

China's Active Defense Strategy and its Regional Impact

Prepared statement by

Stacy A. Pedrozo

CAPT, JAGC, USN¹

U.S. Navy Military Fellow

Council on Foreign Relations

Before the

U.S.-China Economic & Security Review Commission

United States House of Representatives

First Session, 112th Congress

Introduction

There is no doubt that China is flexing its muscles throughout Asia, sometimes acting unreasonably – its guarded, and arguably inappropriate, reaction to North Korea's sinking of the Cheonan; its demands for an apology after a Chinese fishing boat captain was arrested for ramming into two Japanese Coast Guard vessels in the East China Sea (ECS); and its declaration of the South China Sea (SCS) as a "core interest," on par with Taiwan and Tibet. These actions, viewed in conjunction with its increasing maritime surveillance and military exercises in the SCS and ECS, have many Asian nations on edge. Rather than increasing stability throughout the region as it gains military capability, these incidents have created more strategic mistrust and led to suspicion of China's self-proclaimed "peaceful rise."

China's bold assertions regarding its maritime claims have also coincided with actions that suggest a more aggressive posture and presence in SCS, ECS, and Yellow Sea – steps which seem to have sparked a backlash of regional reactions that China may not have anticipated. My remarks will focus on certain aspects of the maritime component of China's active defense and anti-access strategy and how that has

¹ The views expressed in this testimony are my personal views and do not necessarily reflect the views of the United States Navy or the United States Department of Defense.

evolved over the past year. I will also discuss how China seeks to exercise authority over its claimed maritime zones differently from the majority of the international community. Finally, I will address some of the regional consequences of that strategy and highlight what I believe are future flashpoints and sources of strategic maritime tension.

China's Maritime Strategy

China's active defense strategy has a maritime component that aligns with the PRC's 1982 naval maritime plan outlined by then-Vice Chairman of the Military Commission, Liu Huaqing. This naval strategy delineated three stages. In the first stage, from 2000 to 2010, China was to establish control of waters within the first island chain that links Okinawa Prefecture, Taiwan and the Philippines. In the second stage, from 2010 to 2020, China would seek to establish control of waters within the second island chain that links the Ogasawara island chain, Guam and Indonesia. The final stage, from 2020 until 2040, China would put an end to U.S. military dominance in the Pacific and Indian Oceans, using aircraft carriers as a key component of their military force.

Recent Chinese military developments, rhetoric, and actions reflect implementation of this maritime strategy, on pace with the projections to seek control of the first island chain. Increased rhetoric and military activity over the past year includes China's announcement that the SCS was a "core interest;" assertion and reaffirmation by Chinese diplomats and scholars that "China has indisputable sovereignty over the Spratly Islands;" unprecedented military exercises in the SCS; verbal and public protests over U.S. military activities in their claimed Exclusive Economic Zone (EEZ), in particular protests over carrier operations in the Yellow Sea; expansive declarations of their sovereignty over the ECS; and increased military and maritime surveillance activities in the waters off Japan. At the 18 December 2010 Shanghai Maritime Policy Symposium, a professor from the Shanghai Jiatong University Center for Oceans Law and Policy stated that "If our boats are being removed (from the ECS), naval ships and fighter jets should be deployed to the Diaoyu Islands to expel the foreign ships." In the fall of 2010, China also announced increased fisheries patrols in the ECS. Such statements undoubtedly fuel the nationalism within Japan and China regarding their claims to the Senkaku/Diaoyu Islands and increase regional tension.

The PRC's active defense strategy has also been marked by their increased military capabilities, such as advanced submarines, integrated air defense systems, and the development of the DF-21D, land-based anti-ship ballistic missile. As ADM Robert Willard, Commander U.S. Pacific Command, stated in a 26 December 2010 interview, "the anti-access area denial systems, more or less, range countries, archipelagos such as Japan, the Philippines, and Vietnam, so there are many countries falling within the envelope of an A2AD capability of China. That should be concerning – we know is concerning to those countries. While it may be largely designed to assure China of its ability to affect military operations within its regional waters, it is an expanded capability that ranges beyond the first island chain and overlaps countries in the region. For that reason, it is concerning to Southeast Asia and remains concerning to the U.S."

