
The CLCS and South China Sea Continental Shelf Disputes: Legal Strategies, Practical Challenges, and China's Response*

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Five countries have made submissions for an extended continental shelf in the South China Sea (SCS) to the Commission on the Limits of the Continental Shelf (CLCS), fuelling tensions and disputes with China. As the CLCS' decision to consider and qualify these submissions may have a far-reaching impact on the settlement of territorial and maritime disputes in the region, comprehensive understanding and analysis of the CLCS' strategies in managing "submissions involving land or maritime disputes" in practice is needed. China's notes verbales contesting the submissions may not stop the CLCS from considering these submissions. Therefore, to ensure that its interests are respected, China should amend its notes verbales by: (1) identifying the 'dispute'; (2) clarifying its status as party to the 'dispute'; (3) expressing "not consent" and requesting the CLCS "not to consider or qualify" any of the submissions; and (4) clarifying the legal scope of waters in the SCS.

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I. Introduction

Five submissions for expanding the limits of the continental shelf beyond 200 nm (extended continental shelf) in the South China Sea (SCS), pursuant to Article 76(8) of the United Nations Convention on the Law of the Sea (UNCLOS), have been made to the Commission on the Limits of the Continental Shelf (CLCS) by coastal countries. In chronological order, these submissions include, a joint submission by Malaysia and Vietnam in the southern part of the SCS on May 6, 2009; Vietnam's submission in the North Area on May 7, 2009; Malaysia's submission on December 12, 2019; the Philippines' submission concerning the West Palawan Region on June 14, 2024; and Vietnam's submission concerning the Central Area on July 17, 2024.¹ Responding to these actions, China promptly filed objections to each of these submissions, triggering diplomatic reactions, including 28 formal exchanges of diplomatic notes among regional and extra-regional states. Consequently, the CLCS decided to “defer further consideration” of the first three submissions until such time that the submission was “next in line for consideration, as queued in the order in which it had been received.”²

With the end date approaching for the consideration of the first three submissions by the CLCS and the likely consideration of the other two submissions in the post-South China Sea Arbitration era, it is a timely and necessary initiative

1 Division for Ocean Affairs and the Law of the Sea [UN DOALOS], Joint Submission by Malaysia and Viet Nam (No.33), https://www.un.org/depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm; Submission by Viet Nam (No.37), https://www.un.org/depts/los/clcs_new/submissions_files/submission_vnm_37_2009.htm; Submission by Malaysia (No.85), https://www.un.org/depts/los/clcs_new/submissions_files/submission_mys_12_12_2019.html; Submission by Philippines (No.94), https://www.un.org/depts/los/clcs_new/submissions_files/submission_ph11_2024.htm; Submission by Viet Nam (No.95), https://www.un.org/depts/los/clcs_new/submissions_files/submission_vnm_95_2024.htm.

2 Commission on the Limits of the Continental Shelf (CLCS), Statement by the Chairman of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission, UNCLOS Doc. CLCS/64 (Oct. 1, 2009) (CLCS/64), at 20 & 22, <https://docs.un.org/en/clcs/64>; CLCS, Progress of work in the Commission on the Limits of the Continental Shelf: Statement by the Chair, UNCLOS Doc. CLCS/55/2 (Oct. 4, 2022), at 10, <https://docs.un.org/en/CLCS/55/2>.

to summarise the rules developed by the CLCS and evaluate whether China's objections are sufficient to prevent the CLCS from considering and qualifying submissions that are subject to dispute. The situation also calls for providing references to China to deal effectively with such submissions in the future.

This research aims to clarify how the CLCS interprets and applies its procedural rules when addressing submissions involving maritime disputes, and to assess the legal and practical implications of these practices for claimant States in the South China Sea. This paper is divided into six parts including Introduction and Conclusion. Part two will address current legal and theoretical dilemmas in handling submissions involving 'disputes' by the CLCS. Part three will examine the CLCS's practices in dealing with disputed submissions under the auspices of Paragraph 5(a), Annex I of the Rules of Procedure (RoP-Annex I) and assesses the rules developed by the CLCS. Part four will discuss China's responses to submissions on the extended continental shelf in the SCS and provides tentative proposals for improving China's notes verbales (NVs). Part five will explore the limitations of the CLCS in managing maritime and sovereignty conflicts and proposes recommendations for better ocean governance in the future.

II. Theoretical Dilemmas in the CLCS's Dealing of Disputed Submissions

As the CLCS consists solely of technical experts (mainly in geology, geophysics, hydrography, oceanography, and related earth sciences) without authority to resolve legal disputes, Rule 46 and Annex I to the CLCS Rules of Procedure provide guidance for handling submissions involving states with opposite/adjacent coasts or unresolved territorial or maritime disputes. Paragraph 5(a) of RoP-Annex I mentions that the CLCS shall not consider the submissions from states in dispute unless all parties have given their consent. A prerequisite for considering submission is thus to determine whether a dispute exists. The invocation of Paragraph 5(a) creates difficulties for the CLCS in carrying out its mandate,³ as it is unclear whether the invocation will lead to deferral decision by

3 CLCS, Rules of Procedure of the Commission on the Limits of the Continental Shelf, UNCLOS Doc. CLCS/40/Rev.1 (Apr. 17, 2008), at annex I, 5(a), <https://documents.un.org/doc/undoc/gen/n08/309/23/pdf/n0830923.pdf>.

the CLCS.⁴ Despite its recognised importance, ambiguities in the interpretation and application of Paragraph 5(a) have led to practice-related controversies,⁵ raising interrelated questions: What does qualify as a dispute?; Who may raise a dispute?; Who does determine the existence of a dispute?; and How is prior consent properly provided?

A. Who Determines the Existence of a Dispute?

When a submission involves disputes, the CLCS must suspend consideration under Paragraph 5(a) of RoP-Annex I.⁶ These disputes are categorised into three types: (1) land disputes concerning territorial sovereignty over areas with the potential for natural prolongation of the continental shelf;⁷ (2) maritime delimitation disputes, which include disputes among adjacent or opposite states⁸ and objections from the international community regarding excessive claims on or encroachment of the area;⁹ and (3) maritime entitlement disputes, which question whether reefs or rocks can generate exclusive economic zones (EEZs) or continental shelves,¹⁰ as illustrated by the Oki-no-Tori submission by Japan in 2008.¹¹

In practice, agreements on the existence of disputes are rare.¹² Based on the disagreement of states, the CLCS reviews NVs to assess whether disputes exist. The *Bay of Bengal Case* (Bangladesh/Myanmar) demonstrates the complexity of the process to determine the existence of disputes. In this case, the International Tribunal for the Law of the Sea (ITLOS) proceeded ahead of recommendations

4 Michael Sheng-Ti Gau, *Third Party Intervention in the Commission on the Limits of the Continental Shelf Regarding a Submission Involving a Dispute*, 40(1) OCEAN DEV. & INT'L L. 61 (2009).

5 Ted McDorman, *The Role of the Commission on the Limits of the Continental Shelf: A Technical Body in a Political World*, 17(3) INT'L J. MARINE & COASTAL L. 319 (2002).

6 Yumiko Iuchi & Asano Usui, *The Functions and Work of the Commission on the Limits of the Continental Shelf*, REV. ISLAND STUD. (2013), <https://www.spf.org/islandstudies/transfer/readings/docs/b00005r.pdf>.

7 SIGNE BUSCH, ESTABLISHING CONTINENTAL SHELF LIMITS BEYOND 200 NAUTICAL MILES BY THE COASTAL STATES: A RIGHT OF INVOLVEMENT FOR OTHER STATES? 162 (2016).

8 LIAO XUOXIA, THE CONTINENTAL SHELF DELIMITATION BEYOND 200 NAUTICAL MILES: TOWARDS A COMMON APPROACH TO MARITIME BOUNDARY-MAKING 159 (2021).

9 David Colson, *The Delimitation of the Outer Continental Shelf between Neighboring States*, 97(1) AM. J. INT'L L. 91 (2003).

