

Table of Contents

CHAPTER 12	518
Territorial Regimes and Related Issues	518
A. LAW OF THE SEA AND RELATED BOUNDARY ISSUES	518
1. UN Convention on the Law of the Sea.....	518
<i>Meeting of States Parties to the Law of the Sea Convention</i>	518
2. South China Sea and East China Sea	519
<i>a. U.S. statement on arbitration between the Philippines and China</i>	519
<i>b. December Diplomatic Note to China</i>	520
3. Freedoms of Navigation and Overflight	523
<i>a. Indonesia Maritime Law</i>	523
<i>b. Iran's detention of U.S. vessels and sailors</i>	524
<i>c. Venezuela</i>	524
4. Other Boundary or Territorial Issues.....	526
<i>a. Transmittal of Maritime Boundary Treaties</i>	526
<i>b. Republic of the Marshall Islands and Wake Island</i>	527
<i>c. Canada and U.S. Claims in Beaufort Sea</i>	529
5. Maritime Security and Law Enforcement.....	529
<i>a. Vanuatu</i>	529
<i>b. Ghana</i>	529
B. OUTER SPACE	530
1. The Outer Space Treaty	530
2. UN General Assembly First and Fourth Committees	535
3. Sustainability and Security of Outer Space Environment	536

4. U.S. Report to Conference on Disarmament on GGE Recommendations	538
Cross References	541

CHAPTER 12

Territorial Regimes and Related Issues

A. LAW OF THE SEA AND RELATED BOUNDARY ISSUES

1. UN Convention on the Law of the Sea

Meeting of States Parties to the Law of the Sea Convention

The United States participated as an observer to the 26th meeting of States Parties to the Law of the Sea Convention (“SPLOS”) at the United Nations. Dr. Elizabeth Kim of the Department of State, Office of Ocean and Polar Affairs, delivered the U.S. statement at the 26th meeting of SPLOS on June 23, 2016. Her statement follows.

* * * *

Thank you, Madam President. At the outset, my delegation would like to congratulate you and the bureau on your elections and on your conduct of this meeting, and to thank the Secretariat for their outstanding service, as always.

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 Secretary-General of the International Seabed Authority, the President of the International Tribunal for the Law of the Sea, and the Chair of the Commission on the Limits of the Continental Shelf for the reports and information provided by them to this meeting. And we would like to express our appreciation to DOALOS for supporting the important work of the Commission on the Limits of the Continental Shelf, including its consistent efforts to help address the challenges facing the Commission and to assist coastal States in making their submissions to the Commission.

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.

As we have stated previously, the United States is 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 advisory opinion jurisdiction beyond the authority of the Seabed Disputes Chamber of ITLOS to issue advisory opinions as set forth in paragraph 10 of Article 159 and Article 191. The Tribunal's exercise of jurisdiction in contentious cases is clearly set out in the Convention, but this is quite different from asserting that the full Tribunal can or should exercise advisory jurisdiction as well.

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. Case number 21 concerned broad fisheries-related rights and obligations of coastal States and flag States under the Law of the Sea Convention more than it concerned the provisions of the underlying regional fisheries agreement. We were disappointed with the Tribunal's decision that as a full body it has advisory jurisdiction, and that it would exercise such advisory jurisdiction in that case.

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 acknowledges 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.

Finally, Madam President, the United States does not believe that the "State of Palestine" qualifies as a sovereign State and does not recognize it as such. The United States believes that the "State of Palestine" is not qualified to accede to the Law of the Sea Convention, or to serve as a Party to the Convention on any bodies of this SPLOS meeting.

* * * *

2. South China Sea and East China Sea

a. U.S. statement on arbitration between the Philippines and China

On July 12, 2016, the State Department issued a press statement regarding the decision in the arbitration between the Philippines and China over disputed claims in the South

China Sea. The press statement is excerpted below and available at <http://2009-2017.state.gov/r/pa/prs/ps/2016/07/259587.htm>.

* * * *

The decision today by the Tribunal in the Philippines-China arbitration is an important contribution to the shared goal of a peaceful resolution to disputes in the South China Sea. We are still studying the decision and have no comment on the merits of the case, but some important principles have been clear from the beginning of this case and are worth restating.

The United States strongly supports the rule of law. We support efforts to resolve territorial and maritime disputes in the South China Sea peacefully, including through arbitration.

When joining the Law of the Sea Convention, parties agree to the Convention's compulsory dispute settlement process to resolve disputes. In today's decision and in its decision from October of last year, the Tribunal unanimously found that the Philippines was acting within its rights under the Convention in initiating this arbitration.

As provided in the Convention, the Tribunal's decision is final and legally binding on both China and the Philippines. The United States expresses its hope and expectation that both parties will comply with their obligations.

In the aftermath of this important decision, we urge all claimants to avoid provocative statements or actions. This decision can and should serve as a new opportunity to renew efforts to address maritime disputes peacefully.

We encourage claimants to clarify their maritime claims in accordance with international law—as reflected in the Law of the Sea Convention—and to work together to manage and resolve their disputes. Such steps could provide the basis for further discussions aimed at narrowing the geographic scope of their maritime disputes, setting standards for behavior in disputed areas, and ultimately resolving their underlying disputes free from coercion or the use or threat of force.

* * * *

b. December Diplomatic Note to China

Following the July 12, 2016 decision in the arbitration between the Philippines and China, China circulated three papers regarding its claims in the South China Sea. In the papers, China expressly claimed for the first time “historic rights in the South China Sea.” China also claimed internal waters and other maritime entitlements “based on” the islands in the South China Sea, seemingly in reference to claims based on unlawful collective treatment of groups of islands, for example by unlawful use of straight baselines. In keeping with its global policy of formally protesting foreign government maritime claims that are inconsistent with the international law of the sea, the United States responded to these papers with a demarche and a diplomatic note on December 28, 2016, identifying contradictions between China's claims and the international law of the sea. The text of the note appears below. The note references previous published assessments by the United States of China's claims in the South China Sea. See *Digest*

2014 at 521-29 for discussion of *Limits of the Seas # 143*, which is available at <https://www.state.gov/documents/organization/234936.pdf>; *Limits of the Seas #117* is available at <https://www.state.gov/documents/organization/57692.pdf>.

* * * *

[The United States] has the honor to refer to the following three documents circulated by China on July 12-13, 2016: the “Statement of the Government of the People’s Republic of China on China’s Territorial Sovereignty and Maritime Rights and Interests in the South China Sea” (hereinafter the “PRC Government Statement”); the “Statement of the Ministry of Foreign Affairs of the People’s Republic of China on the Award of 12 July 2016 of the Arbitral Tribunal in the South China Sea Arbitration Established at the Request of the Republic of the Philippines”; and the paper entitled “China Adheres to the Position of Settling Through Negotiation the Relevant Disputes Between China and the Philippines in the South China Sea” (hereinafter the “PRC White Paper”).

