

# The South China Sea Arbitration and Beyond: China's Approach to the Law of the Sea and the Rule of Law\*

Paul Reichler\*\*

## Abstract

Within the South China Sea Arbitration, there were a number of significant issues. Among them, the author sees that the two issues stand out above the others. One is China's claim to the waters and seabed of the South China Sea based on its so-called nine-dash line and the other is the maritime entitlements of the islands in the South China Sea—particularly those of the Spratly Islands. The author discusses what these issues meant, tying it into the developments between China and the Philippines in the South China Sea since the Arbitral Award and how it has affected the attitudes and actions of other South China Sea coastal States. Comparing China's approach to its neighbors in the South China Sea with its approach to its neighbors to the East—South Korea and Japan—in regard to maritime issues, the author also points out that China does not eschew international law in setting out its maritime boundary claims. To the contrary, it attempts to justify its far-reaching claims on the basis of international law, specifically, UNCLOS and customary international law. It allows China to present itself to the outside world as respectful of the rule of law. Being seen as law-abiding enhances their reputation and their “soft” power, that is, their ability to influence the conduct of other States. The author concludes that these disputes can, and will, only be resolved by agreements between or among China and the various other protagonists although it will take time and will not be easy.

## 1. The Chagos Archipelago Case

Good afternoon, everyone. The topic that I have been asked to speak about is, “The South China Sea Arbitration and Beyond: China's Approach to the Law of the Sea,” and I will come to that in a moment. Before I address that topic, I was asked by the organizers if I would make a few remarks about the International Court of Justice (ICJ)'s recent advisory opinion issued on 25 February 2019, in the case involving the Chagos Archipelago. I had the honor of being counsel to Mauritius in that case, and I was present during the reading of the advisory opinion.

Briefly, the case involved the decolonization of Mauritius. In 1965, prior to the granting of independence of Mauritius by the British, the British themselves divided the colony of Mauritius, keeping for themselves a portion of that colony, specifically, the Chagos Archipelago, and creating a new colony, which they called the British Indian Ocean Territory. They did that for the purpose of leasing the main island, Diego Garcia, to the United States for use as a military base.

---

\* This is an edited transcript of a keynote speech made by the author at the symposium “Territory and Maritime Issues in East Asia and their Origins,” hosted by JIIA, Doshisha University Center for Study of South China Sea, and Faculty of Law Doshisha University on March 2, 2019.

\*\* Paul Reichler, Esq. is Partner at Foley Hoag LLP and Lead Counsel for the Philippines in the South China Sea Arbitration Case.

In 1968, Mauritius was granted independence, but without the Chagos Archipelago. As a sovereign state, Mauritius never stopped demanding the return of that piece of its territory, which had been severed from it by the British prior to the granting of independence.

Because the British have reservations to their acceptance of ICJ jurisdiction, it was not possible for Mauritius to bring a contentious case against the United Kingdom; however, after many years of presenting the issue before the General Assembly of the United Nations, in 2017 the General Assembly adopted a resolution by an overwhelming vote to submit the matter to the International Court of Justice in the form of a request for an advisory opinion, and specifically, the General Assembly asked the Court to answer two questions.

One, given that the Chagos Archipelago was severed from Mauritius prior to independence and remained under British rule, was the decolonization of Mauritius ever lawfully completed?

And two, what are the consequences, the legal consequences today, of the continued colonial administration of the Chagos Archipelago?

The court answered both questions, and because these were advisory proceedings, every State that is a member of the United Nations had an opportunity to participate if it chose to do so. Some 30 States did, either through written submissions or at the oral hearings. The vast majority spoke in support of Mauritius' position.

In response to the first question, the Court determined that the decolonization of Mauritius was not lawfully completed. This was because it was unlawful in 1965 for the British to dismember the colonial territory and to establish a new colony since, as of 1965, international law had already crystallized into a rule, a customary rule, requiring the decolonization of subject peoples, of non-self-governing peoples, in accordance with the freely exercised self-determination of those peoples; and the United Kingdom had failed to respect the right of self-determination of the people of Mauritius when it severed the Chagos Archipelago and excluded it from the decolonization of Mauritius.

In fact, the United Kingdom not only retained control of that part of Mauritius, but forcibly removed the native population of these islands, against their will, leaving their possessions behind, and deposited them in Mauritius and the Seychelles. It was, as the Court found, a horrendous violation of their human rights.