China's other actions in the SCS and ECS have also facilitated the progress of their active defense strategy. ADM Willard testified before Congress in 2010 that the PLAN had increased its patrols in the SCS and "had shown an increased willingness to confront regional nations on the high seas and within contested island chains." It was reported that in 2009 the Chinese had prepared a tactical warplan to seize control of

the islands in the SCS. In July/August 2010, China staged the largest joint military exercise it has ever conducted – involving half of the vessels from all three Fleets, as well as bombers and anti-ship missiles. Then, in November 2010, China conducted an unusually transparent live-fire exercise in the SCS, employing amphibious assault ships and tanks while countering electromagnetic interference. Uncharacteristically, numerous military attaches were invited to observe the maneuvers.

There have also been several other reports of China's increased military activities in the ECS and SCS over the past few years. One report from a Japanese national newspaper revealed that, in February 2009, a Chinese nuclear submarine had crossed the first island chain in waters near Taiwan. This article also outlines other incidents in 2004 where a Chinese Han was discovered southwest of the Okinawan island of Ishigaki and another incident where the U.S. and Japan monitored a Chinese submarine making a cruise around Guam. All of these incidents symbolize that Beijing is expanding the geographic reach of its military operations. It has also been widely reported that China has drastically increased their military footprint on Hainan Island, building piers capable of berthing aircraft carriers and Jin and Kilo class submarines, which may explain their sensitivity to U.S. surveillance operations in the area. A recent article in the Jakarta Post noted that Indonesia was calling for a binding SCS Code of Conduct since "China has begun to beef up its own navy to protect key trade routes, noting that the submarine base on Hainan Island, adjacent to the SCS, houses its ballistic missile submarines -- a major component of its nuclear arsenal." After chairing a recent meeting with ASEAN foreign ministers, Indonesian Foreign Minister Marty Natalegawa said that the group needed to find another way to move the stalled SCS issue forward by engaging senior officials in working group discussions about the code of conduct.

Unintended Consequences for the Region

China's recent actions regarding tension on the Korean Peninsula, increased rhetoric and assertiveness regarding its maritime claims, and significant military developments have created a sense of unease in the Region, which has prompted reactions throughout Asia. In North East Asia, we have seen closer cooperation between Japan and South Korea. Earlier this month, Japanese Defense Minister Toshimi Kitazawa and his South Korean counterpart Kim Kwan-jin agreed to begin discussions toward signing pacts to boost cooperation between the Japanese Self-Defense Forces (SDF) and the South Korean military. These agreements include an Acquisition and Cross-Servicing Agreement, an Intelligence Sharing Agreement, and agreements to hold more ministerial level defense talks. In early December, U.S. and Japanese Self Defense Forces (JSDF) engaged in military exercises in the vicinity of the Ryukyu Islands. For the first time, Republic of Korea (ROK) military officials observed the U.S.-JSDF military exercise. Similarly, JSDF officials observed a U.S.-ROK exercise in July 2010.

On December 17, 2010, the Japanese government announced a new 10-year defense policy, the National Defense Program Guideline, which contains a more proactive defense concept entitled the Dynamic Defense Force. News reports from Japan suggest that the guidelines see military modernization by China and its insufficient transparency as a "concern for the regional and global community." They also point to North Korea's nuclear and missile development programs as "immediate and grave destabilizing factors for regional security." Japanese Prime Minister Naoto Kan criticized China for the opaque expansion of its defense capabilities and maritime activities, and stressed the need to strengthen bilateral communications. On 21 January 2011, The United States and Japan officially signed the new Special Measures Agreement, a

five-year plan that will maintain Japan's current spending to support U.S. military forces in the country, a move which Japanese officials say is significant not only to the security of Japan but to the peace and stability of the region.

