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CHAPTER 12

Territorial Regimes and Related Issues

A. LAW OF THE SEA AND RELATED BOUNDARY ISSUES

1. Workshop on Maritime Boundary Delimitation Law and Practice

On August 3 and 4, 2015, with support and involvement from the U.S. Department of State, the Asia Foundation and the Centre for Strategic and International Studies (“CSIS”) co-sponsored a workshop in Indonesia that examined “Law and Best Practices for Maritime Boundary Delimitations.” The workshop allowed governmental and non-governmental participants from the United States, ASEAN states, and other states to discuss their nations’ practical experiences implementing international law as reflected in the UN Convention on the Law of the Sea (“LOS Convention” or, below, “UNCLOS”), and encouraged particular focus on Articles 74 and 83 on the delimitation of the exclusive economic zone (“EEZ”) and the continental shelf between states with opposite and adjacent coasts. Excerpts follow from the summary report of the workshop, which is also available at <http://www.state.gov/s/l/c8183.htm>.

* * * *

Key findings and recommendations that can be drawn from the workshop include the following:

(1) All maritime boundary delimitation happens in the context of international legal rules. Most participants agreed that the law under UNCLOS regarding maritime boundary delimitation is clear, though some noted that it lacks specificity. For delimiting the EEZ and continental shelf, the key is to reach an agreement on the basis of international law in order to achieve an “equitable solution.”

(2) What constitutes an “equitable solution,” and what methodology is used to reach it, is largely up to the countries involved in negotiating a maritime boundary agreement, but there is a growing body of case law and state practice to refer to. Some contexts are relatively simple, and

some are more complex. When international courts and tribunals adjudicate maritime boundaries, they have coalesced around applying a “three-step method” that first involves drawing a provisional equidistance line between the relevant coasts, then determines whether there are any relevant circumstances that justify deviation of the line, and then checks its result with a test for disproportionality. The most important of the “relevant circumstances” is coastal geography, including issues like relative length and shape of coastlines and the effect of small islands.

(3) Many participants noted advantages of negotiation between claimants, as opposed to resorting to adjudication before a court or tribunal. In negotiation, for example, the countries have more control over the result and can generate creative options. Adjudication, however, also can have advantages, including a relatively predictable methodology, timely resolution of difficult issues, and an international imprimatur with binding effect that can help justify compromises to domestic stakeholders. Conciliation and other third-party procedures are also potentially useful options.

(4) In all the case studies, whether involving negotiation, adjudication, or other processes, the importance of making reasonable claims, grounded in international law, was emphasized. Positions that would be perceived internationally as unreasonable or without apparent legal basis are counterproductive and detrimental to national interests. Trust and credibility are critical to the successful resolution of maritime boundaries. It is also important to manage the expectation of domestic stakeholders with regard the range of feasible and legally plausible outcomes.

(5) International law also provides rules governing states’ activity pending delimitation of a maritime boundary, as reflected in UNCLOS articles 15, 74(3), and 83(3). With respect to the EEZ and continental shelf, for example, states are obligated to make every effort to enter into provisional arrangements of a practical nature and not to jeopardize or hamper the reaching of the final delimitation agreement. Provisional arrangements of a practical nature, while not a panacea, can take a variety of forms and cover a range of issues, and many useful examples of such arrangements exist.

(6) For complex government-to-government negotiations, national teams need multi-disciplinary perspectives—with input from lawyers, hydrologists, geologists, geographers, diplomats, regulators, etc. Team leaders should be well-versed in the legal and technical issues involved (including the determination of the outer limit of their nation’s maritime claim under the international law of the sea), and can be groomed through ongoing training. There is great value in countries’ providing or acquiring training to build a negotiating team and senior experts. Establishing a strong team of experts will greatly benefit a country’s interests and improve the chances of successfully concluding a maritime boundary agreement.

(7) Because of the multiplicity of skills required to successfully determine and negotiate a maritime boundary, increased capacity building, particularly in smaller, less developed nations is needed.

(8) There should be greater transparency in sharing information between countries. Such information sharing could help to bridge disagreements among countries in the region.

* * * *

There are a variety of approaches states might take in dealing with maritime boundaries, including:

- leave the boundary issue unresolved, provided that each side acts in accordance with international law with respect to the disputed area;
- attempt to negotiate a boundary agreement;
- attempt to negotiate provisional arrangements of a practical nature pending a boundary agreement (see UNCLOS articles 74(3) and 83(3));
- request the other party to agree to mediation by a third party;
- pursue conciliation under UNCLOS, part XV (articles 284 and 298);
- refer the issue to a court or tribunal, such as the ICJ, the International Tribunal on the Law of the Sea, or an arbitral tribunal, consistent with Part XV of UNCLOS, if the countries have consented to that either on an ad hoc basis or by virtue of being party to UNCLOS (to the extent the country has not opted out of such disputes under UNCLOS article 298(1)(a)(i)).

* * * *

2. UN Convention on the Law of the Sea

Meeting of States Parties to the Law of the Sea Convention

The United States participated as an observer to the 25th meeting of States Parties to the Law of the Sea Convention (“SPLOS”) at the United Nations, June 8-12, 2015. The U.S. Delegation intervened to make a statement about the role of SPLOS and to express its view that the International Tribunal for the Law of the Sea did not have jurisdiction under the Convention to issue a recent advisory opinion on fisheries-related rights and obligations of coastal States and flag States. For background on the March 2013 request by the Sub-Regional Fisheries Commission (“SRFC”) for an advisory opinion, see *Digest 2013* at 360-63. Relevant excerpts follow from the U.S. statement at the 25th meeting of States Parties.

* * * *

The delegation of the United States would like to thank the Secretary-General for his report on oceans and the law of the sea. We would also like to take this opportunity to thank the Chair of the Commission on the Limits of the Continental Shelf, the Secretary-General of the International Seabed Authority, and the President of the International Tribunal for the Law of the Sea for the reports and information provided by them to this meeting.

As we and others have stated in this and previous meetings of States Parties, the role of the meeting is not as if it were a Conference of parties with broader authority. Article 319 is not intended to, and does not, empower the meeting of States Parties to perform general or broad reviews of general topics of interest, or to engage in interpretation of the provisions of the Law of the Sea Convention. Proposals to that effect did not garner sufficient support during the Third Conference, and there is no supporting text to that effect in the Convention. Rather, the role of the meetings of States Parties is prescribed in the Convention: to conduct elections for the

Tribunal and the Commission, and to determine the Tribunal's budget. In addition, the meeting receives the report of the Secretary-General on oceans and the law of the sea, reports from the Commission and the Tribunal, and information from the International Seabed Authority. Members have the opportunity to comment on these reports and the reports are then simply noted.

In that connection, we would like to comment briefly on the report from the President of the Tribunal with respect to the advisory opinion in case number 21.

At the outset, the United States wishes to commend the States that are members of the SRFC, and the SRFC itself, for their efforts to combat illegal, unreported and unregulated (IUU) fishing and acknowledge the scope of this challenge, particularly in the face of limited resources. IUU fishing undermines the goal of sustainable fisheries and deprives legitimate fishers and coastal States of the full benefits of their resources. Like many other States, the United States actively supports efforts to address problems of IUU fishing, including through the implementation of the numerous international instruments that have been negotiated and adopted in recent years for this purpose.

That being said, as we are all aware, the Seabed Disputes Chamber of ITLOS has authority to issue advisory opinions pursuant to Law of the Sea Convention, as set forth in paragraph 10 of Article 159 and Article 191. The United States has been of the view that the Law of the Sea Convention, including its Annex VI setting forth the Statute of the Tribunal, does not provide for any additional advisory opinion jurisdiction. While the Tribunal's statute does recognize that agreements other than the Law of the Sea Convention may confer certain jurisdiction upon ITLOS to render decisions relevant to those other agreements, that jurisdiction should not extend to general matters beyond the scope of those other agreements.

We were disappointed with the Tribunal's decision that as a full body it has advisory jurisdiction, as well as with its cursory justification of that decision. We believe this is the first case where an international tribunal has ever asserted advisory jurisdiction despite the fact that its constitutional agreements do not expressly provide for advisory jurisdiction. Moreover, even having decided there was advisory jurisdiction, the Tribunal in our view should have prudentially declined to exercise it—especially in this case, which concerned the provisions of the Law of the Sea Convention more than the provisions of the underlying regional fisheries agreement.

These jurisdictional concerns arise regardless of the substantive answers provided by the Tribunal in its advisory opinion. With respect to the underlying fisheries questions, the United States recognizes the challenges that developing States face in dealing with IUU fishing activities by foreign-flagged vessels in waters subject to their fisheries jurisdiction. The United States provides, and encourages other States and international organizations to provide, assistance to developing States in this regard through mechanisms such as capacity building initiatives, information sharing, and cooperative enforcement efforts. The United States has been working with the SRFC and its member States to provide targeted capacity building assistance to address IUU fishing issues, including through fisheries prosecution and enforcement and international fisheries law trainings. Notably, in July of this year, the United States, in cooperation with SRFC, will conduct an international fisheries law workshop to address many of the issues that gave rise to the request for an advisory opinion from the Tribunal.

3. Continental Shelf

On October 30, 2015, the U.S. Mission to the UN delivered two separate notes to the Commission on the Limits of the Continental Shelf (“CLCS”) regarding submissions made to the CLCS by the Russian Federation and by the Government of the Kingdom of Denmark together with the Government of Greenland. Excerpts follow, first from the U.S. note relating to the submission by the Russian Federation, and second from the U.S. note relating to the submission by the governments of Denmark and Greenland.

* * * *

The United Nations Convention on the Law of the Sea, including its Annex II, and the Rules of Procedure of the Commission, in particular Annex I thereto, provide that the actions of the Commission shall not prejudice matters relating to delimitation of boundaries between States with opposite or adjacent coasts.

The United States has taken note of the reference in the Executive Summary of the partial revised submission regarding the “Agreement between the USSR and the USA of June 1, 1990, [in which] the Parties delimited the territorial sea, economic zones, and continental shelf in the Chukchi and Bering seas, as well as in the Arctic and Pacific oceans.” The United States confirms that the Agreement’s provisions, including with respect to the boundary line, have been provisionally applied by agreement of both governments since June 15, 1990, pursuant to an exchange of notes dated June 1, 1990. Pursuant to that exchange of notes, the two governments continue to abide by the terms of the 1990 Agreement.

With reference to the Executive Summary of the partial revised submission, the Government of the United States confirms that it does not object to the request made by the Russian Federation that the Commission consider the data and other material in the partial revised submission and make its recommendation on the basis of this information, to the extent that such recommendations are without prejudice to the establishment of the outer limits of the continental shelf by the United States of America, or to the delimitation of the continental shelf between the Russian Federation and the United States of America.

* * * *

The United States has taken note of the view expressed in the Executive Summary of the partial submission that the entitlement of the United States of America to continental shelf in the Arctic Ocean could overlap with the outer limits of the Northern Continental Shelf of Greenland.

With reference to the Executive Summary of the partial submission, the Government of the United States confirms that it does not object to the Kingdom of Denmark’s request that the Commission consider the data and other material in the partial submission and make its recommendation on the basis of this information, to the extent that such recommendations are without prejudice to the establishment of the outer limits of the continental shelf by the United States of America, or to any delimitation of the continental shelf between the Kingdom of Denmark and the United States of America.

* * * *

4. South China Sea and East China Sea

On May 13, 2015 Daniel Russel, Assistant Secretary of State for East Asian and Pacific Affairs, testified before the Senate Foreign Relations Committee on the subject of maritime issues in East Asia. His testimony, excerpted below and available at http://www.foreign.senate.gov/imo/media/doc/051315_REVISED_Russel_Testimony.pdf, includes discussion of the importance of international law to the maintenance of peace in the East and South China Seas.

* * * *

For nearly 70 years, the United States, along with our allies and partners, has helped to sustain in Asia a maritime regime, based on international law, which has underpinned the region's stability and remarkable economic growth. International law makes clear the legal basis on which states can legitimately assert their rights in the maritime domain or exploit marine resources. By promoting order in the seas, international law has been instrumental in safeguarding the rights and freedoms of all countries regardless of size or military strength. We have an abiding interest in freedom of navigation and overflight and other internationally lawful uses of the sea related to those freedoms in the East and South China Seas and around the world.

The East and South China Seas are important to global commerce and regional stability. Their economic and strategic significance means that the handling of territorial and maritime issues in these waters by various parties could have economic and security consequences for U.S. national interests. While disputes have existed for decades, tensions have increased considerably in the last several years. One of our concerns has been the possibility that a miscalculation or incident could touch off an escalatory cycle that would be difficult to defuse. The effects of a crisis would be felt around the world.

This gives the United States a vested interest in ensuring that territorial and maritime issues are managed peacefully. Our strategy aims to preserve space for diplomatic solutions, including by pressing all claimants to exercise restraint, maintain open channels of dialogue, lower rhetoric, behave responsibly at sea and in the air and acknowledge that the same rules and standards apply to all claimants, without regard for size or strength. We strongly oppose the threat of force or use of force or coercion by any claimant.

