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CHAPTER 12

Territorial Regimes and Related Issues

A. LAW OF THE SEA AND RELATED BOUNDARY ISSUES

1. UN Convention on the Law of the Sea

a. *Meeting of States Parties to the Law of the Sea Convention*

The United States participated as an observer to the 28th meeting of States Parties to the Law of the Sea Convention (“SPLOS”) at the United Nations, June 11-12, 2018. Elizabeth Kim led the U.S. delegation and delivered a statement on behalf of the United States. The U.S. statement included the following:

The United States delegation 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 CLCS, 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 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.

b. *UN General Assembly Resolution on Oceans and the Law of the Sea*

During meetings of the 73rd General Assembly, the United States co-sponsored and voted in favor of a resolution entitled "Oceans and the Law of the Sea" under Agenda Item 78(a). The United States delegation delivered a statement in support of the resolution, which is excerpted below.

My delegation is pleased to co-sponsor the General Assembly resolution on oceans and the law of the sea. The United States underscores the central importance of international law as reflected in the Law of the Sea Convention—the universal and unified character of which is emphasized in this resolution. As we see attempts to impede the lawful exercise of navigational rights and freedoms under international law, it is more important than ever that we remain steadfast in our resolve to uphold these rights and freedoms. In this regard, we call on all States to fashion their maritime claims and conduct their activities in the maritime domain in accordance with international law as reflected in the Convention, to respect the freedoms of navigation and overflight and other lawful uses of the sea that all users of the maritime domain enjoy, and to peacefully settle disputes in accordance with international law.

2. *South China Sea and East China Sea*

On November 9, 2018, Secretary of State Michael R. Pompeo and Secretary of Defense James N. Mattis met with Director of the Office of Foreign Affairs of the Central Commission of the Communist Party of China Yang Jiechi and State Councilor and Defense Minister General Wei Fenghe for the second U.S.-China Diplomatic and Security Dialogue. See State Department media note, available at <https://www.state.gov/u-s-china-diplomatic-and-security-dialogue-3/>. The media note includes a summary of their discussion regarding the South China Sea:

The two sides committed to support peace and stability in the South China Sea, the peaceful resolution of disputes, and freedom of navigation and overflight and other lawful uses of the sea in accordance with international law. Both sides committed to ensure air and maritime safety, and manage risks in a constructive manner. The United States discussed the importance of all military, law

enforcement, and civilian vessels and aircraft operating in a safe and professional manner in accordance with international law. The United States called on China to withdraw its missile systems from disputed features in the Spratly Islands, and reaffirmed that all countries should avoid addressing disputes through coercion or intimidation. The United States remains committed to fly, sail, and operate wherever international law allows.

3. Freedoms of Navigation, Overflight, and Maritime Claims

a. China

On September 29, 2018, the People's Liberation Army Navy LUYANG II Class Destroyer (DDG-170) came dangerously close to the U.S. Ship ("USS") DECATUR, which was conducting a freedom of navigation assertion in the South China Sea. DDG-170's unsafe actions created a substantial risk of collision, and were inconsistent with the International Regulations for Preventing Collisions at Sea, the Code for Unplanned Encounters at Sea, and the Memorandum of Understanding between the Department of Defense of the United States of America and the Ministry of National Defense of the People's Republic of China Regarding the Rules of Behavior for Safety of Air and Maritime Encounters. The United States' protest, excerpts from which follow, was delivered to appropriate government officials in China.

- DDG-170's maneuvers were inconsistent with basic seamanship and international regulations, including the International Regulations for Preventing Collisions at Sea (COLREGS), specifically Rule 8, regarding action to avoid a collision. Moreover, its actions were inconsistent with the Code for Unplanned Encounters at Sea (CUES), Para. 2.6.2 and the Rules of Behavior for Safety of Air and Maritime Encounters (Rules of Behavior), Annex II, Sections III.ii and IV.i.1.
- DDG-170's maneuvers constituted unsafe and unprofessional seamanship that posed a threat to the safety of U.S. and Chinese crews and vessels.
- It is of paramount importance that all ships maintain the highest levels of safety and professionalism and operate in accordance with well-established international rules, regulations, and other established multilateral rules of behavior. This incident also underscores the importance of sustained dialogue about operational safety in the maritime environment, including earnest participation in the Military Maritime Consultative Agreement (MMCA).
- China's harassment of lawfully operating U.S. ships is unsafe and unacceptable.
- The United States will continue to uphold the freedoms of navigation and overflight by asserting navigational rights and freedoms around the world, including in the South China Sea. The United States objects to excessive maritime claims without singling out any particular country or claimant. U.S. forces will continue to fly, sail, and operate wherever international law allows.

b. Venezuela

On December 23, 2018, the U.S. State Department issued a press statement regarding actions by the Venezuelan Navy in Guyana's exclusive economic zone. The statement, available at <https://www.state.gov/venezuelan-navy-actions-in-guyana/>, follows:

On December 22, the Venezuelan Navy aggressively stopped ExxonMobil contracted vessels operating under an oil exploration agreement with the Cooperative Republic of Guyana in its Exclusive Economic Zone.

