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## CHAPTER 12

### Territorial Regimes and Related Issues

#### A. LAW OF THE SEA AND RELATED BOUNDARY ISSUES

##### 1. UN Convention on the Law of the Sea

###### a. *Meeting of States Parties to the Law of the Sea Convention*

The United States participated as an observer to the 23<sup>rd</sup> meeting of States Parties to the Law of the Sea Convention (“SPLOS”) at the United Nations June 10 to 12, 2013. Delegations to SPLOS discussed the work of the bodies established under the Convention and other issues that have arisen with respect to the Convention. One item on the agenda was a new request to the International Tribunal for the Law of the Sea (“ITLOS”) from an African regional fisheries management organization for an advisory opinion on fisheries-related rights and obligations. The United States expressed concern that the request seeks advice beyond the scope of the regional agreement under which it was brought. Excerpts follow from the U.S. statement responding to the ITLOS report at the 23<sup>rd</sup> meeting of SPLOS.

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...[W]e would like to comment briefly on the report from the President of the Tribunal regarding the request it received for an advisory opinion from the Sub-Regional Fisheries Commission.

As we are all aware, the Seabed Disputes Chamber of ITLOS has authority to issue advisory opinions pursuant to Law of the Sea Convention, as set forth in paragraph 10 of Article 159 and Article 191. The Law of the Sea Convention, including its Annex VI setting forth the Statute of the Tribunal, does not provide for any additional advisory opinion jurisdiction. While the Tribunal’s statute does recognize that agreements other than the Law of the Sea Convention may confer certain jurisdiction upon ITLOS to render decisions relevant to those other

agreements, that jurisdiction cannot extend to general matters beyond the scope of those other agreements.

In this instance, the request concerns broad fisheries-related rights and obligations of coastal States and flag States under the Law of the Sea. The questions posed to the Tribunal contain no references to the agreement from which the request originated, namely the agreement establishing the Sub-Regional Fisheries Commission. Indeed, the documentation accompanying the request states that the intention of the request is to improve implementation of the 2009 Port State Measures Agreement—a separate agreement that itself confers no such jurisdiction on the Tribunal. Thus, we are not persuaded that this particular request is permissible and will continue to follow this matter closely.

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**b. *International Tribunal for the Law of the Sea***

On November 27, 2013, the United States submitted a written statement to the International Tribunal for the Law of the Sea (“ITLOS,” or “Tribunal”) regarding Case No. 21, “Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (“SRFC”).” In March 2013, the Conference of Ministers of the SRFC adopted a resolution in which it authorized the Permanent Secretary of the SRFC to obtain an advisory opinion from ITLOS on a range of fisheries-related questions. The request is the first ever submitted to the full Tribunal for an advisory opinion. The United States submitted the statement in response to the invitation of the Tribunal for written statements on the issues presented in the request for an advisory opinion. While recognizing the legitimacy of the concerns which motivated SRFC’s request for an advisory opinion, the U.S. written statement presents its view that the full Tribunal lacks jurisdiction in this instance and that ITLOS should deny the request, either on legal or prudential grounds. The U.S. statement is excerpted below (with footnotes omitted) and available in full at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

\* \* \* \*

4. With this being the first advisory opinion request to the full Tribunal, ITLOS is presented with a unique and important opportunity to consider the scope of its jurisdiction and the exercise of its related discretionary powers.

\* \* \* \*

7. While recognizing the legitimacy of the concerns which motivated SRFC’s request for an advisory opinion, the United States believes that there are important legal and prudential considerations outlined in this written statement that militate against the Tribunal granting an advisory opinion in response to the SRFC request. **Section I** of this statement addresses jurisdictional considerations and explains why jurisdiction is lacking or, at a minimum, is limited

to matters of interpretation or application of any agreement that confers jurisdiction upon ITLOS. **Section II** considers the discretionary authority of the Tribunal, including the concern of the United States that the SRFC's request invites the Tribunal to interpret and apply customary international law and other international agreements under which other States have not consented to advisory jurisdiction. Accordingly, the United States concludes that the request should not be granted, either on legal or prudential grounds.

### I. Jurisdictional Considerations

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#### 1. Advisory Jurisdiction of the Full Tribunal

9. The LOS Convention contains only two provisions that refer to the advisory jurisdiction of ITLOS: Article 159(10) and Article 191. These provisions appear in Part XI of the Convention and expressly establish advisory opinion jurisdiction with respect to the Seabed Disputes Chamber of the Tribunal on matters relating to deep seabed mining. The Statute of ITLOS, contained in Annex VI of the Convention, contains just one provision referencing advisory opinions. This provision, like those in Part XI of the Convention, refers only to the Seabed Disputes Chamber.

10. Article 21 of the ITLOS Statute also contains a more general description of the Tribunal's jurisdiction. While not referring to advisory jurisdiction expressly, Article 21 states: "The jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with this Convention *and all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal.*" (Emphasis added.)

11. Article 138 of the Tribunal's Rules of Procedure (Rules) partially tracks the second part of Article 21 of the Statute and addresses the issue of advisory opinions. Specifically, Article 138 of the Rules states: "The Tribunal may give an advisory opinion on a legal question if an international agreement related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for such an opinion." Thus, according to the Tribunal's Rules, the *full Tribunal* has advisory jurisdiction, under the circumstances described in Article 138. Because the Rules cannot confer broader jurisdiction upon the Tribunal than does the Convention, the validity of Article 138 depends on whether it is consistent with the powers conferred upon the Tribunal by the Convention, including the ITLOS Statute.

12. In deciding how broadly to interpret and apply Article 21 of the Tribunal's Statute, the Tribunal should consider the overall content and purpose of the Convention's dispute settlement provisions as well as the intent of the Convention's drafters. It may likewise be helpful to consider the governing legal documents of other international courts and tribunals. When these factors are considered, the United States believes that the best reading of Article 21 of the ITLOS Statute is that this provision does not provide for an advisory opinion function for the full Tribunal pursuant to other international agreements.

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#### 2. Jurisdictional Limitations of Article 288

21. If ITLOS decides that the LOS Convention and its Statute authorize the full Tribunal to issue an advisory opinion pursuant to another agreement, that jurisdiction is nevertheless limited by Article 288 of the Convention, which requires the jurisdiction conferred must concern

the interpretation or application of the international agreement that is conferring the advisory jurisdiction upon the Tribunal. In this instance, the request made by the SRFC does not call for an interpretation or application of the MCA Convention, which would be the instrument conferring advisory jurisdiction upon the Tribunal in this case. Accordingly, there is no advisory jurisdiction with respect to this specific request.