The United States welcomes efforts by China to adjust or clarify its maritime claims in accordance with international law as reflected in the 1982 Law of the Sea Convention, but has a number of concerns with China’s articulation in these three documents of its South China Sea maritime claims. In this regard, the United States takes particular note of paragraph III of the PRC Government Statement, which reads:

“Based on the practice of the Chinese people and the Chinese government in the long course of history and the position consistently upheld by successive Chinese governments, and in accordance with national law and international law, including the United Nations Convention on the Law of the Sea, China has territorial sovereignty and maritime rights and interests in the South China Sea, including, inter alia:

- i. China has sovereignty over Nanhai Zhudao, consisting of Dongsha Qundao, Xisha Qundao, Zhongsha Qundao and Nansha Qundao;
- ii. China has internal waters, territorial sea and contiguous zone, based on Nanhai Zhudao;
- iii. China has exclusive economic zone and continental shelf, based on Nanhai Zhudao;
- iv. China has historic rights in the South China Sea.

The above positions are consistent with relevant international law and practice.”

The United States further notes paragraph 70 of the PRC White Paper, which appears under the heading “[t]he development of the international law of the sea gave rise to the dispute between China and the Philippines over maritime delimitation,” and which reads:

“Based on the practice of the Chinese people and the Chinese government in the long course of history and the position consistently upheld by successive Chinese governments, and pursuant to China’s national law and under international law, including the 1958 *Declaration of the Government of the People’s Republic of China on China’s Territorial Sea*, the 1992

Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, the 1996 *Decision of the Standing Committee of the National People's Congress of the People's Republic of China on the Ratification of the United Nations Convention on the Law of the Sea*, the 1998 *Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf*, and the 1982 *United Nations Convention on the Law of the Sea*, China has, based on Nanhai Zhudao, internal waters, territorial sea, contiguous zone, exclusive economic zone and continental shelf. In addition, China has historic rights in the South China Sea.”

These statements appear to assert expressly, for the first time, a Chinese maritime claim in the South China Sea that would include “historic rights.”¹ For a number of reasons, including those set forth in the Department of State publication *Limits in the Seas #143—China: Maritime Claims in the South China Sea* (which is appended to this note), the United States objects to such a claim as unlawful, insofar as it would be inconsistent with international law as reflected in the Law of the Sea Convention.

Furthermore, to the extent China's claim to “internal waters” contemplates waters within straight baselines around any South China Sea islands, the United States objects for reasons including but not limited to those set forth in the Department of State publication *Limits in the Seas #117—Straight Baseline Claim: China* (which is also appended to this note). Consistent with international law as reflected in the Law of the Sea Convention, including Articles 5, 7, 46, and 47, China cannot claim straight or archipelagic baselines in the Paracel Islands, Pratas Island, Macclesfield Bank, Scarborough Reef, or the Spratly Islands. Similarly, China's claims related to what it calls “Nanhai Zhudao (the South China Sea Islands),” and to “Dongsha Qundao (the Dongsha Islands), Xisha Qundao (the Xisha Islands), Zhongsha Qundao (the Zhongsha Islands) and Nansha Qundao (the Nansha Islands)” would be unlawful to the extent they are intended to include any maritime claim based on grouping multiple islands together as a single unit for purposes of establishing internal waters, territorial sea, contiguous zone, exclusive economic zone and continental shelf or any other maritime claim. Moreover, Macclesfield Bank is an entirely submerged feature; it and other features in the South China Sea that are not “islands” under international law as reflected in Article 121(1) of the Law of the Sea Convention are not subject to appropriation and do not generate any entitlement to a territorial sea, contiguous zone, exclusive economic zone or continental shelf under the international law of the sea.

These objections are without prejudice to the views of the United States concerning other aspects of the three above-referenced documents or concerning other Chinese maritime claims and activities. The United States reiterates that it takes no position on competing sovereignty claims to naturally formed land features in the South China Sea, or on maritime boundary delimitation in the South China Sea. The United States respectfully reiterates its longstanding request, however, that the People's Republic of China adjust or clarify its maritime claims in the South China Sea to be consistent with the international law of the sea as reflected in the Law of the Sea Convention, in particular its provisions pertaining to baselines and maritime zones. The United States is ready to discuss this and other related issues with China in order to maintain consistent dialogue on law of the sea issues.

¹ As discussed in *Limits in the Seas #143—China: Maritime Claims in the South China Sea*, pages 17-19, previous Chinese assertions, such as those in the 1998 Exclusive Economic Zone and Continental Shelf Act, have not claimed “historic rights” in the South China Sea.

* * * *

3. Freedoms of Navigation and Overflight

a. *Indonesia Maritime Law*

In a diplomatic note delivered to the United States and during the first Indonesia-United States Maritime Law and Oceans Policy Dialogue in Washington, D.C. in March 2016, the Government of Indonesia objected to being listed in the 2015 Freedom of Navigation report as having excessive maritime claims. In October 2016, the United States delivered a diplomatic note identifying issues that must be resolved with regard to Indonesia's maritime laws, regulations, and claims. The text of the U.S. diplomatic note is excerpted below.

* * * *

Based on discussions with Indonesian officials during the Dialogue held in Washington, D.C., the United States understands that Indonesian Government Regulation No. 8 of 1962 is no longer in effect, and has been superseded by Indonesian Act No. 6 of 1996 and Indonesian Government Regulation No. 37 of 2002 in order to implement international law as reflected in the Law of the Sea Convention. In particular, the United States understands that Indonesia does not require foreign warships to provide notice prior to exercising the rights of innocent passage or archipelagic sea lanes passage, nor does Indonesia apply the restriction in Regulation No. 8 of 1962 on "stopping, dropping anchor, and cruising about without legitimate reason" in waters adjoining Indonesian territorial waters.

The United States would appreciate a note in reply affirming these understandings.

With respect to the exercise of the right of archipelagic sea lanes passage, recalling the exchange of notes in 2002 between our two governments regarding the international rights and obligations pertaining to transit of the Indonesian archipelagic waters in accordance with international law, the government of the United States continues to consider for the most part regulation No. 37 of 2002 as publicized by International Maritime Organization (IMO) circular SN/CIRC.200/ADD.1 of July 3, 2003 faithfully follows the provisions of Part IV of the 1982 Law of the Sea Convention and guidance on the partial proposal of sea lanes adopted by the IMO in 1998. The United States understanding of regulation No. 37 and its annexes includes the following:

-- as the archipelagic sea lanes designation in regulation No. 37 and its annexes are a partial designation of archipelagic sea lanes through the Indonesian archipelago, the right of all ships and aircraft to exercise archipelagic sea lanes passage continues on all normal routes used for international navigation through other parts of the Indonesian archipelago, as reflected in article 53 of the Law of the Sea Convention. Paragraph 6.7 of Part H of the IMO publication *Ships' Routing* provides additional guidance in this regard.

