

## **Maritime Territorial Disputes and Sovereignty Issues in Asia**

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Senator Webb and other Members of the Subcommittee on East Asia and Pacific Affairs, I thank you for this opportunity to address the Subcommittee about some issues in East Asia and the Pacific which are critical to peace, stability, and balanced development in a part of the world that matters greatly to the United States. For reasons you have implied in your invitation to testify at this hearing, China's unilateral assertion of maritime claims that are contrary to the principles of the Law of the Sea, and its willingness to resort to force and intimidation to achieve its goals, have become matters of serious concern in Asia and the Pacific.

China's behavior directly threatens legitimate American and Southeast Asian interests, including freedom of navigation, access to rich undersea oil and gas deposits, and the cooperative and sustainable development of other seabed resources, fisheries, and estuaries. The consequences of China's behavior in the South China Sea in particular include threats to regional peace and stability, economic development, traditional subsistence livelihoods, and food security.

China's behavior in the South China Sea follows the same pattern as in disputes with Japan and its currently moribund disputes with North and South Korea, and in regard to the exploitation of the hydroelectric power potential of the Mekong River without regard for the interests of 60 million people or more in five downstream countries for whom the river is their lifeblood and main source of food security. I would be glad to address those issues if you wish, but for now I will concentrate on the South China Sea.

I want to emphasize at the beginning that the United States itself is not party to any territorial disputes in Asia, but several allies and other important friendly countries are, and we have a strong interest in the issues at stake. These interests include the most basic ones such as regional peace and stability, the right of innocent passage of U.S. warships, and important commercial interests in regional trade, investment. China's rejection of accepted international principles also extends to the air, and contributed to the 2001 mid-air collision between a US reconnaissance plane and a Chinese fighter, and the crash landing of the U.S. aircraft on Hainan Island.

At the global level we have a very important interest in the South China Sea with regard to climate change and global warming, the cooperative and environmentally sustainable exploitation of migratory fish stocks and the protection of coral reefs. With regard to

maritime territorial disputes, I will address primarily on so-called “nontraditional security interests” (NTS) such as the impact of territorial disputes on economic development, food security, livelihoods, and on American business interests in the South China Sea and adjacent Southeast Asian waters.

### **Impact of the Law of the Sea Convention of 1994**

The importance and tenaciousness of conflicting claims to disputed territories has grown steadily since the adoption in 1994 of The United Nations Convention on the Law of the Sea (UNCLOS), the “Law of the Sea,” which provides for 200 nautical mile Exclusive Economic Zones (EEZs) extending beyond a country’s shore. The Convention also conveys exclusive rights to the seabed resources of a nation’s continental shelf, subject to a 350 n. mile limit from the “baseline” (most commonly the mean low water line on the shore) and 2,500 meters depth.

The United States played a leading role in crafting the Law of the Sea treaty and signed all of its parts except Part XI, relating to deep seabed resources and some other contentions issues. The United States generally accepts the most important provisions of the Convention, but has not ratified it due to its position on Part XI.

The growing tensions over conflicting territorial claims are being driven by presumed seabed resources such as oil and gas, and fisheries. The energy sources have become increasingly valuable and easier to extract because of technological advances in drilling and related activities. The rapid decline open water fish stocks and resultant rise in prices has threatened food security in some countries and made jurisdiction over fisheries a source of actual conflict.

Most of the territorial disputes are more heated at this moment because the UNCLOS required countries to submit formal claims by May 13, 2009. Several countries have already made formal complaints to other countries’ submissions, most notably by China.

### **China’s as the Common Denominator in South China Sea Disputes and the Mekong Delta**

Beijing has repeatedly asserted its sovereignty over almost the entire South China Sea, and has acted forcefully to enforce its claims. In 1974 China took advantage of the failing South Vietnamese government to attack islands in the Paracels group, which had been garrisoned by South Vietnamese troops. The reunified government of Vietnam maintains the claims of the former Saigon government. In 1998 more than seventy Vietnamese sailors died in a clash between Chinese and Vietnamese ships near Johnson Reef in the Spratlys in 1988. The Spratly Islands incident of 1995 involved China’s occupation of small reefs that are 130 nautical miles from the nearest Philippines land mass – well within the Philippines internationally recognized EEZ, and 620 miles from China.

The 1995 incident at Mischief Reef provoked a collective reaction among the ASEAN countries that may have taken China by surprise. China subsequently proposed joint

development of undersea resources until the issues are resolved. In fact, however, China still resolutely refuses to enter into substantive multilateral discussions and has used its superior power to enforce its claims unilaterally.

The most egregious Chinese actions have been in the Gulf of Tonkin and the surrounding parts of the South China Sea, where China has repeatedly drilled for oil and gas in areas claimed by Vietnam by historical occupation and under UNCLOS rules. Chinese ships have also forcefully prevented Vietnamese and other neighboring countries' fishing boats from operating in waters claimed by China.