22. Requests to ITLOS for advisory opinions are authorized by Article 33 of the MCA Convention, as follows: “The Conference of Ministers of the SRFC may authorize the Permanent Secretary of the SRFC to bring a given legal matter before the International Tribunal of the Law of the Sea for advisory opinion.” The record before the Tribunal indicates that the Conference of Ministers adopted a resolution during its fourteenth session in March 2013 authorizing the SRFC Permanent Secretary to “seize” ITLOS to obtain an advisory opinion on the questions reproduced in paragraph 1 of this written statement.

23. The questions submitted by the SRFC, however, do not call for an interpretation or application of the MCA Convention. Instead, the request invites the Tribunal to interpret and apply other international agreements and customary international law. This goes beyond what is contemplated in the LOS Convention and the ITLOS Statute.

24. Although Article 21 of the ITLOS Statute is worded broadly (referring to “all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal.”), to the extent it is read to encompass advisory jurisdiction, it should still be read in light of Article 288 of the LOS Convention, which provides that the jurisdiction conferred upon ITLOS by another agreement must pertain to that agreement. Specifically, Article 288(2) of the LOS Convention provides that ITLOS (as well as other relevant courts and tribunals) have “jurisdiction over any dispute *concerning the interpretation or application of an international agreement* related to the purposes of this Convention, *which is submitted to it in accordance with the agreement*” (emphases added). Thus, the jurisdiction conferred upon ITLOS must “concern the interpretation or application” of the *agreement conferring jurisdiction*.

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## II. Discretionary Considerations

29. If the Tribunal nevertheless decides that the LOS Convention and its Statute authorize it to issue an advisory opinion pursuant to another agreement, and that the Tribunal has jurisdiction in this specific instance, the United States believes that the Tribunal should exercise its discretionary powers to decline the request. The ICJ, the PCIJ, and other courts and tribunals have emphasized that, even where they have jurisdiction to render an advisory opinion, they will consider the judicial propriety of doing so. Without prejudice to the considerations discussed in Section I, the United States suggests that several considerations weigh in favor of not taking up the request. Most notably, relevant coastal and flag States have not consented to the Tribunal’s exercise of advisory jurisdiction under the international instruments that the Tribunal would apparently need to interpret and apply in fashioning a response to the SRFC request. . . .

### 1. The Principle of Consent

30. The jurisprudence of the ICJ and its predecessor, the PCIJ, indicates the importance of State consent in the context of advisory as well as contentious proceedings. In the *Western Sahara* proceeding, the ICJ stated:

In certain circumstances . . . the lack of consent of an interested State may render the giving of an advisory opinion incompatible with the Court’s judicial character. An

instance of this would be when the circumstances disclose that to give a reply would have the effect of circumventing the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent. If such a situation should arise, the powers of the Court under the discretion given to it by Article 65, paragraph 1, of the Statute, would afford sufficient legal means to ensure respect for the fundamental principle of consent to jurisdiction.

\* \* \* \*

## **2. Additional Discretionary Considerations**

38. Finally, the United States requests that the Tribunal consider several additional prudential reasons for refraining from exercising jurisdiction in this instance even if it finds the legal authority to do so. Exercising jurisdiction in this case might invite controversy and confusion about the ability of States Parties to control the interpretation and application of the agreements they negotiate. Likewise, a response to the questions posed to the Tribunal could prejudice the positions of the Parties to the instruments referred to above with respect to existing State-to-State disputes that may exist, but that have not yet been submitted to the jurisdiction of an international court or tribunal. Finally, responding substantively to the questions posed might encourage States to enter into new international agreements, the sole purpose of which is to confer advisory jurisdiction to the tribunal over a matter under another agreement that does not confer such jurisdiction.

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## **2. Other Boundary or Territorial Issues**

### ***a. U.S.-Kiribati maritime boundary treaty***

On September 6, 2013, the United States and the Republic of Kiribati signed a boundary treaty delimiting the waters between their two countries. The treaty was signed in Majuro, Marshall Islands, in connection with the Pacific Islands Forum. The treaty represents the first treaty to delimit a maritime boundary that the United States has signed since 2000. Using three separate boundary lines, the treaty divides the maritime space between the U.S. islands of Palmyra Atoll, Kingman Reef, Jarvis Island and Baker Island and the Kiribati Line and Phoenix island groups. The treaty, with appropriate technical adjustments, formalizes boundaries that had been informally adhered to by the two countries previously on the basis of the principle of equidistance, such that the lines are equal in distance from each country. The three boundaries, taken together, approximate 1,260 nautical miles in length and form the second longest among all U.S. maritime boundaries. The treaty will enter into force upon ratification by both countries.

**b. South China Sea**

On October 10, 2013, at the 2013 East Asia Summit (“EAS”) in Bandar Seri Begawan, Brunei, Secretary Kerry spoke about U.S. policy with respect to the South China Sea. Excerpts from Secretary’s remarks appear below. The remarks are available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

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To demonstrate our continued commitment to the region, the United States is increasing its investments in Asia through new programs to support ASEAN’s political and economic integration.

Within the EAS, every nation, large and small, has a role to play. Every nation has a voice that should be heard. Each of us also has an obligation to meet the founding principles of this organization: to foster mutual respect for independence and sovereignty; to promote peaceful resolution of disputes and adherence to international law. It is by honoring those principles that we promote predictability and partnership . . . .

A Code of Conduct is a necessity for the long term, but nations can also reduce the risk of miscommunication and miscalculation by taking steps today. All claimants have a responsibility to clarify and align their claims with international law. They can engage in arbitration and other means of peaceful negotiation.

Freedom of navigation and overflight is a linchpin of security in the Pacific. It is a right we all share...the right to safe and unimpeded commerce, freedom of navigation, and respect for international law must be maintained. The rights of all nations, large and small, must be respected.

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On October 3, 2013, at the Expanded ASEAN Maritime Forum (“EAMF”), in Kuala Lumpur, Malaysia, Kevin Baumert of the Department of State’s Office of the Legal Adviser spoke on behalf of the United States delegation on the subject of “Freedom of navigation, military and law enforcement, as well as other activities in the EEZ.” An excerpt follows from Mr. Baumert’s remarks. The remarks are available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

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...The well-documented views of the United States on matters such as freedom of navigation and military activities in the [exclusive economic zone] have remained unchanged in the 30 years since the advent of the regime of the EEZ and remain consistent with international law. Our positions are also consistent across the globe. We take a principled and uniform approach,

whether in this region of the world or others, whether with allies and friendly neighbors, or with other States.

We would like to take this opportunity to emphasize several points, and also to reflect upon the importance of the EEZ in the Asia-Pacific region.

First, what is the EEZ, and where did it come from? In the long history of the law of the sea, the exclusive economic zone is a relatively recent innovation.

The EEZ is a unique maritime zone forged from compromises made by States during the Third Law of the Sea Conference in the 1970s, compromises between those coastal States that wished to extend their full sovereignty out to 200 nautical miles and those States that, conversely, wished to confine all coastal State authority to the territorial sea. The resulting maritime zone—the EEZ—is a combination of high seas law and territorial sea law that has created a unique maritime space, the rules for which are set out in the 1982 United Nations Law of the Sea Convention.

