

**UNITED STATES SENATE
COMMITTEE ON FOREIGN RELATIONS
HEARING ON MARITIME DISPUTES
AND SOVEREIGNTY ISSUES IN EAST ASIA
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**TESTIMONY OF PETER DUTTON
ASSOCIATE PROFESSOR, CHINA MARITIME STUDIES INSTITUTE
U.S.NAVAL WAR COLLEGE**

I would like to thank the Chairman and this Committee for the opportunity to appear before you today.

With my testimony today I hope to make the following points:

1. China's South China Sea legal claims and the activities it has undertaken to enforce them pose a challenge to America's regional and global maritime interests.
2. China sees its sovereignty claims in the South China Sea as fundamentally non-negotiable, yet close to being within its grasp to consolidate.
3. China is a developing maritime power, but its maritime development is best characterized as a maritime enhancement to China's continental strategic focus, rather than as a rising expeditionary maritime force.
4. The U.S. should exercise renewed maritime leadership to ensure the regional and global access necessary to our national defense and to the security of the global maritime system generally.

Beginning with China's actual claims in the South China Sea, contrary to what some commentators have suggested, the Chinese government has not claimed *sovereignty* over the water space of the South China Sea *per se*. China's claims of legal control over the sea space of the South China Sea are based in part on its assertion of territorial sovereignty over all of the islands in the South China Sea articulated in China's 1992 Law on the Territorial Sea and Contiguous Zone--under which China claims sovereignty over Diaoyu (Senkaku) Islands in the East China Sea, and in the South China Sea China claims sovereignty over the Dongsha (Pratas) Islands, the Xisha (Paracel) Islands, the Zhongsha (Macclesfield Bank) Islands and the Nansha (Spratly) Islands.¹ Added to the claims of sovereignty over the islands themselves, China's 1998 Exclusive Economic Zone (EEZ) law asserts its claim to an "exclusive economic zone ... extending 200 nautical miles from the baselines from which the breadth of the territorial sea is measured."² Since all of the islands in the

¹ Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, February 25, 1992.

² Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf, June 26, 1998.

South China Sea are claimed as Chinese territory and included in the baselines section of the 1992 Territorial Sea Law, the effect of the 1998 law is to claim an exclusive economic zone around each of them. In combination, therefore, the two Chinese laws effectively claim a Chinese EEZ covering nearly the entire South China Sea.

Thus, the Chinese government does not claim that these waters are territorial seas, internal waters, or archipelagic waters, or any other sort of coastal state zone that would confer the rights of sovereignty over broad swaths of the region's oceans. That said, the combination of their territorial claims over the islands of the South China Sea and China's 'unique' interpretation of international law of the sea relating to coastal state authorities to limit or prohibit foreign military activities in the exclusive economic zone,³ does appear to be part of a Chinese plan to achieve in the South China Sea exclusive military control over the water space within their U-shaped, nine-dashed line. Such control is tantamount to the control a sovereign exercises over its zones of maritime sovereignty.

Pointing out this distinction may seem like splitting hairs, but it is important to a full understanding of the broader implications for international law generally of China's policies. China does not claim sovereignty over the water space of the South China Sea and the concomitant right to exercise control over foreign military activities as the prerogative of a sovereign—China claims the right to restrict and even to prohibit foreign military activities in these waters as a matter of a coastal state's right to make laws governing its EEZ, which is a non-sovereign zone of special jurisdiction over resources and environmental preservation. Had China claimed the right to exercise control over military vessels because it claimed sovereignty over the South China Sea, the U.S. would certainly have objected to the claim, primarily on *factual* grounds, but we could both agree upon the general *legal* proposition that only with full sovereignty over water space comes the right to control foreign military activities. As such, the legal impact of the dispute would have been limited to the waters of the South China Sea, as was the case with Libya's claim to the authority to control foreign military activities in the Gulf of Sidra based on its excessive claim of sovereignty over those waters.

What makes the Chinese case so significant for U.S. interests is that the impact of our dispute with China over characterization of its EEZ could affect how *all* EEZ's are characterized everywhere around the world. By tying their legal perspective to the legal characterization of the EEZ generally, were China's perspective to become accepted, it could affect the way international law views EEZ's *everywhere*. Thus, inasmuch as EEZs cover more than one third of all the world's oceans and, of course, one hundred percent of all coastal regions, island regions, and many of the world's strategic chokepoints and sea lines of communication, China's legal perspectives undermine the interests of all maritime powers and the United States, as the primary guarantor of maritime security, in particular.