There have also been other significant regional reactions such as the Philippine military sending marines to conduct exercises on some of the Philippine-claimed islands in the SCS, amid reports that China is continuing to develop additional structures on some of the land features, including a lighthouse on Mischief Reef. Other regional reactions have recently included the island of Taiwan staging an air defense drill and conducting its largest missile exercise in almost a decade. Taiwan also announced that it has begun to develop missiles that could strike mainland PRC cities.

India and Indonesia have also called for greater defense cooperation and collaboration, noting their common strategic interests, especially with regard to the increasing Chinese naval footprint in the Indian Ocean. China has been trying to build naval bases in Myanmar and Timor Leste, which could directly impinge on the strategic interests of India and Indonesia. India's maritime doctrine declares the entire Indian Ocean region, from the Persian Gulf to the Straits of Malacca, as its "legitimate area of interest." Additionally, the Indian Maritime Strategy document released in 2009 listed the Sunda and Lombok straits as falling within the Indian Navy's area of strategic interest. Clearly, China's actions in SE Asia align with their 1982 maritime strategic plan to assume control of the Pacific and Indian Oceans by 2040.

China's Protection of Sovereign Interests in the Maritime Domain

As China struggles to solidify control over its claimed maritime zones and resources, it has publicly increased its rhetoric and has demonstrated a willingness to assert sovereign jurisdiction in its self-proclaimed zone of interest. China's 2010 Ocean Development Report stated that "China's maritime rights and interests face complicated situations and safety threats...including sovereignty over islands, sea delimitation, sea resource disputes, protecting the sea environment, and new challenges such as delimitation of the continental shelf, safe passage of the seas and terrorism." Over the past several years there has been considerable debate among international law scholars concerning the Chinese concept of sovereignty. Most agree that the concept of sovereignty remains a guiding principle of China's foreign policy, but several note that China's interpretation of sovereignty has evolved as their economy has grown and they begin to see that participation in various international organizations is in their national interest. Most scholars and policy experts agree that the PRC is highly unlikely to concede any sovereignty claims or sovereign rights in the SCS as China did with some of its land/border disputes in the 1990s. There are numerous recent examples that suggest this prediction is accurate. At a 2010 Conference hosted by the U.S. Naval War College, one Chinese speaker, Maj Gen Peng, stated that "China is active and firm in defending its legitimate rights and interests. This is the most basic right and responsibility of a sovereign state. Given the lessons of history, including being invaded and divided, China is especially sensitive and firm on issues of sovereignty and territorial integrity. The Chinese government and the Chinese people will not compromise any vital interests related to national sovereignty and security. Respect for sovereignty and jurisdiction is a basic principle of international law."

U.S. scholars would not debate the statement that respect for sovereignty and jurisdiction is a basic principle of international law, but most would debate the way China defines and interprets its "sovereignty" and

jurisdiction within its maritime zones. China argues that it enjoys some form of sovereign jurisdiction in the EEZ, in excess of its right to resources, which allows it to regulate foreign military activities. Therefore, if China obtained “sovereignty” over all the islands that could legally generate an EEZ, they would purport to restrict military activities throughout the entire SCS. Given China’s history, one can assume that China adheres to the inviolability of sovereignty doctrine, but China also exhibits inconsistency with respect to the exercise of sovereignty. There are actually two components of the discussion of Chinese sovereignty as it relates to their claims in the SCS. There is the issue of whether they claim sovereignty over the land features, and the issue of whether they will exercise jurisdictional rights related to that claim of sovereignty, which may exceed the rights accorded to them under international law. It is abundantly clear that China claims, and will continue to assert, sovereignty over all islands in the SCS within their claimed “nine dash line.” It is also clear from their actions and words, that they will continue to assert a form of security jurisdiction in the EEZ which is incompatible with international law and exceeds the sovereign rights that they have in the EEZ – although China has stated that vessels enjoy freedom of navigation in the EEZ, China claims that they have the right to prohibit certain military activities in their EEZ – a position which they seek to enforce as part of their active defense and area denial strategy.

