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**Testimony before the U.S.-China Economic and Security Review Commission**  
**China's Views of Sovereignty and Methods of Access Control**  
**February 27, 2008**

Summary: The Chinese are seeking to alter the traditional balance of maritime rights between coastal states and the international community, especially in and above the Exclusive Economic Zone, as they seek to consolidate and extend sovereignty over their maritime periphery. China's efforts to alter the balance of maritime rights are part of its overall anti-access strategy, and could have an impact on the perceived legitimacy of U.S. operations in the region, especially in times of crisis. In response, the U.S. should: promote military engagement to build trust; communicate the expectation that China must accept the burdens as well as the benefits of the international system; continue to exercise international prerogatives in offshore waters and airspace; commit to the preservation of the legal freedoms at sea that belong to the international community; and maintain its commitment to naval strength in East Asia.

**How does the PRC view sovereignty, and in particular, its own sovereignty?**

The Chinese remain very aware of the historical role the Middle Kingdom played in Asian relations. Influential Chinese scholars of modern international relations recognize the sensitivities of China's neighbors and are very careful to explain that as China rises its new strength will not be used to re-establish the Middle Kingdom's system of sovereignty based on tributes and imperial titles. Chinese scholars and official commentators alike blame the current territorial friction between China and its neighbors, especially in the maritime domain, as the residue of Western colonization and the enforced exchange by Europeans of the traditional Chinese system of sovereignty for the modern Western international system. As one scholar explicitly put it, "The source of much of the disagreement and disputes in Asia over what is "yours" and what is "mine" lies in an interpretation of the East using a divisive Western world view."<sup>1</sup> Even so, China appears to have embarked on a path that, if not designed to re-establish Chinese dominance in the Asian system, then is at least designed to achieve Chinese *predominance* in the Asian order. Accordingly, instead of the formal imperial tributary ties of the ancient system, which was often regulated by China's use of force against its neighbors, China is now using its "soft power" to bind its Asian neighbors to this new order with economic and political ties. The role of China's rapidly strengthening military in the development of this new system is unclear: China speaks the words of peaceful co-existence based on its five principles, but its neighbors remain wary, especially as influential voices in Chinese society argue for "the establishment of an integrated Asian consciousness as well as true peace and prosperity in Asia...built upon a new

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<sup>1</sup> Wang Yiwei, *Envisaging the Concerns of China's Neighbors*, Global Times, January 9, 2008.

understanding of the state and the nation.”<sup>2</sup> This new articulation of a future Asian order leaves some disconcerting ambiguity in its wake about just how China views sovereignty, which, of course, presents both challenges and opportunities for China’s neighbors and for the United States.

It must be recognized, however, that in many respects China has fundamentally embraced the current international system. China is now an economic and political stake holder and its rise is a directly-related consequence of its integration with the global economic and political order. As such, many aspects of China’s views on sovereignty are entirely normative. The People’s Liberation Army’s international law text, for instance, describes the Chinese concept of the state and sovereignty in terms that might be found in any similar American or European text.<sup>3</sup> On the other hand, Chinese justifications for claims to outlying maritime territory, especially in the East and South China Seas, frequently refer to the pre-modern Asian order to establish and support current Chinese territorial claims. These claims, many of which are supported by rather thin bases as modern international law understands them, cause significant friction with China’s maritime neighbors.<sup>4</sup> China’s claim to the Spratly Islands in the South China Sea, for instance, is based on evidence of discovery over one thousand years ago, although there is little evidence of occupation or effective administration and control during the last few centuries before initiation of China’s modern claims after World War II.<sup>5</sup> Similarly, China bases its claim to the Senkaku or Diaoyu Islands in the East China Sea on historical records, primarily from the Ming dynasty, of sightings by Chinese tributary missions on their way to and from the Ryukyuan Kingdom and recorded descriptions of efforts to suppress piracy during the same period.<sup>6</sup>

I believe it is fair to conclude that , because many aspects of China’s sovereignty are strengthened by it, China’s views on sovereignty reflect a pragmatic acceptance of and even reliance on the current model that forms the basis of the international system. But where China may benefit from an alternative to the current model, China is pursuing positions and undertaking activities that reflect a desire to reshape the concept of sovereignty, at least within the Asian context, along lines more recognizable from its long history.