³ Peter Dutton, Testimony before the U.S.-China Economic and Security Review Commission, June 11, 2009, www.uscc.gov/hearings/2009hearings/written_testimonies/09_06_11_wrts/09_06_11_dutton_statement.pdf.

China's territorial claims and its claim to possess EEZ rights over nearly the entire South China Sea is alone controversial enough, since at least four other countries plus Taiwan also claim sovereignty over at least some of the islands, but even more so because many of the islands in the South China Sea are too small to legitimately claim an EEZ under the rules and terms as laid out in the United Nations Convention on the Law of the Sea (UNCLOS). However, in addition, through its domestic law and interpretations of international law of the sea China claims the legal right to broadly limit or regulate foreign military activities in and above its EEZ.⁴ That, for the United States, is the most problematic and challenging aspect of China's legal claims, since China is building a maritime force structure that will soon effectively prevent its neighbors—many of them U.S. friends and allies—from protecting their own island claims and because China has become emboldened to use its increasing military and naval power to attempt to disrupt U.S. naval operations in and above the South China Sea.

In my view, China sees itself as on the verge of achieving its long-sought dominance over the South China Sea. Perhaps one of the reasons China has increased its activities against American naval vessels in the South China Seas is that it considers among the few things to be standing in its way of consolidating its island claims to be the United States Navy and the American political will to support freedoms of navigation and the claims of American regional friends and allies. I suspect that China has identified the latter as the most vulnerable and susceptible to its influence, especially during these challenging economic times and national military focus ground wars in Iraq and Afghanistan. This, in my view, is one among several reasons that China has embarked on its recent campaign to harass U.S. naval operations in the region: if they can undermine the political will to continue active U.S. naval operations in the South China Sea, they do not need to confront the power of the American Navy head on in order to achieve their objectives. They can erode the American Navy's effectiveness indirectly and achieve the same result.

Indeed, some thoughtful analysts and academics have suggested that Chinese calculations of American power determine how aggressively it pursues its claims in the South China Sea. According to this line of thinking, China has for decades taken advantage of small shifts in their favor in the local power dynamics in the South China Sea.⁵ Some Chinese actions can be characterized opportunistic, such as China's sea battle in 1974 with the Republic of Vietnam's beleaguered naval forces to wrest control over several of the Spratly Islands as the United States was completing its withdrawal

⁴ See, e.g., Surveying and Mapping Law of the People's Republic of China, August 29, 2002, and Regulations of the People's Republic of China on the Management of Foreign-Related Marine Scientific Research, October 1, 1996. For an authoritative articulation of the Chinese perspective on the legal rationale for coastal states to limit foreign military activities in the EEZ, see Ren Xiaofeng and Cheng Xizhong, A Chinese Perspective, 29 Marine Policy (2005), p. 139.

⁵ See, e.g., Bonnie S. Glaser and Lyle Morris, Chinese Perceptions of U.S. Decline and Power, Jamestown Foundation, July 9, 2009 (on line); and Richard Fisher, Jr., South China Sea Competition: China Contemplates More Mischief, International Assessment and Strategy Center, June 28, 2009 (on line).

from South Vietnam, and again in 1976 when China took control of the Paracels from a recently united Vietnam. Then in the spring of 1988, when in the midst of the Tanker Wars American naval power was primarily focused on escorting oil tankers safely through the Strait of Hormuz, China engaged in naval battles with Vietnam in the Spratlys and won control over several more islands. Finally, in late 1994 and early 1995, about two years after the United States withdrew its forces from nearby Subic Bay Naval Base, China quietly occupied Mischief Reef, a small coral feature in the South China Sea close to the Philippines Island of Palawan that had previously been administered by the Philippines government. Chinese naval vessels remained in the vicinity of Mischief Reef long enough for China to consolidate its gain by building military reinforcements on the small island.