East China Sea

Let me begin with the situation in the East China Sea. Notwithstanding any competing sovereignty claims, Japan has administered the Senkaku Islands since the 1972 reversion of Okinawa to Japan. As such, they fall under Article V of the U.S.-Japan Security Treaty. With ships and aircraft operating in close proximity to the Senkakus, extreme caution is needed to reduce the risk of an accident or incident. We strongly discourage any actions in the East China Sea that could increase tensions and encourage the use of peaceful means and diplomacy. In this regard, we welcome the resumed high level dialogue between China and Japan and the restart of talks on crisis management mechanisms. We hope that this will translate into a more peaceful and stable environment in the East China Sea.

South China Sea

Disputes regarding sovereignty over land features and resource rights in the Asia-Pacific region, including the South China Sea, have been around for a long time. Some of these disputes have led to open conflict such as those over the Paracel Islands in 1974 and Johnson South Reef in 1988. While we have not witnessed another conflict like those in recent years, the increasing frequency of incidents in the South China Sea highlights the need for all countries to move quickly in finding peaceful, diplomatic approaches to address these disputes.

We know that this is possible. There are instances throughout the region where neighbors have peacefully resolved differences over overlapping maritime zones. Recent examples include Indonesia's and the Philippines' successful conclusion of negotiations to delimit the boundary between their respective exclusive economic zones (EEZs) and India's and Bangladesh's decision to accept the decision of an arbitral tribunal with regard to their overlapping EEZ in the Bay of Bengal. There have also been instances where claimants have agreed to shelve the disputes and find peaceful ways to manage resources in contested areas. In its approach to the East China Sea, Taiwan forged a landmark fishing agreement with Japan through cooperative dispute resolution. These examples should be emulated.

All disputes over claims in the South China Sea should be pursued, addressed, and resolved peacefully. In our view, there are several acceptable ways for claimants to handle these disputes. In the first instance, claimants should use negotiations to try and resolve the competing sovereignty claims over land features and competing claims to maritime resources. However, the fact remains that if every claimant continues to hold a position that their respective territorial and maritime claims are "indisputable," that leaves parties with very little room for compromise. In addition, mutually agreeable solutions to jointly manage or exploit marine resources are more difficult to find if not all claimants are basing their claims on the Law of the Sea.

Another reasonable option would be for claimants to submit their maritime claims to arbitration by a neutral third party to assess the validity of their claims. The Philippines, for example, is seeking clarification from an international tribunal on the validity of China's nine-dash line as a maritime claim under the United Nations Law of the Sea Convention, as well as greater clarity over what types of maritime entitlements certain geographic features in the South China Sea are actually allowed. This approach is not intended to resolve the underlying sovereignty dispute, but rather could help provide greater clarity to existing claims and open the path to other peaceful solutions.

With respect to resolving the claimants' underlying sovereignty disputes, a wide array of mutually-agreed third party dispute settlement mechanisms, including recourse to the International Court of Justice, would be available to them.

Short of actually resolving the disputes, there is another option which past Chinese leaders have called for—namely, a *modus vivendi* between the parties for an indefinite period or until a more favorable climate for negotiations could be established. In the case of the South China Sea, this could be achieved by any number of mechanisms, including, as a first step, a detailed and binding meaningful ASEAN-China Code of Conduct.

But for any claimant to advance its claims through the threat or use of force or by other forms of coercion is patently unacceptable.

In my testimony before the House Foreign Affairs Subcommittee on Asia and the Pacific in February 2014, I noted U.S. concern over an apparent pattern of behavior by China to assert its nine-dash line claim in the South China Sea, despite the objections of its neighbors and the lack of clarity of the claim itself. More than a year later, China continues to take actions that are

raising tensions and concerns throughout the region about its strategic intentions.

In particular, in the past year and a half China's massive land reclamation on and around formerly tiny features, some of which were under water, has created a number of artificial above-water features. Three of China's landfill areas are larger than the largest naturally formed island in the Spratly Islands. China is constructing facilities on these expanded outposts, including at least one air strip on Fiery Cross reef that looks to be the longest air strip in the Spratlys and capable of accommodating military aircraft. China is also undertaking land reclamation efforts in the Paracel Islands, which it currently occupies.

Under international law it is clear that no amount of dredging or construction will alter or enhance the legal strength of a nation's territorial claims. No matter how much sand you pile on a reef in the South China Sea, you can't manufacture sovereignty.

So my question is this: What does China intend to do with these outposts?

Beijing has offered multiple and sometimes contradictory explanations as to the purpose of expanding these outposts and constructing facilities, including enhancing its ability to provide disaster relief, environmental protection, search and rescue activities, meteorological and other scientific research, as well as other types of assistance to international users of the seas.

It is certainly true that other claimants have added reclaimed land, placed personnel, and conducted analogous civilian and even military activities from contested features. We have consistently called for a freeze on all such activity. But the scale of China's reclamation vastly outstrips that of any other claimant. In little more than a year, China has dredged and now occupies nearly four times the total area of the other five claimants combined.

Far from protecting the environment, reclamation has harmed ecosystems and coral reefs through intensive dredging of the sea bed. Given its military might, China also has the capability to project power from its outposts in a way that other claimants do not. And perhaps most importantly, these activities appear inconsistent with commitments under the 2002 ASEAN China Declaration on the Conduct of Parties in the South China Sea, which calls on all parties to forgo actions that "would complicate or escalate disputes."

More recently, Beijing indicated that it might utilize the islands for military purposes. The Chinese Foreign Ministry stated that the outposts would allow China to "better safeguard national territorial sovereignty and maritime rights and interests" and meet requirements for "military defense." These statements have created unease among neighbors, in light of China's overwhelming military advantage over other claimants and past incidents with other claimants. As the statement last week from the ASEAN Leaders Summit in Malaysia made clear, land reclamation in the South China Sea is eroding trust in the region and threatens to undermine peace, security, and stability in the South China Sea.

Apart from reclamation, the ambiguity and potential breadth of China's nine-dash line maritime claim also fuels anxiety in Southeast Asia. It is important that all claimants clarify their maritime claims on the basis of international law, as reflected in the United Nations Convention on the Law of the Sea. On April 29, Taiwan added its voice to the regional chorus by calling on "countries in the region to respect the principles and spirit of all relevant international law, including the Charter of the United Nations, and the United Nations Convention on the Law of the Sea."

The ASEAN claimant states have indicated that their South China Sea maritime claims derive from land features. Beijing, however, has yet to provide the international community with such a clarification of how its claims comport with international law. Removing ambiguity

goes a long way to reducing tensions and risks.

Simple common sense dictates that tensions and risks would also be reduced if all claimants commit to halt reclamation activities and negotiate the acceptable uses of reclaimed features as part of a regional Code of Conduct. Talks on a regional Code of Conduct over several years have been inconclusive, but we share the growing view in the region that a binding Code should be completed in time for the 2015 East Asia Summit in Malaysia.

* * * *

I would like to make two points regarding the Law of the Sea Convention. First, with respect to arbitration, although China has chosen not to participate in the case brought by the Philippines, the Law of the Sea Convention makes clear that “the absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings.” It is equally clear under the Convention that a decision by the tribunal in the case will be legally binding on both China and the Philippines. The international community expects both the Philippines and China to respect the ruling, regardless of outcome.

Secondly, I respectfully urge the Senate to take up U.S. accession of the Law of the Sea Convention. Accession has been supported by every Republican and Democratic administration since it was transmitted to the Senate in 1994. It is supported by the U.S. military, by industry, environmental groups, and other stakeholders. I speak in the interests of U.S. foreign policy in the South China Sea in requesting Senate action to provide advice and consent to accede to the Convention. Doing so will help safeguard U.S. national security interests and provide additional credibility to U.S. efforts to hold other countries’ accountable to their obligations under this vitally important treaty.

* * * *

...For the President and Secretary of State on down, maritime issues remain at the top of this administration’s agenda with Beijing. We consistently raise our concerns directly with China’s leadership and urge China to manage and resolve differences with its neighbors peacefully and in accordance with international law. We also underscore that the United States will not hesitate to defend our national security interests and to honor our commitments to allies and partners in the Asia-Pacific.

Fundamentally, these maritime security issues are about rules, not rocks. The question is whether countries work to uphold international legal rules and standards, or whether they flout them. It’s about whether countries work together with others to uphold peace and stability, or use coercion and intimidation to secure their interests.

The peaceful management and resolution of disputes in the South China Sea is an issue of immense importance to the United States, the Asia-Pacific region, and the world. This is a key strategic challenge in the region. And I want to reaffirm here today that we will continue to champion respect for international law, freedom of navigation and overflight and other internationally lawful uses of the seas related to those freedoms, unimpeded lawful commerce, and the peaceful resolution of disputes.

* * * *

On August 6, 2015, Secretary Kerry delivered remarks at the meeting of the ASEAN Regional Forum (“ARF”) in Kuala Lumpur, Malaysia on maritime security and international threats. First, he discussed the comprehensive plan with Iran. Then he turned to the topic of maritime security in the South China Sea. Excerpts follow from that second portion of his address. The remarks in their entirety are available at <http://www.state.gov/secretary/remarks/2015/08/245758.htm>.

* * * *

Now, let me turn to an urgent regional priority the tensions caused by territorial and maritime disputes. With great respect to my friend and colleague Foreign Minister Wang, the United States and others have expressed concern to China over the pace and scope of its land reclamation efforts. And the construction of facilities for military purposes only raises tensions and the destabilizing risk of militarization by other claimant states.

Freedom of navigation and overflight are among the essential pillars of international maritime law. Despite assurances that these freedoms will be respected, we have seen warnings issued and restrictions attempted in recent months. Let me be clear: The United States will not accept restrictions on freedom of navigation and overflight, or other lawful uses of the sea. These are intrinsic rights that we all share. . . . The principle is clear: The rights of all nations must be respected.

To that end, I have urged all claimants to make a joint commitment to halt further land reclamation and construction of new facilities or militarization on disputed features. Such steps would lower tensions and create diplomatic space for a meaningful Code of Conduct to emerge by the time our leaders meet here in November.

* * * *

On July 21, 2015, Assistant Secretary Russel delivered remarks at the Fifth Annual South China Sea Conference at the Center for Strategic and International Studies in Washington, D.C. Assistant Secretary Russel’s remarks are excerpted below and available at <http://www.state.gov/p/eap/rls/rm/2015/07/245142.htm>.

* * * *

There are many types of investment the world, and Asia, needs in order to grow—investment in people, first and foremost; investment in business; in physical infrastructure, and just as important; investment in “cooperative capital”—the international law and order infrastructure that facilitates the interactions between countries, that advances regional economic integration, and helps states peacefully manage and settle disputes.

The U.S. makes balanced investments in all of these areas.

The last one, the international rules-based system, has been the ‘essential but underappreciated underpinning’ of global growth over the last 70 years. That’s especially true in

Asia, where many countries have grown—and continue to grow—their economies through international trade, especially trade with the U.S.

* * * *

But unfortunately, the situation in the South China Sea does not fit this cooperative pattern.

Now, the U.S. is not a claimant. As I've said here at CSIS, these maritime and territorial disputes are not intrinsically a U.S.-China issue. The issue is between China and its neighbors and—ultimately—it's an issue of what kind of power China will become. But for a variety of reasons, the competing claims and problematic behavior in the South China Sea have emerged as a serious area of friction in the U.S.-China relationship.

Let's take a step back and recall, as I'm sure you discussed this morning, that there is a history of competing assertions of sovereignty and jurisdiction in the South China Sea, and even violent conflicts in 1974 and 1988.

There are no angels here. ...

In [2002], all the claimants (and the ASEAN states) signed a Declaration of Conduct. In it, and on other occasions, they have committed “to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from ... inhabiting the presently uninhabited... features and to handle their differences in a constructive manner”.

In the Declaration of Conduct, they also committed to negotiate a Code of Conduct that would lay out and lock in responsible behavior. But in the ensuing 13 years, work on the Code has stalled, and the Declaration has not been sufficient to prevent confrontations or to help claimants resolve these disputes peacefully.

Recently, the level of concern in the region has escalated as the scale and speed of China's reclamation work has become public. The Chairman's statement at the ASEAN leaders' summit in April was unusually blunt, speaking of “serious concerns” about “land reclamation being undertaken in the South China Sea, which has eroded trust and confidence and may undermine peace, security and stability....”

While China's statement on June 16 that it would stop reclamation work “soon” was presumably intended to reassure, its effect was in fact alarming since the statement went on to warn that China would construct military facilities on these reclaimed outposts.

So we are pushing the parties to revive the spirit of cooperation embodied in the 2002 Declaration of Conduct.

We see a broad consensus within ASEAN on a path forward to reduce tensions and promote peaceful handling of these disputes. And we support ASEAN's efforts to expeditiously conclude an effective, rigorous Code of Conduct that builds on the Declaration by translating its cooperative spirit into specific “do's and don'ts.”

But to make this happen, the parties need to create room for diplomacy.

In the famous words of Rich Armitage's Dictum Number 1, “when you find yourself in a hole—stop digging.” That is the advice we are giving to all the claimants: lower the temperature and create breathing room by: stopping land reclamation on South China Sea features; stopping construction of new facilities; and stopping militarization of existing facilities.

