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March 25, 2008

The Honorable ROBERT C. BYRD
President Pro Tempore of the Senate, Washington, D.C. 20510
The Honorable NANCY PELOSI
Speaker of the House of Representatives, Washington, D.C. 20515

DEAR SENATOR BYRD AND SPEAKER PELOSI:

We are pleased to transmit the record of our February 27 public hearing on “*China's Views of Sovereignty and Methods of Access Control.*” The Floyd D. Spence National Defense Authorization Act (amended by Pub. L. No. 109-108, section 635(a)) provides the basis for this hearing.

In this hearing, the Commission was generally told that the United States and China do not share a common view of sovereignty and that China is actively attempting to protect and expand its sovereignty. While strengthening its military capability to defend sovereignty claims, China is simultaneously pursuing legal and diplomatic avenues of influence. Areas that potentially pose the greatest challenges to the United States are in the domains of outer space and cyber space.

The opening panel on China’s Views of Sovereignty started with Dr. Allen Carlson of Cornell University who asserted that, although “we commonly perceive China as having a sort of absolutist and unyielding position on sovereignty,” in fact “its position has evolved and developed as its become more deeply integrated in the international economic and political system.” He stressed the gradually evolving nature of sovereignty concepts in the People's Republic of China, which have changed as the government has interacted more with other countries. Dr. June Teufel Dreyer of the University of Miami asserted that the PRC's position has evolved to a more rigid stance on issues of sovereignty. She reported that since the 1989 Tiananmen Square protests, the Chinese government has taken an uncompromising position in favor of absolute state sovereignty in order to prevent outside entities from potentially aiding domestic political unrest.

Dr. Robert Sutter of Georgetown University was featured on the second panel looking at China's methods of advancing its sovereignty by non-military means. He stated that China's foreign policy has shifted toward a “Gulliver Strategy,” whereby China attempts to build greater economic interdependence with its Asian neighbors, including U.S. allies, so that these countries are more supportive of China and less likely to join with the United States in efforts to pressure China. Dr. Sutter added that the "Gulliver Strategy" has served to reinforce stability in Asia – which is consonant with the overall interests of the United States, but that China remains a dissatisfied and aggrieved power. There is no guarantee that

changes in the balance of power and influence in Asia will not prompt China to adopt more coercive means against Taiwan.

The third panel addressed China's methods of advancing its sovereignty by military means and featured Mr. Roy Kamphausen of the National Bureau of Asian Research and Mr. Peter Dutton of the Naval War College. Mr. Kamphausen pointed out that the Chinese military is the largest contributor of forces to United Nations peacekeeping operations, of any Security Council permanent member, and its growing capabilities and international activities are increasingly being used as an instrument to consolidate and extend China's sovereignty. Examples of this include greatly increased naval patrols in contested waters and increased air surveillance flights over contested areas. Mr. Dutton noted that China's interpretation of passage rights within its maritime Exclusive Economic Zone (EEZ) continues to differ from that of the international community. He said China contends the right of free passage in the EEZ under the Law of the Sea Treaty does not extend to reconnaissance missions by military aircraft of other nations. The United States does not agree with that interpretation.

Dr. Jim Lewis of the Center for Strategic and International Studies and Mr. Philip Meek of the Department of the Air Force were the final panelists of the day and addressed China's views of sovereignty in outer space and cyber space. Mr. Meek explained how China uses "legal warfare" or "lawfare," to describe a type of preemptive advocacy and/or lawmaking regarding controversial issues with the objective of advancing China's position. Dr. Lewis asserted that the best response by the United States is continually to "assert its rights consistent with international law and practice."

The prepared statements of the hearing witnesses and the complete hearing transcript can be found on the Commission's website at www.uscc.gov. Members of the Commission are available to provide more detailed briefings. We hope this hearing and its materials will be helpful as the Congress continues its assessment of U.S.-China relations.

Sincerely yours,



Larry M. Wortzel
Chairman



Carolyn Bartholomew
Vice Chairman

cc: Members of Congress and Congressional Staff

**CHINA'S VIEWS OF SOVEREIGNTY
AND METHODS OF ACCESS CONTROL**

HEARING

BEFORE THE

U.S.-CHINA ECONOMIC AND SECURITY
REVIEW COMMISSION

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

—————
FEBRUARY 27, 2008
—————

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UNITED STATES-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION
WASHINGTON : MARCH 2008

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

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The Commission was created on October 30, 2000 by the Floyd D. Spence National Defense Authorization Act for 2001 § 1238, Public Law No. 106-398, 114 STAT. 1654A-334 (2000) (codified at 22 U.S.C. § 7002 (2001), as amended by the Treasury and General Government Appropriations Act for 2002 § 645 (regarding employment status of staff) & § 648 (regarding changing annual report due date from March to June), Public Law No. 107-67, 115 STAT. 514 (Nov. 12, 2001); as amended by Division P of the "Consolidated Appropriations Resolution, 2003," Pub L. No. 108-7 (Feb. 20, 2003) (regarding Commission name change, terms of Commissioners, and responsibilities of Commission); as amended by Public Law No. 109-108 (H.R. 2862) (Nov. 22, 2005) (regarding responsibilities of Commission and applicability of FACA); as amended by Division J of the "Consolidated Appropriations Act, 2008," Public Law No. 110-161 (December 26, 2007) (regarding responsibilities of the Commission, and changing the Annual Report due date from June to December).

