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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

Traditionally China did not recognize the concept of sovereignty, defined as the exclusive right to complete control over an area of governance or people. It functioned under principles more akin to what is known in the western world as suzerainty: a government that controls other governments but allows them considerable autonomy over their domestic affairs. Often the mechanism through which this was effected was the swearing of an oath of fealty from vassal to the feudal lord to whom allegiance would henceforth be due.

In the case of China, the emperor was considered the ruler of All Under Heaven 天下 . Those non-Chinese rulers or their representatives who were considered worthy of the honor were permitted to appear at court at certain specified intervals, perform obeisances symbolizing humility that included the *ketou* 頭 or three kneelings and nine prostrations, present costly gifts, and be invested with the seal of office. The procedure legitimated the ruler not only as part of the Chinese empire but also with regard to his own people. The emperor would bestow reciprocal gifts on the vassal. This and other associated rituals symbolized acknowledgement of the universality of the sinic world order with the Middle Kingdom at its center, and also of one's subordinate place in it. Refusal to perform these acts would not have been regarded as mere *lèse-majesté*, i.e. an insult to the imperial persona, but as an affront to the preordained order of the universe. Barbarians, as all under heaven who were not Chinese were regarded, could become civilized to the extent that they accepted Confucian norms and practices, and several degrees of civilized status were recognized. Gradations between raw 生 and cooked 熟 barbarians existed, with various different arrangements devised for dealing with them. Because of the inequality, acknowledged by all parties to the framework, a foreign ministry, with its provision for embassies, diplomatic immunity, and the equivalence of one state to another, would have been unthinkable.

When western states desirous of trade arrived on the coast of the Middle Kingdom, they were treated with the contempt reserved for the uncivilized. The court refused to accept western notions of sovereignty; westerners in turn chafed under the Chinese system. Mutual misunderstandings engendered frustrations that led to a series of armed aggressions, all of them won by the western powers. After one of these, culminating in the Treaty of Beijing in 1860, a proto-foreign ministry known as the Zongli Yamen or Tsung-li Ya-men, 總理衙門, General Affairs Office, was established. An office is plainly not equivalent to a ministry. Moreover, the institution was intended to be temporary. Under a policy of 'loose reins,' the foreigners could be appeased with commercial concessions until the crisis had passed and the empire regained sufficient strength to deal with them. China's humiliating defeat by Japan in the war of 1894-95

indicated that the self-strengthening movement would not succeed. Nonetheless, it was only after the Boxer Rebellion of 1900, in which western and Japanese forces were again victorious, that China agreed to establish a standard foreign ministry and acknowledge the equal status of external powers.

It is therefore ironic that a country that had to be forced into accepting the principle of sovereignty should now become its most staunch defender. Perhaps the most enduring statement of Chinese foreign policy has been its commitment to the Pancha Shila, or five principles of peaceful co-existence, which take a hard line notion of sovereignty. First articulated in their current form in the Sino-Indian Treaty of April 29 1954, these comprise

- mutual respect for each other's territorial sovereignty and integrity
- mutual non-aggression
- mutual non-interference in each other's internal affairs
- equality and mutual benefit
- peaceful co-existence

Public statements unremittingly defend absolute sovereignty and an unwillingness to compromise. In a typical example stated by then-president Jiang Zemin to his opposite number in a visit to Argentina, the People's Republic of China (PRC) "never gives in to any outside pressure on principles related to China's state sovereignty and territorial integrity." Frequently this hard line is justified with reference to China's 'century of humiliation' by western powers and Japan.

This strong defense of absolute sovereignty occurs at a time when sentiment among western powers, who devised the system, was shifting. Proponents of a more limited interpretation of sovereignty argued that a system that worked well for the several hundred years after it was enshrined in the Treaty of Westphalia in 1648 was increasingly inadequate to regulate relations among states in a world where the number of states had risen to nearly two hundred and in which interdependence was fast knitting states together across national borders.

In the decade following Deng Xiaoping's policy of opening up to the outside world in order to speed the country toward industrialization and prosperity, there was some evidence that the PRC might also accept this position. International law experts identified what they believed to be a softening of this position and acceptance of 'perforated sovereignty.' Evidence introduced in support of this position was the PRC's willingness to take part in the discussions for the 1982 United Nations Convention on the Law of the Sea (UNCLOS); its decision, after initially rejecting the idea, to defend itself in a United States court against creditors in the Huguang Railway bonds case; and its acceptance of a less than total sovereignty arrangement for the reversion of Hong Kong from British to Chinese rule.

