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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 29th meeting of States Parties to the Law of the Sea Convention (“SPLOS”) at the United Nations, June 17-19, 2019.

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

Emily Pierce, counselor for legal affairs for the U.S. Mission to the United Nations, delivered the U.S. statement at a joint debate on the General Assembly resolution on oceans and the law of the sea on December 10, 2019. Her statement is excerpted below and available at <https://usun.usmission.gov/statement-at-a-joint-debate-on-agenda-items-74a-and-b-on-oceans-and-the-law-of-the-sea/>.

* * * *

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.

Among the places where freedom of the seas is most threatened is the South China Sea. The assertion of unlawful and sweeping maritime claims—including through ongoing intimidation and coercion against long-standing oil and gas development and fishing practices by others—threatens the rules-based regime that has enabled the region to prosper.

Our position in the South China Sea—and elsewhere in the world—is simple: the rights and interests of all nations—regardless of size, power, and military capabilities—must be respected.

In this regard, we call on all States to resolve their territorial and maritime disputes peacefully and free from coercion, as well as 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 settle disputes peacefully in accordance with international law.

The United States values the platform that the General Assembly provides to elevate these important issues. The annual oceans and law of the sea resolution serves as an opportunity for the global community to identify key ocean issues and develop constructive ways to address them.

In particular, we appreciate that this year's resolution recognizes many of the robust global and regional efforts to combat marine debris, which imposes significant social and economic costs and threatens marine ecosystems.

We are also pleased that this year's resolution supports the "UN Decade of Ocean Science for Sustainable Development" by highlighting the contributions of the 2019 informal consultative process on oceans and the law of the sea toward planning for the Decade, which will begin in 2020. Ocean science, ocean observing, and ocean exploration are key for understanding the full breadth of the ocean's bounty.

Turning to sustainable fisheries, the United States values deeply the important work being done throughout the world on sustainable fisheries management, which helps support economic activity and healthy marine ecosystems.

We wish to call particular attention to new language in this year's resolution related to enhancing fishing vessel safety, improving labor conditions, and addressing illegal, unreported, and unregulated fishing, including encouraging collaboration between the Food and Agriculture Organization, the International Labor Organization and the International Maritime Organization. This year's resolution also recognizes the valuable contributions of women to the fisheries sector as well as the challenges they face.

We would also like to draw attention to paragraphs that emphasize the importance of effective performance reviews of regional fisheries management organizations, which reflect the productive discussions held at the fourteenth round of informal consultations of States Parties (ICSP) to the UN Fish Stocks Agreement. We look forward to continuing substantive discussions at next year's ICSP on "Implementation of an ecosystem approach to fisheries management," as well as preparing for the next session of the resumed Review Conference for the Agreement. Next year we will also focus on reviewing actions as called for by the General Assembly to address the impacts of bottom fishing on vulnerable marine ecosystems and the long-term sustainability of deep-sea fish stocks, with a view to ensuring full implementation and strengthening commitments where necessary.

With regard to both resolutions, we refer you to our remarks delivered on November 21, 2019, regarding our position with respect to the 2030 Agenda for Sustainable Development, the

Addis Ababa Action Agenda, technology transfer, the Paris Agreement and climate change, as well as reports of the Intergovernmental Panel on Climate Change.*

Before concluding, we would like to congratulate the Government of Norway for hosting another successful Our Ocean conference, at which participants announced commitments worth more than 63 billion dollars to address key issues facing the ocean. The United States announced 23 new commitments worth approximately 1.21 billion dollars to promote sustainable fisheries, combat marine debris, and support marine science, observation, and exploration. We look forward to the 2020 Our Ocean conference in Palau, as well as the 2021 conference in Panama.

We would also like to express our appreciation for the important leadership of Ambassador Rena Lee of Singapore in her role as president of the intergovernmental conference on an international instrument regarding the conservation and sustainable use of biodiversity beyond national jurisdiction. We look forward to working with delegations as the IGC continues and hope to have a broadly supported result that takes into account the views of all delegations.

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2. Maritime Claims

a. South China Sea

On July 20, 2019, the State Department issued a press statement regarding China's coercive behavior against other countries' oil and gas development activities in the South China Sea. The press statement is available at <https://www.state.gov/chinese-coercion-on-oil-and-gas-activity-in-the-south-china-sea/> and excerpted below.