10 Edwin Egede, *Submission of Brazil and Article 76 of the Law of the Sea Convention 1982*, 21(1) INT'L J. MARINE & COASTAL L. 39 (2006).

11 UN DOALOS, Submission by Japan (No. 13), https://www.un.org/depts/los/clcs_new/submissions_files/submission_jpn.htm.

12 Huu Duy Minh Tran, *The Approach of the Commission on the Limits of the Continental Shelf to Submissions Involving Unresolved Disputes: Should It Be Modified?*, 23(1) ASIAN J. INT'L L. 124 (2023).

made by the CLCS, suggesting an overlap, yet affirming the CLCS's primary role in resolving the dispute.¹³ This highlights the fragile balance between the scientific mandate of the CLCS and judicial determination in extended continental shelf submissions.

B. Who Can Raise a “Dispute”?

In disputes over submissions for an extended continental shelf, several actors, including submitting states, neighbouring coastal states, and occasionally extra-regional states, have submitted communications to the CLCS.¹⁴ When a submitting state acknowledges the existence of a dispute, the CLCS defers the consideration of the submission, which can be seen in the cases of Australia and Norway,¹⁵ whose submissions involved areas adjacent to Antarctica. In both cases, the CLCS decided “not to consider or qualify” the submissions, since Article 4 of the Antarctic Treaty freezes all territorial sovereignty claims in the Antarctic region. Similarly, when neighbouring states highlight overlapping delimitation claims through NVs,¹⁶ the CLCS treats those as disputes, as exemplified by the case of Gabon and India.¹⁷ In both cases, the consideration was suspended pending negotiation.¹⁸ These cases demonstrate the decisive role of neighbouring states in triggering Paragraph 5(a) and shaping the CLCS procedure.

However, the CLCS does not always explicitly classify contested submissions as disputes. Although the Oki-no-Tori submission by Japan in 2008 was not formally labelled as a dispute, for instance, the CLCS refrained from taking any action, implicitly acknowledging the objections made by China and Korea.¹⁹

13 Dispute concerning Delimitation of the Maritime Boundary Between Bangladesh and Myanmar in the Bay of Bengal (Bangl. v. Myan.), Judgment, ITLOS Rep. 115, ¶ 443 (Mar. 14, 2012).

14 Alex Elferink, *The Establishment of Outer Limits of the Continental Shelf Beyond 200 Nautical Miles by the Coastal State: The Possibilities of Other States to Have an Impact on the Process*, 21(3) INT'L J. MARINE & COASTAL L. 551 (2009).

15 UN DOALOS, Submission by Australia (No. 3), https://www.un.org/depts/los/clcs_new/submissions_files/submission_aus.htm; UN DOALOS, Submission by Norway (No. 7), https://www.un.org/depts/los/clcs_new/submissions_files/submission_nor.htm.

16 Arif Ramadhan & Mohammad Kareem, *How to Resolve the Overlapping Maritime Claims in International Law? Comparing Barbados/Trinidad and Tobago Case and Indonesia–Malaysia Cases*, 1(2) INT'L L. DISCOURSE SE. ASIA 185 (2022).

17 CLCS, Progress of work in the Commission on the Limits of the Continental Shelf: Statement by the Chair, UNCLOS Doc. CLCS/78 (Apr. 1, 2023) (CLCS/78), at 10, <https://docs.un.org/en/clcs/78>.

18 CLCS, Statement by the Chairperson of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission, UNCLOS Doc. CLCS/68 (Sept. 17, 2010) (CLCS/68), at 9, <https://docs.un.org/en/clcs/68>; CLCS/78, *supra* note 17, at 10.

19 *Id.*, UNCLOS Doc. CLCS/64 (Oct. 1, 2009), at 7-8, <https://docs.un.org/en/clcs/64>.

In contrast, the CLCS has restricted objections from non-regional states. In the case of Brazil's submission in 2004, the CLCS instructed a subcommission to disregard the comments from the US, indicating that non-regional states were not considered eligible parties under paragraph 5(a).²⁰

C. How Is a “Dispute” Qualified?

Although “disputes” in Paragraph 5(a) of RoP-Annex I are often equated with those under general international law, key distinctions remain.²¹ In this regard, the International Court of Justice (ICJ) requires an objective conflict,²² which excludes hypothetical or potential disputes.²³ Conversely, the CLCS applies a lower threshold, treating anticipated or potential overlaps as “disputes.”²⁴ For example, a possible overlap was identified in Somalia's NV, which was submitted in response to the submission by Yemen in 2009.²⁵ In this case, the CLCS decided to defer the consideration of the submission, reflecting its prudence in dealing with “disputes.”

The divergence in determining what “dispute” is, raises the question of whether rulings of international courts and tribunals are binding upon the CLCS. The CLCS has generally rejected the use of judicial awards as evidence that a dispute has either been resolved or all parties have consented to the resolution.²⁶ Under the CLCS RoP, ‘consent’ must be explicit and come from ‘all’ parties to a dispute; silence or implied consent is insufficient in the determination of a ‘dispute.’²⁷

The caution exercised in interpreting and determining the existence of a “dispute” was evident in the Bangladesh/Myanmar case, where the CLCS deferred

20 *Id.*, UNCLOS Doc. CLCS/42 (Sept. 24, 2004) (CLCS/42), at 3-4, <https://docs.un.org/en/clcs/42>.

21 Barbara Kwiatkowska, *Submissions to the UN Commission on the Limits of the Continental Shelf: The Practice of Developing States in Cases of Disputed and Unresolved Maritime Boundary Delimitations or Other Land or Maritime Disputes*, 28(2) INT'L J. MARINE & COASTAL L. 248 (2013).

22 Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (First Phase), Advisory Opinion, 1950 I.C.J. 65, 74 (Mar. 20).

23 Northern Cameroons (Cameroon v. U.K.), Order, 1963 I.C.J. 15, ¶¶ 33-4; Question of the Delimitation of the Continental Shelf Between Nicaragua and Colombia Beyond 200 Nautical Miles from the Nicaraguan Coast (Nicar. v. Colom.), Judgment, 2016 I.C.J. 100, ¶¶ 138-9 & ¶¶ 123-4 (Mar. 17).

24 Alex Elferink, *The Continental Shelf of Antarctica: Implications of the Requirement to Make a Submission to the CLCS Under Article 76 of the LOS Convention*, 17(4) INT'L J. MARINE & COASTAL L. 501 (2002).

25 CLCS/68, *supra* note 18, at 5-6.

26 Bjørn Kunoy, *The Delimitation of Outer Continental Shelf Areas: A Critical Analysis of Courts' and Tribunals' Heterogeneous Approaches*, 59 CAN. Y.B. INT'L L. 203 (2022).

27 Michael Sheng-Ti Gau & Gang Tang, *The Operation of the CLCS Facing Disputes: An Examination of the Rules and Practices*, 36 INT'L J. MARINE & COASTAL L. 221 (2021).

Myanmar's submission despite the ITLOS having granted Bangladesh significant maritime entitlements in *Bay of Bengal*.²⁸ Similarly, in the case of submission by India in 2009, the CLCS suspended the review, although Bangladesh had referred the dispute to the Permanent Court of Arbitration (PCA).²⁹ These examples illustrate the CLCS' reluctance to continue with the proceeding, if legal and diplomatic processes remain unresolved.

Thus, the concept of "dispute" under the CLCS rules differs from that under the ICJ Statute both in terms of identification and resolution. While the ICJ relies on formal legal rulings, the CLCS adopts a pragmatic standard that focuses on potential overlaps. The ambiguity in Paragraph 5(a) continues to give rise to disagreements on what constitutes a "dispute,"³⁰ highlighting the tension between scientific review and legal-diplomatic considerations on submissions for the extended continental shelf.