These are steps the parties could commit to immediately; steps that would cost them nothing; steps that would significantly reduce risks; steps that would open the door to eventual resolution of the disputes.

Secretary Kerry has made this point to Chinese leaders and to the other claimants, and will be meeting with his counterparts early next month in Malaysia at the ASEAN Regional Forum, or ARF, to push for progress on this important priority.

Now, steps to exercise restraint through a moratorium and a Code of Conduct will create diplomatic space and help keep the peace, but they won't address the question of maritime boundaries or sovereignty over land features.

So what's the way forward?

When it comes to competing claims, two of the main peaceful paths available to claimants are negotiations and arbitration.

Countries across the region in fact have resolved maritime and territorial disputes peacefully and cooperatively, whether through direct negotiations or through third-party dispute settlement mechanisms.

Just a few examples: Indonesia and the Philippines recently agreed on their maritime boundary; Malaysia and Singapore used international court and tribunal proceedings to resolve disputes concerning the Singapore Strait; and the International Tribunal for the Law of the Sea delimited the maritime boundary between Bangladesh and Burma.

A common thread runs through the maritime boundary disputes that have been resolved peacefully: the parties asserted maritime claims based on land features, and were prepared to resolve those disputes in accordance with international law.

This is why we've consistently called on all claimants to clarify the scope of their claims in the South China Sea, in accordance with international law as reflected in the 1982 Law of the Sea Convention. Doing so would narrow the differences and offer the basis for negotiations and cooperative solutions.

Regrettably, I don't know anyone in the region who believes that a negotiated settlement between China and other claimants is attainable in the current atmosphere.

And the multiple competing claims in some parts of the South China Sea make negotiations that much more difficult.

And then there is the absolutist political position taken by some claimants who insist that their own claims are "indisputable" and represent territory—however distant from their shores—that was "entrusted to them by ancestors" and who vow never to relinquish "one inch."

What about arbitration? As this audience knows, there currently is an arbitration case pending under the Law of the Sea Convention between the Philippines and China.

At the heart of the case is the question of the so-called "Nine Dash Line" and whether that has a legal basis under the international law of the sea. It also asks what maritime entitlements, if any, are generated by features that China occupies? In other words, regardless of whose jurisdiction it may fall under, would Mischief Reef, for example, be entitled to a 12 nautical mile territorial sea? A 200 nm exclusive economic zone? A continental shelf?

Now, it's important to note that the Tribunal is not being asked—and is not authorized to rule—on the question of sovereignty over disputed land features. Everyone recognizes that the sovereignty issue is beyond the Tribunal's jurisdiction. Claimants would need to agree to bring that sort of sovereignty dispute before a court or tribunal, typically the ICJ.

But under the Law of the Sea Convention, the Tribunal is authorized to first determine whether it has jurisdiction under the Convention over any of the Philippines' claims in the case and, if it does, whether the Philippines' arguments have merit.

The United States, of course, is not a party to this arbitration and does not take a position on the merits of the case. But when they became parties to the Convention, both the Philippines and China agreed to its compulsory dispute settlement regime.

Under this regime, the decision of the arbitral tribunal is legally binding on the parties to the dispute. It's a treaty. In keeping with the rule of law, both the Philippines and China are obligated to abide by whatever decision may be rendered in the case, whether they like it or not.

Now China has argued that the tribunal lacks jurisdiction, and the tribunal has specifically considered this issue in recent hearings in The Hague, looking very carefully at a position paper published by China. But if the Tribunal concludes that it in fact has jurisdiction in this case, it will proceed to the merits, including potentially the question of the legality of China's "Nine-Dash Line."

Should it then rule that the "Nine-Dash Line" is not consistent with the Law of the Sea Convention, and particularly if the Tribunal ruled that the features cited in the case do not generate EEZ or continental shelf entitlements, the scope of the overlapping maritime claims—and hopefully the points of friction—would be significantly reduced.

But it's also important to recognize that even in this outcome, important sovereignty and boundary issues would remain unresolved.

This is as good a time as any to acknowledge (as China has often pointed out) that the United States has not acceded to the Law of the Sea Convention, although accession has been supported by every Republican and Democratic administration since the Convention was signed and sent to the Senate in 1994. It is supported by the U.S. military, by industry, environmental groups, and other stakeholders.

For the United States to secure the benefits of accession, the Senate has to provide its advice and consent, as I hope it ultimately will.

But even as we encourage the parties to work for long-term solutions, we are obligated to protect U.S. interests. Let me take a moment to examine what some of those interests are:

- Protecting unimpeded freedom of navigation and overflight and other lawful uses of the sea by all, not just the U.S. Navy;
- Honoring our alliance and security commitments, and retaining the full confidence of our partners and the region in the United States;
- Aiding the development of effective regional institutions, including a unified ASEAN;
- Promoting responsible marine environmental practices;
- Fostering China's peaceful rise in a manner that promotes economic growth and regional stability, including through consistency with international law and standards.
- And more generally, an international order based on compliance with international law and the peaceful of disputes without the threat or use of force.

As a practical matter, in addition to our support for principles such as the rule of law, we are taking steps to help all countries in the region cooperate on maritime issues. For example, we're investing in the maritime domain awareness capabilities of coastal states in the region.

This allows countries to protect safety at sea and respond to threats such as piracy, marine pollution and illegal trafficking. Maritime awareness also advances transparency, in line with our

call to all claimants to be more open and transparent about their capabilities, actions, and intentions at sea.

The U.S. military's freedom of navigation operations are another element of a global policy to promote compliance with the international law of the sea.

Our goal is to ensure that not only can the U.S. Navy or Air Force exercise their navigational rights and freedoms, but ships and planes from even the smallest countries are also able to enjoy those rights without risk. The principles underlying unimpeded lawful commerce apply to vessels from countries around the globe.

And under international law, all countries—not just the United States—enjoy the rights, freedoms, and lawful uses of the sea that our diplomacy and the U.S. military's freedom of navigation operations help protect.

For us, it's not about the rocks and shoals in the South China Sea or the resources in and under it, it's about rules and it's about the kind of neighborhood we all want to live in. So we will continue to defend the rules, and encourage others to do so as well. We will also encourage all countries to apply principles of good neighborliness to avoid dangerous confrontations.

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As discussed in *Digest 2014* at 520 and mentioned in Assistant Secretary Russel's remarks excerpted above, the Republic of the Philippines is pursuing arbitration regarding China's maritime claims and actions in the South China Sea. At the State Department's daily press briefing on October 29, 2015, the United States reiterated that it does not take a position in the arbitration, but supports the peaceful resolution of disputes through international legal mechanisms such as arbitration. See daily press briefing, available at <http://www.state.gov/r/pa/prs/dpb/2015/10/248963.htm#CHINA>.

Specifically, in response to the decision on jurisdiction by the arbitral tribunal, the Department spokesperson said:

[W]e take note of today's unanimous decision by the arbitral tribunal in the case brought by the Philippines against China under the 1982 Law of the Sea Convention. Although we are in the process of reviewing this lengthy decision by the tribunal, we note that it appears that arbitration will proceed to be considered on its merits.

... I would just add that in accordance with the terms of the Law of the Sea Convention, the decision of the tribunal will be legally binding on both the Philippines and China.

On November 4, 2015, Assistant Secretary Russel again spoke on the South China Sea as part of an update on U.S.-Asia policy at the Asia Society in New York. His remarks are excerpted below and available at <http://www.state.gov/p/eap/rls/rm/2015/11/249201.htm>.

* * * *

The South China Sea is in the headlines. China, Vietnam, the Philippines, Malaysia, Brunei and Taiwan all contest the sovereignty of many of the land features there.

Tensions are running high. Nationalism is one important factor in the mix—no country wants to budge. But there are other factors as well, since sovereignty over islands generates legal entitlements over the adjacent seas. The South China Sea is a rich fishing ground that also holds potentially significant hydrocarbon reserves.

Now, the U.S. doesn't have a claim, and we don't endorse any one sovereignty claim over another. We simply insist that all claims, territorial and maritime, be made based on international law, and that differences be addressed peacefully through diplomatic or legal means. This means no violence, no coercion, no threats.

We also insist that behavior by all countries respect unimpeded lawful commerce and be consistent with international law, including long-standing, universal principles such as freedom of navigation and the peaceful resolution of disputes.

This is not an abstraction for us: first of all, these are vital shipping lanes, carrying over half the world's merchant shipping tonnage.

Second, Southeast Asia is an important driver of growth, and a crisis there would seriously harm the fragile global economy.

Third, some of the affected countries are U.S. treaty allies and close friends.

But there's an over-arching reason why we care—and that's because we are committed to a stable, peaceful system of international rules that protects the rights of all countries, big or small. This is a point that President Obama has made again and again in his meetings with Chinese and other leaders.

But China, in 2014, suddenly launched a massive building spree in the contested waters—devastating the coral reefs, alarming the neighbors, infuriating the other claimants, and raising real concerns about China's intentions. And in fact, the Chinese military has at times warned U.S. and other ships and planes in the region that they should not enter China's so-called "security zone." So the recent transit of a U.S. Navy ship near several of the disputed features serves as a reminder that international law applies to the South China Sea just like everywhere else.

Now, during his visit, President Xi Jinping took a major step forward at the press conference in the Rose Garden with President Obama, when he stated unequivocally: "China has no intention of militarizing its islands in the Spratlys."

If China follows through on this pledge, we expect the other claimants to follow suit. And even though none of them have even a fraction of China's military muscle or land reclamation, it's important that everyone play by the same rules.

Another major development soon after the visit was the decision, by the arbitral tribunal under the Law of the Sea Convention, that it has jurisdiction over a case brought by the Philippines evaluating China's maritime actions and claims in the South China Sea, including the so-called "9-dash line."

This case won't address the question of sovereignty (i.e. who owns which island), but by applying the international law of the sea, it has the potential to resolve some important differences over the rights and entitlements of the claimants to the South China Sea maritime space and its resources.

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5. Freedoms of Navigation and Overflight

a. Cuba

On March 20, 2015, the Cuban Interests Section of the Embassy of Switzerland in Cuba delivered a diplomatic note on behalf of the U.S. Department of State regarding the proposed conduct of marine scientific research by the National Oceanic and Atmospheric Administration (“NOAA”) vessel *Nancy Foster*. The diplomatic note requested Cuba’s consent to the conduct of research by the *Nancy Foster* in Cuban waters, with participation by Cuban investigators, during April through June 2015. The following excerpt from the note clarifies that Cuba could not require notification or its consent to the extent a ship was exercising the right of innocent passage rather than conducting marine scientific research.

* * * *

To the extent Decree 189 of the Council of Ministers of the Republic of Cuba and Diplomatic Note RS 324 address any ship in innocent passage and seek to condition the exercise of this right on the giving of prior notification to, or the receipt of prior permission from the coastal State, they are contrary to international law. As part of its global freedom of navigation policy, the United States protests excessive maritime claims of countries around the world. The U.S. government’s objections to Decree 189 should not be viewed as relating only to Cuba; this approach is principled and longstanding, and it applies worldwide.

* * * *

b. Nicaragua

On January 15, 2015, the United States delivered a note in response to a September 13, 2014 note from Nicaragua regarding military surveys being conducted by the United States in Nicaragua’s claimed exclusive economic zone (“EEZ”). Nicaragua expressed disagreement with the U.S. view that conducting military surveys in the EEZ is consistent with international law as reflected in the Law of the Sea Convention. The January 15, 2015 U.S. note follows.

* * * *

The United States notes the views expressed by the Republic of Nicaragua that it disagrees with some of the United States’ views on the conduct of military survey operations in the exclusive economic zone. The United States reaffirms that international law as reflected in the Law of the Sea Convention provides that in exercising their rights and performing their duties under the law

of the sea, States shall refrain from any threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the principles of international law embodied in the Charter of the United Nations. The United States also reaffirms that States exercising their rights and performing their duties under the law of the sea in the exclusive economic zone shall have due regard to the rights and duties of coastal States. But as the United States has consistently stated, these requirements do not prohibit or require coastal State consent for military surveys in an exclusive economic zone.

The United States reiterates that USNS Pathfinder's activities are separate and distinct from "marine scientific research" governed by the provisions of Part XIII of the Law of the Sea Convention. The United States notes Nicaragua's view that any activity carried out for the purposes of collecting data on the marine environment, irrespective of the purpose for collecting the data, must be authorized and regulated by Nicaragua in light of its sovereign rights. The United States respectfully disagrees with this view, and notes that military surveys do not concern a coastal State's sovereign rights regarding the economic exploration and exploitation of resources in the exclusive economic zone.