* * * *

The United States is concerned by reports of China's interference with oil and gas activities in the South China Sea (SCS), including Vietnam's long-standing exploration and production activities. China's repeated provocative actions aimed at the offshore oil and gas development of other claimant states threaten regional energy security and undermine the free and open Indo-Pacific energy market.

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China's reclamation and militarization of disputed outposts in the SCS, along with other efforts to assert its unlawful SCS maritime claims, including the use of maritime militia to intimidate, coerce, and threaten other nations, undermine the peace and security of the region.

China's growing pressure on ASEAN countries to accept Code of Conduct provisions that seek to restrict their right to partner with third party companies or countries further reveal its intent to assert control over oil and gas resources in the South China Sea.

* Editor's note: These November 21, 2019 remarks are discussed and excerpted in Chapter 13 of this *Digest*.

The United States firmly opposes coercion and intimidation by any claimant to assert its territorial or maritime claims.

China should cease its bullying behavior and refrain from engaging in this type of provocative and destabilizing activity.

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On August 22, 2019, the State Department released a further press statement, available at <https://www.state.gov/china-escalates-coercion-against-vietnam-longstanding-oil-and-gas-activity-in-the-south-china-sea/>, regarding China's actions interfering with Vietnam's oil and gas activities in the South China Sea. The August 22 press statement follows.

* * * *

The United States is deeply concerned that China is continuing its interference with Vietnam's longstanding oil and gas activities in Vietnam's Exclusive Economic Zone (EEZ) claim. This calls into serious question China's commitment, including in the ASEAN-China Declaration on the Conduct of Parties in the South China Sea, to the peaceful resolution of maritime disputes.

China's redeployment of a government-owned survey vessel, together with armed escorts, into waters offshore Vietnam near Vanguard Bank on August 13, is an escalation by Beijing in its efforts to intimidate other claimants out of developing resources in the South China Sea (SCS).

In recent weeks, China has taken a series of aggressive steps to interfere with ASEAN claimants' longstanding, well-established economic activities, in an attempt both to coerce them to reject partnerships with foreign oil and gas firms, and to work only with China's state-owned enterprises. In the case of Vanguard Bank, China is pressuring Vietnam over its work with a Russian energy firm and other international partners.

China's actions undermine regional peace and security, impose economic costs on Southeast Asian states by blocking their access to an estimated \$2.5 trillion in unexploited hydrocarbon resources, and demonstrate China's disregard for the rights of countries to undertake economic activities in their EEZs, under the 1982 Law of the Sea Convention, which China ratified in 1996.

U.S. companies are world leaders in the exploration and extraction of hydrocarbon resources, including offshore and in the South China Sea. The United States therefore strongly opposes any efforts by China to threaten or coerce partner countries into withholding cooperation with non-Chinese firms, or otherwise harassing their cooperative activities. The United States is committed to bolstering the energy security of our partners and allies in the Indo-Pacific region and in ensuring uninterrupted regional oil and gas production for the global market.

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b. Turkey

On July 9, 2019, the State Department issued a press statement expressing concern about Turkey's attempts to conduct drilling operations in the waters off Cyprus. The statement is available at <https://www.state.gov/turkish-drilling-in-cyriot-claimed-waters-2/> and includes the following:

The United States remains deeply concerned by Turkey's repeated attempts to conduct drilling operations in the waters off Cyprus and its most recent dispatch of the drillship Yavuz off the Karpas Peninsula. This provocative step raises tensions in the region. We urge Turkish authorities to halt these operations and encourage all parties to act with restraint and refrain from actions that increase tensions in the region. Energy resource development in the Eastern Mediterranean should foster cooperation, increase dialogue between the two communities and among regional neighbors, and provide a foundation for durable energy security and economic prosperity. We continue to believe the island's oil and gas resources, like all of its resources, should be equitably shared between both communities in the context of an overall settlement.

The United States has separately conveyed its views to Turkey that, under international law as reflected in the Law of the Sea Convention, islands generally generate an exclusive economic zone and continental shelf to the same extent as other land territory.