In response to the second question, in regard to the legal consequence of the United Kingdom's failure to lawfully complete the decolonization of Mauritius, the Court ruled that the U.K.'s ongoing colonial administration of the Chagos Archipelago is an internationally wrongful act, which is continuing in nature, and that the U.K. is obligated, under international law, to terminate that administration as rapidly as possible.

The Court also ruled that, because self-determination and decolonization are principles so fundamental to international law that they have *erga omnes* application, other Member States of the United Nations must cooperate in bringing about the decolonization of Mauritius, and must not contribute to or support the continued colonial administration by the British.

Now, this is an advisory opinion, so it is not a legally binding judgment of the Court; however, it is an authoritative determination of the legal status of the Chagos Archipelago, and the obligations of the United Kingdom under customary international law, issued by the highest judicial authority in the international legal system. Hopefully, the British, who have always professed their commitment to the rule of law, will comply with their legal obligation to complete the decolonization of the Chagos Archipelago by terminating their colonial administration as rapidly as possible.

Mauritius, meanwhile, will return to the United Nations General Assembly, now that the Court answered the General Assembly's questions, for a further resolution implementing the Court's rulings.

I will now turn to my main topic, the "South China Sea Arbitration and Beyond," and discuss,

in this context, what appears to be China's approach to the law of the sea.

## **2. A Review of China's Maritime Claims in the South China Sea and the Arbitral Tribunal's Award**

The award is over 400 pages, so naturally I can only summarize it. I did give a presentation on the award in some detail at a JIIA symposium in Tokyo two years ago, and my presentation has been published by JIIA, and is available to any of you who might be interested.<sup>1</sup> There were a number of significant issues in that case. Today, I will focus on the two issues that, in my judgment, stand out above the others.

The first of these issues is China's claim to the waters and seabed of the South China Sea based on its so-called nine-dash line. China claims not only sovereign rights, but actual sovereignty over all of the waters and seabed within the limits of this nine-dash line. If you have seen it depicted on a map, you know how exaggerated a claim this is. The South China Sea is shaped like a bucket with the top being the mainland coast of southern China. The nine-dash line is like the tongue of a cow, which reaches down from the top of the bucket almost entirely to the bottom. It extends more than 600 miles from the Chinese mainland coast, and comes very close to the Philippines, Malaysia, Brunei, Indonesia and Vietnam, within 35 to 50 miles of their coasts. China's claim, therefore, overlaps and purportedly negates the vast majority of their 200-mile maritime entitlements under the United Nations Convention on the Law of the Sea (UNCLOS), to which China and all of the other States are parties.

## **3. UNCLOS and Historic Rights to Maritime Areas**

China makes this extremely exaggerated claim based on its alleged historic rights, and it claims that its historic rights supersede the legal rights of its neighbors under UNCLOS. The tribunal decided that this is a completely untenable claim, which has no basis in international law. The tribunal decided this unanimously. It held that when the States Parties adopted UNCLOS in 1982, they specifically rejected the idea that any previously claimed historic rights in areas beyond the 12-mile territorial sea would survive the Convention. The new regimes for the exclusive economic zone and continental shelf out to 200 miles, beyond the 12-mile territorial sea, were adopted with the express intention of voiding and replacing any previously existing claims, based on historic or economic rights, to areas then considered "high seas." Thus, China could not lawfully claim to have historic rights in areas beyond 12 miles from its coasts, although it could claim, like any other coastal State under UNCLOS, an exclusive economic zone and continental shelf extending up to 200 miles, but no farther.

The tribunal further found, also unanimously, that even under customary international law, prior to UNCLOS, China could not make a credible claim of historic rights to any part of the South China Sea far removed from its coasts. Under customary international law, a claim of historic rights to an area must be based on continuous administration of the area, under claim of title, over a long period of time, to which other States acquiesce. The tribunal ruled that there was no evidence to support China's historic rights claim. Indeed, up until the end of World War II, China had never even made a claim to any part of the sea south of the Paracel Islands, let alone exercised continuous administration over it, or enjoyed the acquiescence of any other State to its dominion.

Historically, there were long periods, sometimes lasting centuries, when China itself, under the emperors, forbade Chinese vessels from navigation in the South China Sea, in an effort to

<sup>1</sup> The lecture made by the author has been published on the website of Japan Information Center, JIIA. For details see Paul Reichler, "The Rule of Law and the Path to a Just and Lasting Peace in the South China Sea," *Japan Review* Vol.1 No.2, [https://www.jiia-jic.jp/en/japanreview/pdf/JapanReview\\_Vol1\\_No2\\_Winter\\_2017.pdf](https://www.jiia-jic.jp/en/japanreview/pdf/JapanReview_Vol1_No2_Winter_2017.pdf)

close China off from the influence of the European colonial powers. So, the idea of any continuous administration under claim of title over a prolonged period of time, let alone with acquiescence of neighboring States, just had no evidence whatsoever to support it.