The Commission's full charter is available at www.uscc.gov.

CONTENTS

THURSDAY, FEBRUARY 27, 2008

CHINA'S VIEWS OF SOVEREIGNTY AND METHODS OF ACCESS CONTROL

Opening statement of Vice Chairman Carolyn Bartholomew	1
Opening statement of Commissioner Jeffrey Fiedler, Hearing Cochair.....	2
Opening statement of Commissioner Mark T. Esper, Hearing Cochair.....	3

PANEL I: CONGRESSIONAL PERSPECTIVES

Statement of Bill Nelson, a U.S. Senator from the State of Florida.....	9
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PANEL II: CHINESE VIEWS OF SOVEREIGNTY

Statement of Dr. Allen R. Carlson, Associate Professor, Government Department, Cornell University, Ithaca, New York.....	4
Prepared statement	7
Statement of Dr. June Teufel Dreyer, Professor, University of Miami School of Business Administration, Coral Gables, Florida	7
Prepared statement.....	15
Panel II: Discussion, Questions and Answers	15

PANEL III: CHINESE METHODS OF ADVANCING SOVEREIGNTY BY NON- MILITARY MEANS

Statement of Dr. Robert G. Sutter, Visiting Professor of Asian Studies, School of Foreign Service, Georgetown University, Washington, D.C.....	34
Prepared statement.....	37
Panel III: Discussion, Questions and Answers	40

PANEL IV: CHINESE METHODS OF ADVANCING SOVEREIGNTY BY MILITARY MEANS

Statement of Mr. Peter A. Dutton, Associate Professor, China Maritime Studies Institute, U.S. Naval War College, Newport, Rhode Island.....	59
Prepared statement.....	62
Statement of Lt. Col. (Ret.) Roy D. Kamphausen, Vice President of Political and Security Affairs Director, National Bureau of Asian Research, Wash, DC....	63
Prepared statement.....	65
Panel IV: Discussion, Questions and Answers.....	66

PANEL V: CHINESE VIEWS OF SOVEREIGNTY IN SPACE AND CYBERSPACE

Statement of Mr. Phillip A. Meek, Associate General Counsel (International Affairs), Department of the Air Force, Washington, D.C.....	90
Prepared statement.....	94
Statement of Mr. James A. Lewis, Senior Fellow, Center for Strategic and International Studies, Washington, D.C.....	100
Prepared statement.....	103
Panel V: Discussion, Questions and Answers.....	107

**CHINA'S VIEWS OF SOVEREIGNTY
AND METHODS OF ACCESS CONTROL**

WEDNESDAY, FEBRUARY 27, 2008

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Washington, D.C.

The Commission met in Room 562, Dirksen Senate Office Building, Washington, D.C. at 9:00 a.m., Chairman Larry M. Wortzel, Vice Chairman Carolyn Bartholomew, and Commissioners Mark T. Esper and Jeffrey Fiedler (Hearing Cochairs), presiding.

**OPENING STATEMENT OF VICE CHAIRMAN
CAROLYN BARTHOLOMEW**

VICE CHAIRMAN BARTHOLOMEW: Good morning, everyone. Welcome to the second hearing of the U.S.-China Economic and Security Review Commission's 2008 reporting cycle. We are very pleased that you could be here today. I'd like to extend a warm welcome to all of you and to thank you for your interest in the Commission's work.

At today's hearing, we will be exploring the concepts of sovereignty that are advanced by the Chinese government. In some circumstances, these concepts are at odds with interpretations of international law as understood by the United States and they also play a role in conflicting territorial claims between China and some its neighbors in Asia.

Furthermore, the continuing advances in outer space exploration and use and in use of cyberspace raise questions regarding how sovereignty is defined in these critical realms of economic and information exchange and what are the rights of lawful international access.

We hope that this hearing will add to the public dialogue on these issues, which I am confident will assume ever greater importance

in the months and years ahead.

Throughout the day today, we will be hearing testimony from distinguished members of the academic and public policy research communities who will contribute their views and insights regarding the positions of the U.S. and Chinese governments on issues of national sovereignty and access to the global commons. A thorough understanding of these issues will be of tremendous importance in the future of U.S.-China relations and we hope that this hearing will assist the public and policymaking community in coming to better informed judgments on these complex and difficult issues.

The cochairs of this hearing are my esteemed colleagues, Commissioners Mark Esper and Jeffrey Fiedler. I would now like to turn the microphone over to Commissioner Fiedler for his opening remarks.

OPENING STATEMENT OF COMMISSIONER JEFFREY FIEDLER HEARING COCHAIR

HEARING COCHAIR FIEDLER: Thank you. The Commission's mandate from Congress requires us to closely monitor the economic and security dimensions of the U.S.-China relationship. I'm pleased to cochair this hearing on China's views of sovereignty and methods of access control, which have significant implications for U.S. interests around the world and for international peace and security.

The purpose of this hearing is to assess China's views of sovereignty, to examine China's access controls of both a military and a non-military nature, and to determine the impact of those access controls on U.S. national security.

As China's economic power grows along with its political influence in global affairs, clearly understanding how Chinese views on sovereignty diverge with the views of the United States, as well as the views of the broader international community, is vital to our efforts to avoid potential conflict, not just in Asia, but around the globe.