More recent shifts in South China Sea power dynamics could not be characterized as opportunistic. Instead they are the product of years of Chinese research, development and investment in military technologies designed to challenge American naval access to East Asian waters. The work of Lyle Goldstein and William Murray documents China's steadily improving submarine force and substantial sea mine capabilities,⁶ for instance, and Andrew Erickson and David Yang's research documents China's developing anti-ship ballistic missile program.⁷ In addition to changing the military balance, China's sustained campaign to try to undermine the legality and legitimacy of routine U.S. naval operations in the South China Sea also appears to be an attempt to change the regional political dynamics. This observation is made with China's doctrine of "Three New Warfare" in mind. The three new warfares articulated under this Chinese military doctrine are legal warfare, public opinion warfare, and psychological warfare. The focus of each of these activities is fundamentally to create and to advance international and domestic legitimacy for China's viewpoint of its sovereignty over the South China Sea islands and its authority to control military activities throughout the South China Sea. An article in *Renmin Haijun* (People's Navy) a couple of years ago stated that the purpose of legal warfare, for instance is to "be far-sighted...to discern any problems before they actually arise," in order to "provide a legal pretext for military action," and to "engage in legal contests to vie for the legal initiative" in order to "safeguard national sovereignty and territorial integrity."⁸ Thus, these 'new' methods of warfare are designed to achieve strategic objectives without having to actually use force by leveraging public opinion alongside the implied threat posed by China's growing military power.

China appears to perceive its opportunities to be increasing for a favorable settlement of its South China Sea claims. The one existing bilateral dialogue on South

⁶ Lyle Goldstein and William Murray, *Undersea Dragons, China's Undersea Submarine Force*, *International Security*, Vol. 28., No. 4, Spring 2004, pp. 161-196.

⁷ Andrew S. Erickson and David D. Yang, *On the Verge of a Game-Changer*, *Proceedings of the U.S. Naval Institute*, May 1, 2009.

⁸ Jin Hongbing, *Legal Warfare: Sharp Tool to 'Seize the Opportunity to Grab the Initiative'*, *People's Navy* [*Renmin Haijun*, in Chinese], May 29, 2006.

China Sea disputes of which I am aware seems to be making no progress. The China-Vietnam Steering Committee on Cooperation released a statement after its second meeting in 2008 that both sides had "agreed to solve disputes through negotiations and safeguard peace and stability in the South China Sea." This statement, however, remains at odds with China's repeated insistence that it has "indisputable sovereignty" over the South China Sea Islands, including as recently as May 2009 when it submitted a statement to the United Nations in response to regional claims by the Philippines and Vietnam.⁹ If China remains unwilling to concede any of the islands to other claimants, it is hard to imagine what there is to negotiate. In its maritime dispute with Japan in the East China Sea, China seems to be willing to live with the ambiguity generated by Japanese control over the Senkaku (Diaoyu) Islands, even as China occasionally takes provocative actions designed to maintain its claims to sovereignty, and to wait for some future circumstance in which China is in a stronger position in relation to Japan to press its claim.¹⁰ In my view, China is likely to take the same approach to its claims in the South China Sea. If it is not in a strong enough position today to gain acceptance of its sovereignty over the islands, rather than negotiate a partial result China will likely wait until such future time as its position is suitably strengthened to finalize all of its claims.

Nonetheless, with active U.S. involvement it may be possible to bring together all parties to at least open multilateral discussions to manage friction and prevent escalation of competing sovereignty claims, EEZ and continental shelf claims, security claims, and access rights. In the context of such discussions, it might be helpful for the U.S. to make clear that it supports peaceful resolution of territorial disputes as provided for in the South China Sea Code of Conduct, that we will honor our commitments to our friends and allies in the region by supporting them in case of attack, and that recent increases in Chinese military and armed maritime law enforcement patrols are not helpful. Likewise, all sides must be expected to exercise restraint. The end result could be an historic opportunity for China to demonstrate that its military build-up is indeed part of its larger policy of Peaceful Development and that its intentions toward its neighbors are indeed benign.

On this latter point, there is some regional skepticism, especially in Japan. Indeed, there exists a robust debate within academic and analytical circles in China itself concerning the extent to which China's growing navy should strive to develop 'blue water' capabilities. However, in my view there is no indication that Chinese decision-makers have been persuaded to create a Navy that will challenge the U.S. navy for command of the seas in the near to medium term. The inevitable result of China's rapid military development over the past two decades, and especially after a Chinese flotilla deployed to the Gulf of Aden to support regional anti-piracy operations, is concern that perhaps China's naval build-up could portend Beijing's intention one day of moving beyond development of a maritime defense zone in East Asia to challenge America's

⁹ Brian McCarten, Roiling the Waters in the Spratlys, Asian Sentinel, February 4, 2008; and China Tells Neighbors to Keep Off Disputed Islands, Reuters, May 12, 2009.