**What are the various ways the PRC uses its military to protect its sovereignty? Are there ways in which the PRC has used or is using its military to advance/extend its sovereignty?**

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<sup>2</sup> Qin Yaqing, *Why is there no Chinese international relations theory?* International Relations of the Asia-Pacific, Vol. 7, No. 3, September 2007; Qin Yaqing, *A response to Yong Deng: Power, Perception, and the Cultural Lens*, Asian Affairs, An American Review, Fall 2001.

<sup>3</sup> *The Law of Armed Conflict*, PLA Press: Beijing (1996).

<sup>4</sup> See, e.g., Greg Austin, *China’s Ocean Frontier*, Allen and Unwin, (St. Leonards, NSW, Australia: 1998), for a comprehensive study of China’s maritime territorial claims and the historical basis for each major claim.

<sup>5</sup> Ministry of Foreign Affairs of the PRC, *China’s Indisputable Sovereignty over the Xisha and Nansha Islands*, Beijing Review, vol. 23, no. 7, 1980, p.15.

<sup>6</sup> Austin, at 160-165.

In the maritime domain, China is best seen as primarily seeking to extend and consolidate its sovereignty, rather than to protect its sovereignty *per se*, since the likelihood of invasion from the sea probably approaches zero. Its strategy is two-pronged. First, China is actively attempting to extend its authority in areas already under its jurisdiction by recasting the traditional relationship between coastal states and the international community and pressing for enhanced coastal state jurisdiction over traditional international freedoms in coastal waters and air space. Second, China has many claims over islands and sea space that are actively disputed by its neighbors. China is consolidating and defending its historical claims to islands in the East and South China Seas and to the maritime zones that will accrue to whoever gains undisputed sovereignty over them.

Many of the activities necessary to develop and consolidate these claims are non-military—or at least non-coercive—in nature; they rely on the use of all instruments of China’s national power, including deft diplomacy, prolific track two academic activities, disciplined information management, and others. That said, there is a clear military component in this ‘non-coercive’ aspect of China’s efforts to expand and consolidate its control over its maritime periphery. Several articles in recent issues of the daily newspaper published by People’s Liberation Army Navy, Renmin Haijun [People’s Navy], for instance, have described the Chinese perspective on three ‘new’ types of modern warfare: Legal Warfare, Psychological Warfare, and Public Opinion Warfare.<sup>7</sup> 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. In the author’s words, Legal Warriors must “be far-sighted...to discern any problems before they actually arise,” in order to “provide a legal pretext for military action,” and to “engage in legal contests to vie for the legal initiative” in order to “safeguard national sovereignty and territorial integrity.”<sup>8</sup> There is, of course, in addition to the Legal Warfare also a traditional military component to China’s sovereignty extension and consolidation strategy (“When reason fails and there are legitimate grounds, categorically adopt unyielding military means.”) It is this blend of coercive and persuasive capacity that appears to underpin China’s approach to consolidating and expanding its sovereign maritime interests.

### Sovereignty Extension.

A good example of China’s efforts to extend its control over maritime space can be seen in its attempt to control international military activities in the airspace above its Exclusive Economic Zone. At the time of the April 2001 ‘EP-3 Incident’, and since, statements by Chinese official and academic sources claim that reconnaissance flights over the Exclusive Economic Zone of another country are threats to “national security and peaceful order of the coastal state” in violation of the United Nations Convention on the

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<sup>7</sup> See, for example, Jin Hongbing, *Legal Warfare: Sharp Tool to ‘Seize the Opportunity to Grab the Initiative’*, Renmin Haijun, Beijing, May 29, 2006.

<sup>8</sup> Jin, *Legal Warfare: Sharp Tool to ‘Seize the Opportunity to Grab the Initiative’*.