China has repeatedly asserted that no nation can conduct military activities in its EEZ without prior permission, an argument which I believe will ultimately backfire on a growing Chinese Navy. It is doubtful that China would want to seek the permission of Japan before conducting military surveys in Japan’s EEZ, or from the U.S. when sending submarines to circumnavigate Guam, or from Vietnam when conducting military exercises within its EEZ or within the EEZ of its offshore islands. Although the PRC continues to assert this overinflated jurisdiction in its EEZ, it is important to look at the potential consequences of this assertion as it relates to their claims of sovereignty.

In articles contained in a recent Naval War College publication, two U.S. international law professors explain the negotiating history of UNCLOS, pointing out that “the final text of article 86 recognizes the existence of the new regimes of the EEZ and archipelagic waters, which were previously considered high seas areas, while at the same time retaining the distinction that had previously existed between the high seas, on one hand, and the territorial sea and internal waters on the other. The term ‘sovereign rights’ was deliberately chosen to make a clear distinction between coastal-state rights and jurisdiction in the EEZ and coastal-state authority in the territorial sea, where coastal states enjoy a much broader and more comprehensive right of ‘sovereignty.’ No state may validly purport to subject any part of the high seas to its sovereignty, a provision that applies equally to the EEZ by virtue of article 58(2) of UNCLOS.”

International Law Warfare

An integral part of China’s active defense and area denial strategy is its use of legal warfare doctrine. In the 1999 text entitled "*Unrestricted Warfare*," Qiao Liang and Wang Xiangsui introduced the concept of "international law warfare" as an example of "means and methods used to fight a non-military war." In an article published in May 2006, Renmin Haijun provides additional insight into Chinese execution of the concept of legal warfare – stating that military warfare under modern high technology conditions is a political and legal battle of safeguarding national sovereignty and territorial integrity against enemy countries’ military interference.” It advocates the “use of law as a weapon” and calls for a strategy which is “far-sighted and strong.” The Chinese are actually quite persistent at attempting to explain or endorse their

actions through a tortured and misplaced interpretation of customary international law and the provisions of UNCLOS. Ultimately, their attempts to justify their objections to military activities in the EEZ will fail as they do not accurately represent state practice or the language and negotiating history of UNCLOS. In fact, the opposite is true – the negotiating history of UNCLOS makes it abundantly clear that attempts to restrict military activities in the EEZ were debated and rejected during the negotiations.

Over the years, the Chinese have continued to evolve their legal arguments concerning why they object to military activities in the EEZ. First, they asserted that military activities such as surveys, intelligence collection, and reconnaissance interfere with their security interests. By basic principles of treaty construction, that which is not prohibited is permitted. The fact that intelligence collection and surveys are expressly prohibited in the territorial sea, but not in the EEZ, clearly supports the fact that they are permitted in the EEZ. Second, they objected to military marine data collection, equating them in their domestic legislation to marine scientific research, which is factually and legally inaccurate. Third, during sessions of the Military Maritime Consultative Talks and the Defense Policy Talks in 2007, the Chinese first attempted to argue that the use of sonar during military activities interfere with their marine mammals and fish. This legal and factual assertion also falls on its face – Article 236 of UNCLOS makes it clear that sovereign immune vessels are exempt from coastal state environmental regulation in the EEZ. The only requirement is that these vessels operate with due regard for the environment. In addition, these vessels should act in a manner consistent with the Convention so far as it is “reasonable and practicable,” as determined by the flag state, and to the extent it does not “impair operations or operational capability.” Therefore no coastal nation may impose environmental regulations on sovereign immune vessels in their EEZ if compliance would impair their operations.

