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Chapter 12

Territorial Regimes and Related Issues

A. LAW OF THE SEA AND RELATED BOUNDARY ISSUES

1. UN Convention on the Law of the Sea

On December 16, 2011, U.S. Secretary of State Hillary Rodham Clinton delivered remarks at the Pew Business Roundtable on the Law of the Sea Convention. Her statement, repeating the executive branch's support for U.S. accession to the UN Convention on the Law of the Sea, appears below and is also available at www.state.gov/secretary/rm/2011/12/178603.htm.

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I am delighted to have this opportunity to speak to this roundtable and once again voice my support for joining the Law of the Sea Convention. Signing onto the Convention is critical to protecting American security and enhancing our economic strength.

Joining the Convention would put America's resource rights on firm legal footing, protecting American business interests and helping those businesses stay competitive internationally. The Convention provides legal certainty and predictability that businesses can rely on, empowering them to pursue ventures that they would not be able to undertake otherwise.

For example, Chinese, Indian, and Russian companies are exploring deep seabeds for rare earth elements and valuable metals, but the United States cannot sponsor our companies to do the same. Joining the Convention will level the playing field for American companies so they have the same rights and opportunities as their competitors.

Past administrations—both Republican and Democratic—the United States military, and industry and environmental groups have all together signaled strong support for joining the Convention. It is a key piece of unfinished business. And I'm confident that the United States will soon do what over 160 other countries have already done and join the Law of the Sea Convention. Thanks to all of you for helping to make this a reality.

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2. Other Boundary or Territorial Issues

On July 22, 2011, after the ASEAN Regional Forum, the State Department issued a press statement by Secretary Clinton explaining the U.S. position on territorial and maritime disputes in the South China Sea. The July 22 statement is excerpted below. The full text of the press statement is available at www.state.gov/secretary/rm/2011/07/168989.htm.

Secretary Clinton provided similar explanations of the U.S. position on the South China Sea on other occasions in 2011. Her June 2, 2011 remarks after a meeting with Foreign Secretary Albert del Rosario of the Philippines are available at www.state.gov/secretary/rm/2011/06/166868.htm. Secretary Clinton's remarks on November 16, 2011 also included some discussion of the South China Sea and are available at www.state.gov/secretary/rm/2011/11/177234.htm. See *Digest 2010* at 513-14 for Secretary Clinton's remarks in 2010 on the South China Sea disputes.

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The United States supports a collaborative diplomatic process by all claimants for resolving the various disputes in the South China Sea. We also support the 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea. But we do not take a position on the competing territorial claims over land features in the South China Sea. We believe all parties should pursue their territorial claims and accompanying rights to maritime space in accordance with international law, including as reflected in the 1982 Law of the Sea Convention.

The United States is concerned that recent incidents in the South China Sea threaten the peace and stability on which the remarkable progress of the Asia-Pacific region has been built. These incidents endanger the safety of life at sea, escalate tensions, undermine freedom of navigation, and pose risks to lawful unimpeded commerce and economic development.

...[E]ach of the parties should comply with their commitments to respect freedom of navigation and over-flight in the South China Sea in accordance with international law, to resolve their disputes through peaceful means, without resorting to the threat or use of force. They should exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from taking action to inhabit presently uninhabited islands, reefs, shoals, cays, and other features, and to handle their differences in a constructive manner.

The United States encourages all parties to accelerate efforts to reach a full Code of Conduct in the South China Sea.

We also call on all parties to clarify their claims in the South China Sea in terms consistent with customary international law, including as reflected in the Law of the Sea Convention. Consistent with international law, claims to maritime space in the South China Sea should be derived solely from legitimate claims to land features.

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3. Piracy

For discussion of U.S. piracy prosecutions in 2011, see Chapter 3.B.8.

4. Freedoms of Navigation and Overflight

a. *Excessive air space claim—Venezuela*

In January 2011, the United States conveyed, through its embassy in Caracas, its protest of three incidents of Venezuela improperly denying access for U.S. military aircraft to a flight information region (“FIR”) under Venezuelan administration. Venezuela had similarly improperly denied access for U.S. military aircraft to the Maiquetia FIR in 2007. See *Digest 2007* at 634-36. Excerpts follow from an unclassified telegram advising the U.S. embassy in Caracas on the legal basis for, and measures needed to register, the U.S. protest.