D. How Can Prior Consent Be Properly Given?

Serious challenges arise from the absence of clear rules in the CLCS RoP for securing 'prior consent, directly affecting the resolution of extended continental shelf disputes. Consent is a key requirement under the CLCS framework. As it parallels the principle of consent under the purview of the ICJ, an explicit agreement is required by all parties before the CLCS can proceed.³¹ However, the RoP does not specify the manner in which such consent should be expressed.³²

Paragraph 5(a) specifies the 'prior' consent of 'all' parties to an act of dispute. In accordance with Article 31 of the Vienna Convention on the Law of Treaties (VCLT),³³ the prior consent must mean explicit consent; silence, inaction, or ambiguous responses cannot be treated as consent,³⁴ as the integrity of requirements that constitute consent in international law will be undermined. In practice, however, the assessment of consent is complex.³⁵ Although the CLCS

28 CLCS/64, *supra* note 2, at 9-10.

29 CLCS, Statement by the Chairperson of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission, UNCLOS Doc. CLCS/50/2 (Sept. 5, 2019), at 13, <https://docs.un.org/en/clcs/50/2>.

30 Coalter Lathrop, *Continental Shelf Delimitation Beyond 200 Nautical Miles: Approaches Taken by Coastal States before the Commission on the Limits of the Continental Shelf*, in *INTERNATIONAL MARITIME BOUNDARIES* 4139-60 (David Colson & Robert Smith eds., 2011).

31 Tom Sparks, *Reassessing State Consent to Jurisdiction: The Indispensable Third-Party Principle Before the ICJ*, 91(2) *NORDIC J. INT'L L.* 216 (2022).

32 ICJ, *Basis of the Court's Jurisdiction*, <https://www.icj-cij.org/basis-of-jurisdiction>.

33 Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331.

34 Sparks, *supra* note 31, at 221-22.

35 RICHARD GARDINER, *TREATY INTERPRETATION* 197 (2015).

relies on NVs, these often omit a clear statement of consent, resulting in escalating disputes when a submitting state counters an objection with a counter NV, which raise doubts about resolution of an issue.

Further complications arise from states' ability to submit new or revised submissions without restrictions.³⁶ Although this flexibility preserves access to the CLCS, it also prolongs uncertainty if submissions proceed without clear consent from all parties.³⁷ This could delay the resolution of disputes and undermine the ability of the CLCS to function effectively.

III. The Practice Followed by the CLCS in Handling Disputed Submissions

The application of Paragraph 5(a) of RoP-Annex I has led to the deferral or non-consideration of many submissions, preventing coastal states from establishing the outer limits of their extended continental shelves. This legal uncertainty affects both submitting and neighbouring states to decide maritime rights, obligations, and the scope of area under international law. Accordingly, the CLCS must handle such submissions carefully to ensure fairness and consistency.³⁸ Importantly, the mere invocation of Paragraph 5(a) by a third state cannot automatically delay consideration.³⁹ Over time, the CLCS, guided by its RoP, has developed three distinct modalities for managing contested submissions for balancing the rights and interests of states while preserving the integrity of the extended continental shelf regime.⁴⁰

36 Ted McDorman, *The Role of the Commission on the Limits of the Continental Shelf: A Technical Body in a Political World*, 17(3) INT'L J. MARINE & COASTAL L. 319 (2002).

37 Michael Sheng-Ti Gau, *The Most Controversial Submission Before the CLCS: With Reference to the 2019 Malaysia Submission*, 37(2) INT'L J. MARINE & COASTAL L. 266 (2022).

38 Clive Symmons, *The Irish Partial Submission to the Commission on the Limits of the Continental Shelf in 2005: A Precedent for Future Such Submissions in the Light of the "Disputed Areas" Procedures of the Commission?* 37(3-4) OCEAN DEV. & INT'L L. 299-317 (2006).

39 CLCS/42, *supra* note 20, at 3-4.

40 Jun Qiu, *The CLCS Modalities for Handling Submissions Involving Disputes and Their Possible Application to the South China Sea*, 14(1) CHINESE J. INT'L L. 142 (2015).

A. Deciding Not to Consider the Submission

The CLCS shall “not consider or qualify” any submission without the prior consent of all parties. This rule has been applied in a limited number of cases. Typically, it is the most relevant in cases involving land disputes, which tend to be protracted and difficult to resolve.⁴¹ Therefore, the CLCS must wait indefinitely before considering or qualifying such submissions, as it lacks the authority to adjudicate disputes over territorial sovereignty.⁴² Without the express prior consent of all parties, the CLCS cannot proceed until the underlying land dispute is resolved through legal or diplomatic means.

In practice, the CLCS will decide not to consider the submission if submitting and notifying states take certain actions that indicate a dispute or lack of consent. First, the notifying state may strongly request that the CLCS not to take any action with respect to the submission, even though Paragraph 5(a) of RoP-Annex I has not been explicitly invoked in their NVs. A notable example is the submission concerning Antarctica, in which parties to the dispute did not formally invoke Paragraph 5(a), but rather clearly opposed the submission process.⁴³ Second, communications exchanged among the parties to the dispute indicate the existence of an unresolved land or maritime dispute, even though they do not explicitly state a lack of consent. In these cases, invoking Paragraph 5(a) of RoP-Annex I becomes secondary, as the dispute itself is already widely recognised by the international community. This was exemplified by the submission concerning the Falkland Islands, where the prolonged dispute based on territorial sovereignty between the UK and Argentina made it impossible to proceed with the submission.⁴⁴

In summary, the decision of the CLCS in terms of not considering or qualifying a submission was primarily based on the existence of a land dispute, rather than on a formal invocation of Paragraph 5(a) by the notifying state. Given the persistent and intractable nature of land disputes, they act as undeniable obstacles to the review process, effectively preventing the CLCS from proceeding,

41 Michael Sheng-Ti Gau, *Recent Decisions by the Commission on the Limits of the Continental Shelf on Japan's Submission of Outer Continental Shelf*, 11(3) CHINESE J. INT'L L. 501 (2012).

42 Atsuko Kanehara, *Contribution by the Commission on the Limits of the Continental Shelf to the International Legal Order of the Oceans*, 61(3-4) SOPHIA L. REV. 33 (2018).

43 CLCS, Statement by the Chairperson of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission, UNCLOS Doc. CLCS/44 (May 3, 2005) (CLCS/44), at 5, <https://docs.un.org/en/clcs/44>; CLCS/64, *supra* note 2, at 17; CLCS, Statement by the Chairperson of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission, UNCLOS Doc. CLCS/66 (Apr. 30, 2010) (CLCS/66), at 9, <https://docs.un.org/en/clcs/66>.

44 CLCS/66, *supra* note 43, at 11-2; CLCS/64, *supra* note 2, at 16-7.

regardless of procedural technicalities. This underscores the inherent legal limitations of the CLCS in dealing with submissions involving contested land sovereignty, reinforcing its role as a scientific and technical body, rather than a dispute resolution mechanism.⁴⁵

B. Deferring Consideration of the Submission or Taking No Action

The decision to defer consideration or take no action is often driven by the existence of a land dispute within a submission, which is usually difficult to resolve, but cannot be ignored.⁴⁶ Whether Paragraph 5(a) of RoP-Annex I is invoked explicitly does not significantly affect the scope of application of this provision. If a serious incidence involving land dispute among states is alleviated and needs to be resolved, deferring the necessary action is likely to be considered unreasonable. In such cases, the decisions to deferral are generally interpreted as a compromise, with the CLCS acknowledging the possibility of future developments, such as provisional arrangements, that could help resolve the dispute or add clarity to the situation.⁴⁷ The authors would argue that the decision of the CLCS to defer action typically follows one of several patterns: (1) The notifying state actively refers to Paragraph 5(a) of RoP-Annex I, explicitly refusing to give consent or making other statements such as to ‘object’ or ‘prohibit’ consideration; (2) The notifying state refers to Paragraph 5(a) but maintains silent on its consent, creating ambiguity regarding its position; (3) Although the notifying state does not invoke Paragraph 5(a), the content of the NV indicates a lack of consent, with exchanged communications clearly reflecting the existence of a dispute.

