

**Testimony**  
**of**  
**Deputy Assistant Secretary Scot Marciel**  
**Bureau of East Asian & Pacific Affairs**  
**U.S. Department of State**

**before the**  
**Subcommittee on East Asian and Pacific Affairs**  
**Committee on Foreign Relations**  
**United States Senate**

**July 15, 2009**

**Maritime Issues and Sovereignty Disputes in East Asia**

Chairman Webb and Members of the Subcommittee, I am pleased to testify before you today on maritime and sovereignty issues in East Asia. The sea lanes that run through East Asia are some of the world's busiest and most strategically important. They serve as the prime arteries of trade that have fueled the tremendous economic growth of the region and brought prosperity to the U.S. economy as well. Billions of dollars of commerce -- much of Asia's trade with the world, including the United States -- flows annually through those waters. Over half of the world's merchant fleet by tonnage sails through the South China Sea alone each year.

The United States has long had a vital interest in maintaining stability, freedom of navigation, and the right to lawful commercial activity in East Asia's waterways. For decades, active U.S. engagement in East Asia, including the forward-deployed presence of U.S. forces, has been a central factor in keeping the peace and preserving those interests. That continues to be true today. Through diplomacy, commerce, and our military presence, we have protected vital U.S. interests. Our relationships with our allies remain strong, the region is at peace, and – as you know well -- the U.S. Navy continues to carry out the full range of missions necessary to protect our country and preserve our interests.

Our presence and our policy have also aimed to support respect for international maritime law, including the UN Convention on the Law of the Sea. Although the United States has yet to ratify the Convention, as you know Mr. Chairman, this Administration and its predecessors support doing so, and in practice, our vessels comply with its provisions governing traditional uses of the oceans.

Issues surrounding maritime and sovereignty disputes in East Asia are multifaceted and complex. With your indulgence, Mr. Chairman, I am going to focus on three topics:

--First, the multiple sovereignty disputes in the South China Sea;

--Second, recent incidents involving China and the activities of U.S. naval vessels in international waters within that country's Exclusive Economic Zone (EEZ);

--And finally, the strategic context of these distinct topics and how the United States should respond.

China, Vietnam, Taiwan, the Philippines, Malaysia, Indonesia, and Brunei each claim sovereignty over parts of the South China Sea, including its land features. The size of each party's claim varies widely, as does the intensity with which they assert it. The claims center on sovereignty over the 200 small islands, rocks and reefs that make up the Paracel and Spratly Islands chains.

Sovereignty disputes notwithstanding, the South China Sea is largely at peace. Tensions among rival claimants rise and fall. To date, the disputes have not led to sustained military conflict. In 2002, the ASEAN countries and China signed the "Declaration on the Conduct of Parties in the South China Sea." While non-binding, it set out useful principles, such as that all claimants should "resolve disputes...by peaceful means" and "exercise self-restraint," and that they "reaffirm their respect for and commitment to the freedom of navigation in and overflight above the South China Sea, as provided for by the universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea."

More importantly, the 2002 document signaled a willingness among claimants to approach the dispute multilaterally. We welcomed this agreement, which lowered tensions among claimants and strengthened ASEAN as an institution. It has not eliminated tensions, nor has it eliminated unilateral actions by claimants in the South China Sea, but it's a start, and a good basis on which to address conflict in the region diplomatically.

U.S. policy continues to be that we do not take sides on the competing legal claims over territorial sovereignty in the South China Sea. In other words, we do not take sides on the claims to sovereignty over the islands and other land features in the South China Sea, or the maritime zones (such as territorial seas) that derive

from those land features. We do, however, have concerns about claims to “territorial waters” or any maritime zone that does not derive from a land territory. Such maritime claims are not consistent with international law, as reflected in the Law of the Sea Convention.

We remain concerned about tension between China and Vietnam, as both countries seek to tap potential oil and gas deposits that lie beneath the South China Sea. Starting in the summer of 2007, China told a number of U.S. and foreign oil and gas firms to stop exploration work with Vietnamese partners in the South China Sea or face unspecified consequences in their business dealings with China.

We object to any effort to intimidate U.S. companies. During a visit to Vietnam in September 2008, then-Deputy Secretary of State John Negroponte asserted the rights of U.S. companies operating in the South China Sea, and stated that we believe that disputed claims should be dealt with peacefully and without resort to any type of coercion. We have raised our concerns with China directly. Sovereignty disputes between nations should not be addressed by attempting to pressure companies that are not party to the dispute.