With China's continued military development and expanding global reach, it is vital that the United States play a role in encouraging China's compliance with international standards and its cooperation in global security efforts. Additionally, this hearing is an opportunity to consider what the United States can do to encourage China to more fully and vigorously implement its commitments.

I look forward to the testimony of our expert witnesses and to the recommendations that they may provide for consideration by the Commission. Thank you again for being here, and I will turn this over to Commissioner Esper.

**OPENING STATEMENT OF COMMISSIONER MARK T. ESPER
HEARING COCHAIR**

HEARING COCHAIR ESPER: Thank you. I would like to welcome everyone to today's hearing. I am pleased to be serving as a cochair for this hearing along with my colleague Commissioner Fiedler.

As mentioned today, we will be examining China's views of sovereignty and the methods China might employ to protect and advance its sovereignty. There are several ways this might be accomplished. The development and employment of military force is one method that comes first to mind. As we are all well aware, China's defense spending has increased at a rate of over ten percent annually for the last several years. The Chinese defense budget increased more than 17 percent in 2007 alone, hastening the pace of Beijing's military modernization.

Fielding more capable systems and forces has increased China's ability to safeguard its sovereignty and control air, land and sea access. Its demonstration of an anti-satellite weapon has shown that China possesses the ability to pursue its interests in space.

Yet, even with China's military advances, we should not restrict our analysis to this domain. China appears to be taking a much broader approach in how it protects its sovereignty to include areas such as domestic legislation, international law, and strategic communications.

These may all be employed prior to or as a precedent for military action. As such, we look forward to our panelists helping us define and examine these non-military means of safeguarding and advancing Chinese sovereignty claims. We hope to look at this issue both historically and prospectively with a particular emphasis on outer space and cyberspace.

Some excellent witnesses have agreed to appear before us today. I look forward to the insights they will provide this Commission on these issues, and I would like to thank all them for being here today. Thank you.

HEARING COCHAIR FIEDLER: Thank you. We are waiting for Senator Nelson to arrive, Bill Nelson from Florida, who's first on the agenda this morning, and he should be here shortly.

[Whereupon, a short recess was taken.]

PANEL II: CHINESE VIEWS OF SOVEREIGNTY

HEARING COCHAIR FIEDLER: We will get started and with

the forbearance of our witnesses interrupt you when Senator Nelson arrives and then resume when he's finished.

Our first panel is Dr. Allen Carlson and Dr. June Teufel Dreyer, a former commissioner of this august body.

Dr. Carlson is the author of *Unifying China, Integrating with the World: Securing Chinese Sovereignty During the Reform Era*. He is a professor of political science at Cornell University. He is currently working on a new research project that examines China's rise and the future of U.S.-China relations from the perspective of nontraditional security issues.

Dr. Dreyer is a professor of political science at the University of Miami and, as I mentioned, a former commissioner. Her research focuses on Chinese politics and defense issues. Among her many books is *the Chinese Political System: Modernization and Tradition*, which is now in its sixth edition.

Professor Dreyer is currently a fellow of the Foreign Policy Research Institute and serves on the USCI Board of Scholars. She is a member of the International Institute of Strategic Studies in London and of the editorial boards of *Orbis* and *The Journal of Contemporary China*.

Welcome. We will start with Dr. Carlson. I just remind you that our procedure and rules are you have seven minutes. We'll enter your testimony into the record. We have a bunch more time this morning than we might normally have so we may let you go a little bit longer. Thank you.

DR. CARLSON: As an academic who is used to having grad students and undergrads at my disposal, I normally get about two hours. Will that be enough?

VICE CHAIRMAN BARTHOLOMEW: Will we be tested at the end?

**STATEMENT OF DR. ALLEN R. CARLSON,
ASSOCIATE PROFESSOR, GOVERNMENT DEPARTMENT,
CORNELL UNIVERSITY, ITHACA, NEW YORK**

DR. CARLSON: No, and I will keep my remarks short, in particular because I'm very interested to hear the sort of questions that will come from the Commission and engage in dialogue.

I also would like to thank you for inviting me. It's a real honor to be here. I think the Commission has done some really interesting work over the past five, six years, since it was created, and I'm particularly happy to be here because I've spent really the past ten to 12 years thinking on a daily basis about sovereignty and sovereignty-related issues. I'm happy to share some of my research findings with

the Commission.

I'll begin, I think, when I very first started this, the work that I've done on sovereignty, and when I realized that I was on to something of importance, I was in Beijing doing interviews--it was one of the first interviews I had done--and I was meeting with the man who was then the head of the American Studies Institute in Beijing, who told me before I even started the interview, that he had thought for a long time about writing a book on Chinese foreign policy, and was going to call it "Defending Sovereignty." He proceeded to say he never got around to it; he thought it would be too controversial and didn't write it.

But, at the time I thought if this man, Wang Jisi, thought this was an important issue, then I should probably spend some time trying to make sense of it.

The difficulty when we turn to thinking about sovereignty, though, not just in a China context, but thinking in terms of international politics, is it's something that's widely perceived, widely understood as being crucial to international relations, a cornerstone to the contemporary international system.

Yet, I think it's also quite poorly understood both by academics and policymakers. Presidents and leaders talk about, but what's the substance of such a comment, and so I've spent a fair amount of time thinking of how to conceptualize, how to make sense of this in a way that can be broken down, and essentially I came to the conclusion that it makes sense to think of sovereignty not as a single entity but rather as a set of kind of interlocking components.