We underscore that Guyana has the sovereign right to explore and exploit resources in its Exclusive Economic Zone. We call on Venezuela to respect international law and the rights of its neighbors.

4. Maritime Boundary Treaties

a. U.S. Maritime Boundary Treaties with Kiribati and Micronesia

On July 26, 2018, the U.S. Senate gave its advice and consent to ratification of two maritime boundary treaties: 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, signed at Majuro on September 6, 2013, 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, signed at Koror on August 1, 2014. See *Digest 2013* at 363 for background on signing the treaty with Kiribati. See *Digest 2014* at 513 for background on signing the treaty with Micronesia. See *Digest 2016* at 526-27 regarding transmittal of the two treaties to the Senate. 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 the Federated States of Micronesia ("FSM") establishes a single maritime boundary between Guam and several FSM islands. Consistent with similar maritime boundary treaties between the United States and other countries, these two maritime boundary treaties define the limits within which each country may exercise EEZ and continental shelf rights and jurisdiction off the coasts of their respective islands. Each treaty will enter into force upon an exchange of notes between the parties, indicating that parties have completed the internal procedures required to bring that treaty into force.*

* Editor's note: The President of the United States signed instruments of ratification for both treaties on March 27, 2019.

b. *Australia and Timor-Leste Maritime Boundary Treaty*

On March 6, 2018, the State Department issued a press statement congratulating the governments of Australia and Timor-Leste on their conclusion of a maritime boundary treaty. The press statement, available at <https://www.state.gov/the-united-states-congratulates-australia-and-timor-leste-on-the-conclusion-of-a-maritime-boundary-treaty/>, explains that their treaty was concluded “under the first-ever conciliation process under the 1982 Law of the Sea Convention.”

5. Other Law of the Sea Issues

a. *U.S.-Vietnam Dialogue on Maritime Issues and the Law of the Sea*

On June 19-20, 2018, the United States and Vietnam held their fifth “Dialogue on Maritime Issues and the Law of the Sea” at the U.S. Department of State in Washington, D.C. See June 20, 2018 media note, available at <https://www.state.gov/united-states-and-vietnam-complete-dialogue-on-maritime-issues-and-the-law-of-the-sea/>.

b. *U.S.-China Dialogue on Law of the Sea and Polar Issues*

On August 23-24, 2018, the United States and China held their ninth annual Dialogue on Law of the Sea and Polar Issues in Zhoushan, China.

B. OUTER SPACE

1. Space Policy Directive 3

On June 18, 2018, President Trump signed a memorandum, Space Policy Directive 3, directed to administration officials, and entitled “National Space Traffic Management Policy.” 83 Fed. Reg. 28,969 (June 21, 2018). Excerpts follow from Space Policy Directive 3.

* * * *

* Editor’s note: The President of the United States signed instruments of ratification for both treaties on March 27, 2019.

Sec. 3. Principles. The United States recognizes, and encourages other nations to recognize, the following principles:

(a) Safety, stability, and operational sustainability are foundational to space activities, including commercial, civil, and national security activities. It is a shared interest and responsibility of all spacefaring nations to create the conditions for a safe, stable, and operationally sustainable space environment.

(b) Timely and actionable [space situational awareness or] SSA data and [space traffic management or] STM services are essential to space activities. Consistent with national security constraints, basic U.S. Government-derived SSA data and basic STM services should be available free of direct user fees.

(c) Orbital debris presents a growing threat to space operations. Debris mitigation guidelines, standards, and policies should be revised periodically, enforced domestically, and adopted internationally to mitigate the operational effects of orbital debris.

(d) A STM framework consisting of best practices, technical guidelines, safety standards, behavioral norms, pre-launch risk assessments, and on-orbit collision avoidance services is essential to preserve the space operational environment.

Sec. 4. Goals. Consistent with the principles listed in section 3 of this memorandum, the United States should continue to lead the world in creating the conditions for a safe, stable, and operationally sustainable space environment. Toward this end, executive departments and agencies (agencies) shall pursue the following goals as required in section 6 of this memorandum:

(a) *Advance SSA and STM Science and Technology.* The United States should continue to engage in and enable [science and technology or] S&T research and development to support the practical applications of SSA and STM. ...

(b) *Mitigate the effect of orbital debris on space activities.* The volume and location of orbital debris are growing threats to space activities. It is in the interest of all to minimize new debris and mitigate effects of existing debris. This fact, along with increasing numbers of active satellites, highlights the need to update existing orbital debris mitigation guidelines and practices to enable more efficient and effective compliance, and establish standards that can be adopted internationally. These trends also highlight the need to establish satellite safety design guidelines and best practices.

(c) *Encourage and facilitate U.S. commercial leadership in S&T, SSA, and STM.* ...

(d) *Provide U.S. Government-supported basic SSA data and basic STM services to the public.* ...

(e) *Improve SSA data interoperability and enable greater SSA data sharing.* ...

(f) *Develop STM standards and best practices.* ...