Law of the Sea and customary international law.<sup>9</sup> The U.S. government's position—which reflects the mainstream view—is that the EP-3 was on a routine, overt reconnaissance mission in international airspace and its activities were fully consistent with international law.<sup>10</sup> A Chinese government spokesman at the time, however, countered that "...All countries enjoy the freedom of overflight in the exclusive economic waters of a nation, [but the EP-3's] reconnaissance acts were targeted at China in the airspace over China's coastal area ... and thus abused the principle of overflight freedom."<sup>11</sup>

More recently, two Chinese scholars—one a military officer and the other a civilian academic—wrote a paper that seems to equate *any* foreign military operations in a coastal state's Exclusive Economic Zone with a threat to use force.<sup>12</sup> They stated:

..."freedoms of navigation and overflight" in the Exclusive Economic Zone does not include the freedom to conduct military and reconnaissance activities in the Exclusive Economic Zone and its superadjacent airspace. Such activities encroach or infringe on the national security interests of the coastal State, and can be considered a use of force or a threat to use force ... inconsistent with the principles of international law embodied in the Charter of the United Nations.<sup>13</sup>

This perspective is clearly not a mainstream view of the balance of rights between coastal states and the international community. Today, as United Nations Convention on the Law of the Sea (UNCLOS) norms concerning international navigational freedoms gain more international acceptance, a declining minority of 24 countries, six of which are not even UNCLOS members,<sup>14</sup> continue to make excessive claims that could be construed as infringing on the rights of the international community in the airspace above the exclusive economic zone. China appears to be using military and senior civilian scholars to attempt to reverse that trend, or at least to form an Asian consensus that coastal states have the right to prevent the international community from using the waters of the exclusive economic zone and the airspace above it for military purposes.<sup>15</sup>

A more active military component of this strategy exists as well. To the extent that China continues to scramble fighter aircraft to intercept U.S. reconnaissance and surveillance

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<sup>9</sup> *U.S. Seriously Violates International Law: Signed Article*, Xinhua News Agency, April 16, 2001. The article is also available on the PRC Embassy web site at <http://www.china-embassy.org/eng/zt/zjsj/t36383.htm>.

<sup>10</sup> Shirley A. Kan, *et al*, China-U.S. Aircraft Collision Incident of April 2001: Assessments and Policy Implications, CRS Report for Congress, October 10, 2001, p. 7.

<sup>11</sup> "Chinese spokesman gives full account on US-China air collision," Xinhua News Agency, Beijing, April 3, 2001, published on-line by the British Broadcasting Service and available at <http://web.lexis-nexis.com>.

<sup>12</sup> Ren Xiaofeng and Senior Colonel Cheng Xizhong, A Chinese Perspective, *Marine Policy*, Vol. 29, (2005), p. 139.

<sup>13</sup> Ren Xiaofeng and Senior Colonel Cheng Xizhong, A Chinese Perspective, *Marine Policy*, Vol. 29, (2005), p. 139, 142.

<sup>14</sup> Congo, Ecuador, Iran, Liberia, North Korea and Peru. As of October 26, 2007 155 countries have both signed and ratified the Convention. Source: <http://www.un.org/Depts/los/index.htm>.

<sup>15</sup> See also, *Guidelines for Navigation and Overflight in the Exclusive Economic Zone*, A Commentary, Ocean Policy Research Foundation, Tokyo, 2006.

flights over its Exclusive Economic Zone—current news reports provide sparse data on this issue--it is demonstrating its military capacity to interfere with U.S. missions. Additionally, civilian and military authorities appear to be actively considering establishing an Air Defense Identification Zone off China's coast to further warn the international community of its security concerns.<sup>16</sup>

### Sovereignty Consolidation.

China's East China Sea boundary dispute with Japan provides a good example of its efforts to consolidate its sovereign claims in its maritime periphery. The focus of the maritime boundary dispute between China and Japan in the East China Sea is an expanse of nearly 70,000 square nautical miles of water space that constitutes the overlap between China's claim—which reaches from the mainland eastward to the Okinawa Trough just west of the Ryukyu Island chain--and Japan's claim along a line equidistant from the coastlines of each state.

Concerning their continental shelf claims, a theme that recurs with remarkable consistency in the statements of Chinese scholars and government authorities, is that the continental shelf off the coast of China is actually historical Chinese *territory*. One discussion of the topic by Chinese oceans scholars refers to the regression of water during the Ice Age thereby extending the Yellow and Yangtze and other rivers out onto the continental shelf, where they deposited silt from the Chinese mainland. On this basis, the scholars claim, “the East Sea continental shelf is a natural extension of Chinese territory.”<sup>17</sup> This helps to put in context the strength of feeling of many Chinese on this issue, who seem to view competing claims on the continental shelf as actual encroachments on their rightful repossession of the continental shelf and its resources. Accordingly, it is the Chinese position on delimitation is that the entire continental shelf under the East China Sea—from the mainland coast to the Okinawa Trough just west of the Ryukyu Island chain—should be Chinese and therefore delimitation of the maritime boundary should occur in that area.<sup>18</sup>