-- the right of innocent passage exists for ships of all states in all of Indonesia's archipelagic waters and territorial sea, as reflected in article 52(1) of the Law of the Sea Convention and as described in paragraph 6.5 of Part H of Ships' Routing.

The United States would appreciate a note in reply affirming these understandings.

* * * *

b. *Iran's detention of U.S. vessels and sailors*

In January 2016, Iran detained two U.S. Navy Riverine Command Boats ("RCBs") and detained and searched the U.S. personnel on board. The United States publicly protested Iran's actions, including that they violated international law regarding the RCBs' exercise of the right of innocent passage through Iran's territorial sea, and regarding the sovereign immunity of the RCBs. The U.S. Navy produced an investigation report of the incident and released a redacted version in its Freedom of Information Act ("FOIA") reading room, available at <http://www.secnav.navy.mil/foia/readingroom/SitePages/Home.aspx>. The following is excerpted from the Executive Summary of that investigation report

* * * *

On 12 January 2016, Iranian Revolutionary Guard Corps Navy (IRGCN) forces breached long-standing tenets of international law when IRGCN vessels intercepted two U.S. Riverine Command Boats (RCBs) in Iran's territorial sea. During their forcible interdiction and subsequent boarding of the RCBs, the IRGCN vessels violated both the RCBs' right to exercise innocent passage and the principle of sovereign immunity.

First, the RCBs were entitled to transit through territorial seas continuously and expeditiously as an exercise of the right of innocent passage... The IRGCN vessels obstructed innocent passage by maneuvering in front of one of the RCBs with weapons trained on the crew, forcing it to stop.

Second, the immunity of one State from the jurisdiction of another State is an undisputed principle of international law. Iran disregarded this well-established norm when its agents boarded, searched, and seized the RCBs, and replaced the colors of the United States with the IRGCN's standard. Sovereign immunity also protects personnel onboard a State vessel from search and seizure by foreign authorities. ...

* * * *

c. *Venezuela*

The Venezuelan government alleged "air safety violations and unauthorized military maneuvers" as well as violations of Venezuela's territorial airspace by U.S. military aircraft on May 11 or on May 13, 2016. The United States responded to the Venezuelan

allegations, via a May 20, 2016 diplomatic note to the Ministry of Foreign Affairs (“MFA”) of Venezuela. The text of the diplomatic note follows.

* * * *

The United States finds no basis for the Venezuelan allegation of air safety violations and unauthorized military maneuvers. On May 11 and May 13, 2016, a U.S. Air Force E-3 Sentry aircraft was operating in international airspace within the Maiquetia Flight Information Region (FIR). The United States has reviewed all available data and has determined that the aircraft did not enter Venezuelan territorial airspace. Instead, the aircraft operated in international airspace, and exercised “due regard for the safety of navigation of civil aircraft,” consistent with Article 3(d) of the 1944 Convention on International Civil Aviation (the “Chicago Convention”).

Customary international law, as reflected in the 1982 UN Law of the Sea Convention, permits a coastal State to claim a territorial sea with a maximum breadth of 12 nautical miles (nm) as measured from baselines drawn consistent with international law. The coastal State’s sovereignty extends through its territorial sea, including to the airspace over its territorial sea. Territorial airspace does not extend over areas beyond the limits of the territorial sea in accordance with international law. The United States understands that Venezuela claims a 12 nm territorial sea. The United States recognizes the sovereignty of Venezuela in its national airspace, including above its territorial sea in places where the territorial sea claim is consistent with international law. The United States also recognizes Venezuela’s right to require military and other state aircraft to obtain diplomatic clearance prior to entry into its territorial airspace. The United States does not, however, recognize assertions of Venezuelan airspace beyond where it claims a 12 nm territorial sea consistent with international law.

The International Civil Aviation Organization (ICAO) may allocate through regional agreements approved by the ICAO Council, responsibility for civil air traffic management in international airspace to a coastal State in a FIR encompassing airspace beyond its territorial airspace, consistent with the requirements of the Chicago Convention, to which the United States and Venezuela are party. According to Annex 11 to the Convention, a FIR is “airspace of defined dimensions within which flight information service and alerting service are provided.” Nothing in this definition serves to extend a State’s territorial jurisdiction. Moreover, the Convention by its terms is applicable to civil aircraft, not state aircraft such as the U.S. military aircraft referred to above. Further, all aircraft, including military and other state aircraft, enjoy freedoms of navigation and overflight in international airspace. This means that military aircraft, and other state aircraft, operating in airspace beyond territorial airspace, whether within or outside of a FIR, are free to operate without the consent of or notice to coastal States, and are not subject to the jurisdiction or control of the air traffic authorities of those States. U.S. military and other state aircraft communicate with air traffic control when operating in such airspace only as a matter of policy and based on a concern for flight safety.

The United States trusts that this explanation clarifies any concerns regarding the operation of U.S. military and other state aircraft in international airspace that falls within the Maiquetia FIR.

* * * *

4. Other Boundary or Territorial Issues

a. *Transmittal of Maritime Boundary Treaties*

On December 9, 2016, the President transmitted to the Senate the Treaty between the Government of the United States of America and the Government of the Republic of Kiribati on the Delimitation of Maritime Boundaries and the Treaty between the Government of the United States of America and the Government of the Federated States of Micronesia on the Delimitation of a Maritime Boundary. The transmittal package is available at <https://www.congress.gov/treaty-document/114th-congress/13/document-text>. The President's letter of transmittal states:

The purpose of the treaties is to establish our maritime boundaries in the South Pacific Ocean with two neighboring countries. The treaty with Kiribati establishes three maritime boundaries totaling approximately 1,260 nautical miles in length between Kiribati and the United States islands of Palmyra Atoll, Kingman Reef, Jarvis Island, and Baker Island. The treaty with the Federated States of Micronesia establishes a single maritime boundary of approximately 447 nautical miles in length between the Micronesian islands and the United States territory of Guam. The boundaries define the limit within which each country may exercise maritime jurisdiction with respect to its exclusive economic zone and continental shelf.

The Secretary of State's letter of submittal for the two treaties is excerpted below.

* * * *

The Treaty with Kiribati establishes three maritime boundaries in the Pacific with respect to the exclusive economic zone (EEZ) and continental shelf generated by various Kiribati islands and by each of the U.S. islands of Palmyra Atoll, Kingman Reef, Jarvis Island, and Baker Island. The treaty with FSM establishes a single maritime boundary between Guam and several FSM islands.

* * * *

The form and content of the two treaties are very similar to each other, and to previous maritime boundary treaties between the United States and other Pacific island countries that have entered into force after receiving the Senate's advice and consent. Each of the two treaties consists of seven articles. Article I states that the purpose of each treaty is to establish the maritime boundary between the two countries. The treaty with Kiribati identifies the relevant United States territory as Palmyra Atoll, Kingman Reef, Jarvis Island, and Baker Island; the treaty with FSM identifies the relevant United States territory as Guam.