With regard to a maritime boundary memorandum of understanding that Turkey and Libya reportedly concluded on November 27, 2019, the United States notes that Greece also has maritime claims in the area addressed by the memorandum of understanding and that the memorandum of understanding cannot, as a legal matter, affect the rights or obligations of third states, such as Greece, without their consent.

3. Maritime Boundary Treaties with Kiribati and Micronesia

As discussed in *Digest 2018* at 492 the U.S. Senate gave its advice and consent to ratification of maritime boundary treaties with Kiribati and Micronesia. 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 President signed the U.S. instrument of ratification on March 27, 2019. The treaty with Kiribati, available at <https://www.state.gov/kiribati-19-719>, entered into force July 19, 2019 via an exchange of notes. The treaty with Micronesia, available at <https://www.state.gov/micronesia-19-718>, entered into force on July 18, 2019 via an exchange of notes.

4. Other Maritime Issues

a. Maritime Cybersecurity

On October 2, 2019, the State Department issued as a media note, available at <https://www.state.gov/joint-statement-on-the-maritime-cybersecurity-event-during-the-one-conference/>, the joint statement by the governments of the United States of America, Denmark, and the Netherlands from a maritime cybersecurity event on the margins of the One Conference in The Hague. The statement includes an affirmation by the three parties of their commitment to continued collaborative efforts in enhancing cybersecurity in the maritime sector. The joint statement includes the following:

In our globalized economy, the maritime sector is critical to the trade and transportation of all nations. While digitization provides tremendous opportunities for economic and social growth, it also poses new security challenges. Maritime cybersecurity is a necessity to keep our people, ports, cargo, and ships safe and secure. Given the inherent connectivity of cyberspace and the interconnectivity of the international maritime transportation system, international cooperation is vital to keep our maritime sector digitally secure and promote economic opportunities. The maritime cybersecurity event brought together like-minded nations to share knowledge and expertise to prevent and respond to threats from cyberspace that could bring societies to a standstill. The participants committed to increasing cooperative engagements in the following areas of maritime cybersecurity: awareness raising, information sharing and risk management. The participants will also visit the Ports of Rotterdam and Amsterdam where they delve into the cybersecurity issues of port operations and the ship-port interface.

b. Work of the International Law Commission on Sea Level Rise

See Chapter 7 for excerpts from the U.S. remarks on the work of the International Law Commission regarding sea level rise and international law.

c. Agreement Protecting Titanic Wreck Site

On December 19, 2019, the State Department announced in a media note that the United States had deposited with the United Kingdom its acceptance of the Agreement Concerning the Shipwrecked Vessel Royal Mail Ship (“RMS”) Titanic, bringing the agreement into force on November 18, 2019. The media note, available at <https://www.state.gov/united-states-accepts-agreement-protecting-titanic-wreck-site/>, provides the following background on the agreement:

Following the discovery in 1985 of the site of the RMS Titanic wreck, the United States, the United Kingdom, Canada, and France negotiated the Agreement to

protect the integrity of the wreck site from unregulated salvage and other activities. The Agreement obligates each Party to enact common measures to regulate the actions of persons and vessels under its jurisdiction regarding activities related to the wreck.

The Agreement reinforces the United States' collaborative efforts with the United Kingdom and others to preserve the wreck site as an international maritime memorial to the men, women, and children who perished aboard the ship. The RMS Titanic is of major national and international historical, cultural, and scientific significance and merits appropriate protection.

The Agreement Concerning the Shipwrecked Vessel RMS Titanic, signed at London November 6, 2003, entered into force November 18, 2019. The full text of the agreement is available at <https://www.state.gov/multilateral-19-1118>.

B. OUTER SPACE

1. Space Policy Directive 4

On February 19, 2019, President Trump signed a memorandum, Space Policy Directive 4, directed to administration officials, and entitled "Establishment of the United States Space Force." 84 Fed. Reg. 6049 (Feb. 25, 2019). Excerpts follow from Space Policy Directive 4.