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<sup>16</sup> Bi Guifang and Xiong Xuyuan, A Legal Analysis of the Establishment of Air Defense Identification Zones, *Journal of Ocean University of China (Social Sciences Edition)*, No. 6 2007, p. 36; Ni Guoan and Qi Wentao, Establish National Air Defense Identification Zones as Quickly as Possible, *Military Science*, No. 4, 2007, p. 55; L.C. Russell Hsiao, *In a Fortnight: China Plans Air Defense Identification Zone (ADIZ) Within Taiwan Straits*, China Brief, The Jamestown Foundation, January 4, 2008.

<sup>17</sup> 耀光, [Zhang Yaoguang and Liu Kai], “海油气源及中国, 日本在 海大 架 界 的研究” [A Study of East Sea Oil and the China-Japan East Sea Continental Shelf Demarcation Dispute], *源科学 [Resources Science]*, Vol. 27, No. 6 (November 2005), p. 11, para. 3.3; See also, Zou Keyuan, “Historic Rights in International Law and in China's Practice,” *Ocean Development & International Law*, April 2001, Vol. 32, Iss. 2, p. 163, where the author states, “In China's view, a claim derived from historic rights may seem more forceful and valid in law than claims simply based upon the EEZ concept.”

<sup>18</sup> 雷[Yang Lei], 中日 海争端的背后 [Behind the Sino-Japanese Dispute in the East Sea], *船知 [Naval & Merchant Ships]* (June 2006).

Significantly complicating factors in the delimitation of the maritime boundary in the East China Sea are the dispute over the sovereignty of the Senkaku Islands (Diaoyutai to the Chinese) and the unique status of Taiwan.<sup>19</sup> The Senkaku/Diaoyu Islands are a group of 5 small uninhabited rocky islets, the largest of which is 3.6 square kilometers in area. Historically, they were known to the Chinese and mentioned in official documents as early as the Ming Dynasty (1368-1644), but there is no evidence they were ever taken under effective administration and control by the Chinese, the necessary element under international law for a state to assert legitimate sovereignty over territory.<sup>20</sup> They have been administered and controlled by Japan since 1895—with the exception of the post World War II occupation by the United States between 1945 and 1972—based on Japanese claims of discovery in about 1894. China's view is that they were stolen from Chinese control as a result of the 1895 Sino-Japanese War and should have been returned to China after World War II.<sup>21</sup> Military posturing between Chinese and Japanese naval forces in the waters around these islands has at times been intense in recent years, including aggressive Japanese tracking of an intruding Han-class Chinese nuclear submarine in the area in November 2004.<sup>22</sup>

There has been some rapprochement in the rhetoric between China and Japan since the end of the Koizumi administration concerning East China Sea issues. There has also been a renewed and fairly intensive round of talks between the two sides. But these talks have, like past rounds, amounted to no progress. Japanese newspapers this year have reported on negotiations to reach agreement to jointly develop some of the gas fields in the disputed zone, but to date no actual agreement appears to have been reached. During the negotiations, however, when Japan suggested it might start test drilling gas fields of its own in light of the lack of progress on the issue, the Chinese response is reported to have been, "In that case there will be a war; we will dispatch our war ships."<sup>23</sup> Whether China would actually use force is an open question, but the fact that such statements were made in the course of negotiations, in addition to the openly provocative passage of the Chinese submarine through the waters surrounding the Senkaku/Diaoyu Islands in November 2004, is indicative of a coercive component to China's sovereignty-consolidation strategy.

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<sup>19</sup> China's Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, effective 25 February 1992 specifically states that the land territory of the People's Republic of China includes the Diaoyu Islands. Department of Defense Maritime Claims Reference Manual, DoD 2005.1-M, December 2003, p. 108.

<sup>20</sup> Greg Austin, *China's Ocean Frontier: International Law, Military Force and National Development*, (Canberra: Allen & Unwin, 1998), pp. 163-164.

