

**Testimony**  
**of**  
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**Asian and Pacific Security Affairs**  
**Office of the Secretary of Defense**  
**before the**  
**Subcommittee on East Asian and Pacific Affairs**  
**Senate Committee on Foreign Relations**  
**United States Senate**

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

Mr. Chairman, thank you for inviting me to appear before your Subcommittee today to provide testimony on Maritime Territorial Disputes and Sovereignty. These issues are central in the Asia-Pacific security equation, and ones that we in the Department of Defense are paying very close attention to. I commend the Subcommittee's continuing interest in this important topic and I look forward to sustaining an on-going dialogue with you as these dynamics evolve.

In a speech that Secretary of Defense Robert Gates delivered on May 30, 2009 at the Institute for International Strategic Studies (IISS) annual defense conference in Singapore, he outlined the remarkable changes that have taken place in the Asian security environment since the end of the Cold War. More specifically, in highlighting the growing wealth and improving living standards of the peoples of Asia, Secretary Gates stressed the correlation

between stability and economic prosperity, one of the defining characteristics of Asian security dynamics during this period. The Asia-Pacific region for the past two decades has largely been at peace; it has been stable, and that stability has redounded to the benefit of all.

Despite this stability, one of the factors that we see potentially challenging the Asia-Pacific security environment – and the subject of today’s hearing – is a series of persistent territorial disputes, particularly disputes over maritime territories in Southeast Asia and the South China Sea, among a number of regional actors. In recent years, we have observed an increase in friction and tension over these disputes, frictions that stand in contrast to the relatively peaceful and cooperative focus on diplomatic solutions that characterized the issue following the landmark 2002 Declaration on the Conduct of Parties in the South China Sea.

The sources of the rising friction are varied – increased demand for oil and natural gas naturally increases the perceived stakes among claimants in securing resource rights; increased attention to the question of sovereignty claims in the run-up to the May 2009 deadline for filing extended continental shelf claims under the UN Convention on the Law of Sea; rising nationalism, which increases the sensitivity among governments and peoples to perceived slights and infringements related to territory and sovereignty. In addition, China’s growing military capabilities have become a factor affecting the tone and tenor of dialogue on regional maritime disputes.

In analyzing China’s maritime activities, I think it is important to draw a distinction between the harassment of U.S. naval auxiliary vessels near China and China’s approach to its South China Sea claims in general. While it is important to draw this distinction, the basis for the U.S. response applies equally to both.

Harassment by Chinese fishing vessels of U.S. naval auxiliary ships conducting routine and lawful military operations in China’s Exclusive Economic Zone (EEZ) re-emerged this year as an irritant in the U.S. – China relationship. I will note, however, that since May, there have been no further incidents of PRC-flagged fishing vessels harassing U.S. naval vessels.

While any incident at sea is of concern, the decline of these incidents after a brief spike underscores the commitment of the leadership of our two

countries to deal with these issues peacefully and through diplomatic channels.

The Department of Defense views Chinese behavior in its EEZ and more broadly in the South China Sea region – a large section of which China claims as – as having two basic premises.

Firstly, there is the strategic issue of China's assertion of sovereignty over the bulk of the South China Sea. This plays out mainly on the political and economic fronts which have been discussed in detail by my colleague from the State Department, but suffice to say that China actively opposes any activity by other claimants to assert their own sovereignty claims. Vietnam, Taiwan, the Philippines, Malaysia, Indonesia and Brunei each claim sovereignty over portions of the South China Sea (SCS); many of these claims are conflicting – notably in areas around the Spratly and Paracel islands.

Secondly, to support the growing strategic and political emphasis in this region, China has increased and will continue to increase, its force posture in the South China Sea. As the PLA has upgraded its facilities on Hainan Island, for example, we see a direct correlation with PRC assertiveness in its reaction to U.S. surface and air activity.

Understanding the strategic premise does not imply that the Department accepts the manner in which China has asserted itself in this region. We strongly object to behavior that puts at risk the safety of our vessels and is a clear violation of international norms of behavior in ocean waters outside territorial seas. The Department will continue to leverage all available channels to communicate this position to our PLA counterparts. Indeed, at the recent Defense Consultative Talks in Beijing held on 23-24 June, this topic was on the agenda. The two sides agreed to convene a Special Meeting under the provisions of the U.S.-China Military Maritime Consultative Agreement (MMCA) (1998) in the coming weeks to review ways to invigorate the MMCA process, improve communications, and reduce the chances of an incident or accident between our two forces as they operate near each other.