Article II of each treaty sets out its technical parameters, stating that for the purpose of the treaty the North American Datum 1983 and the World Geodetic Datum 1984 (“WGS 84”) are considered identical. Further, the article states that, for the purpose of illustration only, the boundary lines have been drawn on maps annexed to the treaties.

Article III lists the turning and terminal points of defining the maritime boundaries. In the treaty with Kiribati, this article defines three distinct boundary lines: for the boundary line between the United States’ Baker Island and the Kiribati Phoenix Islands group, six points are connected by geodesic lines that measure 332 nautical miles in total; for the boundary line between the United States’ Jarvis Island and the Kiribati Line Islands group, ten points are connected by geodesic lines that measure 548 nautical miles in total; and for the boundary line between the U.S. islands of Palmyra Atoll and Kingman Reef and the Kiribati Line Islands group, five points are connected by geodesic lines that measure 383 nautical miles in total. In the treaty with FSM, this article defines the single maritime boundary of approximately 447 nautical miles with 16 turning and terminal points.

As has become standard in these agreements, Article IV sets forth the agreement of the Parties that, on the opposite side of each maritime boundary, each Party will not “claim or exercise for any purpose sovereignty, sovereign rights, or jurisdiction with respect to the waters or seabed or subsoil.”

Article V provides that the establishment of the boundaries will not affect or prejudice either side’s position “with respect to the rules of international law relating to the law of the sea, including those concerned with the exercise of sovereignty, sovereign rights, or jurisdiction with respect to the waters or seabed or subsoil.”

Article VI sets forth the agreement of the Parties that any dispute arising from the interpretation or application of the treaty will be resolved by negotiation or other peaceful means agreed upon by the Parties. Finally, Article VII provides that each treaty will enter into force after the Parties have exchanged notes indicating that each has completed its internal procedures to bring the treaty into force.

The treaties are self-executing. They do not require implementing legislation.

* * * *

b. *Republic of the Marshall Islands and Wake Island*

On August 2, 2016, the U.S. Embassy in the Marshall Islands delivered a diplomatic note to the Ministry of Foreign Affairs of the Republic of the Marshall Islands (“RMI”) regarding U.S. sovereignty over Wake Island. The RMI submitted documents describing its maritime limits and boundaries to the UN in April 2016, including claimed RMI maritime limits around Wake Island. The RMI first made its claim to Wake Island in 1980, although the RMI claims it did so nearly a decade earlier. The text of the August 2, 2016 U.S. diplomatic note follows.

* * * *

The United States notes the Republic of the Marshall Islands' (RMI) "Baselines and Maritime Zones Outer Limits Declaration" of April 18, 2016 (hereinafter the "Declaration"), pursuant to the RMI Maritime Zone Declaration Act of 2016, which describes the purported outer limits of the RMI's maritime zones. The United States generally supports efforts by countries to clarify and publish the limits of their maritime entitlements in accordance with international law as reflected in the 1982 Law of the Sea Convention. The United States has serious concerns and objections, however, with respect to the Declaration and the maritime zones declared in it.

The Declaration appears to claim maritime entitlements that, under the international law of the sea, could only be derived from a claim of sovereignty over Wake Island. Wake Island is U.S. territory and, as such, subject solely to the sovereignty of the United States. Any assertion of maritime entitlements generated by Wake Island by an entity other than the United States would therefore be inconsistent with international law. Accordingly, the United States objects to the assertion by RMI of maritime zones around Wake Island.

To the extent that the Declaration signals a claim of RMI sovereignty over Wake Island, the United States further objects. Wake Island is U.S. territory, over which U.S. sovereignty is based, in part, on nearly uninterrupted possession and administration since 1898, when the United States first claimed possession of the uninhabited atoll, formalizing its claim in 1899. The United States has engaged in extensive military and commercial activities on Wake Island since at least 1935, maintains absolute administrative control of Wake Island, has continued to occupy and use Wake Island, and strictly regulates access to Wake Island.

In contrast, Wake Island is not historically part of Marshallese territory. The Marshallese have never inhabited, occupied, or administered Wake Island, nor did they make commercial use of its lands and resources. Wake Island is neither part of nor continuous to the natural archipelago of the RMI chains. When the RMI was successively administered by Spain, Germany, and Japan, Wake Island was never treated nor considered by these nations as subject to their administration. United States sovereignty over Wake Island has been historically undisputed by other nations until the RMI raised a claim in a 1980 session of the U.N. Trusteeship Council and has not been otherwise disputed by other nations since then. Moreover, the position of the RMI with respect to Wake Island has not been consistent since 1980. Most recently, in January 2015, then-Foreign Minister of the RMI proposed to the U.S. Ambassador that the two countries resolve the U.S.-RMI maritime boundary, and the United States has been preparing accordingly to commence negotiations on a maritime boundary agreement.

The United States reserves its position at this time with respect to whether other provisions of the Declaration are consistent with international law, including, for example, whether the declared archipelagic baselines comply with customary international law as reflected in the 1982 Law of the Sea Convention. The United States notes, for example, that RMI's archipelagic baselines are not consistent with international law if within such baselines the ratio of the area of the water to the area of the land, including atolls, is greater than nine to one.

Separately, the United States also has the honor to refer to the Constitutional Convention (Amendment) (1) Act of 2016 pending in the Nitijela, which proposes to amend the Constitution of the RMI to include Wake Island as part of the existing RMI "electoral district with which it is most closely associated, pursuant to the customary law or any traditional practice." The United States objects to the proposed legislation for the same reason provided above: Wake Island is solely U.S. territory; it has never been and is not now RMI territory. Accordingly, the RMI has no authority to include Wake Island in an existing Marshallese electoral district, and the United States urges RMI not to enact this Act or any similar legislation with respect to Wake Island.

With the shared goal of delimiting the relevant maritime zones of the United States and the RMI with certainty and finality, the United States would welcome the negotiation of a maritime boundary agreement with the Government of the RMI to delimit the maritime boundary between the U.S. territory of Wake Island and the RMI, as proposed by the RMI to the United States in 2015, and would welcome the opportunity for U.S. Government experts to discuss this matter further with relevant experts in the Government of the RMI.

* * * *

c. *Canada and U.S. Claims in Beaufort Sea*

The Canadian Embassy informed the U.S. Department of State on August 9, 2016 that the Department of the Interior's proposed program for gas and oil lease blocks includes an area of the Beaufort Sea subject to Canada's claims. The Canadian Embassy had previously advised the Department of State in 2014 that similar programs under Department of Interior and State of Alaska authorities for offshore lease blocks included areas of the Beaufort Sea subject to Canada's claims. The United States responded to Canada's assertions with a diplomatic note in December 2016, which stated, in part:

The United States Government does not accept that areas referred to in the Proposed Program, lease sales, and related activities (collectively hereinafter the "programs") are within Canadian waters or that the programs in any way infringe upon Canadian sovereignty, sovereign rights, or jurisdiction. The United States does not share the Canadian view that the location of the maritime boundary in this area follows the 141st meridian of longitude. The United States on many occasions has informed Canada of the proper location of the maritime boundary in this area, which has been followed in the case of the programs referred to above. The United States rejects any purported exercise of jurisdiction or sovereignty by the Government of Canada, or any of its provinces or territories, in the United States part of the Beaufort Sea east of the 141st meridian.