It's not one thing; it's a number of different things in the international system, organized around different sort of issue areas or components, and I broke it into four parts--what I call territorial sovereignty, thinking about boundaries; jurisdictional sovereignty, which is the right of the state over a people; sovereign authority, which basically is composed of the principle of noninterference; and economic sovereignty, the right to control economic activity within a territorially defined unit.

When we look at sovereignty in this way, we can see that it means a lot of different things in different places, and then I think much of statecraft, much of diplomacy, on the world stage actually consists of leaders and policymakers trying to define where the lines that sovereignty creates are located and what they mean.

This is particularly important in the China case because it's obvious that Beijing places a heavy, heavy emphasis on sovereignty. From the beginning, from Mao in '49 talking about China standing up, China has been a country which has said sovereignty forms a cornerstone of its relation with the rest of the international system.

I think then we commonly perceive China as having a sort of absolutist and unyielding position on sovereignty. If you pay attention just to Chinese rhetoric, just to the words that appear in places like Renmin Ribao and elsewhere, it does indeed seem as if China has one position.

However, if you look more broadly, particularly at the four issue areas that I just laid out, it's possible to discover that China has been fairly flexible on sovereignty over time, and moreover, its position has evolved and developed as it becomes more deeply integrated in the international economic and political system.

I find this to be the case in both Chinese policymaking and in discussions of sovereignty within China. So one of my basic points I want to make today is that the Chinese position on sovereignty has changed and it's also not all that different than what you find in other developing states where there's a sense that sovereignty is a hard-won right, but also a need to balance this right with the obligations that come with being a player within the international system.

On the four issue areas that I discuss in my written testimony, just very briefly, China starts out in the late 1970s being very defensive of its territorial boundaries, having engaged in border wars with each of its major neighbors.

On the jurisdictional component, it takes an absolute stance in terms of its right to rule over Tibet, Taiwan, Xinjiang, and to a certain extent Hong Kong.

In regards to sovereign authority, there is no question there will be no interference in China's internal affairs. China completely rejects the principles of international human rights, for example. It's not a member of any of the treaties.

On economic sovereignty, China is also fairly insulated, not entirely insulated, but isn't a member of any of the major international economic organizations.

Over the past 30 years, the Chinese policy on each of these four issues has changed. In regards to territory, China has gone from using force to using treaties to secure its boundaries. Yes, there's still a military presence along China's borders, but look at the agreements that China makes with the Central Asian republics, with Russia, the CBMs it reaches with India, even to a certain extent its handling of the South China Sea. It relies more on international law, not ceding sovereign rights, but uses a different way of securing those sovereign rights.

On jurisdictional sovereignty, the relationship to Tibet, Taiwan, Xinjiang and Hong Kong, there's a moment in the early '80s, I think, where China's position is a little bit more flexible, beginning a sort of talk of talks with the Dalai Lama and even with the KMT on Taiwan.

Over the course of the '90s, that policy falls apart as China feels it's being too directly challenged, and actually the position, I think, becomes more intransigent over time in dealing with those regions.

On sovereign authority, while China's human rights record still leaves a lot to be desired obviously, one shouldn't overlook the fact that China is now part of the system. It has signed on to all of the major multilateral human rights treaties, has allowed for a limited number of bilateral and multilateral delegations to come into China to look at human rights conditions. And I think that this doesn't necessarily mean that China now has a strong human rights record, but it's better than it was in the past.

Fourth, on economic sovereignty, and this is where change has been enormous, in the process of gaining admission or trying to get into GATT and finally getting into the WTO, China has really accepted the diminution of its sovereign rights. Nick Lardy has talked about this being "WTO-plus" sort of obligations.

Out of all of this, I think what we look at is the fact that China has compromised, is relatively pragmatic on sovereign rights, has come out of a history in which sovereignty is seen as a hard-won, something which is to be valued in and of itself, but can be negotiated on when the right incentives exist.

Those incentives largely come from international pressure. When the pressure is too strong, there is a backlash, but if it's calibrated, if there's an international consensus when it comes to things like human rights or on WTO issues, China is willing to move forward, and I think that you'll see the same dynamic looking to some of the specific issues that are being dealt with by the Commission today. The difficulty being that there isn't a consensus in international politics today about, for example, the arms race in space or about Internet controls.

I think China will be a player in trying to define how sovereignty extends into these new issue areas, and I would hope that America may take a role in helping to shape China's vision or what these roles will be. However, this will not be an easy process; it will probably be quite tenuous and at times contentious. But we shouldn't begin from seeing China as having some sort of an extreme position on this set of rights. Rather, it's one that's changed and again isn't that far out of sync with the positions that other players in international politics have taken.

I went a little bit over but not much. Thank you.¹

¹ [Click here to read the prepared statement of Dr. Allen R. Carlson](#)

STATEMENT OF DR. JUNE TEUFEL DREYER
PROFESSOR OF POLITICAL SCIENCE
UNIVERSITY OF MIAMI SCHOOL OF BUSINESS
ADMINISTRATION, CORAL GABLES, FLORIDA

DR. DREYER: I envy Dr. Carlson who can take two hours to talk to his students. I've noticed that as soon as the time runs out on my class, the kids are already picking up their books and on their way out of the classroom. As a footnote: Dr. Carlson mentioned Wang Jisi, and I just want to second the opinion. This is a very knowledgeable, very thoughtful individual. Obviously he does not step far outside the party line, but he was educated, I believe, at the University of Texas and the University of Michigan, among other places, and he knows us well as well as being a very bright guy.