In other cases, the CLCS has deferred its decision without explicitly referring to Paragraph 5(a) of RoP-Annex I. For example, the Submission No. 69 by Angola shows that even when the notifying state uses words, such as ‘prohibit,’ “not consent,” or “refrain from” consideration, the CLCS may choose to defer action. This implies that the CLCS interprets such language as an indication that opposes consideration, thereby justifying deferral without formally invoking Paragraph 5(a).⁴⁸ Similarly, in cases where the notifying state remains silent on consent but suggest that a dispute exists under paragraph 5(a), the CLCS interprets silence as

45 Paul Huth et al., *Does International Law Promote the Peaceful Settlement of International Disputes? Evidence from the Study of Territorial Conflicts Since 1945*, 105(2) AM. POL. SCI. REV. 397 (2009).

46 Dominic Roughton & Andrew Cannon, *The Impact of Sovereignty and Boundary Disputes on Commercial Investments*, 2 INSIDE ARB.: PERSP. ON CROSS-BORDER DISP. 18 (2016).

47 CLCS/64, *supra* note 2, at 22-3.

48 CLCS/78, *supra* note 17, at 10.

“not giving consent,” so that it may apply the general deferral rule, as seen in the Submission No. 66 by Nicaragua.⁴⁹

If a submission involves other types of unresolved disputes including the issues related to the interpretation and application of the UNCLOS, the CLCS may decide not to take action. When the Submission No. 13 by Japan involved unresolved issues, for example, the CLCS acknowledged that it had no role in addressing matters of legal interpretation under international law.⁵⁰ In such a case, however, the CLCS referred to it as an “unresolved issue” and chose not to act rather than classifying the issue as a “dispute.”⁵¹

C. Establishing a Subcommittee to Consider Future Submissions

The CLCS may adopt one of the three major approaches when dealing with submissions involving disputes over an extended continental shelf. First, the submitting and notifying states may not consider overlapping maritime claims or delimitation as a “dispute,” thereby avoiding the application of the general rule that the CLCS shall not address submissions involving unresolved territorial or maritime disputes. Second, the notifying state may invoke Paragraph 5(a) of RoP-Annex I to identify the existence of a dispute while simultaneously expressing ‘consent’ or “no objection” to the consideration of the submission. Third, disputes may be resolved by the submitting state through an amendment or revision of the submission.⁵²

Over the years, states responding to contested submissions have refrained from explicitly using the term “dispute.” Instead, they refer to potential or actual overlaps in maritime claims or boundary delimitation while declaring “no objection” to the consideration of the submission and making recommendations without explicitly expressing ‘consent.’ Notably, such ‘friendly’ NVs from the submitting state do not automatically drive the CLCS to establish a subcommittee. The CLCS proceeds to establish a subcommittee only when

49 Submission by Nicaragua (No. 66). See CLCS, Statement by the Chairperson of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission, UNCLOS Doc. CLCS/83 (Mar. 31, 2014) (CLCS/83), at 15-6, <https://docs.un.org/en/clcs/83>.

50 CLCS, Statement by the Chairperson of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission, UNCLOS Doc. CLCS/62 (Apr. 20, 2009) (CLCS/62), at 11-2, <https://docs.un.org/en/clcs/62>.

51 CLCS/64, *supra* note 2, at 7-8.

52 Dita Liliansa, *Outer Limits of Continental Shelf in the Arctic Ocean: Potential Overlapping Claims*, 12(3) *INDON. J. INT'L L.* 347 (2015).

the NV neither raises the issue that a dispute exists, nor explicitly demonstrates “no objection” to the consideration. A notable example, in this context, is the Submission No. 77 by Spain, where the notifying state neither objected to the consideration nor explicitly provided consent.⁵³

In some cases, although the notifying state refers directly to a “maritime dispute,” it provides consent to consider the submission. A key example is the Russian Federation’s NV regarding the submission by Norway. In this case, despite mentioning a maritime dispute, Russia indicated consent to reviewing the submission.⁵⁴ In such cases, the CLCS proceeds to establish a subcommission, as the rule of exception concerning the existence of a dispute and simultaneous consent has been satisfied.

A particularly significant case, in this context, is the Submission No. 71 by the Bahamas, where the US submitted two NVs: the first NV invoked Paragraph 5(a) of RoP-Annex I, stating that it was “unable to consent” to the consideration of the submission, whereas the second did not invoke the paragraph and confirmed that the US “does not object” to the submission.⁵⁵ Based on this invocation, the CLCS decided to establish a subcommission, which implies that the absence of an objection might constitute implicit consent, even though an initial objection had been raised.

Another situation that may demand the establishment of a subcommission is that the CLCS confirms the existence of a dispute, which is subsequently resolved through a revised submission by the submitting state. Once the dispute is resolved, the CLCS may establish a subcommission to review the submission. In the Submission No. 8 by France, for example, although Vanuatu’s NV did not invoke Paragraph 5(a), it directly identified potential disputes.⁵⁶ France later revised its submission,⁵⁷ prompting the CLCS to establish a subcommission to continue the review process.⁵⁸

53 Bing Bing Jia, *Effect of Legal Issues, Actual or Implicit, Upon the Work of the CLCS: Suspensive or Without Prejudice?*, 11(1) CHINESE J. INT’L L. 107 (2012).

54 CLCS, Statement by the Chairperson of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission, UNCLOS Doc. CLCS/83 (Apr. 27, 2007), at 10-1, <https://docs.un.org/en/clcs/54>.

55 *Id.*, UNCLOS Doc. CLCS/105 (Sept. 13, 2018) (CLCS/105), at 11, <https://docs.un.org/en/clcs/105>.

56 CLCS, NV from the Vanuatu (2007/07/11) for submission No. 8 by France, https://www.un.org/depts/los/clcs_new/submissions_files/fra07/van_0701306.pdf.

57 CLCS, Communication from France (July 18, 2007), https://www.un.org/depts/los/clcs_new/submissions_files/fra07/fra_letter_july2007_english.pdf.

58 CLCS, Statement by the Chairperson of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission, UNCLOS Doc. CLCS/56 (Oct. 4, 2007) (CLCS/56), at 8, <https://docs.un.org/en/clcs/56>.

IV. China's Response to the Submissions for an Extended Continental Shelf in the SCS

Under the UNCLOS, coastal states may assert their rights for an extended continental shelf, which must be exercised in good faith to prevent excessive claims.⁵⁹ However, neighbouring states surrounding the SCS have made strong claims that may encroach upon China's sovereignty, sovereign rights, and jurisdiction. This complex situation calls for exploring the way China can effectively respond to and mitigate these challenges.

A. Submissions in the SCS Involving "Disputes"

The SCS is an example of overlapping maritime claims, with China, Vietnam, Malaysia, and the Philippines, all of which submit the claims for an extended continental shelf to the CLCS. These are complicated by sovereignty disputes over the Nansha Islands (Spratly Islands), Xisha Islands (Paracel Islands), and Huangyan Island (Scarborough Shoal), where China's historical and territorial claims conflict with those of neighbouring states. These disputes have a direct impact on the review of the CLCS, particularly regarding states that qualify as parties to the dispute and the timing of their declarations.

The first category of disputes involves territorial sovereignty over the Kalayaan Islands (claimed by China, the Philippines, Vietnam, and Malaysia),⁶⁰ the Nansha and Xisha Islands (claimed by China and Vietnam),⁶¹ and the Huangyan Island (claimed by China and the Philippines).⁶² According to Paragraph 5(a) of RoP-Annex I, unless all parties have provided their prior consent, the CLCS cannot review submissions containing such disputes involving territorial sovereignty. This effectively places China at the centre, as its consent or objection plays a decisive in consideration.

The second category involves maritime boundary delimitation disputes, notably overlapping claims between China and neighbouring states, such

59 United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

60 Robin Gonzales, *The Spratly Islands Dispute: International Law, Conflicting Claims, and Alternative Frameworks for Dispute Resolution* 20 (Undergraduate Thesis, University of Nevada, Las Vegas, 2014).