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2. There have been three recent incidents in which U.S. military aircraft were inappropriately denied access to the Maiquetia Flight Information Region (FIR). In all three cases, the aircraft were on transit on a planned route that would take them through the FIR administered by Venezuela. Maiquetia Air Traffic Control (ATC) informed that they would not allow transit through their airspace. Under customary international law, Venezuela does not have the right to exclude such aircraft from areas beyond the Venezuelan territorial airspace. ...

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Legal Basis for USG Position

5. This is not the first time Venezuelan ATC authorities have required overflight clearance for U.S. military aircraft to transit the MAIQUETIA FIR. The U.S. Government has previously demarched the Government of Venezuela regarding similar excessive airspace claims....

6. Customary international law, as reflected in the 1982 United Nations Convention on the Law of the Sea authorizes a State to claim a twelve (12) NM territorial sea and corresponding airspace, measured from baselines drawn consistent with international law. Beyond the territorial sea, all aircraft, including military and other state aircraft, enjoy the freedoms of navigation and overflight. Military and other state aircraft operating in airspace beyond territorial airspace (whether within or outside a FIR) are free to operate without the consent of, or notice to, coastal State authorities, and are not subject to the jurisdiction of ATC authorities of those States. A coastal State may establish a FIR encompassing airspace that extends beyond territorial airspace, consistent with the requirements of the 1944 Convention on International Civil Aviation (Chicago Convention), to which Venezuela is a party. However, FIR rules apply only to civil, but not state aircraft. Military aircraft such as [those involved in the three recent incidents] are a type of state aircraft.

7. The actions of Venezuelan air traffic control authorities at MAIQUETIA ATC were contrary to customary international law in that MAIQUETIA ATC asserted the right to exclude [the three U.S. military aircraft involved] (a right only enjoyed regarding territorial airspace) from an area of the MAIQUETIA FIR over which Venezuela does not have sovereignty. Therefore, a diplomatic response is warranted to explain our position and request that Venezuela

not again take such actions. In addition, the United States retains the right to respond under the U.S. Freedom of Navigation Program, which has been in place since 1979. The purpose of the FON program is to preserve global maritime mobility of the U.S. armed forces by avoiding acquiescence in excessive claims by other nations to the world's oceans and airspace. The United States acts assertively when coastal States make claims inconsistent with international law, which, if unchallenged, could limit navigational and overflight freedoms vital to U.S. security. The United States considers that the 1982 Law of the Sea Convention accurately reflects the customary rules of international law concerning maritime navigation and overflight rights and freedoms.

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b. Excessive maritime claim—Argentina

On May 20, 2011, the U.S. Embassy in Argentina received a diplomatic note from the Ministry of Foreign Affairs, International Trade, and Worship of the Argentine Republic concerning the transit by two U.S. frigates through the Strait of Magellan on that same day. The government of Argentina conveyed its view that its regulations require three weeks advance notice for innocent passage of foreign warships in Argentine territorial waters. The U.S. Embassy responded by diplomatic note on July 22, 2011, asserting that no prior notice is required under international law. Excerpts from the U.S. diplomatic note follow.

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...[T]he United States takes this opportunity to reiterate its longstanding view that customary international law, as reflected in the UN Law of the Sea Convention, does not authorize a coastal state to condition the exercise of the right of innocent passage by any ships, including warships, on the giving of prior notification to or the receipt of prior permission from the coastal state. As a matter of longstanding policy and practice the United States does not provide prior notification for U.S. flag vessels, including warships, exercising the right of innocent passage in a territorial sea.

The policy is likewise maintained with respect to the right of transit passage through straits used for international navigation and when exercising high seas freedoms of navigation and overflight within an exclusive economic zone.

With respect to the navigational regime for the Strait of Magellan, the United States appreciates the view of the Government of Argentina that this matter is regulated by the Boundary Treaty between Argentina and Chile of 1881 and the Peace and Friendship Treaty of 1984 between the same countries. In this regard, the United States understands that this regime is recognized by customary international law, as reflected in Article 35(c) of the Law of the Sea Convention, and that this regime provides for free navigation, including the right of overflight, to be exercised without any requirement of prior notification.