Additionally, international law as reflected in the Law of the Sea Convention distinguishes between research and survey activities. The United States notes that Article 19(2)(j), for example, includes "research or survey activities" as acts that are inconsistent with innocent passage in the territorial sea. Article 21(1)(g) recognizes coastal State authority to adopt laws and regulations relating to innocent passage through the territorial sea in respect of "marine scientific research and hydrographic surveys." Similarly, Article 40, entitled "Research and Survey Activities," provides that in transit passage through straits used for international navigation, foreign ships, including "marine scientific research and hydrographic survey ships," may not carry out "any research or survey activities" without the prior authorization of the States bordering straits. Article 54 reflects that the same rule, and, thus, the same distinction between research and survey activities, applies to ships engaged in archipelagic sea lanes passage. While Part XIII of the Law of the Sea Convention regulates "marine scientific research" and requires coastal State consent for "marine scientific research" in the exclusive economic zone, it does not refer to "survey" activities at all.

Thus, while the Law of the Sea Convention addresses survey activities during passage in the territorial sea, international straits and archipelagic sea lanes, it does not place constraints on survey activities in the exclusive economic zone in the way that research activities are limited. Rather, the conduct of military surveys in the exclusive economic zone is an exercise of the freedoms of navigation and other internationally lawful uses of the sea related to those freedoms, which international law as reflected in Article 58 of the Law of the Sea Convention guarantees to all States. As reflected in Article 56 of the Law of the Sea Convention, coastal States must show due regard for other States' exercise of these rights in the exclusive economic zone.

The United States notes further Nicaragua's observations in the context of recalling the decision by the International Court of Justice of November 19, 2012, which is binding on the States Parties to that decision, and respects Nicaragua's views. The positions reflected in this note apply with respect to any coastal State. The United States has long followed a freedom of navigation policy that challenges, both diplomatically and operationally, maritime claims asserted by coastal States throughout the world if such claims are inconsistent with the law of the sea. The activities of USNS Pathfinder and the U.S. diplomatic notes regarding this matter are consistent with that long-standing U.S. freedom of navigation policy.

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c. *Russia—Northern Sea Route*

On May 29, 2015, the United States delivered a diplomatic note to the Russian Federation regarding its Northern Sea Route (“NSR”) regulatory scheme, which had been subject to legislative changes in 2012 and new regulations issued in 2013. The note presents U.S. objections to aspects of the scheme that are inconsistent with international law, including: requirements to obtain Russia’s permission to enter and transit the exclusive economic zone and territorial sea; persistent characterization of international straits that form part of the NSR as internal waters; and the lack of any express exemption for sovereign immune vessels. The note also encourages Russia to submit relevant aspects of the scheme to the International Maritime Organization (“IMO”) for consideration and adoption. The text of the diplomatic note to the Russian Federation follows.

* * * *

The Government of the United States of America notes the Government of the Russian Federation has adopted legislation and regulations for the purpose of regulating maritime traffic through the area described as the Northern Sea Route. The United States notes its support for the navigational safety and environmental protection objectives of this Northern Sea Route scheme and commends the Russian Federation interest in promoting the safety of navigation and protection of the marine environment in the Arctic. As conditions in the Arctic continue to change and the volume of shipping traffic increases, Arctic coastal States need to consider ways to best protect and preserve this sensitive region.

The United States advises, however, of its concern that the Northern Sea Route scheme is inconsistent with important law of the sea principles related to navigation rights and freedoms and recommends that the Russian Federation submit its Northern Sea Route scheme to the International Maritime Organization (IMO) for adoption.

As a preliminary matter, to the extent that the Northern Sea Route scheme continues the view of the Russian Federation that certain straits used for international navigation in the Northern Sea Route are internal waters of the Russian Federation, the United States renews its previous objections to that characterization. Also, the United States notes that the legislation characterizes the Northern Sea Route as a historically established national transport communication route. The United States does not consider such a term or concept to be established under international law.

The United States also requests clarification from the Russian Federation about the scope of the Northern Sea Route. The eastern limit of the Route is described as the parallel to Cape Dezhnev and the Bering Strait; the United States seeks clarification whether the Route extends into and through the Bering Strait. Also, the new laws and regulations appear to limit the northern extent of the Route to the outer limits of what the Russian Federation claims as its

exclusive economic zone. The United States requests confirmation that the Route does not extend beyond these northern limits into areas of high seas.

Among our concerns about the Northern Sea Route scheme, it purports to require Russian Federation permission for foreign-flagged vessels to enter and transit areas that are within Russia's claimed exclusive economic zone and territorial sea and only on prior notification to Russia through an application for a transit permit and certification of adequate insurance. In the view of the United States, this is not consistent with freedom of navigation within the exclusive economic zone, the right of innocent passage in the territorial sea, and the right of transit passage through straits used for international navigation.

The United States understands that the Northern Sea Route scheme is based on Article 234 of the Law of the Sea Convention (the Convention). While Article 234 allows coastal States to adopt and enforce certain laws and regulations in ice-covered areas within the limits of their exclusive economic zones, these laws and regulations must be for the prevention, reduction and control of marine pollution from vessels, must be non-discriminatory, and must have due regard to navigation. A unilateral, coastal State requirement for prior notification and permission to transit these areas does not meet the condition set forth in Article 234 of having due regard to navigation. The United States does not consider that Article 234 justifies a coastal State requirement for prior notification or permission to exercise navigation rights and freedoms.

Moreover, the United States questions the scope of the Northern Sea Route area and whether that entire area is ice-covered for most of the year, particularly in the western portion of the Route, in order for Article 234 to serve as the international legal basis for the Northern Sea Route scheme. As conditions in the Arctic continue to change, the use of Article 234 as the basis for the scheme may grow progressively even more untenable.

Additionally, the Northern Sea Route scheme does not seem to provide an express exemption for sovereign immune vessels. As the Russian Federation is aware, Article 236 of the Convention provides that the provisions of the Convention regarding the protection and preservation of the marine environment (including Article 234) do not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service. The United States requests that the Russian Federation confirm that the Northern Sea Route scheme shall not apply to sovereign immune vessels.

The Northern Sea Route scheme contains provisions for the use of Russian icebreakers and ice pilots. It is unclear whether those provisions are mandatory or if there is discretion on the part of the flag State regarding the use of these services. The United States requests that the Russian Federation clarify these provisions on Russian icebreakers and ice pilots. If the provisions are mandatory rather than optional, the United States does not believe that Article 234 provides authority for a coastal State to establish such requirements. Additionally, it does not seem that the Northern Sea Route scheme allows for the use of a foreign-flagged icebreaker. If this is so, then the provision would appear to be inconsistent with the non-discrimination aspects of Article 234. Also, the charges that are levied for icebreakers and ice pilots may not be supportable under Article 234 and, in any event, cause concern about their relation to the cost of services actually provided. Moreover, the provisions in the scheme to use routes prescribed by the Northern Sea Route Administration, use icebreakers and ice pilots, and abide by other related measures, particularly in straits used for international navigation, are measures that must be approved and adopted by the IMO.

...The United States would welcome the opportunity to work with the Russian Federation and with others at the IMO to favorably consider and adopt an appropriate proposal.

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d. Spratly Islands

On December 21, 2015, U.S. Secretary of Defense Ash Carter sent a letter to Senator John McCain in response to a November 9, 2015 letter requesting further information about freedom of navigation operations (“FONOPs”) conducted in the Spratly Islands. Excerpts follow from Secretary Carter’s letter to Senator McCain. The letter is available in full at <http://www.state.gov/s/l/c8183.htm>.

* * * *

As you know, our Freedom of Navigation Operations (FONOPs) are conducted in full accordance with international law. They are one aspect of our broader strategy to support an open and inclusive international security architecture founded on international law and standards. This system has benefited all nations in the Asia-Pacific for decades and will be critical to maintaining regional stability and prosperity for the foreseeable future.

On October 27, 2015, the U.S. Navy destroyer *USS Lassen* (DDG 82) conducted a FONOP in the South China Sea by transiting inside 12 nautical miles of five maritime features in the Spratly Islands—Subi Reef, Northeast Cay, Southwest Cay, South Reef, and Sandy Cay—which are claimed by China, Taiwan, Vietnam, and the Philippines. No claimants were notified prior to the transit, which is consistent with our normal processes and with international law.

The operation was part of an ongoing practice of FONOPs that we have conducted around the world and will continue to conduct in the future. It was the seventh FONOP we have conducted in the South China Sea since 2011 and one of many that we have conducted around the world in the past year. In that sense, it was a normal and routine operation.

The United States does not take a position on which nation has the superior sovereignty claims over each land feature in the Spratly Islands. Thus, the operation did not challenge any country’s claims of sovereignty over land features, as that is not the purpose or function of a FONOP. Rather, this FONOP challenged attempts by claimants to restrict navigation rights and freedoms around features they claim, including policies by some claimants requiring prior permission or notification of transits within territorial seas. Such restrictions contravene the rights and freedoms afforded all countries under international law as reflected in the Law of the Sea (LOS) Convention, and the FONOP demonstrated that we will continue to fly, sail, and operate wherever international law allows.

The FONOP involved a continuous and expeditious transit that is consistent with both the right of innocent passage, which only applies in a territorial sea, and with the high seas freedom of navigation that applies beyond any territorial sea. With respect to Subi Reef, the claimants have not clarified whether they believe a territorial sea surrounds it, but one thing is clear: under the law of the sea, China's land reclamation cannot create a legal entitlement to a territorial sea, and does not change our legal ability to navigate near it in this manner. We believe that Subi Reef, before China turned it into an artificial island, was a low-tide elevation and that it therefore cannot generate its own entitlement to a territorial sea. However, if it is located within 12 nautical miles of another geographic feature that is entitled to a territorial sea—as might be the case with Sandy Cay—then the low-water line on Subi Reef could be used as the baseline for measuring Sandy Cay's territorial sea. In other words, in those circumstances, Subi Reef could be surrounded by a 12-nautical mile-territorial sea despite being submerged at high tide in its natural state. Given the factual uncertainty, we conducted the FONOP in a manner that is lawful under all possible scenarios to preserve U.S. options should the factual ambiguities be resolved, disputes settled, and clarity on maritime claims reached.

The specific excessive maritime claims challenged in this case are less important than the need to demonstrate that countries cannot restrict navigational rights and freedoms around islands and reclaimed features contrary to international law as reflected in the LOS Convention. We will continue to demonstrate as much by exercising the rights, freedoms and lawful uses of the seas all around the world, and the South China Sea will be no exception.

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6. Maritime Security and Law Enforcement

a. Ghana

The United States and Ghana entered into another temporary maritime law enforcement or “shiprider” agreement in 2015 to support exercises conducted pursuant to the African Maritime Law Enforcement Partnership (“AMLEP”). See *Digest 2014* at 546 regarding the temporary agreement entered into in 2014. The 2015 agreement was effected via an exchange of notes, which concluded on February 2, 2015.

b. Vanuatu

The United States and Vanuatu entered into a temporary agreement concerning cooperation to suppress illicit transnational maritime activity, effective from November 2, 2015 (when it was signed) through November 30, 2015.

c. G7 Foreign Ministers Declaration on Maritime Security

On April 15, 2015, the Foreign Ministers of the G7 countries issued a Declaration on Maritime Security at their meeting in Lubeck, Germany. The Declaration is excerpted below and available at http://www.auswaertiges-amt.de/EN/Infoservice/Presse/Meldungen/2015/150415_G7_Maritime_Security.html?n=479796.

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We, the Foreign Ministers of Canada, France, Germany, Italy, Japan, the United Kingdom, the United States of America and the High Representative of the European Union, are convinced that we can comprehensively counter threats to maritime security only if we follow a cooperative, rules-based, cross-sector approach and coordinate our actions nationally, regionally and globally. We are persuaded that lasting maritime security can only be achieved if we join forces in order to strengthen maritime governance in pursuit of rules-based, sustainable use of seas and oceans.

We reiterate our commitment to the freedoms of navigation and overflight and other internationally lawful uses of the high seas and the exclusive economic zones as well as to the related rights and freedoms in other maritime zones, including the rights of innocent passage, transit passage and archipelagic sea lanes passage consistent with international law. We further reiterate our commitment to unimpeded lawful commerce, the safety and security of seafarers and passengers, and the conservation and sustainable use of natural and marine resources including marine biodiversity.

We are committed to maintaining a maritime order based upon the principles of international law, in particular as reflected in the United Nations Convention on the Law of the Sea (UNCLOS). We continue to observe the situation in the East and South China Seas and are concerned by any unilateral actions, such as large-scale land reclamation, which change the status quo and increase tensions. We strongly oppose any attempt to assert territorial or maritime claims through the use of intimidation, coercion or force. We call on all states to pursue the peaceful management or settlement of maritime disputes in accordance with international law, including through internationally recognized legal dispute settlement mechanisms, and to fully implement any decisions rendered by the relevant courts and tribunals which are binding on them. We underline the importance of coastal states refraining from unilateral actions that cause permanent physical change to the marine environment in areas pending final delimitation.

We firmly condemn acts of piracy and armed robbery at sea, transnational organized crime and terrorism in the maritime domain, contraband trade, trafficking of human beings, smuggling of migrants, trafficking of weapons and narcotics, illegal, unreported and unregulated (IUU) fishing, trafficking in protected species of wild fauna and flora, and other illegal maritime activities. These constitute serious and intolerable threats to the life and wellbeing of passengers and crews on board ships, to marine biodiversity and food security, to the rule of law and to freedom of navigation and lawful trade and transport. They pose major risks to the stability and development of coastal states in areas prone to piracy and other forms of maritime crime and maritime terrorist activity. We oppose the deliberate obstruction of sea lanes aimed at

interrupting trade, traffic and tourism, as well as threats against critical sea-borne infrastructure and against energy supply security in the maritime domain.