And the EEZ is an innovation in the law of the sea that can only be characterized as a success in light of the acceptance of this regime by nearly all States. Indeed, today the EEZ—extending up to 200 nautical miles from the shores of coastal States—represents more than one third of the world’s ocean space, ocean space which is vitally important for trade, commerce and other uses of the sea.

Second, the legal regime of the EEZ reflects a balance of interests. On the one hand, coastal States have exclusive sovereign rights over resource-related activities—such as fishing and hydrocarbon exploitation. On the other hand, the extent of a coastal State’s sovereign rights and jurisdiction is limited in the EEZ; it is not a zone of sovereignty. Important high seas freedoms are retained for the international community within the EEZ, and indeed much of the law of the high seas applies in this zone.

This includes of course the freedoms of navigation and overflight and of the laying of submarine cables and pipelines. As reflected in Article 58 of the Convention, other internationally lawful uses of the sea related to these freedoms are likewise preserved for all States in the EEZ. Of course, dating back to the era long predating the EEZ, the United States has always considered a traditional and lawful use of the seas to include military activities.

Third, the United States believes that we need to work collectively to maintain and strengthen this rules-based system that fairly balances the interests of States and is reflected in the Law of the Sea Convention. We must avoid what one eminent scholar has called the “territorial temptation”—that is, the tendency of States to territorialize the EEZ, to turn the EEZ into a security zone or to attempt to impose requirements on foreign vessels or entities that might be appropriate if the EEZ were the territorial sea.

We say this not to diminish the importance of coastal State security; that interest cannot be doubted. Indeed because of geography, the United States has the largest EEZ of any country. While mindful of these coastal State interests, we are at the same time aware that the EEZ is not a zone in which the coastal State may simply restrict the access of others according to its wishes. Any short-term advantages gained by trying to expand coastal State authority in the EEZ are more than offset, we believe, by the long-term risks posed to global mobility, trade, and access to the world’s seas.

Preserving this international law regime is so important to the United States that we continue to peacefully oppose—both through diplomatic channels and operationally with naval vessels—the maritime claims of other States that impinge on our rights and the rights of all States as users of EEZ maritime space.



Fourth, we would like to say a few words about the importance of the EEZ in this region of the world. With its vital sea lanes, countless islands, semi-enclosed seas, and numerous unresolved maritime boundaries, Southeast Asia is a case study on the need to preserve the balance of interests reflected in the Law of the Sea Convention. Indeed, the EEZ comprises most of the waters of East and Southeast Asia, and the geography of the region leads to a proliferation of overlapping EEZ claims. In some areas, as many as four States may claim waters as their own EEZ, waters that are increasingly congested by different uses and activities of different actors from different States. . . .

Fortunately, the diplomats and experts who crafted the current international legal regime for the EEZ wisely created rules that took into account the economic and related rights of the coastal State while at the same time preserving freedoms of navigation, overflight, laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms. It is in our collective interest to maintain this balanced, rules-based regime that is rooted in international law, where coastal State rights and jurisdiction are robust but limited, and navigation, overflight and other lawful uses of the sea remain open to all.

To conclude, we would like to take this opportunity to elaborate on two points that we frequently make in the context of disputes in the South China Sea.

The first point we would like to elaborate on is the idea that “maritime claims in the South China Sea must derive from land features.” This is a fundamental concept in the law of the sea, and it applies strictly in the South China Sea, as elsewhere. As we lawyers say, “land dominates water.”

- What does this mean? To be valid under the law of the sea, EEZ claims, and indeed any maritime claim in the South China Sea, must derive from—and be measured from—claimed land features.

- What do we mean by “land features”? There are two categories—continental (or mainland) territory and islands. Islands are a legal concept under the law of the sea. To be an island, the feature must be naturally formed, surrounded by water, and above water at high tide.

- As elsewhere, the maritime features in the South China Sea that fail to meet this test cannot generate EEZ.

The second point we would like to elaborate on is our urging of States to “clarify their claims in a manner consistent with international law.” Why is this important? Clarification of maritime claims will help reduce the potential for conflict and misunderstanding in the South China Sea. Neighboring countries must know the nature and extent of one another’s claims, even if they do not agree on those claims. How can States clarify their claims? We offer two suggestions.

- First, States can clarify which of their claimed land features—particularly the small islands in the South China Sea—they claim EEZ from. Under the law of islands, reflected in Article 121 of the Law of the Sea Convention, some small islands may be too small to generate EEZ. Likewise, under the law of maritime boundaries, countries often accord very small islands less maritime space when those islands are on the opposite side of other States with long territorial coastlines. So, whether based on the law relating to islands or the law relating to boundaries, States can clarify which of their claimed islands they consider to generate EEZ and which do not. Those that do not would be limited to a territorial sea extending a maximum of 12 nautical miles.

- A second way States can clarify their claims is to specify the geographic limits of their maritime claims. For instance, even where a State cannot agree with a neighbor on a boundary, it can consider taking the step of specifying the locations for the outer limits of its claim. The United States has some relevant experience here. Even where the United States and one of our neighbors have not agreed on a boundary line, the United States publishes the geographic coordinates of our EEZ limit line; this is the line that governs where the U.S. assertion of EEZ rights and jurisdiction ends. This transparency reduces the scope for conflict and misunderstanding with our neighbors. It likewise illuminates and clarifies which areas are disputed between neighbors, and which are not, helping to promote good order of the seas and peaceful relations. We think this kind of an approach—where States specify the geographic limits of their maritime claims—could similarly help promote peace and good order in the South China Sea and more broadly throughout the Asia-Pacific region.

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### 3. Piracy

See Chapter 3.B.6.

### 4. Freedoms of Navigation and Overflight

#### a. *Freedom of overflight—Ecuador*

On February 15, 2013, the Embassy of the United States of America in Quito, Ecuador delivered a diplomatic note to the Ministry of Foreign Affairs, Commerce, and Integration of the Republic of Ecuador regarding frequent denials from Ecuadorian civil aviation authorities of U.S. military flight plans beyond 12 nautical miles of the Ecuadorian coast. Excerpts from the U.S. diplomatic note follow.

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...[O]n December 11, 2012, a U.S. military aircraft planned to depart Lima enroute to Central America. Its planned route of flight was more than 50 nautical miles from Ecuador's coastline. Following this route, the United States intended to enjoy the freedoms of navigation and overflight provided for under international law. Air traffic controllers in Peru denied the aircraft's departures stating that Guayaquil Air Traffic Controllers cited a need for a diplomatic clearance from Ecuador.