The United States also notes that during a May 19, 2011 meeting between the U.S. Military Group Navy Section Chief and the Argentine Navy's Plans and Political directorate head Rear Admiral Romero, the U.S. side informed Admiral Romero of the frigates' passage

through the Strait of Magellan. This and past instances of officials of the U.S. Embassy informing Argentine authorities of the passage of certain U.S. naval vessels were provided in connection with visits to an Argentine port or activities with the Argentine naval forces.

The United States values its relationship with Argentina. The United States maintains the aforementioned policy with regard to freedom of navigation and overflight in our relations with all countries, including our close friends and partners. This policy does not, of course, affect notifications made for port visits or cooperative activities between our military forces.

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c. Excessive maritime claim—Ecuador

On October 29, 2011, the United States Coast Guard conducted a boarding of a Costa Rican-flagged fishing vessel suspected of illicit narcotics trafficking in waters of the eastern Pacific. On November 28, 2011, the Ministry of Foreign Affairs, Commerce and Integration of the Republic of Ecuador sent a note verbale to the U.S. Embassy in Ecuador claiming that boarding the vessel violated international law because it was done within Ecuador's claimed 200 nautical mile territorial sea without prior consent from the government of Ecuador. The United States responded by diplomatic note dated December 9, 2011, stressing that its actions were consistent with customary international law as reflected in the UN Convention on the Law of the Sea. The substantive paragraphs of the U.S. response appear below.

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The vessel in question was suspected of engaging in illicit narcotics trafficking and was boarded by the U.S. Coast Guard with the authorization of the flag State, Costa Rica. The boarding of the vessel was undertaken approximately 100 nautical miles north of the Galapagos Islands in the claimed territorial sea of Ecuador.

The United States fully recognizes that the sovereignty of a State extends beyond its land territory and internal waters to its adjacent territorial sea. However, under customary international law as reflected in the United Nations Convention on the Law of the Sea (“the Convention”), a State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles. In areas beyond the 12 nautical mile territorial sea, all States enjoy high seas freedoms of navigation and overflight and other internationally lawful uses of the sea related to these freedoms, consistent with international law as reflected in the Convention.

In this regard, the United States takes this opportunity to reiterate its longstanding protest of the 200 nautical mile territorial sea claim of the Government of Ecuador. This objection has been communicated to the Government of Ecuador on several occasions since 1967. Since that time, the United States has exercised its freedoms of navigation and overflight in those areas of claimed territorial sea that exceed the limits permitted by international law.

The United States has reviewed the position of the Coast Guard vessel in question and concluded that, at the relevant times, the vessel was located beyond 12 nautical miles from

Ecuadorian land territory. As stated above, the United States does not recognize Ecuador's territorial sea claim because it exceeds the limits permitted by international law.

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d. Thailand's Declarations on ratification of the UN Convention on the Law of the Sea

On May 15, 2011, the Kingdom of Thailand deposited with the United Nations its instrument of ratification of the UN Convention on the Law of the Sea. Thailand's instrument of ratification included five declarations relating to Article 310 of the Convention, one of which asserting that the enjoyment of freedom of navigation in the exclusive economic zone ("EEZ") excluded non-peaceful use, in particular, military exercises, without consent. The United States delivered a diplomatic note to the ministry of foreign affairs of Thailand on October 6, 2011 protesting the assertion in this declaration. The substantive paragraphs of the diplomatic note are set forth below.

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The United States wishes to recall that, although the United States is not yet a party to the Convention, it has long regarded the Convention as reflecting customary international law with respect to traditional uses of the ocean. Since President Ronald Reagan's 1983 Statement on United States Oceans Policy, the United States has acted in accordance with the 1982 Convention's balance of interests, including with respect to its exercise of navigation and overflight rights on a worldwide basis.

The United States also wishes to recall that, while Article 310 of the Convention allows States to make declarations at the time of signing, ratifying or acceding to the Convention, Article 310 also provides that such declarations may not purport to exclude or modify the legal effect of the provisions of the Convention in their application to the State making the declaration.

The United States disagrees with the fourth paragraph of Thailand's declaration stating that the provisions of the Convention exclude military activities in the exclusive economic zone (EEZ) without the consent of the coastal State.

The United States wishes to recall that, within the exclusive economic zone, a coastal State has sovereign rights for the purpose of exploring, exploiting, conserving and managing the living and non-living natural resources of the water column and the sea-bed and its subsoil. The coastal State also has jurisdiction with regard to the protection and preservation of the marine environment, marine scientific research, and the establishment and use of artificial islands, installations and structures for economic purposes.