<sup>21</sup> Zhang Dongjiang and Wu Weili, "A Discussion of the Sino-Japanese Delimitation Issue in the East China Sea and Its Settlement," Beijing Shijie Yu Zhengzhi, 14 April 2006, pp. 35-42 at 35; Greg Austin, *China's Ocean Frontier: International Law, Military Force and National Development*, (Canberra: Allen & Unwin, 1998), p. 163.

<sup>22</sup> Peter Dutton, "International Law Implications of the November 2004 'Han Incident'," *Asian Security*, June 2006.

<sup>23</sup> Sankei Shimbun, PRC proposes Joint East China Sea Gas Field Development on Japan Side of Median Line, January 15, 2008, OSC Translation JPP20080114026002; Daily Yomiuri Online/Associated Press, Government offers Beijing new gas field deal, February 6, 2008, available at [www.yomiuri.co.jp](http://www.yomiuri.co.jp).

**What are the implications for regional stability and prosperity of China's use of its military to protect or extend its sovereignty? What are the implications for the PRC's relations with the United States of China's use of its military to protect or extend its sovereignty?**

These are very broad questions that require expansive answers that I will largely leave to others to provide. However, there are two points that I believe I am qualified to make concerning these questions. The first is that China's relatively cooperative approach to maritime dispute resolution with its South China Sea neighbors stands in stark contrast to the managed confrontation it maintains with Japan concerning their East China Sea disputes.<sup>24</sup> It is entirely possible that regardless of the overtures of friendliness that have recently been extended to the Japanese by Chinese leaders, the Chinese may not actually see it as in their best interest to settle their disputes with Japan. The tension between China and Japan over resources, boundaries and sovereignty in the East China Sea—and especially the confrontation over Japanese administration of and claim of sovereignty to the Senkaku/Diaoyu Islands--provides to the PRC government a lever of nationalism to use to divert the attention of the Chinese people from domestic difficulties and to shore up support for the central government during times of domestic political competition.<sup>25</sup> Whenever Chinese leaders desire to enhance Chinese nationalist sentiment, they need only to remind their people of the territorial disputes in the East China Sea to send a not-so-subtle reminder of Japan's occupation of large portions of Chinese territory only decades ago. This, combined with an unbending stand against Japanese encroachment on China's maritime claims, demonstrates to the people that the PRC government will never again allow outside powers to humiliate them. Thus, by negotiating cooperatively with its other neighbors, and remaining in controlled conflict with Japan, China balances its domestic and regional political messages in a way that contributes both to domestic stability and to regional rise.

Additionally, China's long-term strategic interests are still captive to its geographic position, bounded as the mainland is by the island chain that runs along China's coastline from the Kuriles to the archipelagoes of the South China Sea. Because it would provide the Chinese with a larger operational space within which to legitimately contest the presence of non-Chinese warships, it may be to China's military advantage to maintain its claim over the full breadth of the waters of the East China Sea from the mainland to Okinawa Trough-- the doorstep of American bases on Japanese territory--rather than to reach a compromise with the Japanese that might restrict China's legitimate freedom of action during any future conflict.<sup>26</sup> Even so, China has no short term interest in allowing

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<sup>24</sup> Peter Dutton, *Carving Up the East China Sea*, Naval War College Review, Vol. 60., Spring 2007, 49-72.

<sup>25</sup> Erica Strecker Downs and Philip C. Saunders, "Legitimacy and the Limits of Nationalism: China and the Diaoyu Islands," *International Security*, Vol. No. 23 (Winter 1998/99), p. 114, 116; Norimitsu Onishi and Howard W. French, "Ill Will Rising Between China And Japan," *New York Times*, August 2, 2005.

<sup>26</sup> As one Chinese commentator put it, "If China can control the East China Sea, it can establish a protective screen as a strategy at sea and enhance its strategic defense from the east." "Behind the Disputes in the East China Sea between China and Japan," *Naval and Merchant Ships (Jianchuan Zhishi)*. See also, Ho Szushen, "China interested in Japan's waters," *Taipei Times*, September 9, 2004, quoting former first vice chairman of China's Central Military Commission Liu Huaqing as saying China's blue-water naval strategy

the dispute over maritime boundaries in the East China Sea to get out of hand and to spill over into actual conflict. Only if China's assertion of sovereignty over Taiwan were severely threatened would China be likely to take military control over the full extent of its East China Sea claim. Thus, to conclude my first point, maintaining a policy of managed conflict with Japan—with its diplomatic and military components—may be perceived as a useful tool for Beijing to preserve the sovereign claims to maritime territory it seeks to consolidate, while also preserving the option of extending the authority and control of the Chinese state over that same water space if it ever becomes operationally useful.

