

SECTION 2: CHINA'S VIEWS OF SOVEREIGNTY AND METHODS OF CONTROLLING ACCESS TO ITS TERRITORY

“The Commission shall investigate and report exclusively on—
...

“REGIONAL ECONOMIC AND SECURITY IMPACTS—The triangular economic and security relationship among the United States, [Taiwan], and the People’s Republic of China (including the military modernization and force deployments of the People’s Republic of China aimed at [Taiwan]), the national budget of the People’s Republic of China, and the fiscal strength of the People’s Republic of China in relation to internal instability in the People’s Republic of China and the likelihood of the externalization of problems arising from such internal instability. ...”

Introduction

Sovereignty is a core concept of international law that arose with the emergence of modern era nation states. Fundamentally, sovereignty refers to a state’s supreme authority, and this authority is both physical and political.⁷⁹ Sovereignty does not automatically accompany the emergence of a nation state but relies upon recognition by other states.⁸⁰ A sovereign state has physical control over its own territory and boundaries, controlling entry to and exit from a territory.

While discussions about sovereignty tend to be esoteric, the exercise of sovereignty has practical applications for international relations and security. It affects how a state defines its territory, how it demarcates its boundaries, and what measures it takes to protect those boundaries. It affects the identity of the state, as holdings of territory often have been equated with measurements of state power and influence. Additionally, the exercise of sovereignty affects simple aspects of everyday life, including freedom of movement and commerce. In February 2008, the Commission conducted a hearing on sovereignty and China’s views of sovereignty and control over its territory.

While the lines of China’s land borders for the most part have been demarcated, China recently has sought to assert sovereignty over maritime, air, and outer space territories—claims that are not recognized by others. China has pursued both military and non-military means to support or defend these claims. Some of China’s

actions pose challenges to the United States and its economic and security relationships in Asia.

This section examines Chinese concepts of sovereignty, examples of China's territorial claims, the means with which China seeks to assert its claims of sovereignty, and the implications for the United States.

China's View of Sovereignty

The concept of sovereignty is a sensitive issue in China. This sensitivity stems in part from the historical context of China's 19th century encounters with the West. Western governments pursuing expansion of trade took advantage of internal conflicts within China. After losses in the First Opium War (1839–1842) and the Second Opium War (1856–1860), the Qing dynasty signed treaties that opened the country to trade. The treaties, among other things, established “treaty ports” where international merchants could reside with extraterritoriality.⁸¹

The signing of these treaties, termed “unequal treaties” by China, was perceived as the beginning of a century of humiliation brought on by outside powers. Perhaps China's greatest loss of control of territory was to Japan, when China lost the Sino-Japanese War in 1895. In the Treaty of Shimonoseki in 1895, China ceded control over the Korean Peninsula, the northeastern region of China known as Manchuria, Taiwan, and the Pescadores Islands near Taiwan.⁸² As a result of these events, Chinese leaders came to associate the use of instruments of law and diplomacy by western states, and by a modernized Japan, with the exploitation of resources and territory and manipulation of China's political weakness.

Following the emergence of the People's Republic of China (PRC) in 1949, Communist leaders emphasized this “era of humiliation” in their internal propaganda. These past experiences still affect views regarding sovereignty by China's political and military leadership. June Teufel Dreyer, professor at the University of Miami, testified before the Commission that it is “ironic that a country that had to be forced into accepting the principle of sovereignty should now become its most staunch defender.”⁸³ In sovereignty debates today, China demonstrates a desire to recapture a sense of its greatness and status as a leading power in Asia.

PRC foreign policy directly recognizes the importance of sovereignty, respect of other countries' sovereignty, and expectation of the same respect from others. In the 1950s, Chinese officials articulated a set of diplomatic principles, called the “Five Principles of Peaceful Coexistence,” which included the principle of “mutual respect for sovereignty and territorial integrity.”⁸⁴ These principles continue to be repeated and used today in Chinese diplomatic statements and activities. (See chap. 4, sec. 1, “China's Expanding Global Influence and its Foreign Policy Goals and Tools” for further discussion of the “Five Principles of Peaceful Coexistence.”)