In its 2010 report on military and security developments involving the PRC, the U.S. Department of Defense stated the following regarding PRC "legal warfare:" “The concept of the "Three Warfares" is being developed for use in conjunction with other military and non-military operations. For example, China has incorporated the concept of Legal Warfare into its attempts to shape international opinion and interpretation of international law. An overwhelming majority of nations throughout the world, including the United States, believe that customary international law, as reflected in the UN Convention on the Law of the Sea (UNCLOS), effectively balances resource-related sovereign rights of littoral states in their EEZ with the freedoms of navigation and overflight and other internationally lawful uses of the sea of other nations. This majority view is based upon a sound reading of the negotiating history of UNCLOS, the actual text of UNCLOS itself, and decades of state practice. The PRC, however, appears to be making concerted efforts, through enacting domestic legislation inconsistent with international law, misreading the negotiations and text of UNCLOS, and overlooking decades of state practice in attempts to justify a minority interpretation providing greater authority by littoral states over activities within the EEZ.”

Future Risks of Miscalculation

Although many scholars and policymakers often cite the U.S.-PRC military-to-military relationship as the most contentious and immature, it is unlikely that a purposeful and direct military-to-military confrontation will occur any time in the near future. During President Hu’s recent visit to the U.S., he and President Obama pledged to have closer ties between the two militaries. However, as Liz Economy, Asia Director of the Council on Foreign Relations recently stated, “Despite the nice rhetoric, some within China's top

military have openly expressed little interest in deepening and broadening military ties with the United States.” Limited progress has been made over the past several years - the U.S. Navy and the PLAN both participate in counter-piracy patrols in the Gulf of Aden and have advocated additional military contact, such as search and rescue drills and passing exercises – all activities aimed at creating closer cooperation. However, given the lack of Chinese transparency and reciprocity with regard to its military capabilities and intentions, it is unlikely that Congress will change the current restrictions on more sophisticated and integrated military-to-military operations. Even though it could take years (if ever) to develop a close and open military-to-military relationship, that seam is not likely to be at the heart of the next tactical confrontation. The more likely risk would come from miscalculation of China’s maritime law enforcement fleet or from fishermen acting as proxies for those agencies.

Amid recent controversy surrounding the fishing boat captain incident in the ECS, both China and Japan increased their surveillance and presence in the area. In the wake of the incident, Japan announced that it would add more submarines to its fleet, that it would increase the enforcement powers of its Coast Guard, that it would send troops to the southernmost contested islands, and that it would pass legislation to fund further EEZ exploration in the contested area. China’s State Oceanographic Administration’s Maritime Surveillance Force announced that they had added two large sea surveillance ships to better protect the country’s maritime rights and interests, as part of a long term plan to add thirteen 1,000-plus ton sea patrol ships and 5 patrol helicopters. In addition to the three fleets under China’s Maritime Surveillance Force, covering the Bohai Gulf, East Sea, South Sea, and Yellow Sea, many of the coastal provinces and municipalities also have their own regional sea patrol vessels and plan on expanding their fleets. Additionally, China’s Fisheries Bureau announced its intent to “strengthen fisheries management in sensitive waters including the Yellow Sea, ECS, and SCS.”

This proliferation of state, regional, and provincial maritime law enforcement vessels is likely to result in even more confusion over command and control and mission responsibility. China is ultimately responsible for the actions of all vessels flying its flag and, according to Art 94(3) UNCLOS, must ensure these vessels operate with due regard for the safety of others. Adding vast quantities of patrol vessels from China’s five state agencies and multiple regional governments will enormously complicate the PRC’s responsibility to ensure these vessels comply with international law. As we saw with the ECS fishing boat incident, the actions of a single fisherman failing to abide by international law, can turn a tactical event into a major strategic incident with regional consequences.

Given China’s history of unsafe navigational practices and COLREGs violations, there is little doubt that such events will continue unless China takes steps to ensure that all of its vessels abide by international law. These incidents have included interference and unsafe practices by PLA aircraft, Chinese government vessels, Chinese cargo ships, and Chinese fishermen. The most widely publicized events include the PLA’s interference with the USNS Bowditch in 2001; the PLA fighter jet’s collision with the U.S. Navy EP-3 in 2001; the five Chinese government and commercial vessels interfering with USNS IMPECCABLE in March 2009; and the two Chinese fishing trawlers harassing the USNS VICTORIOUS in 2009. There have also been less widely publicized accounts of the Chinese interfering with other nations’ survey vessels; the ECS Japanese Coast Guard incident in 2010; and historical maritime confrontations with Vietnam in the SCS.