The second point relates to the possibility of military crisis between the U.S. and China concerning American offshore reconnaissance and surveillance flights, and to China's overall strategy of denying access to U.S. naval reinforcements during a crisis over Taiwan. Some interesting research on Chinese writings about preemption strategies was done by Rand and published in 2007.<sup>27</sup> The study describes PLA writings that discuss various preemptive strategies available during times of serious crisis that the Chinese military might use to neutralize or overcome America's military and technological superiority. One specific area the Chinese strategists discuss as important to target early is U.S. surveillance and reconnaissance capacity. Some Chinese strategists see preemption as consistent with their 'active defense' strategy, but in order to maintain domestic and international legitimacy for the preemptive use of force the PLA would need to be seen as defending some aspect of Chinese sovereignty. This suggests that there may be a connection between China's attempts to claim expanded jurisdiction over military activities in and above their Exclusive Economic Zone and a preemptive strategy to prevail during times of serious crisis in the Taiwan Strait. By establishing a claim, as they have, that U.S offshore surveillance and reconnaissance flights are a threat to China's national security, an affront to its sovereignty and in violation of international law, China is perhaps setting the stage to use preemptive force against these flights while attempting to ensure the attacks are perceived as legitimate. Thus, China's efforts to enhance coastal state authority over the international community's military activities in and above the Exclusive Economic Zone could be construed as a form of Chinese Legal Warfare to shape expectations about the conditions under which coastal states may legitimately use force in national self-defense, to deter foreign military activities in the sea and air space within 200 nautical miles of China's shores, and to seize the initiative in the realm of public opinion about U.S surveillance and reconnaissance flights.

**What are the most important ways in which the United States should seek to influence the PRC with regards to its assertion of or efforts to protect its sovereignty? Of the means available to the United States to seek to influence the PRC in these respects, which are the most likely to be successful?**

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is to allow it to move its defense from the coastline to the first chain of outlying islands—Japan, Taiwan, the Philippines and Indonesia—and perhaps beyond.

<sup>27</sup> Roger Cliff *et al*, *Entering the Dragon's Lair*, Rand Corporation, Santa Monica (2007).

Looking toward the horizon, there are four proposals to enhance U.S. influence over the PRC's military decision-making concerning use of force to consolidate and extend its sovereignty.

**First: engage the PLA at all levels.** Direct, personal relationships build the familiarity that help prevent misunderstandings and to diffuse tensions during times of crisis. It is encouraging that the new U.S. Maritime Strategy underscores the Navy's traditional commitment to international engagement as a key aspect of preventing war.<sup>28</sup> The existing legal and policy limitations on military to military contacts between the U.S. and China should in the short term be relaxed and ultimately eliminated.<sup>29</sup> Fundamentally, military to military contacts produce the mutual insight that helps avoid military miscalculations and hopefully, eventually, forms the basis of stabilizing trust. Maritime engagement between the U.S. and China is already flourishing in relations between our respective Coast Guard establishments. This success can serve as a foundation for greater engagement and cooperation.

Perhaps another form of engagement is also called for. Specifically, coordinated strategic communications should be undertaken to highlight the clear expectation that as major stakeholders in the international system the Chinese must accept the responsibilities of membership as well as its benefits. This year may provide an important window of opportunity in this regard, with China front and center on the international stage during the Summer Olympics and the months leading up to them. China's full integration into the modern international political and economic order has profoundly altered China's development; but, having accepted the international system and all its benefits, the U.S. should make it clear that China cannot legitimately claim historical exceptionalism from some of the system's less convenient demands. This is a message not just for China, but also for the audiences susceptible to Chinese influence and especially for other Asian states whose support China hopes to gain as it seeks to legitimize its perspectives on sovereignty and jurisdictional authority. This is an aspect of engagement and a source of leverage that the United States has perhaps not yet fully explored.