According to Dr. Dreyer, China tends to remain resolute on certain matters of principle in sovereignty questions. She stated, “[The Chinese] are willing to negotiate. They will occasionally compromise . . . not on a principle, but on a given issue, without sacri-

ficing the principle behind it.” Although firm over claims to Tibet, Taiwan, Xinjiang, and Inner Mongolia, Chinese diplomats have compromised in other cases. M. Taylor Fravel, associate professor of political science at the Massachusetts Institute of Technology, writes, “Since 1949, China has settled seventeen of its twenty-three territorial disputes. Moreover, it has offered substantial compromises in most of these settlements, usually receiving less than 50 percent of the contested land.”⁸⁵ In July 2008, China and Russia approved a treaty that settled a 40-year dispute over the Yinlong (known in Russia as Tarabarov) and Heixiazi (Bolshoi Ussuriyasky) Islands located in a river separating the two nations. China received control of all of Yinlong and half of Heixiazi in October 2008.⁸⁶ Other border disputes remain unresolved, India for example. China claims territories under Indian control, including most of the Indian state of Arunachal Pradesh. As the Commission noted in its 2007 Report based on its discussions with Indian officials in August of that year, “Chinese and Indian patrols meet face-to-face several times a year, and there is no shared understanding of escalation rules.”⁸⁷

Chinese leaders also recognize that territorial claims can have historical, political, and strategic value. Restoring Chinese sovereignty over and control of “lost” territories can allow the country to regain its historical status, and successful exercise of control over those territories also can serve as a metric for measuring Chinese military and economic strength. Moreover, Chinese officials can use sovereignty claims to exercise diplomatic influence and to demonstrate prowess in international law. Certain territorial claims also can have very practical applications, such as providing access to shipping lanes or oil and gas resources. These features can be of strategic importance for China’s economic growth or in the case of a military conflict.

Salient Sovereignty Issues in U.S.-China Relations

Taiwan

China has active territorial claims, and some of these claims directly affect U.S.-China relations as well as U.S. economic and security concerns in Asia and around the world. Taiwan is the most contentious territorial issue. According to the Taiwan Affairs Office of the PRC State Council, “Taiwan is an inalienable part of China.”⁸⁸ The PRC argues that following World War II, Taiwan was returned to Chinese control (under the Republic of China governed by Chiang Kai Shek). After the PRC was established in 1949 and Chiang fled to Taiwan, the PRC argued that Taiwan is still a part of China: “This is a replacement of the old regime by a new one in a situation where the main bodies of the same international laws have not changed and China’s sovereignty and inherent territory have not changed therefrom, and so the government of the PRC naturally should fully enjoy and exercise China’s sovereignty, including its sovereignty over Taiwan.”⁸⁹ This claim underpins the One-China policy, and asserting control over the Taiwan territory remains a central issue in Chinese diplomacy and military affairs. (For further discussion of the status of Taiwan, see chap. 4, sec. 2, “China’s Relationships and Activities in East Asia.”)

The assertion of control over Taiwan also has strategic value for China. In an article published in the *Naval War College Review*, Chris Rahman writes,

Taiwan's physical position complicates free access to the Pacific from the mainland. The island does not block that access entirely, but its possession by a maritime power inimical to China might threaten both China and China's sea-lanes, both eastward to the Pacific and down through the South China Sea. On the other hand, should Taiwan fall into Beijing's hands, China would be better able to prosecute sea-denial operations and sea-lane disruption against the other Northeast Asian states and their American ally, should the need arise. Accordingly, the 'recovery' of Taiwan represents part of the rationale for the pursuit of offshore active defense and greater defensive depth; in the longer term, the island would play a leading role in the execution of that very strategy. Chinese strategists well understand the relevance of the island to the accomplishment of China's wider maritime goals and the development of a successful national maritime strategy, as reflected by the thoughts of two PLAN [People's Liberation Army Navy] officers: "China is semiconcealed by the first island chain. If it wants to prosper, it has to advance into the Pacific, in which China's future lies. Taiwan, facing the Pacific in the east, is the only unobstructed exit for China to move into the ocean. If this gateway is opened for China, then it becomes much easier for China to maneuver in the West Pacific."⁹⁰ [emphasis added]

With physical control over Taiwan, China has an opening through the "first island chain" and therefore could position itself for broader expansion into the Pacific region. China also could expand its maritime boundaries by establishing its baseline from the coast of Taiwan. This would significantly expand both its coastal territorial waters and Exclusive Economic Zone (EEZ) and thus provide new waters for resource exploitation and fishing rights.

China's Interpretation of the Law of the Sea Treaty

China has open disputes regarding the extent of its sovereignty along its maritime borders, and these territorial claims affect key U.S. allies and partners in the region, including Japan and Korea. China became a party to the United Nations (UN) Convention on the Law of the Sea ("Law of the Sea Treaty") in 1996.⁹¹ The Law of the Sea Treaty defines territorial waters as "up to a limit not exceeding 12 nautical miles" measured from a baseline defined as the "low-water line along the coast as marked on large-scale charts officially recognized by the coastal State."⁹² State sovereignty also extends upward from those boundaries into airspace. The treaty recognizes the right of coastal states to an EEZ, an area beyond and adjacent to territorial waters in which states have "sovereign rights," including rights over living or nonliving natural resources and the right to explore and exploit the resources in the zone. According to the treaty, the EEZ extends 200 miles from the coastal

baseline. Other states enjoy overflight rights and freedom of navigation within the EEZ.⁹³

Another important provision of the treaty affecting China is the right of passage through straits used for international navigation, and parties to the treaty may not hinder “innocent passage”—the transit of ships that are not challenging the sovereignty of the coastal state or engaging in military activities that threaten the security of the state.⁹⁴ As the Taiwan Strait is used for international navigation, under the terms of the treaty ships and aircraft may pass freely through the strait outside China’s territorial waters without impinging upon Chinese sovereignty.