5. *Maritime Security and Law Enforcement*

a. *Vanuatu*

On October 31, 2016, U.S. Ambassador Ebert-Gray and Vanuatu Minister of Internal Affairs Alfred Moah signed the Agreement between the Government of the United States of America and the Government of the Republic of Vanuatu Concerning Counter Illicit Transnational Maritime Activity Operations. The full text of the signed agreement is available at <https://www.state.gov/s/l/c8183.htm>.

b. *Ghana*

The United States and Ghana concluded another short-term maritime law enforcement arrangement setting forth operational procedures for the conduct of a combined

operation conducted in January and February 2016. See *Digest 2015* at 529 and *Digest 2014* at 546 for discussions of prior temporary agreements. The arrangement for the 2016 operation was concluded via an exchange of diplomatic notes with the Ministry of Foreign Affairs of the Republic of Ghana. The United States and the government of Ghana have cooperated in efforts to respond to illicit transnational maritime activity, and to further the objectives of the U.S.-Ghana Security Governance Initiative and the United States West Africa Cooperative Security Initiative. The arrangement allows officers of Ghana's Navy to embark on U.S. Coast Guard or Naval vessels or aircraft and the craft on which they embark may enter Ghana's territorial sea to perform surveillance and law enforcement activities.

B. OUTER SPACE

1. The Outer Space Treaty

State Department Legal Adviser Brian J. Egan delivered remarks entitled "The Next Fifty Years of the Outer Space Treaty," at the Galloway Symposium on Critical Issues in Space Law on December 7, 2016. Mr. Egan's remarks are excerpted below and available at <http://2009-2017.state.gov/s/l/releases/remarks/264963.htm>.

* * * *

Good afternoon. I am delighted to take part in this year's Galloway Symposium commemorating the fiftieth anniversary of the Outer Space Treaty. There is much to commemorate. The Treaty is the cornerstone of an international legal framework for outer space that has enabled the exploration and use of space by an increasingly diverse range of actors, serving a growing set of vital needs on Earth. ...

This is a fitting juncture to offer some observations on how the Outer Space Treaty is guiding the United States' planning and preparation for the future. As we speak, the public and private sectors are making investments in capabilities to advance our understanding of our solar system and unlock new space applications. I am confident that as the world grows increasingly reliant upon space, as more States and actors within States become active in space, the Outer Space Treaty and the fundamental legal principles it embodies will be even more vital in 2067 than they were 1967.

Let me begin briefly by looking back six decades or so, before the international law of outer space had really emerged. In 1958, less than a year after Sputnik's launch, Professors Myers McDougal and Leon Lipson published *Perspectives for a Law of Outer Space* in the *American Journal of International Law*. These scholars did not attempt to predict the precise space capabilities or activities of the coming decades, and they viewed attempts to regulate such unknowns as not being either politically possible or desirable. In their view, the establishment of legal standards for outer space would be a slow and deliberative process, guided by time, experience, and repeated interactions among nation states.

Yet Professors McDougal and Lipson and their peers also understood that certain fundamental legal questions about this new domain would need to be answered on the front end. For example, does territorial sovereignty extend into outer space? May States assert sovereign rights in celestial bodies? Which States are legally responsible for the conduct and consequences of objects placed in outer space?

These basic questions about the legal character of this new domain were addressed by the entire international community of States in the United Nations General Assembly's 1963 Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space. The basic principles from that Declaration were embodied in the Outer Space Treaty, and they were further elaborated in the Rescue and Return Agreement, the Liability Convention, and the Registration Convention. That these instruments do not speak to any particular space activity in detail is key to their continued relevance today, and will be key to their enduring importance fifty years from now.

Today it may be easy to take the ubiquity and vibrancy of non-governmental space activities for granted. But as the international legal framework for space took shape, this future was far from certain. In the negotiations leading to the General Assembly Declaration, the Soviet Union pressed to restrict space activities to governments. In the United States, the private sector already had plans for privately operated telecom satellites. Our government thus advocated for a formulation that would preserve the possibility of non-governmental space activities. Under Article VI of the resulting Outer Space Treaty, non-governmental activities are permitted, but States Parties are responsible for such activities and have an affirmative legal obligation to supervise them and ensure their conformity with the Treaty. Thus, under the Treaty, States Parties ensure that all actors in space, governmental and non-governmental, operate according to a common legal framework.

The steady growth in commercial activities in outer space is one of the major success stories of the Outer Space Treaty's first half century. Today, roughly half of all satellites in outer space are private. Commercial activities account for a considerable share of the space applications on which we rely. There is every indication that this trend will continue into the future.

Among newly contemplated commercial space activities, none have captured the interest of the legal community more than the prospect of utilizing space resources. As humans press deeper into space and explore the habitability of other planets in our solar system, missions will be less reliant upon support from Earth and increasingly reliant on resources in outer space. Government space agencies are not alone in contemplating the utilization of resources found in celestial bodies to support deep space missions. Private firms have announced ambitious plans to develop parts of a deep space infrastructure to utilize space resources—water and minerals, for example—by converting them into fuel, and even manufacturing spacecraft in space.

Whether in the press, academic literature, or the United Nations, legal discussions about space resource utilization are often accompanied by spirited debate about the consistency of these activities with the Outer Space Treaty. In an effort to offer legal certainty to U.S. firms that may invest in space resource utilization activities, Congress enacted the Space Resource Exploration and Utilization Act of 2015. This law seems to have generated some confusion and controversy, and I would like to clarify what it does and does not do.

We have heard concerns from some foreign partners, for example, that the law attempts to abrogate the United States' obligations under the Outer Space Treaty. In fact, it is just the opposite. Rather than abrogating the United States' international obligations, the Space Resource

Utilization Act affirms that space resource utilization activities are subject to the United States' international obligations. By its terms, the Act sanctions space resource utilization only "in manners consistent with the international obligations of the United States." Similarly, the Act only recognizes rights in resources "obtained in accordance with applicable law, including the international obligations of the United States." The Act also recognizes that non-governmental space resource utilization activities are "subject to authorization and continuing supervision by the Federal Government."

The Act is also consistent with the United States' longstanding position that the Outer Space Treaty shapes the manner in which space resource utilization activities may be carried out, but does not broadly preclude such activities.