(g) *Prevent unintentional radio frequency (RF) interference.* ...

(h) *Improve the U.S. domestic space object registry.* ...

(i) *Develop policies and regulations for future U.S. orbital operations.* ...

Sec. 5. Guidelines. In pursuit of the principles and goals of this policy, agencies should observe the following guidelines:

(a) *Managing the Integrity of the Space Operating Environment.*

* * * *

(b) *Operating in a Congested Space Environment.*

* * * *

(c) *Strategies for Space Traffic Management in a Global Context.*

(i) **Protocols to Prevent Orbital Conjunctions.** As increased satellite operations make lower Earth orbits more congested, the United States should develop a set of standard techniques for mitigating the collision risk of increasingly congested orbits, particularly for large constellations. Appropriate methods, which may include licensing assigned volumes for constellation operation and establishing processes for satellites passing through the volumes, are needed. The United States should explore strategies that will lead to the establishment of common global best practices, including:

(iii) **Global Engagement.** In its role as a major spacefaring nation, the United States should continue to develop and promote a range of norms of behavior, best practices, and standards for safe operations in space to minimize the space debris environment and promote data sharing and coordination of space activities. It is essential that other spacefaring nations also adopt best practices for the common good of all spacefaring states. The United States should encourage the adoption of new norms of behavior and best practices for space operations by the international community through bilateral and multilateral discussions with other spacefaring nations, and through U.S. participation in various organizations such as the Inter-Agency Space Debris Coordination Committee, International Standards Organization, Consultative Committee for Space Data Systems, and UN Committee on the Peaceful Uses of Outer Space.

* * * *

2. UN First Committee

On November 6, 2018, Cynthia Plath, Deputy Permanent Representative to the Conference on Disarmament, provided the U.S. explanation of votes on two resolutions before the First Committee: "Prevention of an Arms Race in Outer Space" and "Transparency and Confidence-Building Measures in Outer Space Activities." Her statement is available at <https://www.state.gov/explanation-of-votes-in-the-first-committee-on-resolutions-l-3-prevention-of-an-arms-race-in-outer-space-and-l-68-rev-1-transparency-and-confidence-building-measures-in-outer-space-activities/> and excerpted below.

* * * *

Although the U.S. delegation voted against these resolutions, our votes in no way detract from our longstanding support for voluntary transparency and confidence-building measures (TCBMs) for outer space activities.

The U.S. National Space Strategy seeks to foster conducive international environments through bilateral and multilateral engagements. As part of these efforts to strengthen stability in outer space, the United States will continue to pursue bilateral and multilateral transparency and confidence-building measures to encourage responsible actions in, and the peaceful use of, outer space.

We have repeatedly noted in this and other fora that clear, practicable and confirmable TCBMs, implemented on a voluntary basis, have the potential to strengthen the safety, stability, and sustainability of outer space activities for all nations.

In particular, the United States continues to note the importance of the consensus report of the 2013 Group of Governmental Experts on Transparency and Confidence-building Measures in Outer Space Activities (A/68/189). We encourage all nations to continue to review and implement, to the greatest extent practicable, the proposed transparency and confidence-building measures contained in the 2013 GGE report, through the relevant national mechanisms, on a voluntary basis and in a manner consistent with their national interests.

The United States also encourages Member States to take advantage of fora like the Conference on Disarmament, the UN Disarmament Commission and the Committee on the Peaceful Uses of Outer Space (COPUOS) to make real progress on transparency and confidence-building measures. In particular, we call for all spacefaring nations to begin the practical implementation of the 21 guidelines endorsed in June 2018 by the Committee on the long-term sustainability of outer space activities.

However, our support for voluntary guidelines for the safe and responsible use of space and other transparency and confidence building measures ends when such efforts are tied to proposals for legally-binding space arms control constraints and limitations.

The United States voted “no” on these two resolutions because it believes they make an unacceptable linkage between proposals for voluntary, pragmatic TCBMs and the commencement of futile negotiations a fundamentally flawed arms control proposals. In particular, we note the resolutions’ references to Russia’s and China’s draft treaty proposal introduced in 2014 at the Conference on Disarmament, which the United States opposes. Our most recent critique of their space arms control treaty is in CD/2129 of August 2018.

Mr. Chairman, the United States would prefer that the space domain remain free of conflict. But as Vice President Mike Pence recently noted, “both China and Russia have been aggressively developing and deploying technologies that have transformed space into a warfighting domain.” Therefore, hollow and hypocritical efforts such as PPWT that cannot be confirmed or verified by the international community are not the answer.

Despite this disappointment, the United States will seek to continue to support practical implementation of space TCBMs by Member States and the relevant entities and organizations of the United Nations system. We also will continue to take a leading role in substantive discussions on space TCBMs at the Conference on Disarmament, UN Disarmament Commission and COPUOS.

* * * *

Cross References

ICJ case regarding the British Indian Ocean Territory, **Ch. 7.B.4**

Ukraine (Kerch Strait), **Ch. 9.B.1**

Proliferation Security Initiative, **Ch. 19.B.3**