**Second: continue active military surveillance and reconnaissance programs.** The irony of China's lack of transparency concerning some aspects of its military build-up is that in order to gain the insight necessary to maintain stability in the U.S.-China relationship, the U.S. has increasing incentive to undertake the very intelligence-gathering activities--such as off-shore EP-3 flights--to which the Chinese take such umbrage. The issue of 'transparency' has been addressed with the Chinese over and over again--most recently by Secretary Gates during his visit to China in November 2007.<sup>30</sup> The U.S. needs to gather information on its own to understand the extent of China's

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<sup>28</sup> A Cooperative Strategy for 21<sup>st</sup> Century Seapower, October 2007, p.2.

<sup>29</sup> PL 106-65 (NDAA 2000) limits military-to-military contact to the areas of Humanitarian Assistance/Disaster Relief (HA/DR) and other non-war-fighting venues, and must be approved on a case-by-case basis.

<sup>30</sup> Tom Shanker, Gates Questions China on Military Growth, New York Times, November 6, 2007., available at <http://www.nytimes.com/2007/11/06/world/asia/06china.html>.

military capabilities and to ensure that an acceptable military balance is maintained in East Asia to serve as a deterrent to conflict.

**Third: commit to protecting traditional navigational freedoms on the sea and in the air, and the historical balance of rights between coastal states and the international community.** Attempts by Chinese scholars, government officials and others to erode the international community's rights under international law to perform military activities in and above coastal waters must be strenuously opposed.<sup>31</sup> Chinese maritime law already purports to restrict the widely accepted right of warships to exercise innocent passage in China's territorial waters.<sup>32</sup> In addition, the Chinese actively confront unarmed, civilian-manned U.S. survey vessels, such as USNS BOWDITCH, in international waters claiming, incorrectly, that the United Nations Convention on the Law of the Sea allocates *all* survey rights to the coastal state out to 200 nautical miles.<sup>33</sup> Chinese attempts to extend their reach of control to the airspace over the exclusive economic zone claiming that U.S. EP-3 surveillance and reconnaissance flights violate China's sovereignty and violate international law must be opposed, with the assistance of other like-minded states when possible.<sup>34</sup> Additionally, the U.S. must remain actively engaged in diplomatic efforts, full participants in international forums, and effective advocates in track two discussions to counter attempts to move law of the sea away from the traditional balance of international and coastal state freedoms.

**Fourth: remain prepared to confront the PLA if necessary.** Engagement, information-gathering and effective advocacy may not be sufficient to prevent armed conflict. In addition to the carrots, American capacity to fight and win in combat is a stick that is also required.<sup>35</sup> Continuing America's commitment to a strong naval presence in Asia is the best means of protecting our national interests while attempting to move beyond the current challenges in regional security. The relationship between the U.S. military and the PLA has made remarkable progress over the past few years, as high-level exchange visits, academic exchanges and even simple at-sea exercises have occurred.<sup>36</sup> The future should build on this foundation and aim to construct a meaningful partnership between the U.S. and China for security at sea. However, a strong Seventh Fleet remains the most powerful deterrent to the possibility of PLA military adventurism and especially to the possibility of a cross-Strait conflict. A strong Navy guarantees the United States freedom of action in time of conflict, but just as important it also decreases the probability that conflict will ever occur.

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<sup>31</sup> EEZ Group 21, for instance, has published "Guidelines for Navigation and Overflight in the Exclusive Economic Zone, A Commentary," that would, in the exclusive economic zone of another state, limit the right of the international community to perform live-fire exercises, require the use of adjacent high seas for military exercises, and prevent sea-basing.

<sup>32</sup> Article 6, Law of the People's Republic of China on the Territorial Sea and Contiguous Zone, February 25, 1992.

<sup>33</sup> Mark Oliva, Before EP-3, China turned away U.S. research ship in international waters, Stars and Stripes, May 20, 2001, available at <http://www.stripes.com/01/may01/ed052001d.html>.

<sup>34</sup> "Chinese spokesman gives full account on US-China air collision," Xinhua News Agency, Beijing, April 3, 2001, published on-line by the British Broadcasting Service and available at <http://web.lexis-nexis.com>.

<sup>35</sup> A Cooperative Strategy for 21<sup>st</sup> Century Seapower, October 2007, p.2.

<sup>36</sup> Xinhua News Agency, U.S. Pacific Commander To Visit China, January 8, 2007, available at [http://www.chinadaily.com.cn/china/2008-01/08/content\\_6379736.htm](http://www.chinadaily.com.cn/china/2008-01/08/content_6379736.htm)