To talk about Chinese attitudes towards sovereignty, to me it's always been extremely ironic that the Chinese empire did not accept the concept of sovereignty. It believed it ruled all under heaven, and other political entities presented tribute and were rewarded concomitantly.

I am reminiscing about when I was a student, and my professor, who was an older Chinese fellow with coke-bottle thick glasses and a perpetually very puzzled expression, was telling us that the way the Chinese dealt with "all others" who were not considered civilized was by buying them off so they didn't attack China. We in the class thought this was extremely amusing, whereupon Professor Yong looked even more puzzled than usual, and said "I don't understand why you all are laughing because isn't that what American foreign policy and foreign aid are all about? And I thought, "you know, he's right."

In any case, Mao Zedong was not going to accept this. He had a very hard-line absolutist policy on sovereignty, and this is enshrined in the so-called Pancha Shila, the five principles of peaceful coexistence which actually come out first in the Sino-Indian Treaty of 1954.

You can see this implicit hard-line position on absolute sovereignty: mutual respect for each other's territorial sovereignty and integrity; mutual nonaggression; mutual noninterference in each other's internal affairs; equality and mutual benefit; and peaceful coexistence.

Chinese public statements ever since then have upheld this principle of absolute sovereignty. There's a quote in the paper here which is very typical. This is Jiang Zemin to the president of Argentina: China "never gives in to any outside pressure on principles related to China's state sovereignty and territorial integrity."

Frequently, this is justified in reference to China's "century of humiliation" by western powers and Japan.

This very strong defense of sovereignty occurs at a time when sentiment among western powers, which after all came up with the concept of sovereignty and enshrined it in the Treaty of Westphalia of 1648, is eroding. There is more and more talk that a system which was wonderful for 1648 in settling the Thirty Years War among a relatively limited number of states is not suitable for today's world in which we have approximately 200 states and in which, at least in theory, there is increasing economic interdependence across state borders.

In the decade after Deng Xiaoping came to power, approximately 1978, (he was re-re-rehabilitated in July 1977), he vowed to open China, speed it toward industrialization and prosperity, open it to the outside world. There were certain indications that China was beginning to accept the doctrine which is known as "perforated sovereignty." It's not a term I like, but it's a standard term.

Evidence adduced in support of that is China's willingness to accept a less than absolute sovereign arrangement for the return of Hong Kong to Chinese rule, for its willingness to go into court to settle an ancient dispute regarding Imperial era bonds, the Huguang Railway bonds case, and in the fact that it's willing to enter negotiations for the United Nations Convention on the Law of the Sea.

This changed after 1989.

HEARING COCHAIR FIEDLER: June, may I interrupt for Senator Nelson?

DR. DREYER: Certainly.

SENATOR NELSON: Please excuse me.

DR. DREYER: My fellow Floridian.

SENATOR NELSON: Good morning.

PANEL I: CONGRESSIONAL PERSPECTIVES

HEARING COCHAIR FIEDLER: Good morning. We are pleased to hear from Senator Bill Nelson of Florida. Senator Nelson was first elected to the United States Senate in 2000, a life-long Floridian. He has previously served six years as a member of the Florida state cabinet, 12 years as a congressman.

Senator Nelson is an expert on NASA, who after intensive training spent six days on the space shuttle Columbia in 1986. We're all still deeply envious of his experience. He became the second-sitting member of the United States Congress to fly in space and is currently the only sitting member to have flown.

Senator Nelson currently serves on the Armed Services Committee, the Foreign Relations Committee, the Intelligence Committee, the Budget Committee, and the Committee on Aging.

Senator Nelson, we are pleased to hear your views today.

**STATEMENT OF BILL NELSON
A U.S. SENATOR FROM THE STATE OF FLORIDA**

SENATOR NELSON: Thank you, Mr. Chairman, and thank you all for the work that you're doing to try to protect critical American computer networks from the hacking and the cyber attacks.

What we see happening with China vis-à-vis their intrusion into America doesn't surprise me. It was about almost 20 years ago that as a young member of the House of Representatives, I tried to get the Reagan administration that was hell bent on approving American satellites to be integrated on top of Chinese rockets, that I warned them there was going to be technology transfer, and at the insistence of the American satellite manufacturers which wanted all the more to do business by selling more satellites for a different launcher, there was just no listening in the Department of Defense of Casper Weinberger or the Department of Commerce of the Reagan administration.

And sure enough, that's exactly what happened. A lot of technology transfer even though there were all the protestations and hand-wringing about how they could keep a firewall and there would not be the transfer of that technology.

Just two weeks ago, four people were arrested in two separate spying cases in the U.S. They were accused of spying for China as it is now acquiring more and more of our trade and classified secrets including some of our rocket designs and the technology that they were getting about our space shuttle.

For that matter, the Soviets did that too. The Soviets built an almost exact replica of the space shuttle, called Buran, and trained a whole cadre of cosmonauts to fly it and flew it once but without cosmonauts, and then saw that the tradeoffs of the expense were too great since they had such tremendous success, and still do, with their Soyuz spacecraft.