China is now directly challenging the U.S. Navy. In March 2009, five small Chinese vessels interfered with operations of a US Navy survey ship, the *Impeccable*, some 75 miles from the shore of China's Hainan Island. China claimed that the *Impeccable* was violating its EEZ by conducting seabed survey operations. Even when the U.S. ship turned fire hoses on the Chinese boats they kept interfering with its forward movement. China also threatened to send an armed patrol boat to protect the smaller craft harassing the US ship and support its jurisdiction over the Paracel and Spratly islands.

### **Other South China Sea Disputes**

A number of unresolved disputes include those between the countries of the Association of Southeast Asian Nations (ASEAN). Many of these disputes involve competing claims on both land and sea. Some of the more contentious ones include:

- Thailand and Cambodia, including a now very active dispute over ownership of the Preah Vihear temple on a mountain that straddles their mutual border as well as a dispute over the boundaries of each other's territorial waters. The Preah Vihear dispute is on the front boiler in both countries because of Cambodia's stated intention to unilaterally request the site and its surroundings as a World Heritage protected site. Troops of both countries have been involved in armed clashes. The maritime dispute involves overlapping claims to oil and gas resources that Chevron and ConocoPhillips, among others, are seeking to develop. The handling of this issue by the previous Thai government played a significant role in Thailand's ongoing political turmoil.
- Thailand and Vietnam also have conflicting claims to the parts of the Gulf of Thailand, which has rich oil and gas deposits. The Gulf of Thailand is a particularly difficult to delineate because it is bounded by Cambodia, Malaysia, Thailand and Vietnam. It is not possible to draw lines that would give every country a 200 mile EEZ. Cambodia objected to a settlement between Thailand and Vietnam.
- Malaysia (on Borneo) also has a claim to part of the South China Sea that is also claimed by Thailand, Vietnam, the Philippines and China. A joint submission by Malaysia and Thailand to UNCLOS earlier this year provoked an angry response

by China and a counter claim which, however, was not supported by reference to the provision of the Law of the Sea.

### **Impact of China's Behavior on the Ability of U.S. Companies to Operate in Contested Areas**

Thus far the direct and indirect impact of China's behavior has mainly affected the opportunities for American multinational companies in oil and gas exploration and development in blocs offered by Vietnam and other countries. This includes the direct operations of U.S. multinationals as well as joint ventures with other multinational companies and national oil and gas companies in Southeast Asia. Numerous reports claim that China has told American and other multinational companies that if they want to do business with China they must not drill in areas of the Tonkin Gulf that are claimed by Vietnam.

Vietnam's oil and gas production has flattened out and cannot be increased without the participation of multinational companies. Unless Vietnam and China reach some kind of agreement, Vietnam has little prospect of exploiting promising oil and gas fields off its coast. Beijing has the upper hand, and has been able pressure multinational oil companies operating in China to stop their survey and drilling operations in valuable leases given by Vietnam.

For understandable reasons U.S. multinational energy companies are reluctant to publicize problems created by China's attitude towards contested claims, but reports of Chinese intimidation of multinational energy companies have been increasing. In 2007 and 2008 China forced ExxonMobil as well as BP to suspend drilling in waters claimed by Vietnam.

Countries that are too weak to patrol fisheries within their EEZ also are at a disadvantage in maritime disputes with China and also find themselves the victims of exploitation by major "factory" fishing by outsiders. As in the case of Somalia, the destruction caused to coastal fisheries by large commercial factory-scale fleets may be contributing to the piracy in the South China Sea and the Strait of Malacca. In recent years, entire ships with cargoes have disappeared and reappeared under different names and flags, and pirates have boarding ships in the Strait of Malacca and held hostages for ransom. Beginning with a 2004 agreement between Indonesia, Malaysia and Singapore, and support to sea-lane monitoring by the U.S. Navy, these incidents have been trending downward in the last few years.

Still, there is a long history of piracy among the Indonesian and Philippine Islands, and parts of Malaysia's coastline on Borneo. As the potential for legitimate fishing declines, and as the rampant destruction of tropical forests reduces valuable timber cargoes, groups with a history of involvement in piracy could return to their previous occupations.

## **Environmental, Socioeconomic and Human Security Impacts**

Among many negative consequences of these unresolved territorial disputes, they pose a significant obstacle to the cooperative and sustainable management of the resources of the South China Sea. Various proposals for cooperative efforts to manage fisheries, protect coral reefs, and control the negative impacts of deforestation, mining and urban runoff thus far have been non-starters.

The rampant overexploitation of fisheries throughout the South China Sea and adjacent waters of the Pacific and Indian Oceans threatens the collapse of important food species. Littoral states cannot control what happens on the high seas but if these disputes could be resolved, countries would have at least the right, even if not the power, to manage their own EEZs.