Of course, UNCLOS replaced customary international law in regard to maritime rights in the South China Sea. But even under customary law, the arbitral tribunal found, China's nine-dash line claim was groundless.

#### **4. Islands and Maritime Entitlements**

The other major issue decided by the tribunal, in my judgment, concerned the maritime entitlements of the islands in the South China Sea, and particularly those of the Spratly Islands. It was China's position that it was sovereign over all of the Spratly Islands, that they constituted an archipelago, and thus straight lines could be drawn connecting the outermost features, from which maritime entitlements up to 200 miles would extend.

The tribunal unanimously rejected China's thesis. First, it decided that it did not need to determine which State was sovereign over these disputed islands, because maritime entitlements do not depend on who is sovereign; they depend on the nature of the particular insular feature under Article 121 of UNCLOS.

The tribunal found that the Spratly Islands are not entitled to archipelagic status, because, under UNCLOS, which replaced customary international law, archipelagic status is conferred only on an "archipelagic State," which is defined in the Convention as a State whose maritime areas exceed its land territory by a ratio of up to 9:1. In comparing land to maritime area, the entire continental, as well as insular, landmass of the State must be taken into account. It is impossible to claim archipelagic status solely for a group of outer islands, like the Spratlys, without including China's entire landmass. When that is included, the land territory exceeds the maritime areas, and archipelagic status is unavailable.

The tribunal then considered whether the individual islands were entitled, under UNCLOS, to 200-mile maritime areas, or whether their entitlements were limited to only a 12-mile territorial sea. In doing so, it was called upon to interpret Article 121(3) of UNCLOS, which denies any maritime area beyond 12 miles to any island that constitutes a mere "rock," which is defined as an insular feature that is not capable of sustaining human habitation or economic life of its own. The tribunal carefully analyzed all of the largest islands in the Spratly Group, especially the largest, Itu Aba, which is claimed by China, the Philippines and Vietnam, and is actually occupied by Taiwanese government forces. It ruled that neither Itu Aba nor any other Spratly feature naturally provided the essential elements for sustaining human life, that they were therefore "rocks" under the Convention, and lacked any maritime entitlements beyond 12 miles.

As a result, the tribunal found, China was limited in its maritime entitlements in the South China Sea to a 200-mile exclusive economic zone and continental shelf, measured from its mainland coast, and a 12-mile territorial sea from any island in the Spratlys over which it may be sovereign.

When one overlays the picture of China's entitlements onto the 200-mile entitlements from the coasts of the Philippines, Malaysia, Indonesia and Vietnam in particular, one finds that China's entitlements do not, in fact, overlap much of the entitlements of the other States; that is, all of the other States are entitled to enjoy almost the entirety of their 200-mile entitlements under UNCLOS, free of any lawful Chinese claim.

#### **5. China's Rejection of the Award**

China, as we know, has formally rejected the findings of the tribunal, and its award. It decided not to participate in the proceedings, and it tried mightily to discredit them. It has denounced the arbitrators individually, and it has gone to great lengths to publish and promote criticism of their

award. But, significantly, while it has denounced the award, it has not withdrawn from UNCLOS. Indeed, it has tried to defend its claims by arguing that they are consistent with UNCLOS, and that the tribunal made an erroneous interpretation of the Convention.

I think this is very significant, for reasons that I will come to. But, first, let us look at what China is now arguing. On historic rights, they argue that the Convention does not replace historic rights that existed under customary international law within the regime of the exclusive economic zone and continental shelf, but that historic rights and the new regimes exist side by side. China may be the only State in the world that advances this interpretation of the Convention, which the arbitral tribunal flatly rejected. But I think it is significant that China continues to argue that its claims fall within UNCLOS, thus reinforcing its adherence to the Convention.

On islands, too, China continues to argue that its claims are consistent with UNCLOS: specifically, that the Spratlys constitute an outlying archipelago of China, and their archipelagic status is well-founded under customary international law. Again, the five arbitrators all rejected this claim, as would most, if not all, experts on UNCLOS. But it is not insignificant that China is attempting to defend its claims not by rejecting UNCLOS but by insisting that they are permissible under the Convention. I will offer my thoughts on why China takes this approach in the final section of my presentation.