The development of standards for safe navigation, protection of the marine environment, communication, and operation of maritime shipping has long been an area of international cooperation. We call upon governments, port authorities, shipping companies, ship owners, operators, shipmasters and crews to apply and implement existing law and guidance in order to increase maritime safety and security, such as the International Convention for the Safety of Life at Sea (SOLAS), the International Ship and Port Facility Security Code (ISPS), the International Convention for the Prevention of Pollution from Ships (MARPOL) and the International Maritime Organization's (IMO) Guidance to ship owners, ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships. We call on ship owners, ship operators, shipmasters and crews to report any criminal act at sea immediately in order to prevent future attacks and to improve data collection.

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We support the establishment of functioning regional mechanisms of cooperation on enhanced maritime security. National and regional ownership and responsibility are key to improving maritime security in critical areas. We particularly underline the importance of regional agreements and instruments such as the Asia-Pacific Code for Unplanned Encounters at Sea, the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), the Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden ("Djibouti Code of Conduct") and the Code of Conduct concerning the Repression of Piracy, Armed Robbery against Ships and Illicit Maritime Activity in West and Central Africa ("Yaoundé Code of Conduct"). We call for the acceleration of work on a comprehensive Code of Conduct in the South China Sea and, in the interim, emphasize our support for the 2002 ASEAN Declaration on the Conduct of Parties in the South China Sea. We highlight the constructive role of practical confidence-building measures, such as the establishment of direct links of communication in cases of crisis and efforts to establish guiding principles and rules to govern activities, such as the ASEAN – China talks on a Code of Conduct on the South China Sea. We encourage States to do their utmost to implement their commitments, and we intend to assist them within the scope of our abilities and regional priorities. We furthermore welcome initiatives on maritime security in relevant fora, such as the East Asia Summit, the ASEAN Regional Forum, the EU-ASEAN cooperation, and regionally based Coast Guard Forums.

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d. *Spanish interdiction of a U.S.-flagged sailing vessel*

On May 11, 2015, the United States government, responding to a request from the Kingdom of Spain through their respective Competent National Authorities under Article 17 of the 1988 UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, informed Spanish authorities that the United States granted permission to the Kingdom of Spain "to stop, board, and search [a particular U.S.-flagged sailing vessel] provided that such action is taken seaward of the territorial sea of

any State.” The Kingdom of Spain had requested permission on May 8, 2015 to board and inspect the vessel based on information obtained by Spain’s Center of Intelligence against Organized Crime (“CITCO”) that the vessel was trafficking drugs. On May 14, 2015, CITCO conveyed the results of its inspection, notifying the United States of the seizure of drugs and the detention of three individuals aboard the vessel.

On May 14, 2015, the U.S. Competent Authority responded to Spain and offered to “consider a request made by diplomatic note from the Kingdom of Spain for the United States to waive primary jurisdiction over the vessel, its cargo, and the persons aboard.” The May 14, 2015 U.S. note reiterated that the United States had not authorized taking the vessel to a Spanish port and urged that “the Kingdom of Spain keep the vessel seaward of the territorial sea of any State.”

In response to communications from Spain claiming that it was “jurisdictionally competent to prosecute” the vessel’s crew and was taking it to a Spanish port, the United States delivered a diplomatic note through its embassy in Spain on May 26, 2015, emphasizing Spain’s lack of authority without further permission to exercise jurisdiction over the vessel and its crew. The U.S. note states:

Consistent with international law as reflected in Article 92 of the United Nations Convention on the Law of the Sea, the United States exercises exclusive jurisdiction over United States-flagged vessels operating on the high seas.

...Unless the United States waives jurisdiction over the [sailing vessel in question] for the purpose of prosecuting the crew of this vessel, any prosecution of the crew is inconsistent with international law and interferes with the exclusive jurisdiction of the United States over the [vessel].

The earlier permission granted by the United States to the Government of the Kingdom of Spain with respect to the [vessel] did not include permission to direct the vessel into a port or waters under Spain’s jurisdiction. The United States has the honor to refer to its letter dated May 14, 2015 through its competent national authority under the 1988 Convention, which furthermore expressly requested that the vessel be kept seaward of the territorial sea of any State. Nevertheless, the United States understands that the vessel may now be in a Spanish port. To the extent the Kingdom of Spain has acted beyond the authorization provided by the United States, as the vessel’s flag State with exclusive jurisdiction over the vessel on the high seas, the United States strongly objects.

The Embassy wishes to inform the Ministry that the United States would expeditiously consider a request from the Government of the Kingdom of Spain that the United States waive its primary jurisdiction over the [vessel], its cargo, and the persons aboard should such a request be received.

In a note delivered July 13, 2015, the United States further stated:

Confirmation of registry and flag State permission to board and search a vessel operating in an area beyond national jurisdiction, or to detain its crew pending a determination by the flag State regarding appropriate action, is not a waiver nor does it imply a waiver by the flag State of its primary right to exercise jurisdiction over the vessel for the purposes of criminal prosecution or in any other regard. Moreover, under international law the exclusive jurisdiction of the United States over the [sailing vessel] is not subject to any time limits.

This July 13 note also stated that the United States would construe recent communications from Spanish authorities as a request for the United States to waive its right of primary jurisdiction over the vessel its cargo and crew. In that July 13 note, the United States waived its right of primary jurisdiction, stating its understanding that the case would be prosecuted by Spanish authorities. The note asks that the Kingdom of Spain prevent future misunderstandings by expressly requesting the United States waive its primary jurisdiction and act within the scope of authorization provided in the course of future cooperation in suppressing illicit traffic by sea.*

B. OUTER SPACE

1. Space Situational Awareness

On May 12, 2015, Mallory Stewart, Deputy Assistant Secretary of State for the Bureau of Arms Control, Verification and Compliance, addressed a conference on space situational awareness. She spoke on the topic of promoting space security and sustainability. Her remarks are excerpted below and available at <http://www.state.gov/t/avc/rls/2015/242325.htm#>.

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Many of the speakers we will hear from today will provide detailed assessments of the risks we are facing in space—risks from on-orbit collisions and from the rise in man-made debris—risks that are larger than any one country can tackle alone. But space has unique attributes that further complicate our ability to address these risks. Specifically, with the rise in technological capabilities, irresponsible actors in space, non-state actors, and the exponential increase in space use, actions in space will be even more difficult to attribute to any party, and thus accountability for negligent or irresponsible actions will be more difficult to attain.

That is why diplomacy—in addition to technology—is so important. The U.S. State Department has been tasked by President Obama with expanding international cooperation to

* Editor's note: Spain subsequently asked for consent to prosecute the crew of the sailing vessel in question and the United States confirmed U.S. consent.

address the challenges we face in the outer space domain. We are working closely with countries around the world to highlight the necessity of strengthening the long-term sustainability, stability, safety, and security of space. This international cooperation—such as sharing space situational awareness or sharing best practices or appropriate norms of behavior in space—is crucial to preventing a “wild-West” environment, and contributes in important ways to a safe and secure space environment.

Today I will briefly discuss some of the challenges we are facing and then discuss what we are doing through international cooperation and collaboration to tackle those challenges.

Challenges to the Space Environment

As this audience well knows, orbital debris is one of the greatest challenges facing the world’s continuing usage of space. There are now more than 20,000 man-made objects large enough to be tracked in various Earth orbits—from operational satellites, to parts of rocket bodies, to other pieces of debris resulting from more than half-a-century of space launches. And there are many more objects, too small to be tracked, that still present a threat to human spaceflight and robotic missions. We are all well aware of the recent incidents of collisions and near-collisions between spacecraft, including the need to maneuver the International Space Station to avoid debris. In addition to the direct economic impact of these actions, the resulting orbital debris from natural, man-made, and directed collisions adds to the overall debris levels in critical orbits.

At the same time, compounding the orbital debris from unintentional actions, there is a steep increase in debris from intentional or negligent actions in space. The U.S. Government is particularly concerned about such irresponsible behavior in space increasing the threat to satellites and making future peaceful space use and exploration more difficult.

Such irresponsible behavior specifically includes the development and use of anti-satellite (ASAT) weapons. Even in the development phase, the debris generated by testing of anti-satellite capabilities creates hazards for all spacefaring actors. Indeed, thousands of pieces of debris from the destructive 2007 Chinese anti-satellite test continue to endanger space assets of all nations, including China itself. Because of the altitude of this debris, it is estimated that 50 percent of this debris could still be in orbit 20 years after the 2007 event.

Despite the potential for debris, and the serious international concern voiced by the United States and others, countries continue to develop their ASAT and other debris-generating space control technologies. As Director of National Intelligence James Clapper noted in recent congressional testimony, “Russian leaders openly assert that the Russian armed forces have antisatellite weapons and conduct antisatellite research.” Although the Chinese have not tested a debris-generating ASAT since 2007, they did conduct a non-destructive test of this system in July 2014.

These Russian and Chinese tests have not created debris, but they remain of concern to us. The United States believes that such destructive capabilities are both destabilizing and a threat to the long-term security and sustainability of the outer space environment. Moreover, in an environment in which attribution is obscured, there are often limited means to prevent or address the destructive effect or any resulting debris generated from these weaponized capabilities.

A related issue is the challenge of ensuring that we have situational awareness of the space environment. A long-standing principle of U.S. space policy is that all nations have the right to explore and use space for peaceful purposes, and for the benefit of all humanity, in accordance with international law. Strengthening stability depends on having awareness and

understanding as to who is using the space environment, for what purposes, and under what conditions. And again, the inherent attribution and accountability hurdles that are exacerbated in space, when the actor or intent behind a threat is obscured, make the need for situational awareness in space that much greater.

The U.S. National Space Policy directs us to collaborate with other nations, the private sector, and intergovernmental organizations to improve our shared space situational awareness—in other words, to improve our collective ability rapidly to detect, warn of, characterize, and attribute natural and man-made disturbances to space systems. Having this information as early as possible and as accurately as possible is critical for safe human spaceflight, ensuring a stable global economy, pursuing responsible behavior in space, as well as deterring irresponsible behavior.

Having information that enables us to achieve space situational awareness (SSA) and understanding is necessary *but insufficient* unless we can take steps to avoid the perceived threats. In other words, the challenges of increasing debris in space and the growing complexities of responsible, as well as irresponsible, space operations lead to another challenge, that of collision avoidance. To deal with this challenge, we seek to improve our ability to share information, not only with other space-faring nations but also with the commercial space sector. International cooperation on SSA is greatly beneficial, as international partnerships bring the resources, capabilities, and geographical advantages to enhance SSA upon which we increasingly depend. International cooperation enables us not only to improve our space object databases, but also to pursue common international data standards and data integrity measures.

Responding to These Challenges

The United States takes these issues seriously, and our National Space Policy reflects the importance we attach to addressing these challenges. The Department of State, in cooperation with our interagency colleagues, has been actively working with our allies and partners around the globe to preserve the long-term security and sustainability of the space environment.

A large part of our international cooperation—in accordance with the President's National Space Policy guidance—involves transparency and confidence-building measures (TCBMs) to encourage responsible actions in, and the peaceful use of, space. TCBMs are “top-down,” pragmatic, voluntary actions, and a means by which governments can address challenges and share information with the aim of creating mutual understanding and reducing tensions. Examples of bilateral space-related TCBMs include dialogues on national security space policies and strategies, expert visits to military satellite flight control centers, and discussions on mechanisms for information exchanges on natural and debris hazards. Examples of multilateral space-related TCBMs include joint resolutions and commitments on space security, the prevention of debris-generating activities, and adoption of international norms or “codes of conduct”.

At a very basic level, our international efforts involve outreach, cooperation, and norms development. I will briefly speak about each of these.

Engaging International Partners

Outreach is often the first step in transparency and confidence building, and we engage in outreach efforts both multilaterally and bilaterally. We have established 13 formal Space Security Dialogues on a bilateral basis to discuss these issues with foreign countries, and numerous less-formalized dialogues with international and domestic partners. These dialogues allow in-depth conversations about the collective challenges we face, and encourage

collaborative brainstorming on how we can work together to develop and implement solutions to these issues.

Outreach also involves notifications, and currently the United States provides notifications to other government and commercial satellite operators of potential conjunctions through cooperative relationships and the web site space-track.org. But outreach also involves agreement and cooperation. The Department of State also works with the Department of Defense on the dissemination of orbital tracking information, including predictions of potentially hazardous conjunctions between orbiting objects, through space situational awareness (SSA) cooperation agreements.

Cooperation within the Interagency

The Department of State is working with the Department of Defense's (DoD's) U.S. Strategic Command (USSTRATCOM) to implement its first SSA Sharing Strategy that promotes sharing more information on a more timely basis with the broadest range of partners in an interactive, exchange-based way with satellite owners and operators. The foundations for these cooperative efforts are those SSA sharing agreements and arrangements that provide for enhanced exchanges of unclassified information. To date, DoD has signed 11 SSA sharing agreements and arrangements with national governments and international intergovernmental organizations, and 47 with commercial entities.