In 1996, when it ratified the treaty, the Chinese government produced a declaration that reaffirmed its claims over Taiwan and the Diaoyutai Islands, Penghu Islands, Dongsha Islands, Xisha Islands, Nansha (Spratly) Islands, and “other islands that belong to the [PRC].”⁹⁵ The declaration also argues that the provisions of the treaty concerning innocent passage of ships do not preclude the “right of a coastal State to request . . . a foreign State to obtain advance approval from or give prior notification to the coastal State for the passage of its warships through the territorial sea of the coastal State.”⁹⁶ Article 19 of the Law of the Sea Treaty regarding innocent passage does not distinguish between foreign warships and any other ships, so long as the ships do not pose “any threat or use of force against the sovereignty, territorial integrity, or political independence of the coastal State” and are not conducting an exercise with weapons.⁹⁷ China’s declaration expands its sovereignty by placing such a requirement on foreign warships in its own territorial waters.

In 2006, 10 years after its first declaration, China, as permitted by the treaty, submitted another declaration regarding its obligations under the dispute settlement provisions of the treaty. This one stated that it will no longer accept the compulsory procedures identified in the treaty for resolving disputes, i.e., submitting a dispute to the International Tribunal for the Law of the Sea, the International Court of Justice, or an arbitral tribunal.⁹⁸ Therefore, China will not accept any decision regarding its maritime territorial disputes from these bodies and with its declaration rejects any obligation to comply with any decision made by these mechanisms that involves China and its maritime territorial claims. In effect, the only avenues of peaceful dispute resolution for China and all the other parties involved in its maritime disputes are diplomacy, negotiations, or other means to which all parties to a conflict agree.

With these declarations, China has released itself from a significant set of obligations created by the treaty. According to Dr. Dreyer, these exceptions to its treaty obligations result from China’s unwavering adherence to what it sees as important principles. However, this behavior by China has led to many areas of disagreement between China and the United States about China’s treaty and other international obligations.⁹⁹ With these exceptions, there are questions as to how much benefit the world receives from China’s participation in the treaty regime versus how much benefit China receives.

China has enacted domestic legislation addressing its sovereignty claims in its EEZ, in particular the “Exclusive Economic Zone and Continental Shelf Act” it enacted in June 1998.¹⁰⁰ This law states, “The continental shelf of the People’s Republic of China comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.” As Yann-Huei Song and Zou Keyuan write in *Ocean Development and International Law*, “The PRC has now formally declared a 12-nautical-mile territorial sea . . . , a 200-nautical-mile EEZ, and a 200-nautical-mile-plus continental shelf.”¹⁰¹ China’s legislation allows it to define its outer territorial boundaries based upon which of these encompasses a larger area—the 200-mile EEZ, or the outer edge of the territory claimed by China as its continental shelf. A Chinese Academy of Social Sciences legal scholar concurs, stating that “[t]he coastal State whose continental shelf extends beyond 200-nautical-miles chooses to establish the maximal limits of the continental shelf in the light of its geographic and geological features.”¹⁰²

The Law of the Sea Treaty provides for cases where the natural prolongation of the continental shelf extends beyond 200 nautical miles, but no further than 350 nautical miles.¹⁰³ China has used this legal provision in determining the extent of its continental shelf in the East China Sea and therefore the extent of its sovereignty and rights to resources in that area.

China’s domestic law on the EEZ also subjects navigation and overflight through all areas it claims to the laws and regulations of the PRC. Philip Meek, associate general counsel for the U.S. Air Force, testified before the Commission that, based on the act, instead of recognizing the airspace above its EEZ as “international airspace,” China considers it to be subject to its sovereign control. Despite numerous U.S. objections to this interpretation, China has used its 1998 law as justification for this sovereignty claim and to substantiate the interception, harassment, and engagement of U.S. aircraft flying above its area.¹⁰⁴

One incident in U.S.-China relations highlights the problems that can flow from China’s interpretation of sovereignty and overflight rights in the EEZ. In April 2001, a Chinese fighter plane accidentally collided with a U.S. EP-3 reconnaissance aircraft flying within the EEZ. The damaged U.S. plane was forced to make an emergency landing on China’s Hainan Island, and the crew was held in isolation for three days by the Chinese government. China claimed that the U.S. plane was a “spy plane,” although it was clearly marked “U.S. Navy” and “flying in the EEZ along a frequently flown route following a publicly available flight plan and performing overt reconnaissance missions to which Chinese officials previously had not objected.”¹⁰⁵