Clearly, it's a truth that the American policy of protection depends a lot on our space assets including some that are not classified such as the GPS, the Global Positioning System, communication satellites that are not classified, and yet our own Justice Department says the recent spying cases are only the latest mark in China's ongoing "adept and determined,"--and that's their words--Justice Department--"adept and determined" attempts to gain top secret information about our military and about our protection.

One Assistant Attorney General, Ken Wainstein, said it's not just a threat to "our national security [but also] our economic position in the world"--end of quote.

Well, we have a different ethic in which we operate under the rule of law over here, and we have the constitutional protections, and one of the amendments to our Constitution says the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated.

That's to protect us from the intrusion of our own government in our lives. And yet that's what's happening with the Chinese intruding into our own lives right now and they are everywhere.

Monday morning, there was another news item. It was that in an effort to limit its citizens' access to YouTube, the government of Pakistan accidentally prevented two-thirds of the world's Internet users from reaching YouTube, and that incident may have been an accident, but it highlighted how a foreign government, in this case, Pakistan, and you could substitute foreign spies, could wreck havoc on what is now a globally connected international community of countries.

And now America's reliance on our Internet has grown so exponentially that everything, government, military, financial institutions, subways, utility companies, all rely on this unfettered access to the Internet.

So a catastrophic collapse of the Internet, particularly if it resulted from a coordinated attack, could cripple not only our government but our economy as well.

In the open session before the Senate Intelligence Committee earlier, about a month ago, the DNI warned that China has, quote, "the technical capabilities to target and disrupt elements of the U.S. information infrastructure"--end of quote.

Just last December, it was reported that Chinese hackers had launched a, quote, "sophisticated cyber attack on the Oak Ridge National Laboratory," and the laboratory's director said that that attack which lasted several weeks was an attempt to gain access to the computer networks at numerous laboratories and numerous institutions across the country.

These incidents may have contributed to a collapse last week of a proposed, over \$2 billion, merger between 3Com and a Chinese technology firm that was founded by a former military officer. Now, after a bunch of us have expressed concern over the merger's implications for U.S. cyber security, the Committee on Foreign Investment in the United States refused to approve its terms.

So we best start getting concerned and serious about cyber security, and it's going to require billions of dollars and it's going to require extraordinary interagency coordination. America is clearly going to have to exert some leadership to prevent China and other nations from irresponsible actions, not only in cyberspace but outer

space, and you know what I'm talking about.

How many speeches have I made on the floor of the Senate, and I hear a deafening silence? How many times have I railed in the Space Subcommittee about the thousands and thousands of pieces of debris that are up there at about 400 miles high that threaten all the nations of the world's space assets because China launched an anti-satellite weapon with clear warning to all the nations of the world, so that we could see it?

It was one of their old weather satellites. They took it out. They busted it to smithereens, and there's thousands and thousands of pieces of debris.

People say, well, the U.S. has debris. Yes, we catalogue it, but we try not to put additional debris. Well, you say, well, you just knocked down a tumbling satellite. They knocked that down for a different reason, and oh, by the way, it wasn't up at 400 miles; it was at 120 miles. And those pieces that they wanted to get of that 1,000 pound hydrazine tank so that it wouldn't come back to earth and hurt somebody, and they would have more of a chance to get it into, as it degrades in the atmosphere, into a safer landing, those pieces will burn up because there are no big pieces.

But it's going to take decades for the debris from the Chinese ASAT test to come down. In the meantime look at all the space assets that are at risk. And so as more and more nations have their own space ventures, it underscores all the more the need for spacefaring nations, for these nations to start to have some rules of the road in space.

This doesn't have to be some huge gargantuan agreement, the kind that have bogged down in the past, but about focused efforts to deal with the real challenge of the use of space. We need to better define and try to promote good behavior in space and discourage the irresponsible and threatening behavior.

There are estimated, and this is public information, some 140 million pieces of debris that swirl about the planet in low earth orbit. Some of it is stuff like dead satellites. Others are just nuts and bolts. I'll never forget looking out the window of the space shuttle, and there's a washer that's floating right along with us, at 17,500 miles an hour.

Some debris up there is natural. NASA and the Air Force identify and track the larger pieces, but the bulk of the debris is too small to track and something as little as a paint chip as we saw when it hit the window of the space shuttle can cause a serious crack.

So with their tests, the Chinese added a couple million pieces of space junk in low earth orbit potentially jeopardizing many of the spacefaring nations of the world.

So, Mr. Chairman, I kind of give you a sobering picture of as we

deal with China. You're looking at someone that has reached out to the Chinese. I invited their taikonaut, who is a real hero just like Gagarin was in the Soviet Union, to come over here and, lo and behold, the day that the Chinese Ambassador brought him to my office and we started having a wonderful meeting, who ends up in the office unexpectedly but the second man on the moon, Buzz Aldrin.

So I introduced him to the taikonaut, and it was all the more of a good experience there. We have this opportunity for good experiences.

Now, that the Chinese are so sensitive about their stature in the world with the upcoming Olympics, we have all the more opportunity, and I am an optimist, but you better be a realistic optimist with what we are dealing with, and I believe many of your Commission's recommendations take the right approach that protect our interest first and foremost, and I want to thank you for the opportunity to come here.