This assertive and aggressive behavior of the Chinese Navy and other maritime law enforcement agencies has led to recent discussions concerning whether the U.S. needs to enter into some type of INCSEA or INCSEA-like agreement with the Chinese. During a recent interview, the Chief of Naval Operations, ADM Gary Roughead, said his view was that such an agreement was unnecessary, even though he acknowledged that the potential for "missteps" was there. "To say that we need something like that almost defines the type of relationship - that you are unable to operate within the norms of the international structure and that you need something apart and I am just not there," he said." I fully concur with the CNO's position and also believe that an INCSEA agreement is a bad idea for several reasons – (1) China and the U.S. are not Cold War adversaries and to enter into such a bilateral agreement would suggest that type of relationship, (2) China and the U.S. have already agreed to procedures as members of the Western Pacific Naval Symposium – these rules, entitled the "Code for Unalerted Encounters at Sea" (CUES) cover situations where all member countries encounter other maritime forces – they provide specific navigational practices and procedures to ensure safety of navigation and mariners, and (3) both China and the U.S. are already parties to the Collision Regulations and must abide by their provisions as a matter of international law. The failure of Chinese flagged vessels to abide by existing agreements does not mean that we should create yet another agreement with a similar content and purpose.

The competition for resources, such as fish, natural gas, and oil, has made China's claims of sovereignty more contentious. A recent article highlighted that maritime incidents in the East and SCSs, such as the one that sparked a major row between China and Japan, could intensify in a fight over dwindling fish stocks. This concern was also recently highlighted by the U.S. CNO during an interview with the Financial Times, where he highlighted the maritime friction that exists in regions around the world as nations compete for fish. China clearly recognizes their national interests in seeking claims to islands that can generate fishing rights in the EEZ and, as their 2010 Ocean Report suggests, are taking steps to increase maritime enforcement of these rights. In fact, China unilaterally declared a controversial fishing ban throughout the entire SCS in May 2010 – a move that sparked sharp protests from Vietnam.

Moving Forward

In order to move forward and reduce the chance of miscalculation that could lead to a strategic event and further regional instability, it is critical that China, the U.S., and other nations in the Asia-Pacific region take concrete steps to reduce this risk. Dialogue is not enough – competing maritime claims and increased competition for resources call for action, not just talk – multilateral approaches on safety, bilateral and peaceful settlement of competing claims, and collective acknowledgement that freedom of navigation is the ultimate economic and national security goal for all involved.

The U.S. Navy should continue conducting military activities in China's EEZ and in other foreign EEZ's where our military and national security interests require us to conduct those activities. Not only are these activities permissible under international law, but they support military training requirements and assist in building situational awareness of other nations' military and maritime law enforcement activities in order to help determine military intent. Additionally, they serve the purpose of challenging excessive maritime claims that have the potential of undermining freedom of navigation. Failure to operate in areas where we have a legal right to operate would set an adverse precedent that could impact freedom of navigation

worldwide. These military activities should be conducted routinely, and without advance notice or consent, in accordance with international law.

As pointed out recently by the CNO, we must insist that all navies and law enforcement vessels in the Region operate “in accordance with international law and the adherence to the rules of the road. Prudent, safe interaction based on those is the objective. Anytime you begin to press the limits of those you run the risk of a misstep.”

Regional and international organizations should get involved to ensure all nations adhere to the Collision Regulations – ASEAN, the International Maritime Organization, and the Western Pacific Naval Symposium to name a few. One suggestion would be to establish a mechanism within these organizations for filing reports of unsafe practices at sea – thereby encouraging flag states to abide by their international law responsibility to ensure their mariners engage in safe navigational practices. ASEAN should also seek to evolve the 2002 SCS Code of Conduct into a binding agreement.