China’s interpretation of the Law of the Sea Treaty and its demarcation of its coastal baseline and EEZ are the foundation for PRC claims to territory in the East China Sea and the South China Sea. China continues to have occasional disputes with Japan,

India, Vietnam, Taiwan, and other states around its periphery over these claims, some of them, such as the Spratly and Paracel islands, involving multiple claimants. In the East China Sea, China has two territorial disputes with Japan. The first dispute is regarding sovereignty over the Senkaku Islands, called the Diaoyutai Islands by China. China has asserted an historical claim over the islands, arguing that they were ceded to Japan in the unequal Treaty of Shimonoseki in 1895 and should be returned to Chinese territory. Japan disagrees and argues that these islands were uninhabited and were placed under Japanese control prior to the treaty.¹⁰⁶

The second dispute in the East China Sea concerns the maritime boundary between China and Japan. Based on the interpretation of the treaty noted above, China claims that its continental shelf in the East China Sea extends all the way to the axis of the Okinawa Trough—approximately 350 nautical miles from the Chinese coast—and therefore claims rights to the additional territory and its resources.¹⁰⁷ Japan disputes China's interpretation and argues that "the EEZ of both sides overlap because the width of the [East China Sea] is less than 400 [nautical miles] and therefore the median (or equidistant) line drawn through the overlapping area should be the maritime border."¹⁰⁸ This interpretation is consistent with article 15 of the Law of the Sea Treaty, which states, "Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured."¹⁰⁹ This dispute is complicated even more by claims from South Korea and Taiwan that also border the East China Sea.¹¹⁰ South Korea has a provisional agreement with Japan regarding its claims but has not resolved its dispute with China.¹¹¹

While China's claims on this territory are based upon its interpretation of history and maritime boundaries, these claims also have an economic motivation. In 1969, the Committee for Coordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas operating under the auspices of the United Nations conducted a geographical survey and concluded that the continental shelf in the East China Sea, including the area around the Senkaku/Diaoyutai Islands, may be rich in oil resources.¹¹² The East China Sea oil and gas reserves may amount to 500 million kiloliters (approximately 3.1 billion barrels of oil) of crude oil volume, representing a significant new development of resources in the region. Of note, China asserted its claim over the islands in May 1970 after Japan and Taiwan began talks about joint exploration of the energy resources around these islands.¹¹³

In June 2008, China sidestepped its sovereignty claims in an attempt to promote exploitation of these resources. The PRC Ministry of Foreign Affairs announced that China National Offshore Oil Corporation will cooperate with Japanese partners to develop jointly the oil and gas resources located in the East China Sea, sharing equal investment, risk, and profit. This agreement will allow China to exploit the area economically, but the basic disputes regarding

the Senkaku Islands and the maritime boundaries remain unresolved.¹¹⁴

In the South China Sea, China is involved in disputes over several island groupings, including the Paracel Islands and the Spratly Islands. The Paracel Islands have been occupied by China since 1974. In 1999, China built an installation on Mischief Reef, a part of an island group also claimed by Taiwan and Vietnam.¹¹⁵ The Spratlys, consisting of more than 100 islands and reefs, are claimed in their entirety by China, Taiwan, and Vietnam; portions of the island group are claimed by the Philippines and Malaysia.¹¹⁶ Currently, Vietnam, China, Taiwan, the Philippines, and Malaysia occupy various islets or rocks within the Spratly Islands.¹¹⁷ China, the Philippines, and Vietnam have signed an agreement to conduct marine seismic activities in the region, useful for discovering oil and gas resources.¹¹⁸

China's Claims on Outer Space

There is a debate in China over the control of airspace over territory. Some Chinese scholars also argue that China's control of airspace extends upward indefinitely into outer space. China has passed no domestic laws claiming sovereignty in outer space, but People's Liberation Army (PLA) officer and author Cai Fengzhen contends that "[t]he area above ground, airspace and outer space are inseparable and integrated. They are the strategic commanding height of modern informationalized warfare."¹¹⁹ He admits, however, that "... there is no clear standard in international law as to the altitude to which territorial airspace extends." In an article published in *Space and Defense*, Baker Spring explains that "... there is no formal treaty or non-treaty international agreement that defines the upper limit of territorial space and the lower limit of outer space. ... Nevertheless, states have generally come to accept that there is a fundamental difference between the two and behave in a way that tacitly acknowledges that there is some kind of demarcation line."¹²⁰ If Cai Fengzhen's interpretation represents the common view of Chinese government and military officials, it differs dramatically from the U.S. position and interpretation of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, also called the Outer Space Treaty of 1967.