## **6. Developments between China and the Philippines in the South China Sea Since the Arbitral Award**

Let me now review what has happened between China and the Philippines since the issuance of the arbitral award in July of 2016.

First, as you know, there was a change in government of the Philippines just prior to the issuance of the award, and they adopted a different policy toward China. They made a decision that they would not, indeed they could not, abandon the award or the benefits that they obtained under it. But they decided not to insist on compliance directly to the Chinese. Instead, they adopted a policy of friendliness toward China, and they have reaped significant Chinese investment and increased trade in return.

Second, the Chinese have allowed Philippine fishermen to return to fish at Scarborough Shoal, which China had blocked since 2012. This was one of the reasons the Philippines brought its case against China. The arbitral tribunal ruled that China's prevention of Philippine fishing activity at Scarborough Shoal was a violation of the fishermen's historic fishing rights, and that they should be allowed to return to fish there. In this sense, China is now complying with one of its obligations under the award.

Third, China has engaged with the Philippines about joint development of the resources at Reed Bank, a maritime area that lies between the Spratly Islands that China claims and the Philippine coast at Palawan. The seabed in that area is believed likely to hold huge petroleum deposits. Prior to and during the arbitration, China threatened and used force to keep the Philippines from exploring in this area, which is 100 miles off the Philippine coast and plainly within the Philippine continental shelf and exclusive economic zone. As a result of China's recent approach, the two States are in discussion about joint development. Although no agreement has yet been reached, it may well be that the Philippines gets to enjoy the resources of its continental shelf in collaboration with China.

## **7. Attitudes and Actions of Other South China Sea Coastal States**

The attitudes and actions of other South China Sea coastal States after the issuance of the award are also significant.

Of course, the award is binding only between China and the Philippines; however, some of the tribunal's findings—including the invalidity of China's nine-dash line and its incompatibility

with UNCLOS, and the ruling that none of the Spratly Islands generates an entitlement beyond its 12-mile territorial sea—are as beneficial to Vietnam, Malaysia and Indonesia as they are to the Philippines.

Despite its rejection of the award, China has been careful to avoid confrontations with the other South China Sea States. It does not appear to have engaged in any further drilling or exploration for oil within 200 miles of their coasts; nor has it attempted to prevent fishermen from those States from fishing within these limits.

Moreover, China has not undertaken any action to challenge their hold on the islands in the Spratly group that they already occupy. To be sure, China has consolidated its hold on the islands in this group that it already occupied prior to the arbitration. It has ominously built military facilities on them, which some States regard as a threat to peace and security, but it has not attempted to dispossess Vietnam, Malaysia, or the Philippines of any of the islands that they hold. So, it seems that China has been a bit more cautious, and not especially aggressive, vis-à-vis the other States in the wake of the arbitral award.

The other States have been cautious, as well. Vietnam, Malaysia and Indonesia, in particular, have interests similar to those of the Philippines, and they have made very clear their refusal to accept the nine-dash line and China's exaggerated claims. Similarly, they reject China's claims of exaggerated entitlements from small islands. But they have not been particularly effective in challenging China, because they have acted individually rather than collectively. The decision of the Philippines, shortly after the issuance of the arbitral award, to deal with China bilaterally—a decision that China encouraged and welcomed—made collective action less feasible. ASEAN has not been effective in mounting a collective approach, because it acts by consensus and includes some States that are subservient to China's interests. Only an alliance between the Philippines, Vietnam, Malaysia and Indonesia would have a chance of winning concessions from China.

There is strength in numbers, and an alliance of these States could bring greater pressure on China to accommodate their lawful and legitimate interests, if they act together. But this will not happen as long as the Philippines, under President Duterte, remains committed to its go-it-alone approach vis-à-vis China. This approach is, of course, welcomed by China, which prefers dealing with each of the South China Sea States on a bilateral basis, which allows China to take greater advantage of its superior power.

## **8. UNCLOS and China's Claims in Regard to Maritime Delimitation with South Korea**

It is interesting to compare China's approach to its neighbors in the South China Sea with its approach to its neighbors to the East, namely South Korea and Japan, in regard to maritime issues.

China and South Korea face each other across the Yellow Sea, where the boundary has not yet been delimited. There have been sporadic attempts to initiate negotiations. China's approach has been that before the parties can agree on a maritime boundary, they should agree on the equitable principles that will govern the delimitation of the boundary.