The United States also wishes to recall that pursuant to Article 56 of the Convention, a coastal State's rights and jurisdiction within its exclusive economic zone are subject to the rights and duties of other states as provided for in international law. Pursuant to Article 58, the rights specifically preserved for ships and aircrafts of all States in the exclusive economic zone include the freedom of navigation and overflight, and other internationally lawful uses of the sea related to those freedoms, without requirement to provide prior notification to or obtain prior permission from the coastal State. These include military exercises and maneuvers involving the use of weapons and explosives.

The United States cannot accept the view that “military exercises or other activities [in the EEZ] which may affect the rights or interests of the coastal State” constitute “non-peaceful” uses of the seas. In this regard, the United States notes that while the Convention provides for the peaceful uses of the seas in Article 301, this provision is interpreted in line with Article 2.4 of the U.N. Charter; it does not authorize a coastal state to require prior notification of or its consent to military activities in its EEZ. With regard to the “interests” of the coastal state, the Convention does not recognize a security interest of the coastal State within the EEZ that would provide authority to regulate military activities of other States.

As reflected in the Convention, including the provisions referred to above, the United States considers that all States have the right to conduct military activities within the EEZ, subject to an obligation to have due regard to coastal State resource and other rights as well as the rights of other States as set forth in the Convention. It is the duty of the flag State, not the right of the coastal State, to enforce this due regard obligation.

Accordingly, the United States reserves its rights with regard to the matters addressed in the aforementioned declaration.

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5. Maritime Security and Law Enforcement

a. Agreement with Senegal

On April 29, 2011, the U.S. ambassador to Senegal and the minister of foreign affairs for the government of the Republic of Senegal signed an agreement “Concerning Operational Cooperation to Suppress Illicit Transnational Maritime Activity.” The agreement entered into force upon signature. As provided for in Article 2 of the agreement, its purpose is to “strengthen ongoing cooperative maritime surveillance and interdiction activities between the parties, for the purposes of identifying, combating, preventing, and interdicting illicit transnational maritime activity.” The agreement contains shiprider provisions, allowing officers of Senegal’s defense and security forces, fisheries inspectors, and other authorized agents of Senegal to embark on U.S. Coast Guard or Navy vessels or aircraft to conduct joint operations. These vessels or aircraft carrying “embarked officers” may be authorized on a case-by-case basis to enter the territorial sea of the Republic of Senegal to assist in stopping, boarding, and searching vessels suspected of violating Senegal’s laws and in arresting suspects and seizing contraband and vessels. The agreement also permits U.S. Coast Guard or Navy vessels and aircraft, with embarked officers, to assist in fisheries surveillance and law enforcement activities in Senegal’s exclusive economic zone. The agreement further empowers Senegal’s embarked officers to permit the U.S. Coast Guard or Navy vessels to stop, board, and search vessels located seaward of any state’s territorial sea and claiming registry or nationality in the Republic of Senegal. The full text of the agreement is available at www.state.gov/documents/organization/169471.pdf.

b. *Agreements with Nauru and Tuvalu*

On September 8 and 9, 2011, the United States concluded virtually identical agreements with the Republic of Nauru and Tuvalu, respectively, concerning cooperation to suppress illicit transnational maritime activity. Article 2 of the agreements set forth the purpose of the agreements in a manner identical to that of the Senegal agreement referenced above. The agreements with Nauru and Tuvalu also include shiprider provisions similar to the provisions in the agreement with Senegal. In addition, the agreements with Nauru and Tuvalu authorize U.S. law enforcement officials operating even without any embarked officials from the other Party to board and search suspect vessels and persons on board if the vessels claim registry or nationality in the other Party and are located seaward of any nation's territorial sea. The full text of the agreement with Nauru is available at www.state.gov/documents/organization/180539.pdf and the full text of the agreement with Tuvalu is available at www.state.gov/documents/organization/180540.pdf.

c. *Agreement with Gambia*

On October 10, 2011, the United States and the Republic of Gambia concluded an agreement concerning cooperation to suppress illicit transnational maritime activity. Article 2 of the agreement provides that:

The object of this Agreement is to promote cooperation between the Parties for the purpose of enabling them to more effectively suppress, combat and respond to illicit transnational maritime activity, including without limitation trafficking in narcotic drugs and psychotropic substances.