This document regards outer space as an international commons in which no country can carve out sovereignty claims. The treaty states, "The exploration and use of outer space, including the Moon and other celestial bodies, shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and shall be the province of all mankind."¹²¹ Beyond the scientific value of exploration and discovery, outer space has many commercial applications, such as the use of satellites for communication and global positioning. Without the treatment of space as a "province of all mankind," states seeking to enforce territorial claims would impose a tremendous economic cost on global commerce and modern daily life.

While this treaty article attempts to define the nature of space, the practical application of the treaty is not always clearly defined. The treaty does not provide clear answers to other questions such

as, “What constitutes a space weapon?” or “Where does outer space begin and airspace end?” Some issues purposefully were left vague during the negotiations in order to reach consensus. Section IV of the Outer Space Treaty states:

States Parties to the Treaty undertake not to place in orbit around the Earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer space in any other manner.

*The Moon and other celestial bodies shall be used by all States Parties to the Treaty exclusively for peaceful purposes. The establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military maneuvers on celestial bodies shall be forbidden. The use of military personnel for scientific research or for any other peaceful purposes shall not be prohibited. The use of any equipment or facility necessary for peaceful exploration of the Moon and other celestial bodies shall also not be prohibited.*¹²²

Space law expert Peter Hays notes that disagreements arise from undefined concepts, unclear language, or notable omissions. For example, he describes the omission of antisatellite weapons in the Outer Space Treaty and its implications:

*[The Outer Space Treaty] is silent on anti-satellite systems. It covers weapons of mass destruction, nuclear weapons, bases on the moon, fortifications, etc., but it doesn't say anything about whether you can have anti-satellite weapons. Under the positivist interpretation of international law, if something is not explicitly banned, it is permitted, and that is clearly the position of major signatories of the OST [Outer Space Treaty] regarding ASATs [antisatellite weapons].*¹²³

China and the United States are parties to this treaty and three other multilateral treaties governing the use of space—the Rescue and Return Agreement of 1968, the Liability Convention of 1972, and the Registration Convention of 1975.¹²⁴ Philip Meek testified to the Commission that any analysis of the legal aspects of China’s assertions of sovereignty in space should begin with the Outer Space Treaty.¹²⁵

One of the primary disagreements between the American and Chinese positions on the treaty relates to the use of space for “peaceful purposes.” In a Chinese international law journal, Ren Xiaofeng, a PRC legal scholar, noted that the U.S. position on outer space takes “peaceful use” to mean “non-aggressive,” but Chinese scholars have interpreted “peaceful” use to mean “non-military.”¹²⁶ Although the Chinese government has not issued any formal statements concerning its interpretation of “peaceful purposes,” the statements of the Chinese Delegation at the Thematic Debate on Outer Space at the 62nd Session of the United Nations General Assembly (UNGA), and the statement by Ambassador Hu Xiaodi at the Plenary of the 2003 Session of the Conference on Disarmament addressing Prevention of an Arms Race in Outer Space (PAROS),

suggest that China may consider the phrase “peaceful purposes” to mean “non-military.”¹²⁷ Chinese officials also have highlighted the importance of preventing the proliferation of space weapons, stating before the United Nations that “It is urgent to do what is necessary to prevent the proliferation of space weapons. The key to this end is to take preventive measures. Otherwise, the right to peaceful use of outer space and the safety of outer space assets will be put in jeopardy.”¹²⁸

However, the “peaceful purposes” language in the treaty does not address space itself; it is limited to the moon and other celestial bodies. Moreover, the majority of parties to the treaty interpret that language as meaning “non-aggressive” and not as a prohibition on military activity in space. According to the U.S. interpretation of this clause, “peaceful purposes” allows defense and intelligence-related activities conducted in the pursuit of national interests.¹²⁹

China’s interpretation of the peaceful use of space seems inconsistent with its development of PLA space weapons programs. Chen Qiang, a Chinese legal scholar, highlighted this when he posited that the use of surveillance satellites may constitute an “aggressive use of outer space.”¹³⁰ In addition, this interpretation is inconsistent with the existence of Chinese reconnaissance/imagery satellites, presumably military in nature, currently in orbit, according to the Office of the Secretary of Defense in its unclassified *Annual Report to Congress, Military Power of the People’s Republic of China, 2008*.¹³¹

The *Military Power Report* further notes China’s robust, multi-dimensional counterspace program, including satellite communications jammers, global positioning system jammers, direct ascent antisatellite missiles, and a range of other technologies that are being pursued, such as directed-energy (e.g., lasers and radio frequency) weapons for ASAT missions.¹³² None of these ground-based counterspace weapons is prohibited under current international law. However, China’s collaboration with Russia to seek support for a PAROS treaty within the UN Conference on Disarmament, juxtaposed with developments under China’s counterspace program, inevitably raises questions about China’s real intentions.