Beyond these foundational agreements and arrangements, State is working with USSTRATCOM and others in DoD to foster the development of routine operational partnerships, creating a true data-sharing environment that extends to the robust sharing of international data. These efforts support broader U.S. efforts to ensure that data from sensors and spacecraft operated by allies and other governmental and private sector sources can be aggregated and processed into actionable information.

Finally, in addition to outreach and cooperation, the adoption of norms of responsible behavior is instrumental to our space policy:

The United States continues to lead the development and adoption of international standards to minimize debris, building upon the foundation of the U.N. Space Debris Mitigation Guidelines. The United States has been engaged for more than three years in a multilateral study of the long-term sustainability of outer space activities within the Scientific and Technical Subcommittee of the U.N. Committee on the Peaceful Uses of Outer Space, or UNCOPUOS. Scheduled for completion in 2016, this effort is examining the feasibility of voluntary "best practices guidelines" to help reduce operational risks to all space systems.

In addition, the United States supports a number of multilateral initiatives to establish consensus guidelines—"rules of the road"—for responsible space activities that support U.S. and international security interests. For example:

- Assistant Secretary Frank Rose served as the U.S. expert for the United Nations Group of Governmental Experts (GGE) study of outer space transparency and confidence-building measures. That group published a consensus report in 2013 endorsing voluntary, non-legally binding TCBMs to strengthen sustainability and security in space.
- Additionally, for the past several years the United States has worked with the European Union and other nations to advance an International Code of Conduct for Outer Space Activities. We will participate in negotiations this year and hopefully develop a Code of Conduct that enhances the security and sustainability of space. This Code is a voluntary, "top-down" commitment that complements and expands upon the approach of the UNCOPUOS efforts to develop long-term sustainability guidelines. The Code could help

solidify safe operational practices, reduce the chance of collisions or other harmful interference with nations' activities, contribute to our awareness of the space environment through notifications, and strengthen stability in space by helping establish norms for responsible behavior in space.

Among the draft Code's most important commitments is for subscribers to refrain from any action that brings about, directly or indirectly, damage, or destruction, unless required in self-defense, of space objects, and a commitment to minimize, to the greatest extent possible, the creation of space debris, in particular, the creation of long-lived space debris.

Conclusion

Solving foreign policy problems today requires us to think both regionally and globally, to see the intersections and connections linking nations and regions, and to bring people together as partners to solve shared problems. Partnership implies shared responsibility and shared commitment. We have made it clear in our bilateral and multilateral dialogues with other nations that solving the challenges of orbital debris, situational awareness, collision avoidance, and responsible, as well as irresponsible behavior, and peaceful behavior in space are the responsibilities of all who are or will be engaged in space activities. This includes not only "established" space-faring nations, but also those countries just beginning to explore and use space. Although we are on our way technologically to resolving some of these challenges, issues of attribution, accountability, and transparency remain.

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Deputy Assistant Secretary Stewart also addressed the 2015 Space Resiliency Summit in Alexandria, Virginia on December 9, 2015. Her remarks on promoting space security and sustainability are excerpted below and available at <http://www.state.gov/t/avc/rls/2015/250567.htm>.

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... Today, I will describe several of the U.S. diplomatic efforts that are aimed at achieving the most stable, secure, and sustainable space environment for the resiliency of all peaceful uses of space.

Protecting the national security of the United States and its allies by preventing conflict from extending into space and avoiding or deterring purposeful interference with our space systems is a major goal of our diplomatic engagements. This goal is described in the 2010 U.S. National Space Policy, which makes clear that it is not in anyone's interest for armed conflict to extend into space. The 2010 Policy also states that purposeful interference with space systems, including supporting infrastructure, will be considered an infringement of a nation's rights.

There are two main diplomatic approaches to achieving this goal: (1) we are strengthening space cooperation and information sharing with allies and partners to enhance collective space situational awareness and maximize the interoperability and redundancy of our space assets, and (2) we are encouraging the development of "best practices" and norms of responsible behavior in the space faring community to enhance resiliency through the prevention of mishaps, misperceptions, and the chances of miscalculation.

The first category of our diplomatic engagement strives to gain international support for common ends, including sharing space-derived information to support ongoing operations. It also prepares the way for closer military-to-military cooperation to address mutual threats and to develop capabilities with shared compatibility standards (and thus greater redundancy in the event of a failure). One mechanism we use to discuss cooperative approaches with our allies and space partners is through space security dialogues. The State Department currently has 15 bilateral and multilateral dialogues around the world. These dialogues address each side's understanding of the threat, and include discussions of our respective diplomatic and national security goals. Such discussions are critical in developing common positions on issues such as the benefits and challenges of transfers of dual-use technologies or on the development of common positions related to rules of behavior in outer space.

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A final example of this type of diplomatic engagement, for which the State Department and the Department of Defense work in tandem, is the expansion of Space Situational Awareness, or SSA, through SSA information sharing agreements and arrangements with foreign partners. International cooperation on SSA is crucial, as international partnerships multiply capabilities, expertise, and geographical advantages. Furthermore, international cooperation enables us to improve our space object databases and pursue common international data standards and data integrity measures. To date, the United States has signed 11 bilateral SSA agreements and arrangements with national governments and international intergovernmental organizations, and 51 with commercial entities. And we will continue to pursue opportunities for cooperation on SSA with other nations and nongovernmental space operators around the world. The more we can establish a collective picture of what is happening in space, the more secure we can be in the safety of our own assets.

The second category of the State Department's diplomatic engagement includes the promotion of the responsible use of outer space. Specifically, we aim to further enhance space resiliency through the multilateral development and implementation of voluntary guidelines for space activities. These guidelines can include, for example, establishing appropriate communication and consultation mechanisms and national regulatory frameworks, providing contact information for information exchanges among space owners and operators, and implementing practical measures to eliminate harmful radiofrequency interference.

We use diplomatic engagement in this way to reduce the chances for conflict extending into space through the promotion of international norms of behavior, both bilaterally and multilaterally. ...

In this regard, we see diplomacy as having an important role in responding to the development of anti-satellite weapons developments that threaten the outer space environment. Responding both privately and publicly to tests of anti-satellite systems is a critical component of our diplomatic strategy. ...

Working with our Allies and partners, we can use diplomacy to prevent the development of destabilizing threats to the long-term security and sustainability of outer space.

It is clear that no one nation can develop norms of behavior on its own, but it is also clear, given the growing man-made threats facing the space environment, that we need to move quickly to achieve consensus on what such norms should entail. That is why we are pursuing pragmatic and timely measures such as ...TCBMs in order to enhance strategic stability in space.

TCBMs can occur as voluntary national commitments, or through bilateral, regional, or multilateral cooperation. Bilateral TCBMs can include dialogues on national security space policies and strategies, expert visits to satellite flight control centers, and discussions on mechanisms for information exchanges regarding natural and man-made debris hazards—and the United States is doing all of these. Multilateral, space-related TCBMs can include joint resolutions and commitments on space security, the prevention of debris-generating activities, and adoption of international norms of the aforementioned responsible behavior. The United States is also working with our partners and allies to pursue such multilateral TCBMs.

For example, in 2013, the US helped achieve the consensus report of the UN Group of Governmental Experts (GGE) on outer space TCBMs. This report recommended a number of TCBMs that offer a solid starting point for addressing challenges to space security and sustainability. The GGE report also provides useful criteria for the consideration of new TCBM concepts and proposals. The United States and many others have encouraged UN Member States to implement these recommendations, as soon as practicable.

It is noteworthy that ...COPUOS and the UN General Assembly's First and Fourth Committees deliberated this year on the GGE recommendations. In these deliberations, the United States highlighted the importance of continued progress on pragmatic efforts within the UN system, including the Conference on Disarmament, the UN Disarmament Commission, and the COPUOS Working Group on Long-term Sustainability (LTS) of Outer Space Activities. The LTS Working Group is developing a series of practical, non-legally binding guidelines for spaceflight safety, and an added benefit is that these often technical exchanges serve to build capacity and expertise on spaceflight safety in newer spacefaring nations.

Finally, I want to note that these two areas of U.S. diplomatic engagement also work together to support the resilience of our space architecture in another way: they can deter bad actors. By expanding space situational awareness and the redundancy (and thus decreased vulnerability) of our space capabilities on the one hand, and by developing greater TCBMs, including norms of responsible behavior such as notifications and mitigation of intentional debris on the other, we enhance our ability to both deter interference with our space assets, but also to attribute any such interference to specific actors. Attribution is critical to understanding whether a problematic space event is due to natural or man-made causes, accidental or intentional. If the latter, attribution may enable the international community to quickly hold a space actor accountable for its actions, further increasing stability of the space environment and deterring future disruptions.

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2. UN General Assembly First and Fourth Committees

On October 22, 2015, Frank Rose, Assistant Secretary of State for the Bureau of Arms Control, Verification and Compliance, delivered remarks on behalf of the U.S. delegation at a joint ad hoc meeting of the 70th UN General Assembly First and Fourth Committees to address possible challenges to space security and sustainability. His remarks are excerpted below and available at <http://www.state.gov/t/avc/rls/2015/248673.htm>.

* * * *

Fifty-two years ago, at the beginning of the Space Age, the United Nations General Assembly adopted the “Declaration of Legal Principles Governing the Activities of States in the Exploration and Uses of Outer Space,” or Principles Declaration. This Declaration laid out the key principle that outer space is free for exploration and use by all States on the basis of equality and in accordance with international law. Just over three years later, these and other elements of the Principles Declaration formed the core for the 1967 Outer Space Treaty, which remains the foundation of the international legal framework for space activities.

Today, we find more than 60 nations and numerous government consortia, scientists, and commercial firms accessing and operating satellites for countless economic, scientific, educational, and social purposes. This situation has elevated international space systems and activities to a global scale—that is, they are of benefit not only to their immediate users, owners, and operators, but also to the global economy and security environment.

In this dynamic environment, how do we address the challenges associated with orbital congestion, collision avoidance, and the continued development by some nations of destructive counterspace capabilities?

It is clear that no one nation can address these challenges alone. Therefore, international cooperation to address the challenges can, and must, occur through practical means. Under the capable chairmanship of Ambassador Victor Vasiliev of Russia, the July 2013 consensus report of the ...GGE on ...TCBMs in Outer Space Activities recommended a range of measures to enhance stability in space in the form of national commitments as well as through bilateral, regional and multilateral cooperation. That report offers a solid starting point for discussions on addressing challenges to space security and sustainability, and also provides useful criteria for the consideration of new TCBM concepts and proposals.

The report endorsed efforts “to encourage responsible actions in, and the peaceful use of, outer space.” In this regard, the United States has, for example, pursued a range of bilateral space security exchanges and offers support to all spacefaring nations to reduce the chances of accidental satellite collisions. The report also recommended that States review and implement, on a voluntary basis, the specific TCBMs contained in the report. The United States is already implementing many of these measures, including information exchanges, risk reduction notifications, contacts and visits, international cooperation, outreach, and coordination.

The United States also supports efforts in multiple fora to translate GGE recommendations into results by encouraging responsible actions by all nations in their peaceful use of outer space. In particular, the United States was pleased to join Russia and China in co-sponsoring General Assembly Resolutions 68/50 and 69/38. We are also pleased to be co-sponsoring another TCBMs resolution this year in the First Committee. These resolutions encourage Member States to review and implement, to the greatest extent practicable, the proposed TCBMs contained in the GGE report, and to refer the report’s recommendations for consideration by the Conference on Disarmament, the UN Disarmament Commission, and the UN Committee on the Peaceful Uses of Outer Space (COPUOS). Now the international community should focus on practical and pragmatic forms of international cooperation that advance the GGE report’s recommendations.

It is particularly noteworthy that, during its June 2015 session in Vienna, COPUOS considered the GGE report’s recommendations, including a review of submissions by its members. The U.S. submission highlighted its implementation of the TCBMs contained in the

GGE report, in particular those with relevance to the work of the Committee's working group on long-term sustainability of outer space activities.

... COPUOS also remains the primary multilateral forum for the continued consideration of other forms of international cooperation seeking to ensure the sustainable use of outer space in support of sustainable development here on Earth.

The United States also supports improved coordination on the implementation of space TCBMs across the United Nations system. These efforts should ensure that the Secretariat's Office of Disarmament Affairs and the Office for Outer Space Affairs work closely with other UN agencies to ensure that existing resources are applied effectively to advance the goals of space security and sustainability.

...[A] secure and sustainable outer space environment is vital for every nation, for its security, foreign policy, and global economic interests and for enhancing the daily lives of its citizens.

Meeting the challenges of orbital congestion, collision avoidance, and responsible and peaceful behavior in space is the responsibility of all that are engaged in space activities. We must work together to do more to protect our long-term interests by safeguarding against risks that could harm the space environment and could disrupt space-derived services on which the international community depends.