The agreement contains shiprider provisions to permit members of the "security forces" of one Party to embark on the ships or aircraft of the other Party to conduct joint maritime law enforcement operations. "Security forces" is defined to mean the Coast Guard for the United States and the Armed and Security Forces of The Gambia, including Naval components, Department of Fisheries, National Drug Enforcement Agency, and other departments and agencies. The agreement also authorizes the Coast Guard, under certain conditions, to investigate, board, and search suspect vessels in Gambia's waters if no Gambian official is on the Coast Guard ship. In such circumstances, the agreement authorizes the Coast Guard to detain the vessel, cargo, and persons on board if evidence of illicit transnational maritime activity is found pending instructions from the Republic of The Gambia Security Force.

The agreement is also a shipboarding agreement. It authorizes the security forces of each Party, under certain circumstances, to board, search, and detain suspect vessels in international waters that claim nationality of the other Party. "International waters" is defined as "all parts of the sea not included in the territorial sea, internal waters and archipelagic waters of a State." The agreement further authorizes security forces of a Party to detain suspect ships, cargo, and persons on board pending instructions from the other

Party's security forces. The agreement is available at www.state.gov/documents/organization/180610.pdf.

6. Maritime Search and Rescue: Arctic Council Agreement

The Arctic Council held its Seventh Ministerial Meeting in Nuuk, Greenland March 11-12, 2011. Secretary Clinton attended the meeting, making it the first Arctic Council Ministerial to be attended by a U.S. secretary of state. At the Seventh Ministerial, it was decided to establish a standing secretariat of the Arctic Council, to be based in Tromsø, Norway, and agreement was reached on criteria for the admission of new observers to the Council. See May 12, 2011 State Department media note, available at www.state.gov/r/pa/prs/ps/2011/05/163283.htm.

On May 12, 2011, Secretary Clinton joined representatives of the other seven Member States of the Arctic Council in signing an Agreement on Cooperation on Aeronautical and Maritime Search and Rescue ("SAR") in the Arctic ("Agreement"). The State Department issued a fact sheet on the Agreement on that day, excerpted below, and available at www.state.gov/r/pa/prs/ps/2011/05/163285.htm.

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As Arctic sea ice coverage decreases, ship-borne activities are increasing significantly in the Arctic. Flight traffic is also on the rise as new polar aviation routes cross the Arctic air space in several directions. As human presence and activities in the Arctic expand, the potential for accidents increases as well. Limited rescue resources, challenging weather conditions, and the remoteness of the area render SAR operations difficult in the Arctic, making coordination among the Arctic nations imperative. The SAR Agreement will improve search and rescue response in the Arctic by committing all Parties to coordinate appropriate assistance to those in distress and to cooperate with each other in undertaking SAR operations. For each Party, the Agreement defines an area of the Arctic in which it will have lead responsibility in organizing responses to SAR incidents, both large and small. Parties to the Agreement commit to provide SAR assistance regardless of the nationality or status of persons who may need it.

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The signature of the SAR Agreement in Nuuk is a positive step toward building partnerships in the Arctic. In particular, it reflects the commitment of the Arctic Council States to enhance their cooperation and offer responsible assistance to those involved in accidents in one of the harshest environments on Earth.

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7. Immunity of Vessels

In February 2011, the United States received a diplomatic note from the ministry of foreign affairs of the Republic of Malta concerning the planned visit of T/S State of Maine to Malta in May 2011. The note conveyed the understanding of the ministry of foreign affairs that the T/S State of Maine did not meet the criteria for diplomatic clearance (recognizing its sovereign immunity) because the vessel was being used by the Maine Maritime Academy, a fee-billing institution. The United States responded with a March 21, 2011 diplomatic note providing more information about the planned visit of T/S State of Maine and the application of international law to that visit:

Under international law, as reflected in the UN Convention on the Law of the Sea, a vessel that is owned or operated by a state and used only on government noncommercial service is entitled to sovereign immunity. ...The T/S State of Maine is owned by the United States Government and has been provided to the Maine Maritime Academy under the provisions of the Merchant Marine Act of 1936, as amended... The purpose of the vessel's mission is to provide educational training to students... Maine Maritime Academy is a public educational institution. The vessel is not engaging in commercial service in the course of its at-sea mission...