In a recent forum on national security and space, Peter Hays described his doubts about the sincerity of the Chinese government in pursuing support for a PAROS treaty:

*[A]ccording to the Times of London, the purpose of the Chinese ASAT test was to get the United States to the negotiating table, to negotiate on [the PAROS initiatives]. That strains my credulity, I must say. They also said that the Chinese ASAT test was a response to the bellicose tone of the latest U.S. National Space Policy. Clearly this is a long-term, ongoing effort and the decision to create this ASAT system on the part of the Chinese probably took place in the late 1990s. How they could be prescient enough to know that there would be a bellicose tone in October of 2006 would be something we’d really need to be worried about.*¹³³

The proposed PAROS treaty itself is plagued by a myriad of issues, including what constitutes a space weapon, how space activity will be monitored, and who will punish law breakers and how they will do so. Even if a consensus by the major space-faring nations can be achieved, China will need to explain the contradiction between its oft-stated commitment to an outer space free of weapons and its extensive counterspace weapons program.

China's Methods for Protecting Sovereignty and Asserting Sovereignty Claims

Military Methods for Protecting and Asserting Sovereignty

For China, one key aspect of guarding its sovereignty is the development of a military capable of protecting its claims and preventing intrusions. This is the traditional method a state uses to enforce its claims on territory, and it is apparent in China's military doctrine today. China's 2006 Defense White Paper identifies the enhancement of Chinese sovereignty as a fundamental objective of the military, stating, "The [People's Liberation Army] ensures that it is well prepared for military struggle, with winning local wars under conditions of informationization and enhancing national sovereignty, security, and interests of development as its objective."¹³⁴ This goal also has been associated with the PLA's "historic missions," including ensuring China's sovereignty, territorial integrity, and national security.¹³⁵ All these objectives offer a framework for designing PLA activities domestically and abroad and also provide a means to justify the acquisition of new military capabilities that can aid in the protection of territory.

Roy D. Kamphausen, director of the Washington, DC, office of the National Bureau of Asian Research, a nonprofit research organization, testified before the Commission that the PLA is tasked by Chinese Communist Party leaders with protecting and advancing Chinese sovereignty interests in the following four ways:

1. *At a fundamental level, the PLA advances Chinese sovereignty by engaging in an ambitious program of military modernization that contributes to an increase in Comprehensive National Power;*¹³⁶
2. *The PLA enhances China's international status by acting as a stakeholder in defense and security issues within the existing norms of the international system;*
3. *The PLA occasionally undertakes assertive actions that are intended to enhance China's ability to bring about outcomes more favorable to China's sovereignty claims;*
4. *The PLA actively prepares to prevent de jure Taiwan independence and to avoid third party interference in its central sovereignty challenge.*¹³⁷

A key feature of this military power is providing China the capability to fight and win military engagements and deter objectionable actions, thereby enhancing China's status as a regional leader. Mr. Kamphausen further noted that Beijing wants its military to be sufficiently powerful to protect, and, if necessary, advance the

national sovereignty goals of the Chinese government. This requires the PLA, at a minimum, to be able to perform military missions throughout Asia.¹³⁸

In addition, Mr. Kamphausen noted that the PLA supports Chinese sovereignty goals by enhancing China's status through its increasingly active participation in international defense and security initiatives such as those carried out in UN peacekeeping operations (UN PKO). China now has surpassed the United States as a supplier of troops for UN PKOs.* The PLA also increasingly takes part in multinational military exercises, particularly under the auspices of the Shanghai Cooperation Organization. Such participation, like its growing participation in UN PKOs, enhances China's international reputation and prestige.¹³⁹

More recently, the PLA has developed a relatively active program to demonstrate its military presence in Asia. Most of this activity has taken place near China—in the Taiwan Strait, the East China Sea, and the South China Sea. Some of the missions carried out by the PLA are intended merely to demonstrate a Chinese presence. Other missions, particularly those involving air reconnaissance over the Taiwan Strait, submarine patrols in Japanese territorial waters, and naval cruises through contested waters, have showcased a policy of more assertive engagement by the PLA¹⁴⁰ and have indicated that China will not easily be dissuaded from its claims or prevented from asserting them.

Mr. Kamphausen testified that the PLA's involvement in China's sovereignty claims ultimately may lead to two divergent outcomes:

Insofar as China's growing military power is deftly wielded and its strategy of pragmatism, noninterference, and increased participation in international fora sustained, Beijing may enhance regional security as its neighbors recognize the stabilizing value of burgeoning Chinese [Comprehensive National Power]. At the same time, however, China's military activism is inherently risky, containing the potential to further isolate and marginalize Taiwan, among others, and thus further harden opposition to a military solution to Taiwan's status. Consequently, a chief goal of China's military program to advance sovereignty could be put at risk by the very means that are employed to accomplish it.¹⁴¹

Nonmilitary Methods for Protecting and Asserting Sovereignty

As noted in this section's introduction, claims of sovereignty have no value if they are not recognized by other states. For this reason, China ambitiously uses diplomacy and political influence to assert control over those territories it claims and to encourage other states to recognize those claims.