In this regard, and also in light of the Government of Ecuador's ratification of the 1982 United Nations Convention on the Law of the Sea ("the Convention") in 2012, the United States reminds Ecuador of the Embassy's previous communications concerning the operation of U.S. military aircraft in international airspace and notes that, as reflected in the Convention, the maximum breadth of the territorial sea and the air space over it is 12 nautical miles, beyond

which all States enjoy the freedoms of navigation and overflight and other internationally lawful uses of the sea related to these freedoms.

The United States calls upon Ecuador to facilitate the use of international airspace by state aircraft, whether within or outside a flight information region (FIR). To that end, the United States requests that Ecuadorian civil aviation authorities, including Guayaquil air traffic controllers, be reminded that state aircraft in international airspace are free to operate without notice to or clearance from coastal national authorities, and are not subject to the jurisdiction or control of civil air traffic control authorities of those nations. State aircraft of the United States comply with the international law requirement to navigate with due regard for civil aviation safety.

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On April 23, 2013, the United States delivered another diplomatic note to the Ministry of Foreign Affairs, Commerce, and Integration regarding overflight denials, including two new denials that occurred since February 15. Excerpts from the U.S. diplomatic note of April 23 follow.

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The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs, Commerce and Integration of the Republic of Ecuador and has the honor to refer the Ministry to diplomatic note POL 028/2013 dated February 15, 2013, which regards frequent denials from Ecuador's civil aviation authorities of U.S. military flight plans and flights in international airspace beyond 12 nautical miles of Ecuador's coast. Since that note was sent, two new denials occurred in the interim. The Embassy reiterates its request for a response to its February 15, 2013 note.

In the most recent examples, on March 25, U.S. military aircraft (RCH 501) en route and following a flight plan from Mexico to Peru received a request from Guayaquil air traffic control to divert to a course that would have changed the flight's entry point into Peru. As RCH 501 was flying in international airspace, it proceeded on its filed flight plan. Also on March 25, another U.S. military aircraft (CONVOY 9407) was denied permission to depart from Lima due to an objection from Guayaquil air traffic control that the flight needed diplomatic clearance from Ecuador. The originally planned routes of both flights were well outside Ecuador's national airspace. Following the planned routes, the United States intended to enjoy the freedoms of navigation and overflight provided for under international law, including as reflected in the 1982 United Nations Convention on the Law of the Sea ("the Convention"), to which Ecuador acceded in 2012. In this regard, the United States reminds Ecuador of the Embassy's previous communications concerning the operation of U.S. military aircraft in international airspace and notes that, as reflected in the Convention, the maximum breadth of the territorial sea and the air space over it is 12 nautical miles, beyond which all States enjoy freedom of navigation and overflight and other internationally lawful uses of the sea related to these freedoms, without interference from coastal State authorities.

The United States calls upon Ecuador to facilitate the use of international airspace by State aircraft, whether within or outside a flight information region (FIR), consistent with

international law. To that end, the United States requests that Ecuador's civil aviation authorities, including Guayaquil air traffic controllers, be reminded that State aircraft in international airspace are free to operate without clearance from coastal State authorities, and are not subject to the jurisdiction or control of civil air traffic control authorities of those coastal States. State aircraft of the United States comply with the international law requirement to navigate with due regard for civil aviation safety.

The Embassy would appreciate clarification of Ecuador's adherence to the international law referred to above and reflected in the Convention. The Embassy would welcome the opportunity to discuss the issue further. The United States requests that the Government of Ecuador review this matter in order to prevent a recurrence and to ensure that the rights, freedoms, and uses of the sea and airspace reflected in international law are respected.

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On June 4, 2013, the Ministry of Foreign Affairs, Commerce, and Integration of the Republic of Ecuador responded to the U.S. diplomatic notes of February 15 and April 23, stating, in part, that "in the exclusive economic zone of Ecuador there is freedom of navigation and overflight for ships and aircrafts of other States, in accordance with the provisions of the [UN Convention on the Law of the Sea] and the statement made by Ecuador when it adhered to the Convention in October 2012." The diplomatic note stated further that ". . . appropriate arrangements . . . have been made in order to comply with the provisions of the UN Convention on the Law of the Sea."

**b. *China's claimed baselines of the territorial sea of the Senkaku Islands***

On March 7, 2013, the United States sent a diplomatic note to the Ministry of Foreign Affairs of the People's Republic of China regarding a "Statement of the Government of the People's Republic of China on the Baselines of the Territorial Sea of Diaoyu Dao and Its Affiliated Islands," dated September 10, 2012 ("Statement"). The U.S. diplomatic note protests the establishment by China of straight baselines around the Senkaku Islands, contrary to customary international law as reflected in the UN Convention on the Law of the Sea. The baseline rules in international law distinguish between "normal baselines" (following the low-water mark along the coast at low tide) and "straight baselines," which may only be employed in certain limited geographic situations. The United States has lodged diplomatic protests regarding excessive straight baseline claims of many countries, including a previous protest to China regarding its assertion of straight baselines around mainland China (including Hainan Island) and the Paracel Islands. Excerpts follow from the March 7, 2013 U.S. diplomatic note to China.

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The Government of the United States notes that the Statement lists 17 base points that connect to create two straight baseline systems around two groups of islands known collectively in the United States as the Senkaku Islands (China refers to the islands as the Daioyu Islands). The first system of straight baselines consists of 12 segments enclosing Uotsuri Shima (Diaoyu Dao), Kuba Shima (Huangwei Yu), Minami Kojima (Nanxiao Dao), and certain other features. The second system of straight baselines consists of 5 segments surrounding one island, Taisho To (Chiwei Yu) and its surrounding features.

The United States recalls that, as recognized in customary international law and as reflected in Part II of the 1982 United Nations Convention on the Law of the Sea, except where otherwise provided in the Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast, as marked on large-scale charts officially recognized by the coastal State. As provided for in Article 7 of the Convention, only in localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, may the coastal State elect to use the method of straight baselines joining appropriate points in drawing the baseline from which the breadth of the territorial sea is measured.

The Senkaku Islands comprise several small features spread over an area of approximately 46 square nautical miles. The United States takes no position on the ultimate sovereignty of the Senkaku Islands. Irrespective of sovereignty claims, international law does not permit the drawing of straight baselines around these features. The Senkaku Islands do not meet the specific geographic requirements for the drawing of straight baselines because their coastline is not deeply indented and cut into and they do not constitute a fringe of islands along the coast in its immediate vicinity.

To the extent that the Statement might be intended to suggest that archipelagic baselines may be drawn around the Senkaku Islands, this also would be inconsistent with international law. Under customary international law, as reflected in Part IV of the Law of the Sea Convention, only “archipelagic States” may draw archipelagic baselines joining the outermost points of an archipelago. Coastal States, such as China and the United States, do not meet the definition of an “archipelagic State” reflected in Part IV of the Convention. China, therefore, may not draw archipelagic baselines enclosing offshore islands and waters, and the proper baseline for such features is the low-water line of the islands.