...The United States notes that whether the Academy is a fee-billing institution is not relevant to whether this government-owned vessel is entitled to sovereign immunity while engaged exclusively in a maritime educational training cruise in furtherance of the government policies and objectives reflected in the Merchant Marine Act of 1936, as amended.

The United States would like to further convey that port visits by such training vessels is a long-standing practice in which requests for diplomatic clearances are routinely requested and received from port nations. In the past four years, for the T/S State of Maine and similarly situated U.S. training vessels, the United States has requested and received diplomatic clearances for more than 60 port calls in 30 countries. ...

In response, the ministry informed the U.S. in an April 20, 2011 note that diplomatic clearance had been granted for the planned visit of T/S State of Maine.

B. OUTER SPACE

On November 17, 2011, Deputy Assistant Secretary of State Frank A. Rose addressed the U.S. Strategic Command Cyber and Space Symposium in Omaha, Nebraska. His remarks were entitled "Leading with Diplomacy to Strengthen Stability in Space." The remarks, excerpted below, are available in full at www.state.gov/t/avc/rls/177306.htm.

* * * *

...The world is increasingly interconnected through, and increasingly dependent on, space systems. Our prosperity and security rely on communication, navigation, financial activities, and scores of other activities that depend on information derived from space systems. ... [A]ll nations must work together to adopt approaches for responsible behavior in space, and the United States, with our history of leadership in space, must lead the pursuit of potential solutions to these shared challenges.

Certainly no one in this audience needs to be reminded of the congested and contested nature of space, nor of the President's goals for expanding international cooperation, strengthening stability in space, and increasing assurance and resilience of mission-essential functions. However, some of you may not be familiar with the active leadership role and responsibilities the State Department and diplomacy have in addressing the President's goals.

Orbital Debris Mitigation

One issue that underlines the need for international cooperation and diplomacy is the growing presence of debris in space. There are now approximately 21,000 pieces of trackable debris 10 centimeters or larger in various Earth orbits—about 6,000 metric tons of debris orbiting the Earth. While some pieces of debris are simply “dead” satellites or spent booster upper stages still orbiting, and others are the results of accidents or mishaps, such as the 2009 Cosmos-Iridium collision, some debris is the result of intentionally destructive events, such as China's test in space of an anti-satellite weapon in 2007. Experts warn that the quantity and density of man-made debris significantly increase the odds of future damaging collisions. To address the growing problem of orbital debris, the United States, through the State Department, has expanded its engagement within the United Nations and with other governments and non-governmental organizations. We are continuing to lead the development and adoption of international standards to minimize debris, building upon the foundation of the U.N. Space Debris Mitigation Guidelines. We are also working to develop international and industry standards to slow down the accumulation of debris in space, and to develop and implement international “best practices” of responsible behavior in space that will put us all on a more sustainable path.

Space Situational Awareness

International cooperation is also necessary to ensure that we have robust situational awareness of the space environment. No one knows better than U.S. Strategic Command that even with the best technology and expertise available, no one nation has the resources to precisely track every space object. The U.S. National Space Policy implicitly recognizes this fact and thus directs us to collaborate with foreign governments, the private sector, and other organizations to improve our space situational awareness. One example of our efforts to cooperate internationally in the area of space situational awareness is our collaboration with Europe as it develops its own space situational awareness, or SSA system. The Department of State, in close collaboration with the Department of Defense, is currently engaged in policy and technical exchanges with regional and international organizations such as the European Union and the European Space Agency, as well as the governments of individual European allies. These discussions are considering approaches to protect our shared security interests as well as measures to ensure interoperability between our current and planned SSA architectures. Looking

ahead, we also see opportunities for cooperation on SSA with our allies and partners in the Asia-Pacific and other regions.

Prevention of Satellite Collisions

International cooperation is also essential to prevent future collisions through the sharing of information with other space-faring nations and our industry partners. As a result, we are seeking to improve our ability to share information with other space-faring nations as well as with our industry partners. The National Space Policy calls for international collaboration on the dissemination of orbital tracking information, including predictions of potentially hazardous conjunctions between orbiting objects. Such collaboration has the benefit of not only preserving the sustainability of space through the prevention of collisions, but improving our own capabilities to conduct expanded space object detection, characterization, and tracking and maintaining the space object catalogue. In coordination with U.S. Strategic Command, the Department of State is working to facilitate the rapid notification of space hazards via Conjunction Summary Messages by reaching out to all space-faring nations to ensure that the Joint Space Operations Center has reliable contact information for transmitting timely notification messages to both government and private sector satellite operations centers.