Testifying before the Commission, Peter Dutton, associate professor of China maritime studies at the Naval War College, identified from Chinese writings three types of nonmilitary "warfare" to

* Susan Puska, "Military backs China's Africa adventure," *Asian Times Online*, June 8, 2007. <http://www.atimes.com/atimes/china/f08ad02.html>.

enhance China's assertions of sovereignty, including legal warfare, psychological warfare, and public opinion warfare. These non-military methods employ "deft diplomacy, prolific ... academic activities, [and] disciplined information management. ... The focus of each of these activities is fundamentally to create and to advance international and domestic legitimacy for China's viewpoint of its sovereign authority."¹⁴²

These nonmilitary tactics have been used collectively by China against a range of nations—any that it perceives to pose serious challenges to its sovereignty claims. But the PRC government has focused on the United States as the leading threat to its territorial claims, particularly in the post-Cold War period. In response to and as a component of China's growing interaction with the world and the increased foreign military presence around China's periphery, the PRC government has adopted measures to create a web of relationships and buffer zones around China to constrain the actions of stronger adversaries through norms, principles, and bilateral, regional, and international agreements. This strategy intends to limit real or perceived efforts by the United States to impinge on China's sovereignty.¹⁴³

Lawfare

In testimony before the Commission, Mr. Meek explained that legal warfare, or "lawfare," occurs when a state asserts positions in legal forums justifying its own military actions or denying the legitimacy of an adversary's military actions, defenses, or resistance to aggression. An example of this is the increasing number of scholarly articles published by Chinese authors claiming that China's terrestrial borders extend infinitely upward through outer space and that all the space within those perimeters is China's sovereign territory.¹⁴⁴ These articles generally assert that territorial claims in outer space are not inconsistent with international law, because no internationally accepted definition of "outer space" delineates where territorial airspace ends and outer space begins. They go on to claim that China has sovereign territorial rights to all of outer space above its terrestrial area.

The problem with these "lawfare" efforts is that, as Mr. Meek noted before the Commission, "any Chinese assertion of sovereignty in outer space would be completely inconsistent with international space law. Article II of the Outer Space Treaty [of which China is a signatory] clearly establishes that outer space is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means."¹⁴⁵

Efforts to construct legal justifications of China's sovereignty claims are intended to engender international support while also justifying the preparation of China's military forces to engage in military conflict in the event that its claims are challenged by force.¹⁴⁶ Across a number of fronts, China may be laying the legal foundations for possible conflict in the maritime domain and in outer space. Two PLA officers, Zhang Shanxin and Pan Jiangang, writing on the importance of "legal warfare," said that China must conduct legal campaigns to generate support for military action because prior to any military conflict a nation must "muster public opinion in its favor."¹⁴⁷

The use of legal frameworks to justify military action across these domains appears to be the purpose of China's 2005 Anti-Secession Law that sets forth an unambiguous legal justification for the PLA to attack Taiwan. Article 8 of the law cites protection of China's sovereignty and territorial integrity as underlying justifications for military intervention and explicitly threatens the use of military force if Taiwan seeks de jure independence from the mainland:

*In the event that the 'Taiwan independence' secessionist forces should act under any name or by any means to cause the fact of Taiwan's secession from China, or that major incidents entailing Taiwan's secession from China should occur, or that possibilities for a peaceful reunification should be completely exhausted, the state shall employ non-peaceful means and other necessary measures to protect China's sovereignty and territorial integrity.*¹⁴⁸

Lawfare can be used by China against any actions it perceives to pose serious challenges to its sovereignty claims. Chinese leaders use legal agreements, treaties, and norms to attempt to limit the actions of other countries.¹⁴⁹ For example, as described in detail earlier in this section, China's interpretation of its rights under the Law of the Sea Treaty may be used to impinge upon other states' freedom of navigation and overflight in the Exclusive Economic Zone around China.

In turn, the United States and many of China's regional neighbors have adopted a similar approach intended to hedge against the possible effects of China's growing economic and diplomatic power. China's neighbors seek to develop relationships, institutions, agreements, and norms that can preclude disruptive Chinese practices and promote greater stability in Asia.¹⁵⁰ The effect of these efforts, along with similar efforts on the part of the Chinese government, has been to increase stability and reduce the danger of confrontation in Asia, which is in the interest of the United States.