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On November 3, 2015, Ambassador Robert A. Wood, U.S. Permanent Representative to the Conference on Disarmament, delivered the U.S. explanation of vote at the 70th UN General Assembly First Committee on the resolution entitled "No First Placement of Weapons in Outer Space." Ambassador Wood's statement is excerpted below and available at <http://usun.state.gov/remarks/6953>.

* * * *

Mr. Chairman, my delegation will vote "No" on draft resolution L.47, "No first placement of weapons in outer space" ("NFP"). In considering the Russian Federation's NFP initiative, the United States took seriously the criteria for evaluating space-related transparency and confidence-building measures, TCBMs, that were established in the 2013 consensus report of the ... GGE, study of outer space TCBMs. That study was later endorsed by the full General Assembly in Resolutions 68/50 and 69/38, both of which the United States co-sponsored with Russia and China, as well as a resolution that is being considered this year in the First Committee. As the GGE report stated, non-legally binding TCBMs for outer space activities should: be clear, practical, and proven, meaning that both the application and the efficacy of the proposed measure must be demonstrated by one or more actors; be able to be effectively confirmed by other parties in their application, either independently or collectively; and finally, reduce or even eliminate the causes of mistrust, misunderstanding, and miscalculation with regard to the activities and intentions of States.

In applying the GGE's consensus criteria, the United States finds that Russia's NFP initiative contains a number of significant problems: first, the NFP initiative does not adequately define what constitutes a "weapon in outer space." As a result, States will not have any mutual

understanding of the operative terminology. Second, it would not be possible to effectively confirm a State's political commitment "not to be the first to place weapons in outer space." Thus, the application and efficacy of the proposed measure could not be demonstrated.

Third, the NFP initiative focuses exclusively on space-based weapons. It is silent with regard to terrestrially-based anti-satellite weapons, and thus could contribute to increasing, not reducing, mistrust and miscalculations.

To date, the NFP initiative's proponents—including Russia—have not explained, and did not explain during the First Committee's Thematic Discussion, how the NFP initiative is consistent with the GGE's TCBM criteria, nor how such an initiative enhances stability in outer space when it is silent with regard to terrestrially-based ASAT weapons.

Given these problems and the absence of a satisfactory explanation by the NFP initiative's proponents, the United States has determined that the NFP initiative fails to satisfy the GGE's consensus criteria for a valid TCBM. Thus, the NFP initiative is problematic and unlikely to be timely, equitable, or effective in addressing the challenges we face in sustaining the outer space environment for future generations.

Therefore, as we did last year, the United States will again vote "No" on this First Committee resolution and intends to vote "No" again in the full General Assembly.

Mr. Chairman, the United States believes it is not in the international community's interest to engage in a space weapons arms race. Such a race would not bode well for the long-term sustainability of the space environment. Indeed, U.S. efforts, bilaterally as well as multilaterally, seek to *prevent* conflict from extending into space. To that end, the United States continues to engage in sustained dialogue to identify, develop, and implement tangible TCBMs that are consistent with the recommendations of the 2013 GGE report.

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3. Sustainability and Security of Outer Space Environment

Assistant Secretary Rose addressed the 31st Space Symposium in Colorado Springs, Colorado on April 16, 2015. His remarks on using diplomacy to advance the long-term sustainability and security of the outer space environment are excerpted below and available at <http://www.state.gov/t/avc/rls/2015/240761.htm>.

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This morning I would like to discuss steps the United States is taking diplomatically, in concert with international partners to address the growing threats to space security.

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Strengthening Our Deterrent Posture

First, we use diplomacy to gain the support of our allies and friends. We have established numerous space security dialogues with our Allies and Partners. These dialogues help them understand the threat, as well as our diplomatic and national security goals, which is critical in

persuading them to stand by our side, often in the face of tremendous pressure from our adversaries. . . . Furthermore, our Department's leadership has also carried our message in numerous bilateral and multilateral dialogues.

Diplomacy also prepares the way for closer military-to-military cooperation and allied investment in capabilities compatible with U.S. systems. We work very closely with our interagency colleagues in the Department of Defense to make sure our efforts are synchronized so that investments by our allies and friends contribute to strengthening the resilience of our space architectures and contribute to Space Mission Assurance. . . .

Promoting the Responsible Use of Outer Space

Second, we use diplomacy to promote the responsible use of outer space and especially strategic restraint in the development of anti-satellite weapons.

Diplomacy has an important role in responding to the development of anti-satellite weapons developments that threaten the outer space environment. Responding both privately and publicly to tests of anti-satellite systems is a critical component of our diplomatic strategy. . . .

The Department of State is also using diplomacy to reduce the chances for conflict extending into space through the promotion of responsible international norms of behavior, both bilaterally and multilaterally. Norms matter because they help define boundaries and distinguish good behavior from bad behavior.

For example, we have discussed preventing mishaps and reducing potentially destabilizing misperceptions or miscalculations with China.

In addition, and very importantly, through bilateral and multilateral dialogue and diplomatic engagement we seek to identify areas of mutual interest and hopefully reach agreement on how to prevent those interests from being harmed in peacetime, and in conflict.

. . .

Simply stated, if the United States and the Soviet Union could find areas of mutual interest in the realm of nuclear deterrence and chemical weapons—with the tensions and stakes as high as they were—then in today's climate we should be able to find areas of mutual interest among all space-faring nations regarding space security.

Indeed, I would argue that it is reasonable to assume that most nations, if not all nations, would find it to be in their national interest to prevent conflict from extending into space, knowing that such conflict would degrade the sustainability of the space environment, hinder future space-based scientific activities, and potentially reduce the quality of life for everybody on Earth if the benefits of space-based applications were eroded. Convincing other nations, including China and Russia, of this objective is the role of diplomacy.

The United States and China have already implemented some bilateral . . . TCBMs to prevent the generation of additional debris in space. As part of the 2014 U.S.-China Strategic and Economic Dialogue, led by Secretary of State John Kerry, we reached agreement on the establishment of e-mail contact between China and the United States for the transmission of space object conjunction warnings. Not only does this communication help prevent collision between objects in space, it will help to develop trust and understanding between the United States and China.

Over the past few years the United States has also supported a number of multilateral initiatives that should reduce the chances of mishaps, misperceptions and potential miscalculations. Multilateral TCBMs are means by which governments can address challenges and share information with the aim of creating mutual understanding and reducing tensions.

Through TCBMs we can increase familiarity and trust and encourage openness among space actors.

One of the key efforts that we have been pursuing is working with the European Union to advance a non-legally binding International Code of Conduct for Outer Space Activities. The Code would establish guidelines to reduce the risks of debris-generating events and to strengthen the long-term sustainability and security of the space environment. Among the draft Code's most important provisions is a commitment for the subscribing States to refrain from any action—unless such action is justified by exceptions spelled out in the draft Code—that brings about, directly or indirectly, damage or destruction of space objects. We view the draft Code as a potential first step in establishing TCBMs for space.

The State Department is also leading U.S. efforts in the framework of the ...UNCOPUOS to move forward in the development of a draft set of guidelines for sustainable space operations to include ways to prevent the generation of space debris.

Another important recent effort was the United Nations ...GGE study of outer space transparency and confidence-building measures. That UN group, for which I served as the U.S. expert, published a consensus report in July 2013 endorsing voluntary, non-legally binding TCBMs to strengthen sustainability and security in space. The United States subsequently co-sponsored a resolution with Russia and China referring the GGE report's recommendations for consideration by the relevant entities and organizations of the United Nations system.

These diplomatic efforts contribute to reducing misperceptions and miscalculations and help lower the chance of conflict extending into space.

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In contrast, Russia's and China's diplomatic efforts to pursue legally binding treaties and other measures do not reduce the chances for mishaps, misunderstanding or miscalculation and provide little or no verification capability to make sure that everyone is playing by the same rules. Moreover, their diplomatic efforts do not address very real, near-term space security threats such as terrestrial-based anti-satellite weapons like the one China tested in 2007.

To be more specific, Russia and China continue to press for a "Treaty on the Prevention of the Placement of Weapons in Outer Space, the Threat or Use of Force against Outer Space Objects," known as the PPWT. Russia also is making concerted diplomatic efforts to gain adherents to its pledge of "No First Placement" of weapons in outer space. These two documents are fundamentally flawed. They do not address the threat of terrestrially-based ASAT capabilities, and they contain no verification provisions. Yet, at the same time, these proposals may gain some support internationally because many countries are attracted, naturally, to the idea of preventing the weaponization of space. As a diplomat, it is my job to explain why support for these Russian and Chinese proposals is misplaced and may even be counterproductive, while offering pragmatic alternatives, such as TCBMs, which demonstrate U.S. leadership and help shape the international space security agenda.

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4. Proposed Legally Binding Instruments on Space Security

On November 30, 2015, Assistant Secretary Rose spoke at the 3rd ASEAN Regional Forum (“ARF”) Workshop on Space Security, Session II: Enhancement for Space Security through Arms Control Measures, Including Legally-Binding Instruments, held in Beijing. Mr. Rose’s speech refers to the proposed Treaty on the Prevention of the Placement of Weapons in Outer Space, the Threat or Use of Force against Outer Space Objects (“PPWT”); and the “no first placement of weapons in outer space” initiative (“NFP”). The Assistant Secretary’s remarks are excerpted below and available at <http://www.state.gov/t/avc/rls/2015/250231.htm>.

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First, let’s look at the broad challenges associated with arms control in outer space: verification; scope; and the ability to address the most pressing and existing threats.

The verification challenge is a serious one: How does one verify and monitor that limitations on space weapons are being enforced? Assuming we identify an effective methodology for verification, does the technology to rigorously apply this methodology even exist?

A second key challenge is determining the scope of space arms control measures. For example, just what is a “space weapon?” Many space assets are potentially dual-use, making it impossible to determine if they constitute a weapon. If one satellite collides with another satellite, destroying the latter, is the first satellite a weapon? Even if the former satellite was constructed with completely benign intentions and the collision accidental, the fact remains that it has now destroyed another space asset. This key definitional problem remains unsolved.

A third key challenge is ensuring that any arms control measures equitably address the most pressing and existing threats. Some governments have recommended that we focus our attention on the placement of weapons in outer space. While the Soviet Union did indeed produce, place, and test weapons in outer space, we think that focusing on a recurrence of such deployments is a misprioritization. The most pressing and existing threat to outer space systems is actually terrestrially-based anti-satellite weapons, which exist, have been tested, and have already damaged the space environment. The continued development of such weapons, and their potential use in a conflict, should be of grave concern to all governments. Due to high impact speed in space, even sub-millimeter debris poses a realistic threat to human spaceflight and robotic missions.

Recent Proposals Fundamentally Flawed

Having examined some of the key challenges associated with space arms control, I would like to consider how these challenges have been addressed in some of the measures discussed earlier during this Session, notably the PPWT and NFP.

First, with regards to the verification challenge, the PPWT contains no integral verification regime to help monitor and verify the limitation on the placement of weapons in space. The United States could not support an approach in which verification provisions were determined only through subsequent negotiations of an “additional protocol.” In addition, as the United States has pointed out, it is not possible with existing technologies and/or cooperative

measures to effectively verify these proposals. Nor does the development of such technology appear to be imminent. The authors of the latest draft PPWT have admitted as much in official Conference on Disarmament documents. The NFP also lacks any effective confirmation features, rendering it impossible to demonstrate the efficacy of such a proposal.

Second, on the scope issue, the PPWT again has serious problems. Typically, arms control treaties that prohibit the deployment of a class of weapon also prohibit the possession, testing, production, and stockpiling of such weapons to prevent a country from rapidly breaking out of such treaties. The PPWT contains no such prohibitions and thus a Party could develop a readily deployable space-based weapons break-out capability. The NFP is also silent on this particular scoping issue. Moreover, since it does not define a “weapon in outer space,” states lack any mutual understanding of the operative terminology of such a pledge.

And third, the draft PPWT fails to address the most pressing and existing threat to outer space systems: terrestrially-based anti-satellite weapon systems. There is no prohibition on the research, development, testing, production, storage, or deployment of terrestrially-based anti-satellite weapons; thus such capabilities could be used to substitute for, and perform the functions of, space-based weapons. Unlike more hypothetical threats that some speakers have suggested we focus on, terrestrially-based anti-satellite systems have actually been tested in recent years. We cannot allow such a weapon to be retained, as our Russian colleagues have argued, as a “hedge” against cheating in the PPWT. The NFP proposal shares these same weaknesses.

The Way Ahead

Given the fundamental flaws contained in these two proposals, my fellow participants will not be surprised to find out that the United States does not support either initiative and does not see them as an acceptable basis for negotiation in the Conference on Disarmament or in any other forum. However, I would like to point out that the United States is not opposed to space arms control agreements in principle. Indeed, as the U.S. National Space Policy makes clear, “[t]he United States will consider proposals and concepts for arms control measures if they are equitable, effectively verifiable, and enhance the national security of the United States and its allies.” Furthermore, we believe that it is not in the international community’s interest to engage in a space weapons arms race; indeed, our efforts are aimed at preventing conflict from extending into space.