¹⁰ Xiong Qu, China Starts Examination of Navigational Safety of East China Sea, CCTV, July 3, 2008

global command. However, in my view this would be a highly unlikely development for three reasons.

First, China is unlikely to build a large, expeditionary navy because it is not in the geostrategic interests of a fundamentally continental power to put too much attention and resources into global control of the seas, especially when a maritime superpower exists and provides the service free of charge.¹¹ Second, others have suggested that China has too many internal economic, political and demographic challenges that will compete for resources and political attention during the remainder of this century for China to be able afford such an undertaking.¹² To these observations I add a third reason why I do not foresee China becoming an expeditionary sea power: if China intended its growing naval capacity to be used to challenge American sea power outside of the East and South Chinese Seas, a leading indicator of this intention would be a shift in perspective on international law of the sea from anti-access to access, because the capacity to wield naval power without the international law authorities to use it would be an expensive investment with little practical utility. As such, paradoxically, it may be in America's best interest to accept the friction that attends our differing perspectives on international law of the sea as one of the manageable costs of separating the fundamental interests of a strong continental power from the fundamental interests of a strong maritime power.

That is not to say that the United States should in any way compromise its values or perspectives related to the international law rights to naval access to the world's oceans for missions related to international peace and security or to missions related to security of the seas from non-traditional threats. Although American perspectives on the law of the sea are shared by approximately 140 of the current 157 members of UNCLOS, with the remainder agreeing with China to one degree or another that as coastal states they have the right to impose legal restrictions on foreign military activities in their EEZ's, we cannot take the current state for granted. Indeed, the Chinese perspective holds some attraction even among China's neighbors. Despite the fact that their governments remain among those that are on record as accepting traditional military freedoms in the EEZ, representatives from the Philippines, Indonesia, and other regional states sometimes quietly express general support for the Chinese perspective, if for no other reason than it could help them hold rising Chinese naval power at bay. This unsettling development suggests that our regional partners in Asia also sense the shift in power dynamics in the South China Sea and may need more reassurance than we are currently giving them that the United States remains fully committed to our regional security commitments and to maintaining a dominant naval presence in the region.

Protecting traditional freedoms of navigation for military purposes by maintaining a commitment to globally dominant sea power will have important consequences for the

¹¹ See, e.g., Robert S. Ross, *The Geography of the Peace: East Asia in the 21st Century*, *International Security*, Vol. 23, No. 4, Spring 1999, pp. 81-118.

¹² See, e.g., Susan Shirk, *Fragile Superpower: How China's Internal Politics Could Derail its Peaceful Rise*, Oxford University Press (2007).

East Asian region and beyond. An arc of anti-access is developing across the southern Asian landmass from the Arabian Sea to the Sea of Japan. Of the handful of remaining states that officially maintain legal perspectives that challenge traditional military freedoms of navigation in and above the EEZ, a concentration of these states is situated along the southern coasts of Asia astride some of the most critically important sea lines of communication in the world. In this region, Iran, Pakistan, India, Bangladesh, Burma, Malaysia, China and North Korea all maintain laws that assert some right of control over foreign military activities in the EEZ. Vietnam too can be added to this list, although it has chosen to draw grossly excessive baselines, rather than to assert EEZ control as its anti-access legal method of choice. This is in addition to the occasional tacit approval for anti-access perspectives sometimes expressed by scholars and officials from the few remaining regional states not already listed here. Some of these countries have been building strong regional navies, while others have been actively seeking nuclear capacity or conventional anti-access technologies similar to China's in order to provide teeth to their legal perspectives.

In countering the anti-access concerns of these coastal states, the United States will need to make it a priority to promote and demonstrate the maritime security benefits that can be provided by strong sea power capacity combined with broad authorities to access ocean space. Specifically, the United States will need to find opportunities to undertake with China and other in the region cooperative international action to secure the seas from both traditional and non-traditional destabilizers. Additionally, since China clearly aspires to play a more important role in global leadership, as evidenced for instance by its increased commitment to international peacekeeping efforts, working together with China on an equal footing wherever possible will be helpful to the overall relationship.¹³ Inviting Chinese naval vessels to participate in future maritime security operations—even as we disagree about some of the applicable legal authorities—should become routine. Achieving a common maritime objective by either operating in separate sectors or operating in the same sector while performing different tasks are approaches demonstrated in current Gulf of Aden operations that deserve close study as models for future cooperation at sea where parties do not necessarily agree on the relevant authorities.