Psychological Warfare

In his testimony, Mr. Meek defined psychological warfare as the use of planned operations to convey selected information and indicators to foreign audiences to influence their emotions, motives, and objective reasoning, and, ultimately, to influence the behavior of foreign governments, organizations, groups, and individuals.¹⁵¹ The Chinese government practices this kind of tactic, among other reasons, to influence the perception of its sovereignty claims and discredit opposition to those claims. It uses this tactic domestically against the Chinese people and also against target foreign populations.¹⁵² Psychological warfare also includes deception, which is utilized to mislead and surprise an adversary so that he or she makes faulty decisions and takes unwise actions. This deception includes schemes to create divisions among leaders, their subordinates, and other organizations.¹⁵³

Media and Public Opinion Warfare

Both Mr. Dutton and Mr. Meek highlighted in their testimony the use of public opinion warfare, whereby China uses news media and information resources to develop a favorable environment to achieve propaganda objectives and break the adversary's will to fight.¹⁵⁴ Such activities, although they do not make use of military force, are employed for the purpose of catalyzing negative international opinion concerning the nation or national activity against which they are targeted. The PRC government's use of public opinion warfare may entail comments to the press by Chinese officials, articles in China's daily newspapers and publications, advertisements purchased in domestic or foreign publications, employment of public relations firms or lobbyists, and actions of Chinese representatives at various international venues, including UN gatherings. China frequently employs these venues to deliver criticisms of or rebuttals to claims that run counter to those of the PRC government. Although they are nonmilitary attacks, these occasions are used to produce negative international opinion of the nations that oppose China's interests or desires. For example, following the anti-Chinese protests surrounding the Olympic torch relays in France, the Chinese press published articles vigorously denouncing the actions of sympathizers for Tibet and trying to reframe the issue as an attempt by Tibetan separatists to destabilize China prior to the Olympics. *Xinhua* stated, "The more the Dalai Lama clique tries to disrupt the Olympic torch relay and some Western politicians and media take advantage to launch attacks and condemn China, the more we need to unify with the people of the world to hold a successful Olympic Games."¹⁵⁵

The use of public diplomacy to sway perceptions of Chinese sovereignty claims has been especially effective in limiting the ability of Taiwan to assert its own claims of sovereignty and to have diplomatic recognition from other states. China uses aid packages to woo governments with diplomatic relations with the Republic of China—to encourage them to derecognize Taiwan and establish formal relations with the PRC. (For more discussion of Taiwan and the competition between it and the PRC for international recognition, see chap. 4, sec. 1, "China's Expanding Global Influence and its Foreign Policy Goals and Tools.")

The Implications for the United States of China's Use of Military and Nonmilitary Methods to Assert Sovereignty

Both the military and nonmilitary means China is deploying to advance its sovereignty claims have negative implications for the United States. China's ability to assert and defend its sovereignty claims through military means is being enhanced by its military modernization.¹⁵⁶ These developments give it greater capability to deter, delay, or deny efforts by other nations to resist China's territorial claims. Where U.S. and Chinese interests conflict, this has implications for the United States. PLA access control capabilities could slow or prevent U.S. military actions in the Pacific region and affect the outcome of those actions.

To the extent Chinese propaganda is accepted by the international community on issues such as China's control of the seas

within, and airspace above, its EEZ, American and other nations' claims to freedom of navigation are diminished, forcing the United States to expend political/diplomatic capital to retain them. Even the threat of a full-bore Chinese propaganda effort sometimes deters nations, including the United States, from pressing contentious issues with China, such as human rights violations, illicit trade practices, and nonproliferation compliance, thereby enabling China to prevail by default.

Conclusions

- China's leaders adamantly resist any activity they perceive to interfere with China's claims to territorial sovereignty. At times this priority conflicts with international norms and practices.
- Some experts within China are attempting to assert a view that China is entitled to sovereignty over outer space above its territory, contrary to international practice. If this becomes Chinese policy, it could set the stage for conflict with the United States and other nations that expect the right of passage for their spacecraft.
- China has asserted sovereignty over the seas and airspace in an Exclusive Economic Zone that extends 200 miles from its coastal baseline. This already has produced disputes with the United States and other nations and brings the prospect of conflict in the future.
- Any assertions by Chinese officials of sovereignty in the maritime, air, and outer space domains are not just a bilateral issue between the United States and China. The global economy is dependent upon the fundamental principles of freedom of navigation of the seas and air space, and treatment of outer space as a global "commons" without borders. All nations that benefit from the use of these domains would be adversely affected by the encroachment of Chinese sovereignty claims.
- China's efforts to alter the balance of sovereignty rights are part of its overall access control strategy and could have an impact on the perceived legitimacy of U.S. military operations in the region, especially in times of crisis.
- China is building a legal case for its own unique interpretation of international treaties and agreements. China is using "lawfare" and other tools of national power to persuade other nations to accept China's definition of sovereignty in the maritime, air, and space domains.