61 Carlyle Thayer, *Vietnam's Strategy of "Cooperating and Struggling" with China over Maritime Disputes in the South China Sea*, 3(2) J. ASIAN SEC. & INT'L AFF. 200 (2016).

62 Fu Ying, *Huangyan Dao: What Actually Happened in 2012*, SCSPI (Jan. 7, 2021), <http://www.scspi.org/en/dtfx/huangyan-dao-what-actually-happened-2012>.

as Vietnam, Malaysia, the Philippines, and Indonesia.⁶³ Examples include Vietnam's outer continental shelf submission overlapping with China's claims in the Xisha Islands, and joint submissions by Vietnam and Malaysia conflicting with China's territorial sea claims. Given the complexity of these maritime boundary delimitation disputes, the CLCS must assess whether it can review such submissions without the express consent of the parties involved.

The third category involves maritime entitlement disputes, which relate to the interpretation and application of the UNCLOS provisions on the limits of EEZs and continental shelves. Leading examples of these disputes are noted in the SCS region, between China and Malaysia, the Philippines, Indonesia, and others.⁶⁴ These disputes fall squarely under purview of Paragraph 5(a) of RoP-Annex I, which bars the CLCS from considering submissions unless all parties provide prior consent.

The CLCS RoP states that disputes eligible for consideration must involve states with opposite or adjacent coasts or those with unresolved land or maritime disputes with the submitting state.⁶⁵ In the SCS region, China, as the main claimant, must formally object or consent to submissions by neighbouring states. In practice, China has frequently filed NVs opposing such submissions, particularly when they overlap with areas claimed under territorial sovereignty.

Also, timing is crucial for introducing disputes before the CLCS. China has consistently objected in a timely manner to the consideration of submissions involving disputes over sovereignty and maritime rights.⁶⁶ A notifying state must submit its NVs either before or during the review. Silent or ambiguous NVs that do not explicitly reject a dispute can lead to delays or setbacks, which has been illustrated by submissions concerning the SCS.

In some cases, the CLCS has delayed or refused to consider parts of the submissions because of a lack of explicit consent from all parties. An example was China's objections to the submissions by Vietnam and Malaysia, where China, through NVs, withheld consent and requested suspension until the dispute was resolved.⁶⁷ In accordance with its general rule, the CLCS did not review

63 Hong Nguyen, Manh Ho & Quan-Hoang Vuong, *Probing Vietnam's Legal Prospects in the South China Sea Dispute*, 16(3) ASIA POL'Y 105 (2012).

64 International Crisis Group, *Competing Visions of International Order in the South China Sea*, (Nov. 29, 2021), <https://www.crisisgroup.org/asia/north-east-asia/china/315-competing-visions-international-order-south-china-sea>.

65 E.g., Submission No. 2 by Brazil. See CLCS/42, *supra* note 20, at 3-4.

66 Robert Volterra, *Problems Arising from Submissions by States to the CLCS in Relation to Disputed Areas: A Selective Survey of State Practice to Date*, in *SELECTED CONTEMPORARY ISSUES IN THE LAW OF THE SEA* 273-83 (Clive Symmons ed., 2011).

67 CLCS, Communication by China, U.N. Doc. CML/17/2009 (May 7, 2009), https://www.un.org/depts/los/clcs_new/

submissions involving disputes unless all the parties concerned had provided their consent.⁶⁸

Recognition of a dispute by the CLCS plays a decisive role in determining whether a submission should be considered or deferred. Once a dispute is identified under Paragraph 5(a) of RoP-Annex I, the CLCS must assess whether it concerns territorial sovereignty or maritime delimitation. If such concerns are identified, the review process may be postponed until the dispute is resolved or all parties have provided explicit consent.⁶⁹ This approach ensures that submissions will proceed only with clear agreement among parties, safeguarding procedural fairness and consistency.

B. China as a Party to the “Dispute”

As a party to disputes in the SCS, China has consistently expressed its non-consent through NVs, invoking Paragraph 5(a) of RoP-Annex I. In these NVs, China requested the CLCS “not to consider or qualify” all five regional submissions, reaffirming its claims over disputed areas involving sovereignty and maritime boundaries.⁷⁰ In this regard, the SCS Arbitration was not instituted based on

submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf; U.N. Doc. CML/8/2011 (Apr. 14, 2011), https://www.un.org/depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2011_re_phl_e.pdf; U.N. Doc. CML/18/2009 (May 7, 2009), https://www.un.org/depts/los/clcs_new/submissions_files/vnm37_09/chn_2009re_vnm.pdf; U.N. Doc. CML/8/2011 (Apr. 14, 2011), https://www.un.org/depts/los/clcs_new/submissions_files/vnm37_09/chn_2011_re_phl_e.pdf; U.N. Doc. CML/14/2019 (Dec. 12, 2019), https://www.un.org/depts/los/clcs_new/submissions_files/mys85_2019/CML_14_2019_E.pdf; U.N. Doc. CML/11/2020 (Mar. 23, 2020), https://www.un.org/depts/los/clcs_new/submissions_files/mys_12_12_2019/China_Philippines_ENG.pdf; U.N. Doc. CML/42/2020 (Apr. 17, 2020), https://www.un.org/depts/los/clcs_new/submissions_files/mys_12_12_2019/2020_04_17_CHN_NV_UN_003_EN.pdf; U.N. Doc. CML/46/2020 (June 2, 2020), https://www.un.org/depts/los/clcs_new/submissions_files/mys_12_12_2019/2020_06_02_CHN_NV_UN_eng.pdf; U.N. Doc. CML/48/2020 (June 18, 2020), https://www.un.org/depts/los/clcs_new/submissions_files/mys_12_12_2019/2020_06_18_CHN_NV_UN_006_English.pdf; U.N. Doc. CML/54/2020 (July 29, 2020), https://www.un.org/depts/los/clcs_new/submissions_files/mys_12_12_2019/20200729_CHN_NV_UN_e.pdf; U.N. Doc. CML/56/2020 (Aug. 7, 2020), https://www.un.org/depts/los/clcs_new/submissions_files/mys_12_12_2019/20200807_CHN_NV_UN_Eng.pdf; U.N. Doc. CML/63/2020 (Sept. 18, 2020), https://www.un.org/depts/los/clcs_new/submissions_files/mys_12_12_2019/2020_09_18_CHN_NV_UN_009_e.pdf; U.N. Doc. CML/1/2021 (Jan. 28, 2021), https://www.un.org/depts/los/clcs_new/submissions_files/mys_12_12_2019/20210128ChnNvUn009OLA202000373e.pdf; U.N. Doc. CML/32/2021 (Aug. 16, 2021), https://www.un.org/depts/los/clcs_new/submissions_files/mys_12_12_2019/20210816ChnNvUnEn.pdf; and U.N. Doc. CML/96/2022 (July 25, 2022), https://www.un.org/depts/los/clcs_new/submissions_files/mys_12_12_2019/20220725EN.pdf.

68 Constance Johnson & Alex Elferink, *Outer Limits of the Continental Shelf and “Disputed Areas”: State Practice Concerning*, 21(4) INT’L J. MARINE & COASTAL L. 474-5 (2006).

69 Michael Lodge, *Enclosure of the Oceans Versus the Common Heritage of Mankind: The Inherent Tension Between the Continental Shelf Beyond 200 Nautical Miles and the Area*, 97(1) INT’L L. STUD. 814 (2021).

70 CLCS, Communication by China, U.N. Doc. CML/17/2009 (May 7, 2009), https://www.un.org/depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf; U.N. Doc. CML/8/2011 (Apr. 14, 2011), https://www.un.org/depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2011_re_phl_e.pdf; U.N. Doc. CML/18/2009 (May 7, 2009), https://www.un.org/depts/los/clcs_new/submissions_files/vnm37_09/chn_2009re_vnm.pdf; U.N. Doc.

mutual consent. Unilaterally initiated by the Philippines, although the case dealt with the interpretation of the UNCLOS rules, it did not address the issues of territorial sovereignty or maritime entitlements. China has categorically rejected both jurisdiction and awards, insisting that disputes should be resolved through bilateral negotiations rather than international adjudication.⁷¹ Accordingly, the award had no bearing on China's maritime rights or status as a competent party in disputes with Vietnam, Malaysia, and other countries.