This contrasts with the approach to delimitation taken by the ICJ, ITLOS and UNCLOS arbitral tribunals. UNCLOS itself prescribes that boundary delimitation in the exclusive economic zone and continental shelf should be based on equity, and international tribunals have adopted a clear methodology for achieving that objective via a three-stage process: first, drawing an equidistance line or a median line, then assessing whether there are relevant geographic circumstances which make the equidistance line inequitable, in which case an adjustment would be made to it, and then test to make sure the line does not result in a disproportionate division of the disputed maritime area between the two parties.

But China resists the standard "equidistance" approach to boundary delimitation. Instead, it

has proposed to South Korea that, instead of drawing a median line (and adjusting it as needed), the boundary in the continental shelf should reflect the fact that the vast majority of the seabed in the Yellow Sea, the sediments, originate in China and are carried to the Sea by Chinese rivers; on this basis, China claims that it is entitled to the vast majority of the continental shelf between the two States.

This is an interesting theory, and it is not bad science. But it is bad law. Boundary delimitation in the continental shelf does not depend on the source of the sediments that comprise it. In fact, this theory was addressed, and rejected, by ITLOS in the delimitation case between Bangladesh and Myanmar. Bangladesh argued for a greater share of the continental shelf in the Bay of Bengal because most of the sediments were deposited by the major river systems—the Ganges and the Brahmaputra—that traversed Bangladesh. Not a single one of the 23 judges on that tribunal (including two ad hoc judges) agreed that this was a relevant factor in the delimitation of the continental shelf. Instead, the tribunal applied the standard three-step process.

The point here is that China does not eschew the law. It attempts to justify its claim on the basis of a legal theory that it considers consistent with UNCLOS, or with customary international law, but which plainly is not. This is similar to China's invocation of the nine-dash line in the South China Sea, and China's argument that it is consistent with UNCLOS and customary international law.

## **9. UNCLOS and China's Claims in Regard to Maritime Delimitation with Japan**

We can see the same patterns in China's approach to maritime delimitation with Japan.

Japan, by virtue of its legislation, claims that the boundary shall be determined by agreement, but in the absence of agreement it shall be a median or equidistance line. This is consistent with UNCLOS. Because the distance between that parties' coasts is less than 400 miles, their respective 200-mile entitlements to an exclusive economic zone and continental shelf overlap. In such circumstances, UNCLOS and the case law interpreting it require that the boundary be delimited by a median line, with appropriate adjustments to accommodate any relevant geographical factors that might exist (if any).

China, however, rejects that approach. This is what their Ministry of Foreign Affairs wrote in 2015: "China claims that the 200-mile exclusive economic zone and China's continental shelf in the East China Sea prolongs naturally to the Okinawa Trough." Now this of course is a very serious issue for Japan. China rejects equidistance in favor of geological continuity. It claims that its maritime entitlements extend beyond the median line with Japan, and even beyond 200 miles from its own coast, all the way to the geological breach in the seabed known as the Okinawa Trough, which is much closer to Japan than to China.

There are two serious problems with China's approach. First, the EEZ is unrelated to the seabed; it consists only of the waters above the seabed, and UNCLOS does not permit it to extend beyond 200 miles in any circumstances. China appears to be confusing, perhaps deliberately, the EEZ and the continental shelf.

Second, in regard to the continental shelf, China invokes Article 76(1) of UNCLOS, which entitles each coastal State to a shelf extending up to 200 miles from its coast, or, in some cases, longer, if there is a natural prolongation. However, even if the Chinese shelf naturally extends beyond 200 miles, there is a difference between "entitlement" and "delimitation." China's "entitlement" might be more extensive than Japan's 200 mile "entitlement," but the extension completely overlaps with Japan's "entitlement." Where there are overlapping entitlements, a delimitation is required. And, as the ICJ and other international tribunals have consistently ruled, delimitation begins with a median or equidistance line. It does not follow the geological features of the seabed.

## **10. Observations on China's Commitment to UNCLOS and the Rule of Law**

Of course, we are not here to delimit the maritime boundary between China and Japan. Our purpose is to discern and understand China's maritime claims and their purported justifications. And what we see in the East China Sea is consistent with the pattern observed in regard to China's approaches in the South China Sea and the Yellow Sea. Here again, China does not eschew international law in setting out its maritime boundary claims. To the contrary, it attempts to justify its far-reaching claims on the basis of international law, specifically, UNCLOS and customary international law. This allows China to present itself to the outside world as respectful of the rule of law.