Accordingly, with regard to the Statement and baselines set forth therein, the United States is obliged to reserve its rights and those of its nationals. These baselines, as asserted, impinge on the rights, freedoms, and uses of the sea by all nations by expanding the seaward limit of maritime zones and enclosing as internal waters areas that were previously territorial sea.

The United States requests that the Government of China review its current practice on baselines, explain its justification under international law when defining its maritime claims, and make appropriate modifications to bring these claims into accordance with international law as reflected in the Law of the Sea Convention. The United States is ready to discuss this and other related issues with China in order to maintain consistent dialogue on law of the sea issues.

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**c. *Vietnam's national law of the sea***

On June 21, 2012, the Socialist Republic of Vietnam adopted the Law of the Sea of Vietnam, which took effect in January 2013. The United States has protested prior versions of Vietnam's maritime law as contrary to the international law of the sea. Additionally, U.S. Navy warships have challenged these excessive maritime claims as part of the U.S. Freedom of Navigation Program. The new Law of the Sea of Vietnam addresses some past concerns conveyed by the United States, but other impermissible restrictions relating to the rights, freedoms, and lawful uses of the sea remain in the new law. Accordingly, the United States conveyed its ongoing concerns with Vietnam's maritime law in an October 7, 2013 diplomatic note, excerpted below.

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The United States compliments Vietnam's earnest efforts to harmonize its maritime law with international law as reflected in the U.N. Convention on the Law of the Sea ("Convention") and notes the many positive aspects of the Law in this regard. In particular, the United States notes that the Law does not require prior permission for foreign warships to conduct innocent passage in the territorial sea nor is prior notification or permission required for foreign warships to operate in the contiguous zone. Further, the Law provides that the Convention will prevail in the event of differences between the Law and treaties to which Vietnam is a Party. The United States welcomes these developments and congratulates Vietnam on the general alignment of the structure of the Law with the structure of the Convention.

The United States wishes to provide additional observations on the consistency of the Law with the Convention. Regrettably, the Law contains provisions that are not consistent with the Convention. To the extent that similar provisions in Vietnam law were the subject of previous communications, the United States wishes to remind Vietnam of those communications and restates them in the context of the Law.

In this regard, the United States notes in particular that Article 8 of the Law provides for the use of straight baselines from which to measure maritime zones; Article 12 conditions innocent passage of foreign military vessels in the territorial sea on the provision of prior notification; and Article 37 forbids in the exclusive economic zone acts against the sovereignty, defense, and security of Vietnam. The United States recalls its previous communications with Vietnam on the establishment of baselines, the rights and freedoms of foreign military vessels, and the limits of coastal State authority in the exclusive economic zone and notes that the views stated in those communications apply to the same extent with respect to the Law.

Additionally, the Law contains other provisions that are inconsistent with international law as reflected in the Convention. Among these provisions, Article 12 asserts sovereignty over archeological and historical objects in the territorial sea, the application of which to sunken foreign military ships and aircraft is uncertain. The United States views such ships and aircraft as remaining the property of the foreign flag State unless expressly abandoned or transferred and that disturbance or recovery of such ships and aircraft should not occur without the express permission of the foreign flag State. The Law also conditions the laying of submarine cables in

the exclusive economic zone and on the continental shelf on written consent of Vietnam (Article 16); and provides that the threat or use of force against other countries renders passage in the territorial sea not innocent (Article 23). The United States notes further that Article 24 of the Law addresses obligations of nuclear-powered vessels or vessels transporting radioactive, noxious, or dangerous substances, and states its understanding that Article 24.2 of the Law is to be read in conjunction with and limited by Article 23 of the Convention.

The United States thus reserves its rights and those of its nationals with respect to those provisions of the Law that are not consistent with the Convention. The United States requests that the Government of Vietnam review these provisions of the Law and provide assurances that the Law will be implemented in a manner consistent with international law as reflected in the Convention.

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**d. *China's Announced Air Defense Identification Zone in the East China Sea***

On November 23, 2013, the Ministry of National Defense of the Republic of China announced the establishment of an air defense identification zone ("ADIZ") over the East China Sea, purportedly requiring that noncommercial aircraft entering the ADIZ identify themselves to Beijing or risk possible defensive emergency measures by Chinese armed forces. The United States government responded negatively to the announcement. In a November 23, 2013 press statement available at [www.state.gov/secretary/remarks/2013/11/218013.htm](http://www.state.gov/secretary/remarks/2013/11/218013.htm), Secretary Kerry said:

The United States is deeply concerned about China's announcement that they've established an "East China Sea Air Defense Identification Zone." This unilateral action constitutes an attempt to change the status quo in the East China Sea. Escalatory action will only increase tensions in the region and create risks of an incident.

Freedom of overflight and other internationally lawful uses of sea and airspace are essential to prosperity, stability, and security in the Pacific. We don't support efforts by any State to apply its ADIZ procedures to foreign aircraft not intending to enter its national airspace. The United States does not apply its ADIZ procedures to foreign aircraft not intending to enter U.S. national airspace. We urge China not to implement its threat to take action against aircraft that do not identify themselves or obey orders from Beijing.

We have urged China to exercise caution and restraint, and we are consulting with Japan and other affected parties, throughout the region. We remain steadfastly committed to our allies and partners, and hope to see a more collaborative and less confrontational future in the Pacific.

Secretary of Defense Chuck Hagel issued a similar statement on November 23, available at [www.defense.gov/news/newsarticle.aspx?id=121223](http://www.defense.gov/news/newsarticle.aspx?id=121223):

The United States is deeply concerned by the People's Republic of China announcement today that it is establishing an air defense identification zone in the East China Sea. We view this development as a destabilizing attempt to alter the status quo in the region. This unilateral action increases the risk of misunderstanding and miscalculations.

This announcement by the People's Republic of China will not in any way change how the United States conducts military operations in the region.

The United States is conveying these concerns to China through diplomatic and military channels, and we are in close consultation with our allies and partners in the region, including Japan.

We remain steadfast in our commitments to our allies and partners. The United States reaffirms its longstanding policy that Article V of the U.S.-Japan Mutual Defense Treaty applies to the Senkaku Islands.

At the November 26, 2013 State Department press briefing, State Department spokesperson Jen Psaki explained further the U.S. policy regarding ADIZ procedures:

[W]e don't support efforts by any state to apply its air defense identification zone procedures to foreign aircrafts not intending to enter its national airspace. We don't apply—the United States does not apply that procedure to foreign aircraft, so it certainly is one we don't think others should apply.

Shortly after China announced the ADIZ, the United States flew two unarmed B-52 bombers on a training mission through the area purportedly covered by China's claimed ADIZ without notifying Beijing.