First, the decisions of international courts or tribunals, including the SCS Arbitration award, can neither be considered a definitive resolution to disputes nor those substitute the consent required under the CLCS framework.⁷² As per the UNCLOS, an arbitration award is legally binding only upon the parties to the dispute.⁷³ The award affects neither third-party states, such as Vietnam and Malaysia, nor China in its maritime claims over the Xisha and Nansha Islands. Consequently, China remains a competent party in disputes and retains the right to withhold consent via NVs, thus influencing the CLCS's decisions to consider submissions.

Second, China maintains that bilateral negotiations are the proper means of

CML/8/2011 (Apr. 14, 2011), https://www.un.org/depts/los/clcs_new/submissions_files/vnm37_09/chn_2011_re_phl_e.pdf; U.N. Doc. CML/14/2019 (Dec. 12, 2019), https://www.un.org/depts/los/clcs_new/submissions_files/mys85_2019/CML_14_2019_E.pdf; U.N. Doc. CML/11/2020 (Mar. 23, 2020), https://www.un.org/depts/los/clcs_new/submissions_files/mys_12_12_2019/China_Philippines_ENG.pdf; U.N. Doc. CML/42/2020 (Apr. 17, 2020), https://www.un.org/depts/los/clcs_new/submissions_files/mys_12_12_2019/2020_04_17_CHN_NV_UN_003_EN.pdf; U.N. Doc. CML/46/2020 (June 2, 2020), https://www.un.org/depts/los/clcs_new/submissions_files/mys_12_12_2019/2020_06_02_CHN_NV_UN_eng.pdf; U.N. Doc. CML/48/2020 (June 18, 2020), https://www.un.org/depts/los/clcs_new/submissions_files/mys_12_12_2019/2020_06_18_CHN_NV_UN_006_English.pdf; U.N. Doc. CML/54/2020 (July 29, 2020), https://www.un.org/depts/los/clcs_new/submissions_files/mys_12_12_2019/20200729_CHN_NV_UN_e.pdf; U.N. Doc. CML/56/2020 (Aug. 7, 2020), https://www.un.org/depts/los/clcs_new/submissions_files/mys_12_12_2019/20200807_CHN_NV_UN_Eng.pdf; U.N. Doc. CML/63/2020 (Sept. 18, 2020), https://www.un.org/depts/los/clcs_new/submissions_files/mys_12_12_2019/2020_09_18_CHN_NV_UN_009_e.pdf; U.N. Doc. CML/1/2021 (Jan. 28, 2021), https://www.un.org/depts/los/clcs_new/submissions_files/mys_12_12_2019/20210128ChnNvUn009OLA202000373e.pdf; U.N. Doc. CML/32/2021 (Aug. 16, 2021), https://www.un.org/depts/los/clcs_new/submissions_files/mys_12_12_2019/20210816ChnNvUnEn.pdf; U.N. Doc. CML/96/2022 (July 25, 2022), https://www.un.org/depts/los/clcs_new/submissions_files/mys_12_12_2019/20220725EN.pdf; U.N. Doc. NO.D.167/2024 (June 18, 2024), https://www.un.org/depts/los/clcs_new/submissions_files/phl1/20240618ChnNvUnEng.pdf; U.N. Doc. NO.D.240/2024 (Aug. 19, 2024), https://www.un.org/depts/los/clcs_new/submissions_files/phl1/20240819ChnNvUn002eng.pdf; U.N. Doc. NO.D.229/2024 (July 29, 2024), https://www.un.org/depts/los/clcs_new/submissions_files/vnm95_24/20240729ChnNvUn001E.pdf; U.N. Doc. NO.D.272/2024 (Oct. 14, 2024), https://www.un.org/depts/los/clcs_new/submissions_files/vnm95_24/20241014ChnNvUn002E.pdf; and U.N. Doc. NO.D.125/2025 (June 10, 2025), https://www.un.org/depts/los/clcs_new/submissions_files/vnm95_24/CHINANV12520250610Eng.pdf.

71 PRC Ministry of Foreign Affairs, China Remains Committed to Peaceful Settlement of Disputes in the South China Sea through Negotiations and Consultations, Keynote Speech by Liu Zhenmin, Vice Foreign Minister (Mar. 25, 2016), https://www.fmprc.gov.cn/eng/zy/jj/2016zt/lkqcxbaoyzlt2016nnh/202406/t20240606_11381101.html.

72 Gau & Tang, *supra* note 27.

73 UNCLOS art. 296.

resolving disputes in the SCS region. It consistently rejected legal proceedings, including arbitration, as a legitimate path to resolution, particularly in disputes with the Philippines. Although the Philippines pursued arbitration under the UNCLOS,⁷⁴ China refused to accept the legitimacy or effects of the arbitral award, which, it argued, could neither resolve the underlying disputes between the two countries nor could resolve the wider conflicts in the region.⁷⁵ Accordingly, the award did not deny China's status as a party to disputes or affect its ability to raise objections to submissions in the CLCS.

Third, the impact of decisions made by the international courts or tribunal on the work of the CLCS is limited. As a technical body, the CLCS is tasked to review both scientific and legal basis for extended continental shelf claims, rather than adjudicating territorial or maritime boundary disputes. For example, in the case of *Bay of Bengal*, although the ITLOS delivered a judgment on the maritime boundary between the two states, the CLCS deferred consideration of Myanmar's submission on the basis that the decision of the ITLOS did not address issues concerning the extended continental shelf, which would directly affect the technical review process.⁷⁶

Similarly, the SCS Arbitration award deals with the interpretation of legal issues under the UNCLOS, which exists beyond the mandate of the CLCS. The CLCS does not possess jurisdiction to apply such legal rulings in the technical review of submissions. Therefore, the arbitral award neither affected the position of China as a party to the dispute, nor it excluded China from objecting to the submissions of other coastal states that implicated its maritime claims.

In conclusion, the SCS Arbitration award neither invalidates the status of China as a party to disputes in the region nor it precludes China from asserting non-consent to submissions made by other states. China's diplomatic and legal responses to these submissions in the SCS are grounded in its commitment to resolving disputes through bilateral negotiation and its rejection of unilateral legal proceedings. Given the CLCS's strict technical mandate, it is bound by the rules laid down by RoP-Annex I, empowering China to object to submissions and contest claims that it deems inconsistent with its rights. Therefore, China's

74 See *Philippines Repeatedly Take Moves that Complicate Disputes in South China Sea: White Paper*, XINHUANET (July 13, 2016), <http://en.people.cn/n3/2016/0713/c90000-9085432.html>.

75 See *China Adheres to the Position of Settling through Negotiation the Relevant Disputes Between China and the Philippines in the South China Sea*, XINHUANET (July 13, 2016), https://english.www.gov.cn/state_council/ministries/2016/07/13/content_281475392503075.htm.

76 CLCS/64, *supra* note 2, at 10. See also John Noyes, *Judicial and Arbitral Proceedings and the Outer Limits of the Continental Shelf*, 42(4) VAND. J. TRANSNAT'L L. 1263 (2009).

objections remain valid and should be respected by the CLCS in light of ongoing territorial and maritime disputes in the SCS region.

C. Pathways to Strengthen China's NV

Although the five submissions for an extended continental shelf in the SCS have not been recognised by the CLCS, these submissions can be regarded as declarations of sovereignty. A deferral does not amount to termination, leaving room for future substantive reviews. Examining the CLCS practices and China's NVs regarding objections or comments on these submissions leads us to identify potential avenues for reinforcement.