After the suppression of demonstrations in Tiananmen Square and a hundred other cities in China in spring 1989, Beijing again reverted to a hard-line position. Of particular concern to Beijing, for obvious reasons, was the third principle of peaceful co-existence: non-interference in the internal affairs of another sovereign state. It threatened to veto a United Nations peacekeeping operation to force Iraq to disgorge its conquest of Kuwait on grounds that this constituted aggression against a sovereign state and interference in that state's internal affairs.

When it was pointed out that Kuwait was a recognized sovereign state, a PRC spokesperson replied that two wrongs did not make a right. When a North American Treaty Organization coalition headed by the United States began a bombing operation against the Federal Republic of Yugoslavia to halt the ethnic cleansing of Kosovo, the Chinese protested vigorously. Kosovo was not, it argued, a sovereign state and it was impermissible to argue, as the U.S. and its NATO allies had, that human rights considerations outweighed sovereignty as a criterion for action. Beijing clearly saw in this a precedent for external interference should one or more of its restive ‘autonomous areas’ such as Tibet or Xinjiang attempt to separate from the PRC, or should already de facto independent Taiwan try to formalize its status.

At the same time, desirous of the benefits that membership in the World Trade Organization would bring to its drive for industrialization and prosperity, the Beijing government did agree to certain limitations on its economic sovereignty. It has also signed several aerospace conventions that contain similar limitations on absolute sovereignty, and has participated in a number of United Nations operations though always protected by its right of veto in the Security Council. Its position on territorial sovereignty has remained strong. Nonetheless, China acquiesced in the independence of East Timor from Indonesia and Kosovo from Yugoslavia, both of which could have implications for the formal independence of Taiwan.

Chinese views on sovereignty as they relate to the law of the sea and air space have commanded much attention over the past two decades. In 1992, its National People’s Congress passed a law unilaterally declaring sovereignty over various disputed islands including the Nansha (Paracels), Xisha (Spratleys), Taiwan, and Diaoyutai (Senkaku) areas. The law also asserted the right of the People’s Liberation Army (PLA) to safeguard the PRC’s territorial waters, which would include the areas around these islands. The Beijing government made maritime claims citing ‘historic waters,’ and placed restrictions on the rights of foreign warships to exercise innocent passage of these waters. It claimed an Exclusive Economic Zone (EEZ) of 200 miles from its shores. The U.S. and other countries disputed the PRC’s contention that these are consistent with UNCLOS provisions. The areas of the islands unilaterally claimed by the 1992 are claimed by six states. Three years later, the Indonesian foreign ministry’s chief maritime law expert, after several fruitless trips to Beijing to try to reach an agreement over the PRC’s EEZ as it related to the Indonesian-administered Natuna Islands, complained

...They tell us this is the national heritage of China...They don’t argue, they just go on talking about Chinese dynasties...We have a great deal of difficulty analyzing what they’re claiming.¹

When, in 1996, just before signing the UNCLOS treaty, Beijing extended its maritime jurisdiction claim from 370,000 kilometers off its main coastline to three million square kilometers, doing so only for the Paracels, an Indonesian foreign minister commented that this would be valid only if the PRC were an archipelagic state, which it clearly is not.²

¹ Ambassador Hashim Dalal, quoted in John McBeth, “Oil-Rich Diet: Beijing Is Being Asked to Explain its Maritime Appetite,” *Far Eastern Economic Review* (Hong Kong), April 27, 1995, p. 14.

² (No author), “Questionable Claim,” *Far Eastern Economic Review*, June 20, 1996, p. 12.

The position of the United States is that the free flow of commerce through the western Pacific trade routes is a vital national interest. Therefore, it is of great concern to American officials when Beijing takes actions that appear to infringe on international rights of navigation and overflight. U.S. sources point out that UNCLOS rules do not prohibit warships from exercising innocent passage, and articulate no requirement for advance notification in order for a warship to exercise these rights. However, when China ratified the UNCLOS treaty, it cited the above-mentioned 1992 domestic law, asserting that the warships of all foreign nations would be required to obtain advance approval from the PRC prior to exercising innocent passage of Chinese territorial seas.