## **5. Maritime Security and Law Enforcement**

### ***a. Agreement with Palau***

On August 15, 2013, the United States and the Republic of Palau signed a bilateral maritime law enforcement agreement. The agreement, which entered into force upon signature, supersedes the Cooperative Shiprider Agreement between the Government of the United States of America and the Government of the Republic of Palau by exchange of notes at Koror and Melekeok on March 5 and March 20, 2008. The new agreement will facilitate law enforcement cooperation between Palau and the United States on fisheries and counter-narcotics. As provided in Article 2 of the agreement, its purpose is to "strengthen ongoing cooperative maritime surveillance and interdiction activities between the Parties, for the purposes of identifying, combating, preventing, and interdicting illicit transnational maritime activity." The agreement contains shiprider provisions, allowing officers of Palau's Division of Marine Law Enforcement to embark on U.S. law enforcement vessels or aircraft to conduct joint operations. These vessels or aircraft carrying "embarked law enforcement officials" may be authorized on



a case-by-case basis to enter the territorial sea of Palau to assist in stopping, boarding, and searching vessels suspected of violating Palau's laws and in arresting suspects and seizing contraband and vessels. The agreement also permits U.S. law enforcement vessels and aircraft, with embarked officers, to assist in fisheries surveillance and law enforcement activities in Palau's exclusive economic zone. For operations without an embarked Palauan law enforcement official, the agreement further authorizes the United States to board and search suspect vessels claiming registry or nationality in Palau and located seaward of any State's territorial sea. The full text of the agreement is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

**b. *Amendments to Agreements with Marshall Islands, Kiribati, and Micronesia***

On March 19, the United States and the Republic of the Marshall Islands signed a Protocol to the Agreement between the Government of the United States of America and the Government of the Republic of the Marshall Islands Concerning Cooperation in Maritime Surveillance and Interdiction Activities. The Protocol amends the earlier Agreement, most notably, by adding to Article 1 a new definition, entitled "Law Enforcement Vessels," that covers "warships and other ships of the Parties. . . ." The original Agreement referred only to United States Coast Guard law enforcement vessels. Thus, the Protocol modifies the Agreement to allow for greater cooperation through the joint maritime surveillance program, including through the use of U.S. Navy vessels. The Protocol entered into force upon signature.

The United States similarly modified two other maritime law enforcement agreements with Pacific Island partner nations to permit cooperative activities aboard U.S. Navy vessels:

- (1) On March 27, the United States and the Republic of Kiribati signed a Protocol to the Agreement between the Government of the United States of America and the Government of the Republic of Kiribati Concerning Cooperation in Joint Maritime Surveillance Operations. The Protocol entered into force upon signature.
- (2) On April 5, the United States and the Federated States of Micronesia agreed, by exchange of diplomatic notes, to an amendment to the Cooperative Shiprider Agreement between the Government of the United States of America and the Government of the Federated States of Micronesia.

See *Digest 2008* at 649-50 for discussion of the original agreements with these Pacific island states.

**6. *Maritime Search and Rescue: Arctic SAR Entry into Force***

On January 19, 2013, the Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic, done at Nuuk on May 12, 2011, entered into force. For background on this Arctic SAR agreement, see *Digest 2011* at 413. In accordance with

Article 19(2) of the agreement, entry into force occurred 30 days after receipt by Canada, serving as Depositary, of the last notification that the Parties had completed their internal procedures required for entry into force. The December 20, 2012 diplomatic note from Canada informing the parties that all necessary steps had been taken for entry into force is available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

## **B. OUTER SPACE**

### **1. Space Security Conference**

On April 2, 2013, Deputy Assistant Secretary of State for Space and Defense Policy Frank A. Rose addressed a panel on space security threats at the 2013 Space Security Conference convened in Geneva by the UN Institute for Disarmament Research. Mr. Rose's remarks are available at <http://geneva.usmission.gov/2013/04/02/protecting-space-for-future-generations-is-in-the-vital-interests-of-the-global-community/>, and are excerpted below.

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For over five and a half decades, nations around the globe have derived increasing benefits from the peaceful use of outer space. Satellites contribute to increased transparency and stability among nations and provide a vital communications path for avoiding potential conflicts. The utilization of space has helped save lives by improving our warning of natural disasters and making recovery efforts faster and more effective. Space systems have created new markets and new tools to monitor climate change and support sustainable development. In short, space systems allow people and governments around the world to see with clarity, communicate with certainty, navigate with accuracy, and operate with assurance.

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As more nations and non-state actors recognize these benefits and seek their own space or counterspace capabilities, we are faced with new challenges in the space domain.

Now there are approximately sixty nations and government consortia that own and operate satellites, in addition to numerous commercial and academic satellite operators. This increasing use—coupled with space debris resulting from past launches, space operations, orbital accidents, and testing of destructive ASATs which generated long-lived debris—has resulted in increased orbital congestion, complicating space operations for all those that seek to benefit from space. Another area of increasing congestion is the radiofrequency spectrum. As the demand for bandwidth increases and more transponders are placed in service, the greater the probability of radiofrequency interference and the strains on international processes to minimize that interference.

In addition to the challenges resulting from space debris and radiofrequency interference, space is also becoming increasingly contested. From the U.S. perspective, concerns about

threats were recently noted in an assessment issued last month by James Clapper, the U.S. Director of National Intelligence.

“Space systems and their supporting infrastructures enable a wide range of services, including communication; position, navigation, and timing; intelligence, surveillance, and reconnaissance; and meteorology, which provide vital national, military, civil, scientific, and economic benefits. Other nations recognize these benefits to the United States and seek to counter the US strategic advantage by pursuing capabilities to deny or destroy our access to space services. Threats to vital US space services will increase during the next decade as disruptive and destructive counterspace capabilities are developed.”

#### Responding through International Cooperation

In response to these challenges, the United States continues to be guided by the principles and goals of the National Space Policy that was signed by President Obama in June 2010. The policy places increased emphasis on international cooperation to deal with the challenges of the 21st Century.

To address the hazards of an increasingly congested space environment, the United States has expanded efforts to share space situational awareness services, including notifications to government and commercial satellite operators of close approaches that could result in satellite collisions. These and other “best practices” can form the basis for the development of a set of guidelines for the long-term sustainability of space activities. Long-term sustainability of space activities is a topic being addressed by a working group of the UN Committee on the Peaceful Uses of Outer Space, which will be discussed in greater detail by Dr. Peter Martinez, the working group chair, later today.

To address threats to space activities in the increasingly contested space environment, the United States continues to pursue a range of measures to strengthen stability in space. In doing so, we expect to increase the security and resilience of space capabilities, continue to conduct Space Security Dialogues with our friends and partners, and pursue transparency and confidence building measures, or TCBMs.