First, China should clearly identify the existence of a "dispute" in its communications. In several NVs submitted by China, there is no explicit reference to a "dispute" regarding the five submissions. Instead, those have focused on violating China's sovereignty, sovereign rights, and maritime jurisdiction. Based on the CLCS's past practice, "disputes" of this nature have indeed affected its decision-making process, as evidenced by the deferral or non-consideration of submissions involving disputed or overlapping areas, including those by the Argentine and United Kingdom of Great Britain and Northern Ireland (2009), Russian Federation (2001), and Japan (2008) may directly impact the CLCS' decision-making process.⁷⁷ Therefore, in its subsequent NVs, China should clearly state that at least three types of disputes exist in submissions related to an extended continental shelf in the SCS.

Second, China should clarify its status as a party to a "dispute" when filing an NV. After the CLCS decided to defer considerations of SCS submissions in accordance with Paragraph 5(a) of RoP-Annex I, the submitting states, such as Vietnam and Malaysia, may opt for partial, revised, or joint submissions to avoid unresolved disputes. These disputes involve the issues related to territorial sovereignty, historical rights, jurisdiction, and the delimitation of overlapping maritime zones, all of which are categorised as "maritime disputes" under Paragraph 5(a) of RoP-Annex I. Above all, the SCS Arbitration award did not address or resolve the disputes between China and other claimant states, such as Viet Nam and Malaysia. The award has no bearing on China's status as a party to these disputes. Even if third parties invoke an arbitration award, the invocation cannot alter the CLCS's determination of unresolved disputes.

⁷⁷ CLCS/64, *supra* note 2, at 17; CLCS/66, *supra* note 43, at 12; UNGA, Report of the Secretary-General, Oceans and the Law of the Sea, U.N. Doc. A/57/57/Add.1 (Mar. 11, 2002), at ¶¶ 38-41, <https://docs.un.org/en/A/57/57/Add.1>; CLCS/62, *supra* note 50, at 12.

The SCS Arbitration is flawed in terms of admissibility and lacks jurisdiction, rendering it null and void without binding effect.⁷⁸ Consequently, it would be important for China's NVs to clarify that the arbitration ruling has not resolved disputes among China, Vietnam, and Malaysia, and is unrelated to the three submissions made by Vietnam and Malaysia in the SCS.

Third, China should explicitly state "not consent" and request the CLCS "not to consider or qualify" any submissions in the SCS. The CLCS's decision to defer further consideration of these three submissions highlights the lack of clarity in China's earlier NVs. Considering the CLCS practice, "silent consent" or the avoidance of expressing explicit 'consent' has generally led to the submissions being taken up for consideration.⁷⁹

To prevent any intervention from extraterritorial states (e.g., the US, Australia, the UK), China should submit a counter NV at the next consideration of the submission, as per Paragraph 5(a) of RoP-Annex I, requesting exclusion of these States from becoming parties to the "dispute." Non-claimant states out of SCS area, such as the US, France, and Germany, have invoked the SCS Arbitration to influence the way that the CLCS determines parties to the "dispute." As the CLCS is working as a scientific and independent organ,⁸⁰ however, it was not influenced by the determinations of other bodies regarding the "dispute" or the status of the parties.

Therefore, China should clarify the legal status and specific scope of waters near the SCS in its communications to strengthen its claims in the region. Although China's official position has not changed, its NVs have not clearly defined the legal status or specific scope of its waters. Some scholars argue that China maintains this ambiguity to provide room for interpreting assertions of historical waters.⁸¹ In the NVs, however, China should have addressed this issue. For instance, when the Philippines challenged China's "relevant maritime areas" in its NV, China did not respond directly but simply referred to the maritime areas under the UNCLOS. This inaction is presumably not enough to create an international legal obligation of 'estoppel,'⁸² but may adversely impact China's

78 National Institute for South China Sea Studies, *A Legal Critique of the Award of the Arbitral Tribunal in the Matter of the South China Sea Arbitration*, 24 ASIAN Y.B. INT'L L. 151-4 (2018).

79 Submission No. 66 by Nicaragua facing Costa Rica NV (2013/07/15) invoking paragraph 5(a), while saying nothing about consent. See CLCS/83, *supra* note 49, at 14-6.

80 Anna Cavnar, *Accountability and the Commission on the Limits of the Continental Shelf: Deciding Who Owns the Ocean Floor*, 42(3) CORNELL INT'L L. J. 388-90 (2009).

81 Keyuan Zou, *China's U-Shaped Line in the South China Sea Revisited*, 43(1) OCEAN DEV. & INT'L L. 18 (2012).

82 I. MacGibbon, *Estoppel in International Law*, 7(3) INT'L & COMP. L. Q. 468 (1958).

claims to historic rights or waters. Thus, in subsequent NVs, China is required to assert that the maritime areas adjacent to the SCS islands are historic waters in line with its domestic legislation and declarations. This consistent communication may reinforce the claims of China in this region.

There is a possibility that the ambiguity of China's nine-dash line claims in the SCS may have led to disputes. Although China has mentioned that it enjoys various types of maritime rights and interests within the dashed line,⁸³ the international community has found this claim to be unclear.⁸⁴ As the concepts of EEZs and continental shelves did not exist in the 1930s when the nine-dash line was introduced, China's maritime rights within this line could not be deemed an established maritime zone under the UNCLOS. Moreover, the nine-dash line had not been formally submitted to the UN before it was used in NVs for the objections to the joint submission by Vietnam and Malaysia, as well as to a separate submission by Vietnam. Furthermore, China did not provide a detailed explanation of the nine-dashed line, leading to ambiguity.⁸⁵ To address this question, China should incorporate the nine-dash line into its domestic legislation, clarifying its historic rights, including exclusive sovereignty (historic title) over Nansha and Xisha Islands, and Zhongsha Islands (Macclesfield Islands), and its non-exclusive sovereign rights (rights short of title), such as fishing and navigation, in parts of the SCS.⁸⁶ This legislative clarity would strengthen China's claims and reduce the potential for "malicious legal warfare" by neighbouring and Western countries.

Mutual respects for international law are crucial for addressing overlapping claims in the SCS. Therefore, to finalise the delimitation peacefully, China is asked to negotiate directly with the relevant countries to determine the potential areas where the nine-dash line may overlap with their maritime claims. Another important point is to emphasize China's commitment to respect freedom of navigation and overflight under the international law within the nine-dash line.

The semi-enclosed nature of the SCS necessitates negotiations to resolve disputes over continental shelf boundaries, placing the CLCS in a challenging

83 Keyuan Zou & Xinchang Liu, *The Legal Status of the U-Shaped Line in the South China Sea and Its Legal Implications for Sovereignty, Sovereign Rights and Maritime Jurisdiction*, 14(1) CHINESE J. INT'L L. 63 (2015).

84 Ana Espina, *Implications of the Submission of Claims for Extended Continental Shelf in the South China Sea 3* (RCAPS, Working Paper Series, 2013), https://www.apu.ac.jp/rcaps/uploads/fckeditor/publications/workingPapers/RCAPS_RPD-12002.pdf.

85 CLCS, Communication by China, U.N. Doc. CML/8/2011 (Apr. 14, 2011), https://www.un.org/depts/los/clcs_new/submissions_files/vnm37_09/chn_2011_re_phl_e.pdf.

86 Ran Guo, *Historic or Historical: Lost in Translation of Li Shi Xing Quan Li in the South China Sea Arbitration*, 11(1) J. E. ASIA & INT'L L. 53 (2018).

position. On the one hand, overlapping maritime claims among multiple coastal states trigger Rule 46 of the CLCS RoP, which prohibits the Commission from adjudicating disputes. On the other, as a technical body, the CLCS is tasked with examining submissions concerning the outer limits of the continental shelf. This tension prevents the CLCS from advancing its work without either exceeding its mandate or becoming entangled in unresolved political controversies. China has consistently stressed negotiation and consultation as the preferred approach to resolving these disputes. In the framework of the Code of Conduct (CoC) in the SCS,⁸⁷ the foreign ministers of China and the Association of Southeast Asian Nations (ASEAN) committed to jointly manage territorial and jurisdictional disputes. Nonetheless, before relevant disputes are settled, provisional arrangements with neighbouring countries are necessary for China to enhance mutual trust through joint development and ensure the proper delimitation of overlapping continental shelves, thereby maintaining regional stability.⁸⁸

V. Legal and Policy Implications

A. Challenges in Maritime Dispute Resolution: The CLCS and Sovereignty Conflicts

The CLCS RoP and handling of disputed submissions have important legal implications for managing international maritime disputes. These rules reflect a balance among international legal principles, technical assessments, and state sovereignty. A key issue is the role of international law in resolving territorial and maritime disputes, and the way the CLCS functions as both a technical body and a legal entity.