Further, we reject any nation's attempt to place limits on the exercise of high seas freedoms within an exclusive economic zones (EEZ). Customary international law, as reflected in articles 58 and 87 of the 1982 United Nations Convention on the Law of the Sea, guarantees to all nations the right

to exercise within the EEZ, high seas freedoms of navigation and overflight, as well as the traditional uses of the ocean related to those freedoms. It has been the position of the United States since 1982 when the Convention was established, that the navigational rights and freedoms applicable within the EEZ are qualitatively and quantitatively the same as those rights and freedoms applicable on the high seas. We note that almost 40% of the world's oceans lie within the 200 nautical mile EEZs, and it is essential to the global economy and international peace and security that navigational rights and freedoms within the EEZ be vigorously asserted and preserved.

As previously noted, our military activity in this region is routine and in accordance with customary international law as reflected in the 1982 Law of the Sea Convention. We have consistently reiterated our basic policy towards the competing claims in the South China Sea - most recently at the Shangri-La Dialogue in May 2009, where Secretary Gates stated that the U.S. does not take sides in the sovereignty disputes and supports a peaceful solution that protects freedom of navigation. In his speech at that event, Secretary Gates stated, "whether on the sea, in the air, in space, or cyberspace, the global commons represents a realm where we must cooperate - where we must adhere to the rule of law and other mechanisms that have helped maintain regional peace."

As Secretary Gates has said, "we stand for openness, and against exclusivity, and for common uses of common spaces in responsible ways that sustain and drive forward our mutual prosperity." The United States has an interest in keeping sea lines of communication open; avoiding being drawn into a regional conflict; encouraging resolution of territorial disputes through a multilateral framework that avoids any precedent setting acquiescence; and protecting the United States' reputation in Southeast Asia.

In support of our strategic goals, the Department has embarked on a multi-pronged strategy that includes: 1) clearly demonstrating, through word and deed, that U.S. forces will remain present and postured as the preeminent military force in the region; 2) deliberate and calibrated assertions of our freedom of navigation rights by U.S. Navy vessels; 3) building stronger security relationships with partners in the region, at both the policy level through strategic dialogues and at the operational level by building partner capacity, especially in the maritime security area, and 4) strengthening the military-diplomatic mechanisms we have with China to improve communications and reduce the risk of miscalculation

Force posture is perhaps the most important component of the first element of our policy outlined above. In this regard, the military build-up on Guam is viewed as permanently anchoring the U.S. in the region and cementing our “resident power” status. We believe this will have a stabilizing influence on the policies and strategies of South China Sea claimants. The alternative – a power vacuum caused by a U.S. security withdrawal from the region – would leave very little strategic maneuver room for the least powerful among them.

As for the second element of our strategy, U.S. Pacific Command will continue to assert freedom of navigation rights in the region. U.S. Pacific Command will continue to conduct operations in the South China Sea, in strict compliance with customary international law as reflected in the UN Convention on Law of the Sea. The United States’ activity will be governed by our interests in the region, and our desire to preserve security and stability throughout the western Pacific.

The third element of our strategy will focus on expanding and deepening our defense diplomacy and capacity building programs in the region as important supporting efforts to prevent tensions in the South China Sea from developing into a threat to U.S. interests. To that end, we have recently established high-level defense policy dialogues with Vietnam and Malaysia that complement our already strong consultative mechanisms with Philippines, Thailand, and Indonesia. Through a variety of security cooperation activities ranging from seminars to multilateral exercises, we are also helping the countries of the region overcome longstanding historical and cultural barriers that inhibit multi-lateral security cooperation.

Finally, we need to invigorate the mechanisms that we have in place to engage China on this and other security issues, namely the U.S.-China Defense Consultative Talks, the U.S.-China Defense Policy Coordination Talks, and the U.S.-China Military Maritime Consultative Agreement process. These mechanisms provide open and sustained channels of communication to build greater confidence and mutual understanding, discuss candidly our differences, and improve understanding and application of safety standards and rules of the road for operations that improve the safety of sailors and airmen of all countries in the region.

All of this effort is designed to reduce volatility. We believe the South China Sea claimants assess that the U.S. is a stabilizing regional influence. While we do not propose to arbitrate or mediate the underlying conflicts between

competing claims, our presence does provide a sense of stability and a modicum of breathing room for the claimants to pursue political means to resolve these issues.

I would be happy to answer your questions.