A number of maritime disputes directly hinder economic development and, at least the possibility of responsible and environmentally and sustainable development. The disputes between Thailand and Cambodia and between China and Vietnam harm the development interests of the weaker parties. Moreover, if Cambodia, for instance, could develop offshore and inshore oil and gas deposits, its government might not feel the same compulsion to resort to destructive hydropower dam projects in currently protected forests in the Cardamom Mountains and on the Mekong mainstream. At present, the high cost of electricity in Cambodia is one of several major obstacles to development.

## **Potential U.S. Role in Supporting Peace and Stability**

Even though it is not a direct party to these maritime disputes, there are several ways that the United States could serve its own and Southeast Asia's interests, especially through diplomacy, science and technology support, and capacity building to deal with rising destruction from storms and climate change adaptation. The means to pursue these objectives can include:

**More regional involvement, especially in support of ASEAN.** I share the frustration of many that with a few important exceptions the United States has been conspicuously absent from the main currents in Southeast Asia for several decades. Thanks in particular to the sometimes unpopular efforts of the officials at our embassies and consulates in the region to get greater attention from Washington, this has been changing since the last years of the Bush Administration. The appointment concurrently of Deputy Assistant Secretary of State for East Asia and Pacific Bureau Scot Marciel as our first Ambassador to ASEAN in 2007 is a good example of the positive trend in U.S. attention to Southeast Asia.

At present, the Obama Administration and especially the State Department appear to be stepping up the pace of constructive U.S. involvement in the region. All Southeast Asian capitals will be listening closely to what Secretary of State Clinton has to say when she attends the ASEAN Post-Ministerial Conference (PMC) between ASEAN and its "dialogue partners" and the ASEAN Regional Forum, in just a couple of days. The

expectation is that she will bring a new U.S. initiative, probably regarding support to climate change adaptation and related issues that affect human and food security.

The United States could also help the region and itself by responding to requests to support ASEAN's Coral Triangle Initiative. The "Coral Triangle" covers a vast area of sea between Indonesia, Malaysia, the Philippines, Papua New Guinea, Timor Leste, and the Solomon Islands. Host to thousands of fish species worth many billions of dollars a year, the Coral Triangle is under increasing assault from destructive methods used by large commercial fishing fleets – including Chinese, Korean, and Japanese and other fleets – as well as deforestation, and pollution runoff from the land. As with many ASEAN projects, this one has seen more grand commitments than action, but none of the countries have the necessary resources to carry out their commitments. This would be an appropriate project for cooperation with Australia, which has major concerns about this issue and has special relationships with Papua New Guinea (PNG), Timor Leste and the Solomons.

The United States can help resolve maritime disputes between *willing* nations through support to research on undersea structures and resources, and the collection of data. Initiatives such as these might possibly help countries make a better case to China, and even help it make concessions without appearing to lose face.

**Directly Asserting U.S. Rights and Interests.** Above all, the Obama Administration should abandon its predecessors' passive attitude since 1995 towards Chinese behavior in the Spratlys and elsewhere that is not supportable under the principles of the Law of the Sea. The Obama Administration should lend at least moral support to Southeast Asian countries which are subject to intimidation, and be resolute in asserting its own rights to free passage in the face of Chinese provocations.

It can do this in the framework of the U.S.-China Strategic and Economic Dialogue. The upcoming meeting in Washington during July 27-28 follows closely the annual ASEAN Ministerial Meeting and the PMC and ARF meetings in Phuket, Thailand, during July 17-23. Secretary of State Clinton should return from that meeting after getting first hand knowledge of the concerns of China's neighbors.

Unfortunately, in regard to maritime disputes in the South China Sea, Beijing has put itself on the wrong side of international law and norms. For U.S. and other diplomacy to have any chance of positive impact, though, it is important to remember that China has many past losses of territory that it is still attempting to redress. These began with the occupation of China and the forced abandonment of legitimate Chinese maritime and territorial interests at the hands of the European colonial powers and Japan, and even encroachments by its South China Sea neighbors during the chaos of Mao's Cultural Revolution, when China attention was focused inward.

The U.S. Congress can play an important and constructive role by holding hearings such as this one to highlight these issues and by authorizing and funding, after due deliberation, important new U.S. initiatives towards ASEAN and Southeast Asia more

generally. U.S. attention need not and should not be polarizing, or aimed at stigmatizing China. That simply will not work. Instead, we should make every effort to respect China's aspirations for leadership and major power status, but within the internationally recognized rules and norms, and support those of our Southeast Asian allies and friends as well.

Thank you very much for the privilege of testifying at this hearing. I would be happy to try to answer any questions you may have or respond subsequently for the record.