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Sec. 3. *Legislative Proposal and Purpose.* The Secretary of Defense shall submit a legislative proposal to the President through the Office of Management and Budget that would establish the United States Space Force as a new armed service within the Department of the Air Force. The legislative proposal would, if enacted, establish the United States Space Force to organize, train, and equip forces to provide for freedom of operation in, from, and to the space domain; to provide independent military options for national leadership; and to enhance the lethality and effectiveness of the Joint Force. The United States Space Force should include both combat and combat support functions to enable prompt and sustained offensive and defensive space operations, and joint operations in all domains. The United States Space Force shall be organized, trained, and equipped to meet the following priorities:

- (a) Protecting the Nation's interests in space and the peaceful use of space for all responsible actors, consistent with applicable law, including international law;
- (b) Ensuring unfettered use of space for United States national security purposes, the United States economy, and United States persons, partners, and allies;
- (c) Deterring aggression and defending the Nation, United States allies, and United States interests from hostile acts in and from space;
- (d) Ensuring that needed space capabilities are integrated and available to all United States Combatant Commands;

(e) Projecting military power in, from, and to space in support of our Nation's interests; and

(f) Developing, maintaining, and improving a community of professionals focused on the national security demands of the space domain.

Sec. 4. Scope. (a) The legislative proposal required by section 3 of this memorandum shall, in addition to the provisions required under section 3 of this memorandum, include provisions that would, if enacted:

(i) consolidate existing forces and authorities for military space activities, as appropriate, in order to minimize duplication of effort and eliminate bureaucratic inefficiencies; and

(ii) not include the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, the National Reconnaissance Office, or other non-military space organizations or missions of the United States Government.

(b) The proposed United States Space Force should:

(i) include, as determined by the Secretary of Defense in consultation with the Secretaries of the military departments, the uniformed and civilian personnel conducting and directly supporting space operations from all Department of Defense Armed Forces;

(ii) assume responsibilities for all major military space acquisition programs; and

(iii) create the appropriate career tracks for military and civilian space personnel across all relevant specialties, including operations, intelligence, engineering, science, acquisition, and cyber.

Sec. 5. United States Space Force Budget. In accordance with the Department of Defense budget process, the Secretary of Defense shall submit to the Director of the Office of Management and Budget a proposed budget for the United States Space Force to be included in the President's Fiscal Year 2020 Budget Request.

Sec. 6. United States Space Force Organization and Leadership. (a) The legislative proposal required by section 3 of this memorandum shall create a civilian Under Secretary of the Air Force for Space, to be known as the Under Secretary for Space, appointed by the President by and with the advice and consent of the Senate.

(b) The legislative proposal shall establish a Chief of Staff of the Space Force, who will be a senior military officer in the grade of General or Admiral, and who shall serve as a member of the Joint Chiefs of Staff.

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2. Conference on Disarmament

On August 14, 2019, U.S. Permanent Representative to the Conference on Disarmament Robert A. Wood delivered remarks at a meeting on the prevention of an arms race in outer space. Ambassador Wood discussed threats to the outer space environment presented by Russia and China. His statement is excerpted below and available at <https://geneva.usmission.gov/2019/08/14/statement-by-ambassador-wood-the-threats-posed-by-russia-and-china-to-security-of-the-outer-space-environment/>

* * * *

The United States has explained in detail, many times our concerns about definitions and about verification related to objects in outer space and especially related to the draft “Treaty on the Prevention of the Placement of Weapons in Outer Space” that has been submitted to this body by Russia and China. We have previously provided lengthy examinations of the fundamental flaws in the PPWT.

Instead of repeating those arguments at length, I would like to apply the provisions of the draft PPWT to some real-world examples of weapon systems—specifically ground-based weapons—that are designed to damage, destroy or disrupt the on-orbit functioning of spacecraft in order to further the debate in this body. ...

Let me start with the threat to outer space objects. Despite what the proponents of the draft PPWT would have us believe, right now, the greatest threat to satellites is not from weapons in outer space, but rather from ground-based anti-satellite weapons that are designed to “destroy, damage or disrupt the normal functioning of objects in outer space.” The defenders of the draft PPWT would have us believe that the provisions of Article II of the draft text would in fact prohibit these types of ground-based threats. They point to the language in Article II that would obligate parties, “Not to resort to the threat or use of force against outer space objects of States Parties to the Treaty.”

But what everyone in this room should understand is that, despite these claims, nothing in the draft PPWT, including in Article II, prohibits the development, testing, production, storage or deployment of these ground-based anti-satellite weapons. More importantly, despite expressing grave concerns over the threat to objects in space, these are precisely the types of weapons that Russia and China are developing and deploying today.