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In that vein, our Space Security Dialogues provide an opportunity for constructive exchanges on emerging threats to shared space interests, national security space policies and doctrine, and opportunities for further bilateral cooperation. ...

...[Y]ou will be hearing later today from Ambassador Jacek Bylica and Victor Vasiliev on two of the most important efforts—an International Code of Conduct for Outer Space Activities, or “Code,” and the UN Group of Governmental Experts (GGE) study of outer space TCBMs. While I will defer to them for specific details on these efforts, I will note that the United States is a strong supporter of both activities, as well as other multilateral efforts in specific regions—such as a workshop on space security that commenced last December within the framework of the ASEAN Regional Forum.

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As you will hear later today from Ambassador Bylica, the European Union is leading efforts to develop a text that would be open to participation by all States on a voluntary basis. The United States believes the EU's latest draft is a useful foundation and constructive starting point for developing a consensus on an International Code. We look forward to participating in the open-ended consultative meeting that the EU and Ukraine will be convening in Kiev next month. These consultations, to which all UN member states will be invited, will provide an opportunity to address all elements of the draft Code. Along with our partners in the EU, the United States' aim remains to find agreement on a text that is acceptable to all interested States and that can produce effective security benefits in a relatively short time.

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## 2. UN Group of Governmental Experts

On July 18, 2013, the State Department issued a press statement on the consensus reached by the UN Group of Governmental Experts on transparency and confidence-building measures ("TCBMs") for outer space activities at the Group's meetings in New York earlier in July. The U.S. statement welcoming the consensus is excerpted below and available at <http://www.state.gov/r/pa/prs/ps/2013/07/212095.htm>.

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Through these discussions, the United States sought to find solutions to common challenges and problems in an increasingly contested and congested space environment. The Group's study was a unique opportunity to establish consensus on the importance and priority of voluntary and pragmatic transparency and confidence-building measures to ensure the sustainability and safety of the space environment as well as to strengthen stability and security in space for all nations.

The Group recommended that States and international organizations consider and implement a range of measures to enhance the transparency of outer space activities, further international cooperation, consultations, and outreach, and promote international coordination to enhance safety and predictability in the uses of outer space.

Furthermore, the Group endorsed efforts to pursue political commitments—including a multilateral code of conduct—to encourage responsible actions in, and the peaceful use of, outer space. In this regard, the Group noted the efforts of the European Union to develop an International Code of Conduct for Outer Space Activities through open-ended consultations with the international community. Previously, on January 17, 2012, the Secretary of State announced that the United States has decided to join with the European Union and other nations to develop a Code of Conduct.

All UN member states share a common commitment to the pursuit of peace and security. We support the principle, solemnly declared by the United Nations General Assembly in December 1963, that the exploration and use of outer space shall be carried on in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international cooperation and understanding.

In the half century since this principle—subsequently incorporated into the 1967 Outer Space Treaty—was recognized, all nations and peoples have seen a radical transformation in the way we live our daily lives, in many ways due to our use of space. The globe-spanning and interconnected nature of space capabilities and the world’s growing dependence on them mean that irresponsible acts in space can have damaging consequences for all. As a result, all nations must work together to adopt approaches for responsible activity in space to preserve this right for the benefit of future generations.

The United States is pleased to join consensus to affirm the role of voluntary, non-legally binding transparency and confidence-building measures to strengthen stability in space. This consensus sends a strong signal: States must remain committed to enhance the welfare of humankind by cooperating with others to maintain the long-term sustainability, safety, security, and stability of the space environment.

The United States looks forward to the official issuance of the Group of Governmental Experts’ study and our future dialogues on these issues with the international community, including all relevant entities and organizations of the United Nations system.

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### **3. UN General Assembly First Committee Discussion on Outer Space**

On October 25, 2013, Jeffrey L. Eberhardt, Alternate Representative for the U.S. delegation, delivered remarks at the 68<sup>th</sup> UN General Assembly First Committee thematic discussion on outer space. Mr. Eberhardt’s remarks are excerpted below and available at [www.state.gov/t/avc/rls/2013/215881.htm](http://www.state.gov/t/avc/rls/2013/215881.htm).

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We will soon observe the 50th anniversary of General Assembly’s adoption of the “Declaration of Legal Principles Governing the Activities of States in the Exploration and Uses of Outer Space.” Resolution 1962 (XVIII), which was adopted by consensus on December 13, 1963, laid out the key principle that outer space is free for exploration and use by all States on a basis of equality and in accordance with international law. Just over three years later, these and other elements of the Principles Declaration formed the core for the 1967 Outer Space Treaty, which remains the foundation of the international legal framework for space activities.

In the half century since the Principles Declaration was adopted, all nations and peoples have seen a radical transformation in the way we live our daily lives, in many ways due to our use of space. Over the past three decades, the space environment, especially key Earth orbits, has become increasingly utilized as more and more States are becoming space-faring and space-benefiting nations. As a consequence, the outer space environment is becoming increasingly congested, contested, and competitive—with threats to vital space services potentially increasing during the next decade as disruptive and destructive counterspace capabilities are developed.

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Given the importance of international cooperation, the United States welcomes the achievement of consensus of the UN Group of Governmental Experts (GGE) on Transparency and Confidence-Building Measures (TCBMs) in Outer Space Activities. Under the able chairmanship of Victor Vasiliev of Russia, the GGE study<sup>1</sup> provides this body with a unique opportunity to advance consensus on the importance and priority of voluntary and pragmatic measures to ensure the sustainability and safety of the space environment as well as to strengthen stability and security in space for all nations.

The GGE study recommended that States and international organizations consider and implement a range of measures to enhance the transparency of outer space activities, further international cooperation, consultations, and outreach, and promote coordination to enhance safety and predictability in the uses of outer space. Reflecting the extensive technical expertise within the Group, the study provides an analytically rigorous set of criteria for evaluating proposed TCBMs. These criteria can help inform future discussions in this Committee and in other fora regarding the implementation, demonstration, and validation of specific measures.

The Group also endorsed efforts to pursue political commitments—including a multilateral code of conduct—to encourage responsible actions in, and the peaceful use of, outer space. In particular, the Group noted the efforts of the European Union (EU) to develop an International Code of Conduct for Outer Space Activities through open-ended consultations with the international community. In this regard, the United States continues to participate actively in this initiative and looks forward to the next round of Open-ended Consultations to take place in November, 2013 in Bangkok, Thailand. The United States joins the EU in calling on all interested States to continue to engage in this process.

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As the GGE study noted, international space cooperation should be based upon the 1996 Benefits Declaration endorsed in UN General Assembly Resolution 51/122, with each State free to determine the nature of its participation on an equitable and mutually acceptable basis with regard to appropriate technology safeguard arrangements, multilateral commitments, and relevant standards and practices.

