and partial, from which no objective conclusions can emerge about how to settle the issue.

China has sovereignty over Nansha Qundao. China has internal waters, territorial sea, contiguous zone, exclusive economic zone and continental shelf based on Nansha Qundao. Furthermore, China has historic rights in the South China Sea. The above maritime rights and interests enjoyed by China in the South China Sea have solid grounds in international law, and have been

reaffirmed by China's legal instruments, including the Declaration of the Government of the People's Republic of China on the Territorial Sea of 1958, the Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone of 1992, the Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf of 1998, and 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 issued on 12 July 2016.

The United Nations Convention on the Law of the Sea (UNCLOS) is not the whole of the international law of the sea. It is the UNCLOS itself that expressly provides that, matters not regulated by it continue to be governed by the rules and principles of general international law. The matter of historic rights and the regime of continental States' outlying archipelagos are such issues not regulated by the UNCLOS and should continue to be governed by general international law. China's rights and interests in the South China Sea have been established based on the practice of the Chinese people and the Chinese government in the long course of history, and are solidly grounded in history and law. China's Nansha Qundao meets the criteria for a continental State's outlying archipelagos under general international law, and has been historically regarded as such. China has territorial sovereignty over, and maritime rights

and entitlements based on, Nansha Qundao as a whole.

China's vessel Haiyang Dizhi 8 has been operating in waters under China's jurisdiction, fully in line with international law including the UNCLOS. Rather, it is Viet Nam who has disregarded China's opposition and has unilaterally started activities of oil and gas exploratory drilling in waters under China's jurisdiction in the South China Sea, infringing China's sovereign rights in the South China Sea, deviating from the relevant bilateral agreement between China and Viet Nam, and violating Paragraph 5 of the Declaration on the Conduct of Parties in the South China Sea of 2002.

2. In your Open Letter, you stated that you would not touch upon the territorial sovereignty issue. By so doing, you actually circumvented the very essence of the Nansha issue between China and Viet Nam and the prerequisite for the settlement of that issue. In this regard, it is necessary to reiterate an important principle of international law, i.e., "the land dominates the sea" principle. Territorial sovereignty is the basis of a particular coastal State's maritime rights. Without first determining the relevant territorial sovereignty, it will be impossible to clearly identify the maritime rights enjoyed by a related coastal State. Since 1970s, Viet Nam has intermittently and illegally occupied some islands and reefs of China's Nansha Qundao, giving rise to the territorial

dispute between China and Viet Nam. In addition, with the development of the international law of the sea, the issue of maritime delimitation also arose between China and Viet Nam. The core of the Nansha issue between China and Viet Nam is a territorial issue. This issue should not be skirted; instead, it should be dealt with in the first place.

You also cited the Award in the so-called South China Sea Arbitration. Here, I feel obligated to reiterate another important principle of international law, i.e., the principle of consent, which is a direct manifestation of the principle of sovereignty in dispute settlement. To exercise jurisdiction over an inter-State dispute, an international judicial or arbitral body must have received the prior consent of the parties to the dispute. The dispute settlement regime contained in the UNCLOS, Annex VII arbitration procedures included, is subject to the principle of consent in the same way. If an international judicial or arbitral body oversteps the scope of the consent of States, or even obstinately exercises jurisdiction, in disregard of the objection of a party, over matters to which that State has not given consent, it will trample the principle of sovereignty and its decisions are null and void. The dispute will be aggravated instead of being settled. The South China Sea Arbitration is such a typical bad example. The Chinese Government has on many occasions explicitly reiterated its position of non-acceptance of and non-participation in the South China Sea

Arbitration and its position of non-acceptance and non-recognition of the illegal Awards. From the legal perspective, the Arbitral Tribunal has no jurisdiction in rendering the Awards. Furthermore, in the Awards, the Tribunal's findings of fact are one-sided, its legal analyses capricious, and its reasoning arbitrary. For many conclusions, the tribunal even fails to give any reason. In order to put the record straight and to promote a proper understanding of the matter, the Chinese Society of International Law published *The South China Sea Arbitration Awards: A Critical Study* in May 2018, which comprehensively lays bare the serious errors in the Awards and demonstrates its illegality and invalidity. The *Critical Study* (Chinese and English versions) is available on the website of the Chinese Society of International Law and in the *Chinese Journal of International Law* (2018, Issue 2), to which you may refer.

3. The issue of maritime dispute between China and Viet Nam is very complex. The proper handling of this issue demands not only adherence to international law but also, more importantly, political wisdom and patience. The joint efforts of China and Viet Nam have built up good precedents and a reservoir of rich experience in settling disputes through bilateral negotiations and consultations. In December 2000, China and Viet Nam signed the Agreement between the People's Republic of China and the Socialist Republic of Viet Nam on the Delimitation of the Territorial Seas, Exclusive Economic

Zones and Continental Shelves in Beibu Bay. As of 2008, China and Viet Nam resolved by bilateral negotiation all the land boundary issues. In fact, settling disputes on territorial sovereignty and maritime delimitation through bilateral negotiation is not only the consistent position of the Chinese Government, but also the understanding of most States, including Viet Nam. The Agreement on the Basic Principles Guiding the Settlement of Maritime Issues between the People's Republic of China and the Socialist Republic of Viet Nam expressly provides that, for maritime disputes between China and Viet Nam, the two sides shall settle them through friendly negotiations and consultations. This point is also fully reflected in the Declaration on the Conduct of Parties in the South China Sea.

The ocean is vast and inclusive. It should be a link connecting all parties, rather than an obstacle separating each other. We are glad to see that the first reading of the draft text of a Code of Conduct in the South China Sea has been completed; this shows that the pursuit of peace and stability is the common aspiration of the coastal States of the South China Sea. Talks and debates between the Chinese and Vietnamese societies of international law, both academic bodies studying international law, do not represent the respective governments, but we could enhance our exchanges on the South China Sea issue, in particular, the provisional arrangements pending maritime delimitation, joint development in the South China Sea as well as other forms

of maritime cooperation, in order to contribute to peace and stability in the South China Sea and the friendly relations between China and Viet Nam. To this end, I am pleased to invite you and other members of the Viet Nam Society of International Law to visit China at a time convenient for both sides.



President of the Chinese
Society of International Law