The United States' position on the issue of space resource utilization dates back several decades. For example, in 1979, Secretary of State Cyrus Vance articulated what was already at that point a longstanding U.S. interpretation of Articles I and II of the Treaty. Secretary Vance told members of the Senate Foreign Relations Committee that, under Article II of the Treaty, "Outer space, including the moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means." He went on to explain that "this 'non-appropriation' principle applies to the natural resources of celestial bodies only when such resources are 'in place.'" The prohibition on national appropriation does not, however, limit "ownership to be exercised by States or private entities over those natural resources which have been removed from their 'place' on or below the surface of the moon or other celestial bodies." Such removal, Secretary Vance further explained, is permitted by Article I of the Outer Space Treaty, which provides that "outer space, including the moon and other celestial bodies, shall be free for exploration and use by all States..."

In 1980 testimony before the Senate, State Department Legal Adviser Roberts Owen reiterated that "the United States has long taken the position that Article I of the Treaty... recognizes the right of exploitation." He acknowledged that this view is not shared by all States or commentators, and this remains true today. Notwithstanding the variety of States' political positions on space resource utilization, the United States remains confident that its interpretation of Articles I and II over many decades and many administrations represents the better reading of the Treaty.

The Outer Space Treaty does shape the manner in which space utilization activities may be conducted. For example, space resource utilization activities may not be structured around rights in celestial bodies or their resources in place, since Article II of the Treaty prohibits the creation of any such rights. On the other hand, Article VIII clarifies that launching an object into outer space, including to the Moon and other celestial bodies, does not affect that object's ownership. Entities engaged in space resource utilization activities will therefore retain ownership interests in their equipment, including whatever non-interference rights flow from those ownership interests, even though they will not acquire ownership interests in the ground beneath their equipment.

To say that the Treaty does not preclude private ownership of resources extracted from a celestial body is not to suggest that the Treaty provides a comprehensive international regime for space resource utilization activities. At this stage, we see neither a need nor a practical basis to create such a regime. For one thing, initial technology demonstration missions will be required long before widespread space resource utilization activities occur. The four core space treaties provide a basic legal framework within which interested States can assure their interests are protected for such initial missions.

In sum, passage of the Space Resource Utilization Act has not altered the United States' consistent approach to the Outer Space Treaty for the past half-century. That said, as the Statement of Administration Policy observed, more remains to be done. Notably, the Act does not provide a means for the U.S. Government to implement Article VI of the Outer Space Treaty in relation to commercial space resource utilization and other newly contemplated commercial space activities. In the next few minutes, I'll tell you a bit more about the current status of our efforts to fill this gap.

Article VI is at the center of an active dialog here in Washington about the optimal approach to authorizing and supervising future ground-breaking commercial space activities. The conversation about what Article VI requires can be heard within the Executive Branch, on Capitol Hill, and in meetings of commercial space industry groups and among other interested lawyers.

As I mentioned earlier, Article VI provides that States "shall bear international responsibility for national activities in outer space" carried on by both governmental and non-governmental entities, and shall "assur[e] that national activities are carried out in conformity with the provisions" of the Treaty. Importantly, under Article VI, "[t]he activities of non-governmental entities in outer space, including the Moon and other celestial bodies, shall require authorization and continuing supervision by the appropriate State Party to the Treaty."

In recent years, it has become apparent that the United States' existing licensing frameworks for non-governmental space activities would not, by themselves, enable the United States to fulfill its Article VI obligations in relation to the full spectrum of the newly contemplated commercial space activities. This revelation became most concrete in 2014, when a U.S. company requested a Payload Review of a proposed manned lunar habitat that, once viable, would serve a wide range of functions over a projected twenty-year lifespan. In accordance with the Federal regulations currently governing the Payload Review process, the State Department was asked to advise whether the launch of the proposed payload would present any issues affecting U.S. foreign policy or our international obligations. The State Department ultimately advised that the United States could not, at that time, authorize the launch of the proposed payload consistent with our Article VI obligations. This was not because the Outer Space Treaty categorically prohibits any of the proposed activities; the consistency of those activities with the Treaty depends on the manner in which they are carried out. The problem was the absence of a mechanism for the U.S. Government to ensure that the proposed activities would be carried out in conformity with the Treaty. At that time, the State Department indicated that we would work with other Executive agencies, with industry, and with Congress to find a solution.

Following two years of work and productive dialog with interested parties, the Administration transmitted a report to Congress in April 2016 outlining the need for a new authorization framework and proposing legislation to address this need. The proposed legislation would establish a "Mission Authorization" framework for those non-governmental space activities for which the existing licensing frameworks for launch, communications, and remote sensing are not sufficient for full implementation of our Article VI obligations.

At its most recent meeting, the Commercial Space Transportation Advisory Committee adopted a finding that the absence of a clear mechanism for implementing the United States' Article VI obligations "has resulted in a lack of stability, predictability, transparency and efficiency, which has and will continue to hinder the development of U.S. commercial space activities." The Administration's proposal for a Mission Authorization framework to provide such a mechanism has been generally well received by industry stakeholders as an efficient,

narrowly tailored solution that provides the necessary predictability for investments in path-breaking space activities.

* * * *

One basic question that has arisen in discussions of these legislative proposals is the meaning of the term “continuing supervision” in Article VI. What does it mean for a State to supervise non-governmental activities in outer space? What space activities must States supervise?

The answer, in the United States’ view, is in fact fairly straightforward. The meaning of the term “continuing supervision” in the second sentence of Article VI can be found in the first sentence, which creates the obligation to ensure conformity of all national activities, whether governmental or non-governmental, with the Treaty. The supervision required for any given activity will depend on the provisions of the Treaty it implicates. “Continuing supervision” means a legal link between government and operator sufficient to ensure the activity is carried out in conformity with the Treaty.

In reviewing proposals to date, the State Department has applied a fact-specific, two-part inquiry to ascertain whether existing U.S. Government oversight mechanisms are sufficient for compliance with the United States’ Article VI obligations. First, we examine which provisions of the Outer Space Treaty are potentially implicated by the proposed activity. Second, we work with other parts of our government to analyze whether the applicable governmental oversight arrangements are sufficient to ensure conformity with these provisions.

Our handling of a more recent Payload Review request illustrates this approach. The request involved a proposed technology demonstration of a small, commercial lunar lander. Compared to the proposed lunar habitat that was the subject of the 2014 Payload Review request, this proposed mission was relatively limited in scope and short in duration—under the best of circumstances, the lander’s batteries were not expected to survive the lunar night, or two weeks in Earth time.

On these facts, the State Department concluded that the limited scope of the proposed activities and their short duration did not implicate some provisions of the Outer Space Treaty that might be implicated by more extensive lunar activities. The proposal would, however, implicate the harmful contamination obligation contained in Article IX. This provision requires that States Parties “conduct exploration” of the Moon and other celestial bodies “so as to avoid their harmful contamination” and also requires States “where necessary... [to] adopt appropriate measures for this purpose.”