Indeed, China's decision to participate in anti-piracy operations in the Gulf of Aden has been an encouraging opportunity to demonstrate the power of a global maritime partnership to bring about the order and stability necessary for the well-functioning of the global system on which the economic health and political strength of all major countries relies. Additionally, such operations enable China to participate meaningfully in the provision of the 'global goods' that come from maritime humanitarian and constabulary operations, which are supported by reasonable, access-oriented interpretations of international law of the sea.

¹³ Peter Dutton, *Charting A Course: U.S.-China Cooperation at Sea*, China Security, March 2009.

A final point about U.S.-China cooperation at sea: because the East and South China Seas represent strategically important zones for both China and the United States and friction in the region is therefore likely to continue, cooperation is more likely to occur between Chinese and American naval forces the further away they operate from the East Asian coastal regions. The challenge for the United States in interacting with China will be to manage tensions in East Asia while encouraging greater global cooperation. China's aspirations to play a global role as a responsible major power and its willingness to undertake security operations in parallel, if not exactly in direct cooperation, with the U.S. and other maritime states in the Gulf of Aden suggests that future such opportunities will present themselves and should be welcomed. The more that China works with the U.S. and like-minded states away from East Asian shores, the greater the chance that the essential factor of trust will begin to enter into the equation of U.S.-China relations in East Asia. Should opportunities arise for cooperation in East Asia, such as humanitarian assistance or disaster relief, China should be welcomed as a partner. China's new hospital ship may provide opportunities in this regard, and joint regional deployments of U.S. and Chinese hospital ships should be considered in order to bring the benefits of modern medicine to under-served areas of Southeast Asia. Ultimately, such activities could begin to build the essential factor of trust, based on increased military to military contacts, which will help develop the strategic stability that all parties desire.

In conclusion, perhaps the two most important leadership actions the United States could undertake to preserve the navigational freedoms that are of strategic importance to U.S. national security, are first to reassert our position as the global advocate for access-oriented approaches to international law of the sea. For too long we have neglected this fundamental pillar of American security. We have either taken for granted that the benefits of our perspective are self-evident and expected that other reasonable state actors would be eventually persuaded to our perspective, or we have simply relied on the strength of our national power to do what is in our maritime interest to do without much regard for what others thought. Today, however, there is not even complete unity of perspective across the various federal agencies that have a hand in oceans policy. The federal government would benefit from a comprehensive national oceans policy, and flowing from that policy, a comprehensive strategic communications plan to explain the benefits and strengths of the American perspectives on the oceans.

Second, since October 2007 the United States Navy has been operating under a maritime strategy that reflects international cooperation as one of the most important foundations of global maritime security against both traditional and non-traditional threats. As Admiral Willard recently testified, "our current non-party status constrains" us in forming partnerships to achieve national and international security. Admiral Willard also observed that UNCLOS is important because it provides a "robust legal regime for global operations" to counter both traditional and non-traditional threats. To these reasons I would add that China's active promotion of its anti-access perspectives—and the receptive audience the message is reaching in some critical parts of the world -- reminds us that the current level of freedoms of navigation for

military purposes that we currently enjoy cannot be taken for granted. Additionally, China is exercising leadership on these issues from institutional positions inside the Convention. The United States is not. A Chinese judge sits on the International Tribunal for the Law of the Sea. There is no American judge. When negotiations are undertaken to consider changes to the Convention, China will have a seat at that table and a vote; the United States will not. In order to enhance our global leadership position on law of the sea issues, and to preserve our national security interests in the oceans from encroachment, it is my view that the United States should join the 157 other states that are currently members and accede to the United Nations Convention on the Law of the Sea at our earliest opportunity.

In conclusion, international law of the sea is important and the United States needs to be vigilant to see that our interests in access-oriented approaches to law of the sea are preserved. However, strength speaks louder than words. In my view it is essential to our own national security and to the security of many other states that our maritime power be protected from erosion. Power is currently shifting in East Asia, not equalizing, but shifting. America's best chance to preserve peace in the region is to show respect for China's newfound regional position by extending the hand of maritime cooperation. However, in order to preserve our own fundamental interests and those of our friends and allies, we must also retain our dominant maritime strength.