Instead of focusing on fundamentally flawed proposals, we would instead offer a pragmatic way ahead in order to address some of the urgent challenges that we all face, especially in the area of space debris. We believe that way is through the creation and implementation of pragmatic and near-term transparency and confidence-building measures, or TCBMs, that can encourage responsible actions in, and the peaceful use of, space. Unlike inadequate proposals, TCBMs can make a real difference in the near term, and such pragmatic measures can lead to greater mutual understanding and reduce tensions.

As I mentioned during my opening remarks earlier today, one promising area is the important work being done in the UN ... COPUOS, on the development of new international long-term sustainability, or LTS, guidelines. The agreed work plan for the COPUOS working group on LTS is near completion, and we look forward to joining other COPUOS delegations to reach consensus on a clear and practical set of guidelines in 2016. I look forward to hearing Dr. Peter Martinez of South Africa, who is the Chair of the Working Group on LTS, present tomorrow on this important effort.

Another promising area on space TCBMs is the continued implementation of the recommendations of the UN GGE study of TCBMs. The 2013 GGE report, which was later endorsed by consensus by the UN General Assembly, highlighted the importance of voluntary, non-legally binding TCBMs to strengthen stability in space. Such TCBMs can include the adoption of the previously-mentioned LTS guidelines in COPUOS, which can serve as a foundation for other TCBMs.

A third promising area is international cooperation on space situational awareness, or SSA, which can help contribute to a more comprehensive picture of what is transpiring in space and ensure the safety, sustainability, stability, and security of the space environment. We see opportunities for cooperation on SSA with other governments and nongovernmental space operators around the globe. Such cooperation on SSA is very important, as international partnerships bring resources, capabilities, and geographical advantages. . . .

One regional example of our cooperation in this area is our ongoing coordination with our Chinese co-hosts on orbital collisions. The Chinese Ministry of Foreign Affairs has provided the United States with email contact information for the appropriate Chinese entity responsible for spacecraft operations and conjunction assessment, allowing this organization to receive Close Approach Notifications directly from the U.S. Department of Defense. This lays the groundwork for a much faster process for sharing information, which reduces the probability of, and facilitates effective responses to, orbital collisions, orbital break-ups and other events that might increase the probability of accidental collisions in outer space.

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5. International Law in Context of Outer Space Activities

On November 30, 2015, Robert Friedman, Attorney-Adviser in the State Department's Office of the Legal Adviser, delivered remarks at the 3rd ARF Workshop on Space Security in Beijing, on the subject of international law in the context of outer space activities. Mr. Friedman's remarks are excerpted below.

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I want to briefly address three interconnected topics this afternoon: first, the importance of understanding *existing* international law as it applies to activities in outer space; second, the importance of *supplementing* existing international law with measures to build trust and confidence and enhance stability; and third, the importance of ensuring that any *new* international law in the area of arms control in outer space is effective and verifiable.

Existing International Law as it Applies to Outer Space Activities

International law is central to the conduct of outer space activities. The U.S. National Space Policy declares that the United States will adhere to, and proposes that other nations recognize and adhere to, several basic principles. One of these core principles is that all nations have the right to explore and use space for peaceful purposes, and for the benefit of all humanity, in accordance with international law.

The U.S. National Space Policy also reaffirms States' inherent right of individual or collective self-defense, which is recognized in Article 51 of the United Nations Charter.

The cornerstone of the United States' view is that there is nothing unique about outer space that would prevent existing international law from applying to the same extent it would apply elsewhere—including with respect to States' inherent right of individual or collective self-defense. In particular, existing bodies of international law such as the international law governing States' use of force in international relations and the law of armed conflict apply, without distinction, to State conduct in all domains, including outer space.

The proposition that this existing international law applies to State conduct in outer space is not new. Indeed, the applicability of these principles is well-established. For example, the 1967 Outer Space Treaty (OST) is a foundational document, joined by virtually all space-faring States. It establishes certain critical legal concepts, including: that the exploration and use of outer space "shall be carried out for the benefit and in the interests of all countries"; and that international law, including the Charter of the United Nations, applies in outer space to the same extent it applies elsewhere.

The inherent right of self-defense is also recognized in the draft Treaty on Prevention of the Placement of Weapons in Outer Space and of the Threat or Use of Force Against Outer Space Objects (PPWT), which states that "nothing in the Treaty shall impair the States Parties' inherent right to individual or collective self-defense, as recognized in Article 51 of the Charter of the United Nations."

While the United States welcomes this affirmation of the right of self-defense in space, the overall PPWT remains a fundamentally flawed proposal for a host of reasons, including, as noted in prior U.S. commentary, the PPWT draft recognizes self-defense as an exception to the prohibition on the use of force, but does not explicitly recognize that a use of force could also be authorized by the UN Security Council under Chapter VII of the UN Charter. Furthermore, the PPWT has no integral verification regime to help monitor and verify the limitation on the placement of weapons in space.

In the context of PPWT, some have also raised the prospect of specifically defining the "use or threat of force" and narrowly tailoring those instances when the use of force in self-defense would be justified in connection with the conduct of outer space activities.

However, a determination of whether specific events—whether in land, air, sea, cyberspace or outer space—constitute an actual or imminent armed attack sufficient to trigger a State's inherent right of self-defense is necessarily a case-by-case, fact-specific inquiry. States have generally not sought to define precisely or state conclusively what situations would constitute "armed attacks" in other domains, and there is no reason outer space should be different. Further, the concept of "use of force" or "threat of force" is not explicitly defined under international law, and attempting to negotiate an agreed definition would likely prove impossible.

Because the existing bodies of international law governing States' use of force in international relations and the conduct of hostilities in armed conflict apply to State conduct in all domains, including outer space, the United States believes the current international legal framework governing self-defense and armed conflict in outer space is sufficient.

Separate from the exercise of their inherent right of self-defense, States may in certain circumstances take actions that do not rise to the level of a use of force under international law in response to situations in outer space. In all cases, however, any actions taken by a State must be consistent with its obligations under international law, including obligations under customary

international law, the Outer Space Treaty and other space-related treaties, applicable arms control agreements, the International Telecommunications Union Constitution and Radio Regulations, and any other applicable international agreements.

One example of the importance of placing international law at the forefront of the conduct of outer space activities is Article IX of the Outer Space Treaty which directs that States shall conduct all activities in outer space with due regard to the corresponding interests of all other States Parties to the Treaty.

Supplementing Existing International Law through Measures to Build Confidence

While the PPWT has flaws, that's not to say there aren't effective ways to supplement existing international law in space. One important tool is non-legally binding transparency and confidence building measures, which can build trust and predictability in States' exploration and use of outer space.

Promoting transparency and confidence building measures in no way represents an abandonment of the rule of law. Quite the opposite is true. Non-legally binding arrangements between States can play an important role in reinforcing and strengthening the rule of law in the outer space legal system. Non-legally binding arrangements can fill the gaps in a legal framework by addressing specific or technical activities that are not addressed in an existing legal regime or contemporary or evolving developments that require flexibility.

Alternatively, States may wish to employ non-legally binding arrangements as a near-term bridge until the often lengthy and complex process is completed to negotiate and ratify a legally-binding agreement. Multilateral treaties take time to negotiate and often involve the completion of a patchwork of domestic procedures before entering into force, even when participating States strongly believe in the underlying goals. Non-binding arrangements often can be constructed more quickly. Exploring the utility of non-legally binding arrangements should not be construed as a resistance to the critically important functions of international lawmaking, simply as a call for crafting an arrangement that will best achieve the desired cooperative outcome.

Specifically, transparency and confidence building measures can actually serve to enable States to better plan their actions without running afoul of existing international law.

Indeed, principles such as those set down in legally-binding international treaties like the Outer Space Treaty and the Liability Convention are critically important in establishing benchmarks for the rule of law in outer space. At the same time, States need to know the rules of the road that they will be expected to follow in highly technical and often evolving areas such as orbital debris mitigation and space situational awareness.

Thus, transparency and confidence building measures actually contribute to the rule of law because they allow States to plan their own actions in accordance with relevant technical rules and guidelines—like the Space Debris Mitigation Guidelines—while providing a basis for predicting the actions of others. In addition, non-legally binding instruments can provide important flexibility in the outer space system while still supporting adherence to the rule of law.

Moreover, use of outer space for exploration, science, and commerce is still at an early stage, and space technology is rapidly advancing. As a consequence, it's important to explore rules of the road that can be adapted to quickly address this changing environment and such flexibility can more easily be achieved through non-legally binding instruments.

Some have suggested an incompatibility between the goal of re-affirming the applicability of principles of international law in the conduct of outer space activities and U.S. approaches to develop non-legally binding transparency and confidence building measures.

In my view there is no incompatibility. Indeed, there are numerous examples of States re-affirming their commitment to the United Nations Charter in non-legally binding political commitments, including codes of conduct. For example, 137 States subscribe to the Hague Code of Conduct Against Ballistic Missile Proliferation that expressly re-affirms their commitment to the United Nations Charter. The United States believes that it is acceptable to include references to, for example, States' inherent right of self-defense, in both legally-binding agreements and non-legally binding political commitments.

As space becomes increasingly contested, exchanges on States' views on national space policies and strategies and affirmation of the applicability of international law in outer space can serve as important transparency and confidence building measures that enhance stability.

The United States supports developing non-legally-binding political commitments in order to build trust and confidence and begin to establish sensible rules of the road for the benefit of all nations. Such measures are not intended to change existing international law, and they would not do so. Rather, these efforts are designed to help maintain the long-term sustainability, safety, stability, and security of outer space by establishing guidelines for the responsible use of space, all within the framework of existing international law.

Arms Control and Verification in Outer Space

The last element I'd like to touch on is the importance of ensuring that any new international law in the area of arms control and verification in outer space is effective and meaningful. The United States has said in numerous fora that it will consider concepts and proposals for outer space arms control measures if they are effectively verifiable, equitable, and enhance the national security of all, including the United States and its allies. To date, the United States has not seen a space-related arms control proposal that meets these criteria.

First, the United States could only support a legally-binding arms control agreement if there was an integral verification regime to help monitor and verify the limitation imposed in the agreement. Specifically, the United States has maintained that it is not possible with existing technologies and cooperative measures to effectively verify an agreement banning space-based weapons.

Verification is critically important because it is the essential process whereby one country assesses whether another country is complying with an arms control agreement. Such a regime would accomplish a number of objectives, including permitting the countries to detect evidence that violations might have occurred and deter violations of the treaty.

To verify compliance, a country must determine whether the activities of another country are within the bounds established by the limits and obligations in the agreement. A verifiable legally-binding arms control treaty contains a host of constraints and provisions designed to deter violations, to make potential violations more complicated and more expensive, or to make their detection timelier. Without effective verification, the arms control regime lacks stability and the parties to the treaty lack confidence in its integrity.

Finally, an arms control agreement in outer space must equitably address the most pressing, existing threats in the field. In the outer space system, this means addressing terrestrially-based anti-satellite weapon systems. Such an arms control agreement would need to prohibit the research, development, testing, production storage or deployment of terrestrial-based anti-satellite weapons so that such capabilities could not be used to substitute for, and perform the functions of, space-based weapons.

The United States remains interested in working with all current and emerging space-faring nations to promote concrete and pragmatic measures that will provide for stability in

space. Thank you for the opportunity to speak this afternoon and I look forward to the range of important issues that will be addressed during this workshop.

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6. Cooperation Arrangement with the EU

On October 19, 2015, the State Department announced that the United States and the European Union had signed a cooperation arrangement on Copernicus Earth observation data. See October 19, 2015 State Department media note, available at <http://www.state.gov/r/pa/prs/ps/2015/10/248336.htm>, and excerpted below.

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The United States and the European Commission signed the “Copernicus Cooperation Arrangement” which will facilitate data sharing from the Copernicus constellation of Sentinel Earth Observation satellites among a broad spectrum of users on both sides of the Atlantic. U.S. Deputy Assistant Secretary of State for Science, Space and Health Jonathan Margolis and European Commission Director for Space Policy, Copernicus and Defence Philippe Brunet signed the arrangement in Washington, D.C., on October 16.

The arrangement articulates a shared U.S.-EU vision to pursue full, free, and open data policies for government Earth observation satellites. Such policies foster greater scientific discovery and encourage innovation in applications and value added services for the benefit of society at large.

The arrangement will allow experts from U.S. agencies, including the National Aeronautics and Space Administration (NASA), National Oceanic and Atmospheric Administration (NOAA), and the U.S. Geological Survey (USGS), to pursue cooperative data sharing activities with European counterparts, including the European Commission, the European Space Agency (ESA), and the European Organisation for the Exploitation of Meteorological Satellites (EUMETSAT). This cooperation will enhance data access, validation, and quality control as well as satellite system compatibility, interoperability, and instrument inter-calibration.

Today’s signing will help the United States and the European Union realize the full value of Earth Observation satellites for civil, commercial, and scientific applications in the public and private sectors, including climate change research, weather forecasting, ocean and atmospheric monitoring, land use management, and the management and mitigation of natural disasters. For example, oil spill detection in the Gulf of Mexico has already been enhanced by the cooperative use of the Copernicus constellation’s Sentinel 1A data.

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Cross References

Counter-narcotics, **Chapter 3.B.2.**

Arms control, **Chapter 19.C.**