We have also urged that all claimants exercise restraint and avoid aggressive actions to resolve competing claims. We have stated clearly that we oppose the threat or use of force to resolve the disputes, as well as any action that hinders freedom of navigation. We would like to see a resolution in accordance with international law, including the UN Convention on the Law of the Sea.

There are various other maritime-related disputes in East Asia. Japan and China have differences over EEZ limits in the East China Sea, and sovereignty over the Senkaku Islands. These disputes have drawn less attention than those in the South China Sea. We continue to monitor developments on all of these

maritime disputes, as quarrels over sovereignty can escalate quickly in a region where nationalist sentiment runs strong.

I would now like to discuss recent incidents involving China and the activities of U.S. vessels in international waters within that country's Exclusive Economic Zone (EEZ). In March 2009, the survey ship *USNS Impeccable* was conducting routine operations, consistent with international law, in international waters in the South China Sea. Actions taken by Chinese fishing vessels to harass the *Impeccable* put ships of both sides at risk, interfered with freedom of navigation, and were inconsistent with the obligation for ships at sea to show due regard for the safety of other ships. We immediately protested those actions to the Chinese government, and urged that our differences be resolved through established mechanisms for dialogue – not through ship-to-ship confrontations that put sailors and vessels at risk.

Our concern over that incident centered on China's conception of its legal authority over other countries' vessels operating in its Exclusive Economic Zone (EEZ) and the unsafe way China sought to assert what it considers its maritime rights.

China's view of its rights on this specific point is not supported by international law. We have made that point clearly in discussions with the Chinese and underscored that U.S. vessels will continue to operate lawfully in international waters as they have done in the past.

I would note that there have been no further incidents of harassment by Chinese fishing vessels since mid-May.

In closing, I would like to look at both these concerns – the EEZ concerns with China and the overlapping South China Sea claims – in a broader strategic context. Specifically, what do these issues signify for international law and for the evolving power dynamics in East Asia, and how should the United States respond?

The *Impeccable* incident and the sovereignty disputes in the South China Sea are distinct issues that require distinct policy responses from the United States. On a strategic level, to an extent, both issues highlight a growing assertiveness by China in regard to what it sees as its maritime rights. In some cases, we do not share or even understand China's interpretation of international maritime law.

We believe that there are constructive ways, however, to tackle these difficult issues. With respect to freedom of navigation in the EEZ by U.S. naval vessels, we have urged China to address our differences through dialogue. Last month at the Defense Consultative Talks in Beijing, Under Secretary of Defense for Policy Michele Flournoy raised this issue, and the Chinese agreed to hold a special session of our Military Maritime Consultative Agreement (signed in 1998) to take up this issue and seek to resolve differences.

In the case of the conflicting sovereignty claims in the South China Sea, we have encouraged all parties to pursue solutions in accordance with the UN Convention on the Law of the Sea, and other agreements already made between ASEAN and China.

The assertions of a number of claimants to South China Sea territory raise important and sometimes troubling questions for the international community regarding access to sea-lanes and marine resources. There is considerable ambiguity in China's claim to the South China Sea, both in terms of the exact boundaries of its claim and whether it is an assertion of territorial waters over the

entire body of water, or only over its land features. In the past, this ambiguity has had little impact on U.S. interests. It has become a concern, however, with regard to the pressure on our energy firms, as some of the offshore blocks that have been subject to Chinese complaint do not appear to lie within China's claim. It might be helpful to all parties if China provided greater clarity on the substance of its claims.

We need to be vigilant to ensure our interests are protected and advanced. When we have concerns, we will raise them candidly, as we have done over the pressuring of our companies.

We note that China has taken a more conciliatory approach to resolving some disputes over its land borders. Last year, for example, China and Vietnam concluded a land border demarcation agreement. China's general diplomatic approach to Southeast Asia has emphasized friendship and good-neighborliness. Likewise, China's anti-piracy deployment to the Gulf of Aden has been a positive contribution to a common international concern. We are encouraged by these steps, and hope that China will apply the same constructive approach to its maritime rights and boundaries.

We have a broad relationship with China, Mr. Chairman, which encompasses many issues of vital strategic importance to both countries. We agree closely on some issues; on others, we frankly have differences. Our bilateral relationship can accommodate and respect those differences, and address them responsibly through dialogue.

Thank you. I am pleased to answer your questions.