Critical Infrastructure Protection

The assurance and resilience of mission-essential functions also benefits from international collaboration. Led by the Department of State, Critical Infrastructure Protection workshops between the United States and the EU seek to identify trans-Atlantic interdependencies, vulnerabilities, and risk-mitigation strategies. The goal of these workshops is to increase the assurance and resilience of mission-essential functions that are enabled by commercial and civil spacecraft and supporting infrastructures against disruption, degradation, and destruction, whether from environmental, mechanical, electronic, or hostile causes. These workshops include the participation of U.S. Strategic Command, which is the lead within the Department of Defense for the protection of defense space critical infrastructures as well as the USG's responses to purposeful interference against U.S. space interests.

Bilateral and Multilateral TCBMs

The examples I just mentioned represent the new role the Department of State is taking in regards to national security space policy. However, we are also taking a more active leadership role within the functions traditionally within State's purview.

One of the ways the State Department is helping the United States move forward with ensuring safety, sustainability, stability, and security in space is through our pursuit of near-term, voluntary, and pragmatic transparency and confidence-building measures (TCBMs). TCBMs are means by which countries can address challenges and share information with the aim of creating mutual understanding and reducing tensions between countries. Through TCBMs we can address important areas such as orbital debris, space situational awareness, and collision avoidance, as well as increase familiarity and trust and encourage openness among space actors.

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The global reliance on space systems means that the challenges of operating in space cannot be addressed by a few parties, but must be recognized and tackled by many. To that end, the State Department engages on space in a variety of multinational fora, from the U.N. General Assembly to the Conference on Disarmament. We believe that efforts to adopt space TCBMs

should be built upon “bottom up” initiatives developed by government and private sector satellite operators as well as from “top down” government-to-government negotiations.

Therefore, the State Department is taking a leadership role in the working group of the UN Committee on the Peaceful Uses of Outer Space (COPUOS) on long-term sustainability. The long-term sustainability working group on space activities will be a key forum for the international development of “best practices guidelines” for space activities, including orbital debris mitigation, collision warning and avoidance, and space situational awareness. All of these activities can enhance spaceflight safety for space operators and are foundational to pursuing TCBMs that enhance stability and security.

The State Department is also anticipating next year’s Group of Government Experts (or GGE) on Outer Space TCBMs established by UN General Assembly Resolution 65/68. We support the full consideration of all helpful proposals for bilateral and multilateral TCBMs. Such proposals could include measures aimed at enhancing the transparency of national security space policies, strategies, activities and experiments or notifications regarding environmental or unintentional hazards to spaceflight safety. International consultations to prevent incidents in outer space and to prevent or minimize the risks of potentially harmful interference could also be a helpful TCBM to consider. We look forward to working with our international colleagues to engage in a GGE that serves as a constructive mechanism to examine voluntary and pragmatic TCBMs that enhance stability and security, and promote responsible operations in space.

The space environment is at serious risk from a number of sources, including space debris and a lack of transparency in the conduct of space activities. It is our belief that one of the most beneficial multilateral TCBMs for strengthening stability in space could be the adoption of “best practice” guidelines or an international “code of conduct.” A code of conduct could help establish guidelines for safe and responsible use of space, avoid collisions, reduce radiofrequency interference, and call out irresponsible behavior.

Unless the international community adopts positive measures to address irresponsible behavior in space, the environment around our planet will become increasingly hazardous to both human and robotic spaceflight. To that end, the United States is actively considering the European Union’s proposal for a non-legally binding, international “Code of Conduct for Outer Space Activities.” We have consulted with the EU over the past four years and see the EU’s initiative as a promising basis for an international Code of Conduct. Such a “Code,” if accepted by established and emerging space powers, could help promote best practices and ensure the long-term safety, sustainability, security, and stability of the space environment.

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Cross References

U.S. efforts to counter piracy, Chapter 3.B.8.

Immunity from attachment of multinational research satellite, Chapter 10.A.2.a.

Report to UN 1718 committee on U.S. attempt to board ship suspected of transporting proliferation-related items, Chapter 16.A.3.a.