According to article 310 of UNCLOS, a state or entity may “make declarations or statements regarding its application at the time of signing, ratifying or acceding to the Convention which do not purport to exclude or modify the legal effect of the provisions of the Convention.”³ Hence the United States does not recognize the Chinese advance notification requirement. Australia has also sent warships into the Taiwan Strait unannounced, responding to Beijing’s protests by averring that the ships were exercising innocent passage. China has made similar claims with regard to military ships and aircraft in its exclusive economic zone, although nothing in the UNCLOS explicitly limits such ships and planes as long as their activities do not involve exploitation of the resources of the EEZ. The dangerous consequences of these differences of opinion can be seen in the collision of an American EP-3 surveillance plane and a Chinese F-8 fighter plane on April 1, 2001. Both sides agree on the distance that the American plane was flying off the Chinese coast: Washington claims the right to be there, and Beijing rejects that claim. There have been ongoing disputes between China and Japan on maritime issues involving territorial waters, with PRC submarines, for example, appearing in waters both sides claim. In 2005, Beijing protested the right of the mayor of Okinawa’s Ishigaki City to visit “China’s Diaoyu” islands, which are under Japanese jurisdiction and included in Okinawa Prefecture, saying that the islands are “92 miles from the port city of Keelung of Taiwan Province and have been part of the Chinese territory since ancient times.”⁴

China’s neighbors worry about creeping assertiveness on the sovereignty issue as the PRC’s economic prosperity and military modernization increase in tandem. This creeping assertiveness was most recently noticeable in Beijing’s announcement that it plans to open a new commercial aviation route through the Taiwan Strait. The route, between Hong Kong and Shanghai, would track just inside the Chinese side of the unofficial dividing line through the middle of the strait, which is an area that both sides have normally avoided since the 1950s.⁵

With regard to cyberspace, the internet is generally regarded as an important force for the global homogenization of political communication. By encouraging the free flow of ideas across borders, supporters anticipate that the internet will create a transnational public sphere, serve as an enhancer of the values of western liberal democracy and result in deterritorialization. This is

³ www.un.org/Depts/los/convention_agreements/Convention_declarations.htm

⁴ <http://au.china-embassy.org/eng/xw/t200616.htm>

⁵ David Lague, “China Planning Taiwan Strait Route for Commercial Aviation,” *International Herald Tribune*, January 6, 2008.

the antithesis of sovereignty. According to its more enthusiastic proponents, the result will be the melting of national boundaries: there can be no central government in cyberspace. The Chinese authorities have, however, sought to expand their control from traditional tangible space to cyberspace---in essence, to create information sovereignty. The goal is to separate the PRC's domestic cyberspace from foreign cyberspace in what has been called the Great Firewall of China. To this end, formal regulations have been passed specifying what can and cannot be discussed. These are implemented with the aid of network security technologies, some of them with the consent of the western countries that provide the technology, and administered by a bureaucracy comprising tens of thousands of people. Arrests have been made for those who break the rules, and stiff prison sentences meted out. Even so, control has been far from complete.

As for differing views of sovereignty between or among ministries, most foreign analysts believe that different policy communities hold somewhat differing views consonant with the corporate interests of their unit. However, there is very little hard evidence to back this up. The slight differences we can ascertain from comparing the statements of these different policy communities are subject to varying interpretations. One example that involves commentary on the afore-mentioned collision between a U.S. E-P3 surveillance plane and a Chinese fighter may be illustrative. Within common parameters of outrage and indignation, statements of civilian organs such as People's Daily---the newspaper of the Central Committee of the Chinese Communist Party---and foreign ministry sound softer than those emanating from the military, which tended to stress the heroism of the deceased Chinese pilot in the face of blatant American aggression. It remains to be seen whether this reflects the desire of the PLA to provide its members with a role model to emulate; a consensual PLA/party/government decision on the wisdom of a good cop/bad cop public posture---which would allow Beijing to assuage irate public opinion while still leaving leeway to soothe the incident before it could do irreparable damage to Sino-American relations---or a genuine difference of opinion between (some?) civilian doves and (some?) military hawks.

While Chinese rhetoric on sovereignty has been consistently hard-line, the PRC has been willing to compromise in practice when it perceives that it is in the best interests of the nation to do so, or when the other side remains steadfast. It is unlikely, however, to concede in principle even when an apparent compromise is made, and so preserves for Beijing the option of returning to that principle at a later time. One example occurred after the 1992 National People's Congress passed the sweeping territorial claims law mentioned above. Since some of these claims involved territories claimed by Japan, the Japanese Foreign Ministry expressed strong objections, hinting that the visit of the emperor and empress---a first ever visit in the long history of the two countries---might be jeopardized. The Chinese Foreign Ministry replied that policy had not changed. The imperial visit took place. But the law remains.

One reason for Beijing's continuing hard line on sovereignty may be the leadership's fear that, as a consequence of its having consciously stirred up the forces of nationalism within the PRC, any show of weakness on the matter of sovereignty could undermine its authority, and the legitimacy of the Chinese Communist Party, with the people. Another reason may be that the

hard line usually works as a negotiating technique. Hypotheses that China is a fragile power that the United States cannot allow to fall apart may induce self-imposed restraints on the part of American negotiators. This is a self-defeating strategy that could ultimately jeopardize American security.