This raises an obvious question: What are “appropriate measures” to avoid the “harmful contamination” of celestial bodies? Over the Outer Space Treaty’s first fifty years, national space agencies—the only entities to visit other planets to date—have generally planned and executed planetary missions in accordance with planetary protection guidelines adopted by COSPAR—the Committee on Space Research, part of the International Council of Science. To simplify greatly, the COSPAR guidelines are designed to avoid introducing biological material from Earth that could contaminate the search for life forms on other planets. The guidelines vary by planet, and even by regions of a planet, as in the case of Mars.

In the case of the lunar lander Payload Review, the company voluntarily committed, in writing, to comply with applicable COSPAR planetary protection guidelines for lunar missions. Though voluntary, these planetary protection representations by the company are enforceable by the Federal Aviation Administration. In analyzing this particular proposal, the State Department

determined that the company's enforceable commitment to comply with the applicable COSPAR planetary protection guidelines would ensure U.S. compliance with Article IX, and that the enforceability of the commitment constitutes a sufficient legal link, on these unique facts, to meet the United States' Article VI obligations. The State Department was thus able to advise in this situation that launch of this proposed payload would not contravene the United States' obligations under the Outer Space Treaty. At the same time, even this relatively limited proposed lunar mission stretched the existing Payload Review process close to its limit. Our ability to authorize more extensive missions will depend on a more robust authorization framework—such as those proposed by the Administration and by Representative Bridenstine—to enable conditional approval where necessary.

I will conclude with one forward-looking observation about Article IX's obligation to avoid "harmful contamination." The international community's approach to "harmful contamination" of celestial bodies may not be the same in the second 50 years of the Treaty's existence as its first. In other words, as our relationship with celestial bodies evolves—from sampling scientific specimens to building habitats that sustain human life—our approach to "harmful contamination" under Article IX may shift as well. The open-textured formulation of the Treaty's basic principles accommodates such developments, and will allow the legal framework to evolve over time in light of changing circumstances and capabilities. Had the Treaty's negotiators attempted to codify a precise definition of "harmful contamination" in 1966, we might now be faced with a treaty obligation that is unworkable in view of the global community's needs and capabilities. The same would be true if we attempted to articulate a precise definition of this concept today.

* * * *

...[T]he Outer Space Treaty serves a constitutional role in the international legal framework for outer space. It does not attempt to answer every legal question directly, or speak to any activity specifically. Instead it has served, for half a century, as the framework within which States have cooperated to address new capabilities and activities in outer space, and the legal questions such activities inevitably generate. If the preparations for future space activities underway in the United States and other nations are any indication, the Treaty will serve this function well into its second half century and beyond.

* * * *

2. UN General Assembly First and Fourth Committees

On October 28, 2016, Ambassador Robert Wood, U.S. Permanent Representative to the Conference on Disarmament, delivered the U.S. explanation of vote at the 71st Session of the First Committee of the UN General Assembly on a draft resolution on "no first placement of weapons in outer space." The explanation of vote is excerpted below and available at <https://2009-2017-usun.state.gov/remarks/7522>.

* * * *

Mr. Chairman, my delegation will vote “No” on draft resolution L.18, “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 UN Group of Governmental Experts study of outer space TCBMs. That study was later endorsed by the full General Assembly in Resolutions 68/50, 69/38, and 70/53, 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: 1, 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; 2, be able to be effectively confirmed by other parties in their application, either independently or collectively; and finally, 3, 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 shared 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 does not contribute to increasing stability in outer space.

Given these problems, the United States has determined that the NFP initiative continues to fail to satisfy the GGE’s consensus criteria for a valid TCBM. Thus, the NFP initiative is problematic and unlikely to be equitable or effective in addressing the challenges we face in sustaining the outer space environment for future generations.

Therefore, as we have done for the past two years, 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 U.S. goal is to ensure the long-term sustainability, stability, safety, and security of the outer space environment. Preventing the extension of conflict into space is a major part of this goal. Furthermore, the United States continues to believe that the TCBMs recommended by the 2013 GGE report offer pragmatic, near-term solutions to the challenges associated with orbital congestion, collision avoidance, and responsible and peaceful behavior in space.

* * * *

3. Sustainability and Security of Outer Space Environment

On September 22, 2016, Frank A. Rose, Assistant Secretary of State for Arms Control, Verification and Compliance, addressed the topic of strengthening international cooperation in space situational awareness. His remarks are excerpted below and available at <http://2009-2017.state.gov/t/avc/rls/262502.htm>.

* * * *

Threats to the Space Environment

So let me start with the outer space environment. As this audience well knows, the outer space environment is very complex and is changing very rapidly. ...

Advances in the use of outer space also present challenges the space environment, including increased congestion both in terms of the number of systems on orbit or related to spectrum allocation. And added to that is the growth in threats to our use of military, civil, and commercial space systems. The Cold War restraint on the development of anti-satellite weapons is eroding. The U.S. Director of National Intelligence James Clapper testified to this fact last February stating, "Russia and China continue to pursue weapons systems capable of destroying satellites on orbit, placing U.S. satellites at greater risk in the next few years." These systems will present a threat, not just to the United States, but to the safe operation of satellites by all countries.

Strengthening Cooperation with Allies and Partners

In order to ensure the free access to outer space that is the legal right of all mankind, we must work together to respond to these threats. And when I say we, that encompasses everyone in this audience. The U.S. Government certainly can't do it alone. We need to work with our allies and partners, with industry, and with non-governmental organizations.

That is why the United States has increased our diplomatic engagement around the world. Our goal is to ensure the long-term sustainability, stability, safety, and security of the outer space environment. One important part of our comprehensive strategy seeks to strengthen our cooperation with allies and partners to respond to these threats, including through improving our ability to share space situational awareness information and to promote rules for responsible behavior in outer space.

The United States has a tremendous advantage in its strong alliance partnerships, and one we need to continue to leverage when working to ensure that potential adversaries cannot achieve their goals when it comes to a conflict in outer space.

Strengthening our space cooperation begins with bilateral diplomatic, civil, and military-to-military dialogues. To date, the State Department has established formal space security dialogues with 15 countries such as traditional allies like the United Kingdom, Japan and the Republic of Korea, and also with other space-faring nations like India and the United Arab Emirates.

These dialogues are an important opportunity to have a productive exchange of ideas on way to work more closely together. They allow us to have a common understanding regarding threats and ways to address them. We are able to talk about changes in national policies, legislation, and regulations. This is also where we expand our bilateral cooperation in space situational awareness or maritime domain awareness or global navigation satellite systems. And we also use it to review efforts to create guidelines on norms in fora such as the United Nations Committee on the Peaceful Uses of Outer Space (COPUOS).