Although U.S.-PRC military dialogue is important and should continue, it is not sufficient to address the significant risk of conflict between Chinese maritime law enforcement vessels and other ships in the Chinese EEZ or in the vicinity of contested islands in the SCS and ECS. The U.S.-PRC military dialogue must be expanded to include discussions of these potential flashpoints with the five other Chinese agencies responsible for maritime law enforcement.

China should continue to evolve better coordination among its maritime law enforcement agencies, improving oversight, command and control, and accountability for safe navigational practices. According to one Chinese scholar, this coordination began in 2004, when the State Council issued an order calling for enhanced coordination. Responsibility and accountability must also involve monitoring navigational practices of regional and local maritime law enforcement agencies and fishermen.

The U.S. and Chinese militaries, as well as the militaries of other WPNS members, should routinely practice the use of CUES in order to become familiar with the operating procedures that they have all agreed to follow. This should include a plan from the WPNS members for annual multilateral exercises to practice the procedures and more frequent bilateral exercises.

The U.S. and other nations must publicly report all serious violations of international law, including COLREGs; issue demarches; and increase public pressure to force flag states to ensure their flagged vessels act in accordance with international law. All violations of COLREGs should be photographed and broadcast to the extent that vessels in the vicinity have the opportunity to capture these violations of international law. Policymakers should not be reticent to highlight these violations of COLREGs when these actions clearly endanger the lives of mariners.

The U.S. should ratify UNCLOS, even though nations, such as China, are parties and do not follow the provisions of the Convention. U.S. policymakers and legislators should recognize the value of the navigational provisions in UNCLOS that represent a careful balance between the rights of coastal nations and maritime nations. These provisions reflect state practice and memorialize important navigational freedoms and protect the right to conduct military activities in EEZs around the world – areas that will

increasingly become a source of tension in the quest for resources and resource protection. Additionally, Art 236 of UNCLOS reflects the critical balance drafters recognized as imperative in order to protect national security while also preserving the environment.

The administration should transfer leadership of the National Ocean Council from CEQ to NSC and form a national security subcommittee within the Council that holistically reviews excessive maritime claims, challenges to U.S. freedom of navigation, and ensures international and U.S. domestic ocean policies are shaped by U.S. national security interests. This committee would be chartered to focus on foreign state practices that seek to reshape international law. It should review domestic and international efforts to curb freedom of navigation and assess impacts of these initiatives on national security, and it should closely track trends within environmental and oceans policy that could impact training realism, operational capability, or freedom of navigation of other states vessels, thereby creating adverse precedent and concern for reciprocal actions that could damage national security.

The U.S. should continue to assure our allies, like Japan, ROK, and the RP, that we will abide by our mutual defense obligations if any nation uses force to impose its sovereignty claims.

Conclusion

China's rhetoric and actions over the past year leave no doubt that they are enforcing their active defense and area denial strategy in the maritime environment. These words and actions have increased regional maritime tension, led to an unprecedented increase in maritime law enforcement deployments, and even resulted in some dramatic shifts in regional defense strategies and multilateral cooperation. Rather than continue to approach this as a bilateral U.S.-China military-to-military problem, the U.S., other Asia Pacific nations, and regional organizations such as ASEAN and ARF, should focus more holistically on concrete bilateral and multilateral actions to help avoid miscalculation leading to further regional instability.

References

Allen Carlson, "Unifying China, Integrating with the World," Stanford University Press, 2005
1982 China Maritime Strategy Statement; Vice-Chairman of the Military Commission, Liu Huaqing.

"China Deploys World's First Long-Range, Land-Based Carrier Killer: DF-21D Anti-Ship Ballistic Missile (ASBM) Reaches Initial Operational Capability," *China Signpost Blog*; December 26, 2010; Andrew Erickson and Gabe Collins Quoting Commander, U.S. Pacific Command, ADM Robert Willard.

ADM Gary Roughead, Chief of Naval Operations Interview Transcript *Financial Times*, January 11, 2011.

United Nations Law of the Sea Convention, 1982, Articles 58, 86, 94.

"*Unrestricted Warfare*," Qiao Liang and Wang Xiangsui; Beijing, PLA Literature and Arts Publishing House, 1999.