Many experts thought that China would withdraw from the Convention after the July 2016 arbitral award. But it did not. China remains a party to UNCLOS and it continues to profess its commitment to UNCLOS. It even claims to be complying with the Convention. This is helpful, and it is an important starting point for thinking about solutions to some of these problems, even if we regard China's legal interpretations as self-serving and implausible.

## **11. UNCLOS and Disputed Islands in the South China Sea, East China Sea and Sea of Japan: Is There a Path to Settlement?**

Why does China remain a party to UNCLOS and present itself as law-abiding and respectful of the rule of law? It must be because China considers that its national interest is best served this way. Why might this be so? Because China, like other States, recognizes the value of "soft" power, that is, the influence that is generated by the reputation the State establishes in the international community, through its behavior. No one needs an explanation of how "hard" power—including military and economic might—generates influence. "Soft" power, by contrast, is more subtle and less easy to appreciate or measure. But there is no question that it exists, and that it is important to States. This is demonstrated in many ways. One is the way States invariably attempt to justify their actions as lawful. Even obviously aggressive behavior is almost always defended by the perpetrator as consistent with international law. Why do States go to this trouble?

Because they know that being seen as law-abiding enhances their reputation and their "soft" power, that is, their ability to influence the conduct of other States. China, as its behavior demonstrates, understands this.

The question is: does China's interest in being seen as law-abiding create opportunities for peaceful and equitable settlement of its disputes with neighboring States in the South China Sea, the Yellow Sea or the East China Sea? And what forms could a dispute settlement process take?

We can probably rule out international arbitration, at least for the foreseeable future. China rejects it. It won't participate. So the arbitration provisions of UNCLOS would not be helpful to other States that have disputes with China. Although it would still be possible to instigate an arbitration against China, and even to obtain an award, the knowledge that China won't participate and will inevitably refuse to accept the award diminishes the value of such an approach. So what can else be done?

The Convention also provides for compulsory conciliation. This is a less confrontational or adversarial approach, more akin to mediation than litigation. It actually succeeded between Timor-Leste and Australia, the only States ever to employ it, and it produced an agreement. Is it possible that China would accept conciliation if it were instigated by Vietnam, for example, or Indonesia (or South Korea or Japan)? What makes conciliation potentially attractive is that the result is either an agreement between the parties, or a recommendation by the conciliators; it does not produce a binding judgment, or compel any State to accept a solution it finds objectionable. Even if the current position of China is to reject all forms of third-party dispute settlement, it might find, eventually, that a mediated settlement negotiation process (which is what conciliation fundamentally is), might be preferable to a permanent stalemate and a frozen conflict.



Another possibility for addressing China's "unique" interpretations of UNCLOS, would be to seek an advisory opinion from the ICJ or ITLOS. This would not be a contentious proceeding and would not require China's consent. It is more difficult to seek an opinion from the ICJ, which requires a resolution of the U.N. General Assembly requesting one. ITLOS merely requires a request from any international organization whose charter authorizes it to make such a request, including a newly-formed organization that is created for that purpose. ITLOS also has the advantage of including a Chinese judge (as well as judges from Japan, South Korea and Thailand). Opinions might be sought on the following questions: Did historic rights claims to areas beyond 12 miles survive the Convention and the regime of the EEZ and the continental shelf? What elements are required to support a claim of historic rights under customary international law? May a continental state that claims a few offshore islands consider itself an archipelagic state under UNCLOS? Does the origin of sediments that comprise the continental shelf constitute a relevant factor in the delimitation of the boundary in the shelf? Does natural prolongation of a State's shelf take precedence over a median line in delimitation of the boundary in the shelf? These are questions quite suitable for an advisory opinion, and the opinion(s) given, which would be likely to undercut China's legal arguments, might help achieve progress in negotiating settlements of the various disputes.

In the end, these disputes can, and will, only be resolved by agreements between or among China and the various other protagonists. This will take time, and it will not be easy. It will take persistence on the part of China's neighbors, and most likely their cooperation and coordination with one another. And it will also require a change in China's attitude, and a conclusion on China's part that its national interest can be better served by reaching equitable accommodations with its neighbors, in ways that respect their rights under UNCLOS as well as China's, and demonstrate the commitment of all to the rule of law, than by permanent stalemate and interminable conflict, with the attendant risk of escalation and descent into violence.