I'm going to have to excuse myself. It's one of those days that I'm supposed to be in three places at once, and I apologize for being late, and thank you, Dr. Dreyer, for the courtesy that I could step in and make some comments.

HEARING COCHAIR FIEDLER: We quite appreciate it, Senator. Thank you.

SENATOR NELSON: Thank you, Mr. Chairman. Thank you.

PANEL II: CONTINUED

DR. DREYER: May I start again?

HEARING COCHAIR FIEDLER: We have the necessity for you to recoup so we'll give you some additional time.

DR. DREYER: I was saying that this apparent evolution toward a more or less absolute version of sovereignty was shattered by Tiananmen, and it's important to remember that these demonstrations were put down not just in Tiananmen Square but in a hundred other cities in China at the same time. What we call the Tiananmen incident was a large number of mass demonstrations.

Chinese policy then reverted to an absolute hardlinism because the leadership saw international interference in China's domestic affairs. The leadership's reaction to "how dare you massacre civilians" was, "well, how dare you say we can't if that's what we feel we must do" kind of thing.

The flaw in the argument that China brooks no interference in its domestic affairs, but it is willing to compromise on international affairs, is that there's leakage between the two spheres. In other words, this isn't in my paper--what they will do is see a linkage between some international event and some domestic spin-off that they

need to worry about.

An example is China's tremendous reluctance to, in fact it's threatening to veto the United Nations' initiative to get Iraq to disgorge Kosovo. The Chinese say this is unwarranted interference in the domestic affairs of Iraq. When people said "but Kuwait is a recognized sovereign state [whose territorial integrity Iraq had violated]" their answer was, this is a matter of record, is "two wrongs don't make a right". Clearly what they're seeing here is some effort, some spin-off with regard to Taiwan or Tibet or Xinjiang, and they got more strident about that with regard to the NATO initiative in Kosovo because Kosovo was not a recognized sovereign state.

So, yes, they are willing to negotiate. They will occasionally compromise but not on a principle, but on a given issue, without sacrificing the principle behind it. One example is in February 1992, when the National People's Congress passed a unilateral law annexing all kinds of disputed territories. The Japanese government got extremely upset because some of those are territories that are, in fact, not just claimed but actually administered by the Japanese.

The Japanese Foreign Ministry said, "well, you know, this really plays into the hands of our hardliners, and furthermore it could jeopardize the visit of the Emperor and the Empress to China," knowing of course that the Chinese wanted very much for the Emperor and the Empress to come visit.

So the Chinese Foreign Ministry issued a statement saying that this law didn't change our previous policy. The visit of the Emperor and the Empress took place, but the law remains: the Chinese have not backed away from the principle, and the Japanese are still suffering with submarines and so on, appearing in waters that they claim are theirs.

So I would say that these are certain compromises that are tactical, but they are definitely not strategic.

There is a lot of talk about the International Law of the Sea. Here China has accepted certain, I emphasize *certain* compromises, but again you find that they do not sacrifice the principle, and we have been arguing with them about our different interpretations on the Law of the Sea for a long time. For one thing, they produced an exception right after they signed it, and they say that our warships and anybody else's warships do not have the right to transit their waters without their prior permission.

The United States and other countries' positions is that there is nothing in the Law of the Sea that prevents that. We do not need to seek permission as long as we are not there for economic exploitation.

So again they have not compromised on principle there. There has been a tactical compromise which is not a compromise on principle.

Information technology, cyberspace, the Chinese have attempted, so far without complete success, to impose what we might call information sovereignty. In the sense of saying, in essence, that there's a wall between China's cyberspace and your and everybody else's cyberspace.

If you would just allow me a few seconds to address that question on differences of opinion among the Chinese ministries.

HEARING COCHAIR FIEDLER: Okay.

DR. DREYER: Most of us believe that there must be differences of opinion among the different Chinese policy communities on this. The problem is that the evidence is very hard to come by, and an example I give in the paper is that, if you really look carefully at the different statements that the different Chinese entities were iterating after the collision of the American EP-3 plane and the Chinese fighter plane, you will be able to ascertain that the statements from People's Daily, which is the house organ of the Chinese Party Central Committee, and those of the Chinese Foreign Ministry take a somewhat softer tone than those coming out of the People's Liberation Army.

The problem is you don't know what that really means. Does that mean a difference between the Foreign Ministry and the party, on the one hand, and the military on the other? Or are they trying a good cop/bad cop situation in which the People's Liberation Army is trying to assuage the already stoked up public opinion while the Foreign Ministry is leaving open some leeway for compromise? Or is it some third factor we have not heard? Is there really a difference between some PLA hawks and some Foreign Ministry soft-liners?

I would conclude that one reason for Beijing's continuous hard line on sovereignty could be a result of its leadership's fear that after this leadership has consciously stirred up feelings of nationalism in the Chinese public, if they are then seen as being weak on the issue of sovereignty, it may destroy their legitimacy and induce public opinion to rise against them.

Another reason may be that the hard line generally works with us as a negotiating technique. If our negotiators really buy into this idea that China is a fragile superpower that the United States cannot allow to fail, it may induce feelings of, well, we can't push them too hard on this or they're going to disintegrate, and this could have a very bad effect on our sovereignty.²

Panel II: Discussion, Questions and Answers

HEARING COCHAIR FIEDLER: Thank you very much.