So let’s look at some examples of the types of actual ground-based weapons ... that are being developed by the very same states pushing for adoption of the treaty.

First, let us start with Russia and its development of a system that is designed to disrupt or damage outer space objects. Last year, Russian President Putin announced the deployment of a ground-based laser weapon called the *Peresvet* Combat Laser Complex. Russia’s Ministry of Defense has publicly stated that this system is designed to “fight satellites.” Our Russian colleagues have not explained what they mean by “fight satellites,” but the United States believes that this means the *Peresvet* laser is designed to either disrupt or damage the normal functioning of another nation’s satellites. ...

Second, let me address a system that is designed to “destroy” outer space objects per the draft PPWT definition. In 2007, China launched a ground-based missile that intentionally destroyed a Chinese weather satellite and created 3,000 pieces of debris in orbit because the Chinese missile was designed to strike the satellite using kinetic force. Most of this debris remains in orbit today, posing an indiscriminate threat to all spacecraft in Low Earth Orbit. Now, our Chinese colleagues have been one of the main proponents of the concept that the language in the draft PPWT on the “threat or use of force” would prohibit the development and deployment of ground-launched systems. Yet the United States judges that China has moved forward with the deployment of the missile system they tested in 2007. Like Russia, China has never tried to reconcile its development of this system with its outward-facing push for space arms control. The very fact that China is deploying such a weapon suggests that China is willing to use it during a conflict. And the implications of the use of such a debris-generating weapon for the security and long-term sustainability of the outer space environment are tremendous. Just as important is the fact that Russia is developing a similar ground-based ASAT missile. Such ground-based anti-satellite weapons are a significant threat to the outer space environment. If

they were truly serious about wanting to prevent conflict from extending into space, then Russia and China would abandon their pursuit of such systems.

It is clear from these examples that Russia and China believe it is currently acceptable to attack satellites in orbit from the ground, whether through directed energy or missile strikes. At the same time, they hypocritically profess their concern about attacks on satellites and serve as the main proponents of the draft PPWT.

In addition, I want to remind my colleagues of a speech the United States gave to this body, exactly one year ago today about the on-orbit activities of a Russian Ministry of Defense satellite. This satellite exhibited abnormal behavior and raised questions for the United States about Russia's intent. The behavior was so inconsistent with the satellites' stated purpose that it could cause observers to question Russia's political commitment not to be the first to place weapons in outer space, which it would also be prohibited from doing under the draft PPWT.

These examples demonstrate that there is not an arms control solution to this issue at this time and that the fundamentally-flawed PPWT has not been, is not, and never will be the solution to the many threats facing the space environment. ...

For its part, consistent with our efforts to strengthen stability in outer space, the United States will continue to pursue bilateral and multilateral TCBMs to encourage responsible actions in, and the peaceful use of, outer space including through the development and advancement of norms of behavior in outer space and best practices for space operations.

In this regard, I want to applaud the remarks of our UK colleague and welcome the UK's submission of the report on its 2019 Wilton Park conference on space security. ...

The remarks by our UK colleague highlight an important point that spaceflight safety is a global challenge and it is in everyone's best interest to continue to encourage safe and responsible behavior in space while emphasizing the need for international transparency. In an effort to increase the sharing of data on satellite positions and to reduce the risk of collisions, the United States is now implementing a comprehensive policy for space traffic management (STM).

I would also underscore the point our UK colleague made regarding the importance of development guidelines for on-orbit servicing. The United States has already assisted in establishing an industry-led effort called the Consortium for Execution of Rendezvous and Servicing Operations (CONFERS), which in February 2019 released a report on Recommended Design and Operational Practices. Voluntary efforts such as CONFERS offer technically-based and scientifically-sound ideas for States and space operators. These efforts are preferable alternatives to vague and unverifiable agreements that may have unforeseen negative impacts on novel or beneficial economic uses of space.

In this regard, we believe the Conference on Disarmament as well as the UN Disarmament Commission and COPUOS have roles to play in the process of developing these transparency and confidence building measures and best practices, taking into account the respective mandates of each body and with appropriate coordination to avoid unnecessary duplication of efforts within the UN system.

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Cross References

ILC's work on sea level rise and international law, **Ch. 7.C.2.**

Iran's attempted space launches, **Ch. 19.B.4.a.**