Bilateral TCBMs also include discussions on space security policy, such as those that the United States has been conducting with a number of space-faring nations around the globe. Along with U.S. efforts to develop mechanisms for improved warning of potential hazards to spaceflight safety, these discussions constitute significant measures to clarify intent and build confidence.

The United Nations itself can play an important role in fostering cooperation on space TCBMs among States. The United States looks forward to discussions next year in the Committee on the Peaceful Uses of Outer Space, the Disarmament Commission, and the Conference on Disarmament on how the specific recommendations of the GGE study can be considered by each of these bodies within the scope of their respective mandates and programs of work. The United States also looks forward to similar consideration on the relevant aspects of the Group's recommendations in other UN bodies as well as in regional and multilateral fora.

As the international community moves forward on space TCBMs, there also will need to be greater coordination among relevant UN entities to facilitate the implementation of the

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<sup>1</sup> A/68/189\*.

transparency and confidence-building measures and promote their further development. In this regard, the United States believes that all relevant entities and organizations of the United Nations system should coordinate, as appropriate, on matters related to the recommendations contained within the Secretary General's report on the GGE study.

The GGE study's endorsement of voluntary, non-legally binding transparency and confidence-building measures to strengthen stability in space is a landmark development. The United States will continue to take a leadership role in international efforts which translate results from this consensus study into action. We are therefore pleased to join in co-sponsorship of a resolution on "Transparency and confidence-building measures in outer space activities" at this session of the General Assembly. We hope this resolution can be adopted by consensus.

All nations are increasingly reliant on space, not only when disasters strike, but also for our day-to-day life. We need to protect and preserve our long-term interests by considering the risks that could harm the space environment and disrupt services on which the international community depends. For this reason, we must all work together and take action now to establish measures that will strengthen transparency and stability in outer space. This work toward TCBMs will enhance the long-term sustainability, stability, safety, and security of the space environment. It is in the vital interests of the entire global community to protect the space environment for future generations.

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#### **4. Space Debris Mitigation Measures**

On April 11, 2013, Brian Israel, U.S. Representative to the Legal Subcommittee of the UN Committee on the Peaceful Uses of Outer Space ("COPUOS"), delivered the statement for the United States at a general exchange of information on space debris mitigation measures during the COPUOS Legal Subcommittee's 52nd Session. Mr. Israel's remarks appear below.

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Mr. Chairman, we are pleased that this subcommittee is continuing to exchange information regarding national mechanisms relating to space debris mitigation measures, as well as international mechanisms such as ESA's *Administrative Instruction on Space Debris Mitigation for Agency Projects* and debris mitigation mechanisms employed by other international organizations. The United States has long recognized the importance of managing the creation and effects of space debris, and those U.S. Government agencies that participate in and license outer space activities have a robust framework of statutes, regulations, and internal policies that take into account space debris mitigation from the design stage of a satellite or space launch system to its end-of-life disposal. We provided a detailed overview of U.S. mechanisms during the 49<sup>th</sup> Session of the Legal Subcommittee, and I would like to provide an update.

Central to the debris mitigation efforts in U.S. Government missions are the United States Government Orbital Debris Mitigation Standard Practices, which many will recall served as the basis for the space debris mitigation guidelines developed and adopted by the Inter-Agency Space Debris Coordination Committee (IADC) in 2002, and the UNCOPUOS Space Debris

Mitigation Guideline approved by the UN General Assembly in 2007. The 2010 National Space Policy directs U.S. Government agencies to “continue to follow the United States Government Orbital Debris Mitigation Standard Practices, consistent with mission requirements and cost effectiveness, in the procurement and operation of spacecraft, launch services, and the conduct of tests and experiments in space.” Notably, the National Space Policy requires that the head of the sponsoring department or agency approve any exceptions to the U.S. Government Orbital Debris Mitigation Standard Practices, and notify the Secretary of State. NASA, the Department of Defense, and NOAA all carry out this guidance through internal regulatory mechanisms.

In addition, those agencies that license commercial satellites also have requirements in their licensing procedures that are intended to limit the creation and impact of space debris, and these requirements are often complementary.

Mr. Chairman, I would like to offer some observations about why we and others invest so much in debris mitigation measures.

The United States is proud of its pioneering role and leadership in orbital debris mitigation. In 1995, NASA became the first space agency in the world to issue a comprehensive set of orbital debris mitigation guidelines. NASA is a founding member of the Inter-Agency Space Debris Coordination Committee (IADC) and has played a leading role in discussions of space debris mitigation in the IADC, and in the Scientific and Technical Subcommittee of COPUOS since the topic became a standing agenda item in 1994. In the IADC, NASA continues to play a lead role in researching and developing relevant technical standards – this work will continue to inform the STSC so that the U.N. Space Debris Mitigation Guidelines can be updated as appropriate.

We are encouraged that a number of States and Intergovernmental Organizations have developed debris guidelines, and believe that the implementation by even more spacecraft operators is vital to the safety and long-term sustainability of space flight.

But let me explain why the United States takes these measures and makes these investments in debris mitigation. We do not do so out of a sense that they are legally required. Rather, we do so because of our strong interest in the safety and long-term sustainability of space activities, and our judgment that these practices represent sound approaches to debris mitigation.

This distinction is important because we sometimes hear the view expressed that the solution to the debris challenge is to elaborate technical debris mitigation guidelines into international legal obligations. Based on our experience, we believe States are motivated first and foremost by enlightened self-interest in the safety and sustainability of space activities. We do not believe that the force of legal obligation is necessary for States to take measures to mitigate debris.

As delegations are no doubt aware, approaches to mitigating debris are linked to evolving technologies. As technologies change so do the available methods for debris mitigation, as well as the cost-benefit tradeoffs of doing so. Given the evolving technical aspects of debris mitigation, and the practical, economic reality that existing platforms cannot be replaced overnight, we do not see the wisdom in ossifying debris mitigation standards into international law at this time.

Safety and sustainability in space are of paramount importance for the United States, and we will continue to wholeheartedly support international cooperation to further debris mitigation technology and techniques.

Finally, Mr. Chairman, let me describe one more U.S. legal mechanism relating to space debris mitigation. The Department of Defense is authorized by statute (10 U.S.C. § 2274) to



share space situational awareness (SSA) information and services with governmental, intergovernmental, and commercial entities to improve the safety and sustainability for space flight. SSA services are critical to avoiding collisions in outer space that can degrade the space environment for all States. To date, the United States has concluded agreements to facilitate the provision of SSA information and services with 35 commercial entities, and negotiation of agreements with a number of governments is underway. We encourage all space-faring nations to explore entering into an SSA-sharing agreement with the United States so that we can continue to improve the safety and sustainability of space flight.

Thank you, Mr. Chairman, and we look forward to continued discussions on this issue.

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### **Cross References**

*Piracy*, **Chapter 3.B.6.**

*Proliferation Security Initiative*, **Chapter 19.E.**