As mentioned above, the CLCS was designed and established as a scientific and technical body in determining the limits of extended continental shelves under the UNCLOS.⁸⁹ When territorial disputes or overlapping maritime claims occur, however, technical functions of the CLCS become deeply intertwined with

87 ASEAN, Joint Communique of the 50th ASEAN Foreign Ministers' Meeting (Aug. 6, 2017), <https://asean.org/joint-communique-of-the-50th-asean-foreign-ministers-meeting>.

88 Huaigao Qi, *Joint Development in the South China Sea: China's Incentives and Policy Choices*, 8(2) J. CONTEMP. E. ASIA STUD. 220-39 (2019).

89 Suzette Suarez, *Commission on the Limits of the Continental Shelf*, 14 MAX PLANCK Y.B. U.N. L. 131 (2010).

areas of political and legal concerns. A challenge in this regard lies in reconciling the scientific mandate of the CLCS with legal disputes raised by states, particularly when parties contest sovereignty over islands or maritime areas that are critical to the claims under review.⁹⁰

One of the major challenges for the CLCS in context of the SCS disputes lies in reconciling state sovereignty with the principle of international cooperation. Sovereignty over maritime zones aims to not only controls the resources but also defend political and territorial integrity.⁹¹ Absolute claims of sovereignty in this region, however, often leads to the conflict with the principle of cooperation in the international maritime law, which aims to balance competing claims for peaceful resolution and equitable distribution of resources.⁹² These disputes illustrate how the CLCS's role reveals the potential for state interests to obstruct the broader aims of international law, i.e., cooperation for mutual benefit.⁹³ The conflict between sovereign rights and cooperative principles underscores the dilemma that the CLCS faces when dealing with overlapping claims.⁹⁴

The disputes in the SCS illustrate the complex process in managing overlapping claims and maritime entitlements under the UNCLOS.⁹⁵ Although the UNCLOS provides a framework for states to submit to the CLCS and address maritime boundary issues, it is not designed to resolve territorial disputes directly. This framework implies that the UNCLOS provides a legal mechanism for defining maritime boundaries but leaves the resolution of territorial disputes to separate diplomatic processes.⁹⁶ In this context, the CLCS' role is limited to technical assessments.⁹⁷ Actually, the UNCLOS does not mandate such negotiations as requirements to resolve disputes.

90 Ekaterina Antsygina, *Extended Continental Shelf of the United States: A Landmark Announcement and Its Implications*, EJIL: TALK (Jan. 18, 2024), <https://www.ejiltalk.org/extended-continental-shelf-of-the-united-states-a-landmark-announcement-and-its-implications>.

91 Andreas Østhagen, *Troubled Seas? The Changing Politics of Maritime Boundary Disputes*, 205 OCEAN & COASTAL MGMT. 105535 (2021).

92 Zhengkai Mao et al., *Binding Force of Extended Continental Shelf Limits: Investigating Whether Article 76(8) of UNCLOS Constitutes Customary International Law*, 10 FRONTIERS IN MARINE SCI. 1 (2023).

93 Iuchi & Usui, *supra* note 6.

94 Hilde Woker, *Disagreements between the Commission on the Limits of the Continental Shelf (CLCS) and Submitting Coastal States*, 39(2) INT'L J. MARINE & COASTAL L. 252-78 (2024).

95 Sofia Kausar, *Sovereignty at Sea: The South China Sea Dispute and UNCLOS Implications*, 6(4) INT'L J. L. MGMT. & HUM. 2624 (2024).

96 Anne Sheehan, *Dispute Settlement under UNCLOS: The Exclusion of Maritime Delimitation Disputes*, 24(1) U. QUEENSLAND L. J. 165 (2005).

97 Lathrop, *supra* note 30.

B. Strategic Approaches: Strengthening China's Position in the CLCS

China is a key player in the SCS disputes. Its strategic approach to the CLCS is crucial to promote co-prosperity between the parties concerned who are involved in territorial claims as well as to strengthen its maritime rights. Therefore, China is recommended to be strategically multifaceted within the CLCS, combining legal arguments, diplomatic efforts, and an effective use of the CLCS RoP to ensure that its interests are respected. A core strategy of China in the CLCS is to invoke Paragraph 5(a) of RoP-Annex I at NVs in order to request the CLCS to defer or refuse considering submissions that overlap with its claims. In addition, it may be good for China to refine its legal clarity and diplomatic language to confirm its objections in a convincing and reasonable manner.⁹⁸ By clearly articulating its position, China can be more aligned with the legal framework of the UNCLOS. This will help China maintain its technical claims, thus safeguarding that the CLCS deliberations are not clouded by unresolved territorial issues.

Furthermore, China can be engaged in regional diplomatic efforts more actively for maritime peace and stability. It is crucial for China to foster cooperation with the ASEAN countries and other regional stakeholders.⁹⁹ Promoting the CoC and engaging in cooperative dialogues can diffuse tensions and reduce the risk of future disputes with regional stakeholders.

Finally, China should support the reforms of the CLCS' operational procedures to better address the complexities involving disputed areas. Currently, the CLCS' framework requires greater flexibility to deal with submissions regarding territorial sovereignty disputes.¹⁰⁰ By reforming ambiguous dispute resolution processes, the CLCS can work more effectively without delays.¹⁰¹ These reforms may include a more defined role for bilateral negotiations within the CLCS or the establishment of a temporary deferral process.¹⁰²

98 Gleice Miranda & Valentina Maljak, The Role of United Nations Convention on the Laws of the Sea in the South China Sea Disputes, E-International Relations (June 23, 2022), <https://www.e-ir.info/2022/06/23/the-role-of-united-nations-convention-on-the-laws-of-the-sea-in-the-south-china-sea-disputes>.

99 Leticia Simões, The Role of ASEAN in the South China Sea Disputes, E-International Relations (June 23, 2022), <https://www.e-ir.info/2022/06/23/the-role-of-asean-in-the-south-china-sea-disputes>.

100 Donald Rothwell, *The Arctic in International Affairs: Time for a New Regime?* 15(1) BROWN J. WORLD AFF. 241 (2008).

101 Tran, *supra* note 12.

102 Limei Wang, *The Rule of Law System for China's Marine Security*, 11 FRONTIERS IN MARINE SCI. 1 (2024).

VI. Conclusion

Since its establishment, the CLCS has received numerous submissions involving various disputes, such as territorial sovereignty over land, maritime boundary delimitations, and maritime entitlements. In response, the CLCS has developed a set of procedural rules to effectively manage such submissions. It was the way to balance the interests of both submitting and notifying states while considering broader implications for the international community.

Nonetheless, the CLCS' decisions on the five submissions in the SCS region highlight certain complexities that warrant further reflection. These submissions involve not only significant disputes over territorial sovereignty, but also the complex issues of delimitation of maritime boundaries and entitlements. Given the existing rules for managing such disputes in the CLCS, a decision to "not consider or qualify" those submissions will align more closely with its practice than merely "defer further consideration."

China has consistently advocated for the peaceful settlement of disputes through dialogue and consultation. In this context, peace and cooperation between China and other key stakeholders is essential to create a more inclusive and effective system for international ocean governance. As maritime disputes continue to grow in complexity, it is critical that the CLCS adopts a more flexible and adaptive approach to conduct its procedures. In this sense, the CLCS is asked to continuously play a pivotal role in both promoting international maritime stability and fostering cooperative efforts to manage and protect oceans of the world.

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