China's 2010 Ocean Development Report; China Ocean Press; May 2010.

"China's Scenario to Seize Isles in South China Sea" and "Island a Base for South China Sea Push," Kenji Minemura, *Asahi.com*, January 01, 2011.

"Japan, South Korea Agree to Discuss Pacts to Boost Defense Cooperation," KUWAIT NEWS AGENCY, January 10, 2011

"Fading Fish Stocks Driving Asian Sea Rivalries," Pascale Trouillaud, *AFP*; November 16, 2010

"Bill Eyed to Ban EEZ Exploration," *Kyodo News The Japan Times*, Oct. 28, 2010.

"Japan To Give More Powers To Coast Guard," *Jiji Press*, January 11, 2011.

"China To Strengthen Fisheries Management in 'Sensitive' Waters," *Kyodo*, December 23, 2010.

"China to Establish Permanent Senkaku Patrols," *Asahi Shimbun (Japan)*, December 20, 2010.

"China's Maritime Rights and Interests," Maj General Peng Quangquan, and "Coastal State Jurisdiction over Marine Data Collection in the Exclusive Economic Zone – US Views" Professor Raul (Pete) Pedrozo, *Naval War College China Maritime Studies Institute No. 7; Military Activities in the EEZ*; December 2010.

"Pentagon Reports Naval Incident in the Yellow Sea," *VOANews.com*, May 5, 2009.
Statement of ADM Robert F. Willard, Commander U.S. Pacific Command, before the House Armed Services Committee on U.S. Pacific Command Posture, March 23, 2010

"East Asia's Military Buildup Sparks Concern," Kang Hyun-kyung, *Korea Times Online*; January 17, 2011.

"China Runs Silent, Runs Rings Around Taiwan," Jens Kastner and Wang Jyh-Perng; January 9, 2011.

"China Adds Patrol Ships to Safeguard Maritime Interests," *Xinhua News Agency*, January 6, 2011.

"Beijing's Coastal Real Estate," Raul (Pete) Pedrozo, *Foreign Affairs Online*, November 15, 2010.

"East Asia's Military Buildup Sparks Concern," Kang Hyun-kyung, *The Korean Times*, January 17, 2011.

"Spratlys Row: Beijing Claims Indisputable Sovereignty," *Phillipine Star*, December 19, 2010.

"How to Gauge the U.S. –China Talks," Bernard Gwertzman interview with Elizabeth Economy, Council on Foreign Relations, *cfr.org*, January 20, 2011.

"China's Position on the SCS: Problems and Progress," Yang Fang, *Eurasia Review*, December 10, 2010.

“Japanese Leader Is Critical Of Beijing,” *Wall Street Journal*, January 21, 2011.

“U.S., Japan Sign New Five-Year 'Host Nation Support' Agreement,” *Stars and Stripes*, January 21, 2011.

Shan Wenhua, “Redefining the Chinese Concept of Sovereignty,” Wang Gungwu and Zheng Yongnian (eds.), *China and the New International Order* (New York: Routledge, 2008).

“India-Indonesia: Towards Strategic Convergence,” Pankaj K Jha, *Institute for Defence Studies and Analysis (India)*, January 24, 2011.

“Five Dragons Stir Up the Sea,” *China Maritime Studies Institute No. 5*, U.S. Naval War College, Lyle Goldstein, April 2010.

“China Ban on Fishing as Tensions Run High,” *South China Morning Post*, May 16, 2010.

China and the New International Order, edited by Wang Gungwu and Zheng Yongnian; Routledge Publishing, 2008.

“Chinese military exercises in 2010 highlight five characteristics,” *China Military Online* <<http://www.chinaview.cn/index.htm>> ; January 21, 2011.

“Taiwan Conducts Air Defense Drill.” http://english.ntdtv.com/ntdtv_en/ns_asia; January 21, 2011.

“Sailing on a Harmonious Sea: A Chinese Perspective,” by Yang Mingjie, *Global Asia* Vol 5., No. 4, Winter 2010.