* * * *

Developments in Improving Space Situational Awareness (SSA) Information Sharing

Turning now to improving space situational awareness sharing, ... transparency and situational awareness, or knowing who is doing what, will only help us if we develop norms and guidelines (so we know when someone is acting irresponsibly or even maliciously and even deter bad behavior from happening in the first place). If there is attributable, irresponsible behavior, we will better know whom to address with our concerns, and even how to hold that space actor accountable.

* * * *

To date, the United States has signed 13 SSA sharing agreements and arrangements with national governments and international intergovernmental organizations, and over 50 with commercial entities. The United States is also collaborating with our partners and allies in Europe as they continue developing their own SSA capabilities. The Department of State, in collaboration with the Department of Defense, has engaged in technical exchanges with experts from the European Space Agency, the European Union, and individual Member States to ensure that our existing and planned SSA systems contribute to a more comprehensive situational awareness picture.

Additionally, we continue to engage in the Working Group on the Long-term Sustainability of Outer Space Activities (LTS) of the UN COPUOS. In this venue we are working on SSA-related guidelines that call for promoting techniques, and investigation of new methods, to improve the accuracy of orbital data for spaceflight safety; performing conjunction assessment during orbital phases of controlled flight; and promoting the use of common, internationally recognized standards when sharing orbital information on space objects.

Conclusion

So let me conclude by making the following points. If conflict extends into space, the right to explore and use space for peaceful purposes would be threatened.

The goal of our diplomatic efforts is to prevent conflict from extending into space in the first place. Working with our allies, industry partners and non-governmental experts is essential to our diplomatic goals. Moreover, space situational awareness is a critical foundational capability to help us achieve this goal and we need to do more of it.

* * * *

4. U.S. Report to Conference on Disarmament on GGE Recommendations

On August 29, 2016 the Delegation of the United States provided a note verbale to the Secretary-General of the Conference on Disarmament conveying the U.S. submission on implementation of the recommendations of the Report of the Group of Governmental Experts on Transparency and Confidence-Building Measures in Outer Space Activities to Enhance Stability in Outer Space (U.N. Doc. A/68/189*). For background on the 2013 consensus of the GGE on TCBMS, see *Digest 2013* at 377-78. Excerpts follow from the U.S. submission, U.N. Doc. CD/2078, available in full at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/206/16/PDF/G1620616.pdf?OpenElement>.

* * * *

1. The United States is committed to ensuring the long-term sustainability, stability, safety, and security of the outer space environment. Addressing the issues associated with orbital congestion, collision avoidance, and responsible and peaceful behaviour in space is the responsibility of all who are engaged in space activities. In considering options for international cooperation to ensure space security and sustainability, some nations would advocate for new, legally binding arms control agreement with a view to prevent the placement of weapons in outer space and to prevent the use of force against space objects. The United States has commented in detail on the challenges of such an approach.

2. In contrast, the United States is convinced that outer space challenges confronting the international community can be addressed through practical, near-term initiatives. Outer space transparency and confidence-building measures (TCBMs) offer a pragmatic, voluntary approach to addressing near-term concerns for outer space security and sustainability. Accordingly, the United States is pleased to provide its views on how to make practical use of the recommendations contained in the 2013 consensus report of the United Nations Group of Governmental Experts (GGE) on Transparency and Confidence-Building Measures in Outer Space Activities, in the context of the ongoing work of the Conference on Disarmament (CD).

3. The United States welcomes the achievement of landmark consensus by the GGE. The GGE study was a unique opportunity to establish consensus on the importance and priority of voluntary and pragmatic TCBMs seeking to ensure the sustainability and safety of the space environment, as well as to strengthen stability and security in outer space for all nations. The recommendations offered by the GGE study provide an effective starting point for discussions on addressing challenges to space security and sustainability.

4. The United States is pleased that the United Nations General Assembly, in 2013, at its sixty-eighth session, welcomed the note by the Secretary-General transmitting the report of the GGE and encouraged Member States to review and implement, to the greatest extent practicable, the proposed transparency and confidence-building measures contained in the report, through relevant national mechanisms, on a voluntary basis and in a manner consistent with the national interests of Member States. Furthermore, the United Nations General Assembly requested that the Secretary-General circulate the report to all other relevant entities and organizations of the United Nations system (including the Conference on Disarmament) to facilitate the effective implementation of the conclusions and recommendations contained therein, as appropriate.¹

5. The United States is also pleased to note its co-sponsorship, with the Russian Federation and China, of three resolutions (A/RES/68/50, A/RES/69/38, and A/RES/70/53) that were adopted by the United Nations General Assembly in 2013, 2014, and 2015, respectively. These resolutions encouraged Member States to review and implement, to the greatest extent practicable, on a voluntary basis, and through relevant national mechanisms, the proposed TCBMs contained in the GGE report. In particular, Resolution 70/53 encourages Member States to hold regular discussions in the Committee on the Peaceful Uses of Outer Space (UNCOPUOS), the United Nations Disarmament Commission (UNDC), and the Conference on Disarmament on the prospects for their implementation. The United States also notes that the UNDC recently considered adopting an agenda item on outer space TCBMs in response to a proposal that the United States was pleased to co-sponsor with Russia and China. We hope that this new agenda item will be added to the Commission's agenda by the start of its 2017 session. Resolution 70/53 further requested the Secretary-General to submit to the General Assembly at

its seventy-second session a report on the coordination of TCBMs in outer space activities in the United Nations system, with an annex containing Member States' submissions of views on TCBMs in outer space activities.

6. In this context, the United States welcomes the opportunity to share its views on: TCBMs identified by the GGE that are relevant to the work of the CD; US implementation of certain TCBMs recommended by the GGE; and considerations for the CD on how to leverage the work of the GGE.

7. It also should be noted that the United States has considered the recommendations of the GGE report as applicable to the work of UNCOPUOS, particularly the ongoing work of the Scientific and Technical Subcommittee (STSC) Working Group on the Long-Term Sustainability of Outer Space Activities (LTS). The United States submitted its views to UNCOPUOS in October 2014 (A/AC.105/1080). In addition, in 2016, the United States supported the development of thematic priorities within the STSC in anticipation of the fiftieth anniversary of the United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE+50). These thematic priorities include: (1) global partnership in space exploration and innovation; (2) international framework for space weather services; (3) strengthened space cooperation for global health; (4) international cooperation toward low- emission and resilient societies; (5) enhanced information exchange on space objects and events; and (6) capacity-building for the twenty-first century (A/AC.105/C.1WG/2016/L.1). The United States notes that, thematic priorities 5 and 6 are consistent with the GGE report's recommendations.

* * * *

Cross References

Piracy, **Chapter 3.B.4.**

Treaties generally, **Chapter 4.A.1.**

Maritime boundary treaties transmitted to Senate, **Chapter 4.A.2.**

Schermerhorn v. Israel (claim regarding tort on U.S.-flagged vessel), **Chapter 10.B.4.**

Biodiversity beyond national jurisdiction, **Chapter 13.B.3.**