² **[Click here to read the prepared statement of Dr. June Teufel Dreyer](#)**

Commissioner Esper, you want to start first?

HEARING COCHAIR ESPER: Thank you both for your testimony. It's very interesting. My first question is for Dr. Carlson. Dr. Carlson, you mentioned how China's views of sovereignty are evolving, integrating more with the international community.

The question I have is this: Do you see that more as a fundamental change in their view of sovereignty or a tactical approach that differentiates China in terms of signing on to a treaty and actually implementing it? Both of you mentioned the Law of the Sea Treaty, which is a case in point where we see examples of, indeed, China signing on to the treaty, but, in practice and interpretation Beijing takes different views.

So is it an actual evolution in their strategic thinking or in their philosophy with regard to sovereignty?

DR. CARLSON: Sure. I think that's a great question. And I think that it varies from issue area to issue area. Again, sovereignty is a pretty nebulous term. Perhaps we can all agree on that, and it only takes on meaning when we look more specifically not just at what states are saying but what they're doing as well.

I believe that committing to a treaty is a significant action, and so in this regard, for example, the obligations that China takes on with WTO represent a fairly fundamental shift in China's approach to economic issues, and on compliance, the record has been mixed, but I think that they're trying; right? I mean they didn't sign on with no intention whatsoever of following through.

In other issue areas, for example, in regards to human rights, there it may be more tactical. But let's not forget when we look at Eastern Europe and the Soviet Union, initial tactical concessions ended up kind of catching up to the state, thinking about the Helsinki Accords and elsewhere.

So on that side of things, it's best to take a longer time frame, maybe over 20, 30 years, and, in addition, in international interventions, multilateral inventions, June correctly talked about the Chinese response to Kosovo.

It's also significant to note only a few months later, China was on board with what was going on in East Timor, so there's a degree of pragmatism here, and a lot is settled in and the to and fro of diplomatic exchanges, and that's why America can have a role here.

When we press too hard--it's without calibrating the amount of pressure--when we press too hard or if it's on too central of a security issue, for example, Taiwan, there's likely to be blow back, and the Chinese position becomes more intransigent.

When it's the U.S. acting in concert with other players in the international arena, when there is some sort of an economic incentive

that's on the table, then China can get pretty pragmatic when it comes to dealing with this.

I'm more interested in that side of things than thinking about the assertiveness of the Chinese state maybe in regards to cyberspace or outer space where the norms are even less well defined.

HEARING COCHAIR ESPER: Okay. My second question is for Dr. Dreyer. And Dr. Carlson, if you have views as well, I would like to hear them. You both spoke about Chinese views with regard to sovereignty, that they for the most part don't compromise on the principle, and they buy into the concepts of mutual noninterference, but yet I'm curious as to how they can take that view, on one hand, but on the other hand seem to take actions that arguably violate others' sovereignty such as sending submarines into Japanese waters?

You would think that they would have a reciprocal view when it comes to addressing their own sovereignty with regard to others, but yet you don't always see that in their strategy or in their policy.

DR. DREYER: I don't think they do have a reciprocal idea. I think this is one of the things that got President Carter is so much trouble with regard to negotiating with the Chinese, that he thought that if he made certain concessions, they would make certain concessions, and then found they don't make concessions.

I would certainly agree--in fact, I say so in the paper--that China's acquiescence on East Timor and Kosovo independence have definite implications for Taiwan. The Chinese government may deny it, but they are there, and so there I would agree with Dr. Carlson on that one.

But I don't really see taking the long view, 20, 30 years, is going to be a solution to this. I think that is what perhaps Jim Mann was talking about when he talked about "the soothing scenario." Naturally I think--as those of you who know me know this, I'm a pessimist by nature, and I suspect that Dr. Carlson is an optimist by nature, and that accounts for the slight differences between us.

DR. CARLSON: Just briefly, Stephen Krasner from Stanford, and long at the State Department as well, in his work on sovereignty defines it as organized hypocrisy. And so it's not just China that is selective. I think if you look around the globe, you're going to find leaders picking and choosing when their sovereignty is to be defended, when it's to be compromised on, and how to deal with others.

HEARING COCHAIR ESPER: Thank you both.

HEARING COCHAIR FIEDLER: Commissioner Wessel.

COMMISSIONER WESSEL: Thank you both for being here. June, it's great to see you on the other side of the table this time. Thank you for participating. I'd like to ask a question relating actually to a hearing we held several weeks ago on sovereign wealth

funds, sovereignty being a key question there.

How do the Chinese look at sovereignty over their business affairs? Can one differentiate between a Chinese company and the actions of its government? Do they view any Chinese entity as being an extension of their policies? We've seen the "go out" theory, et cetera, et cetera.

Conversely, how do they view U.S. companies doing business in China? Do they view those as being under their sovereign control? Should we see ourselves as having any extraterritorial reach, if you will, over entities? We've been told that our own companies are agents of change in China.

If you can comment on that and how they view business affairs, the extension of their economic affairs, et cetera? Both witnesses, please.

DR. DREYER: Yes. You always did ask tough questions. The Chinese government does want its companies to do what it wants internationally, and there have been various complaints, particularly with regard to Latin America, that I know of, and perhaps elsewhere that I do not know of, that when the Chinese government wants one of its companies to acquire something, it will make it easy for that acquisition to take place by providing this company with superb subsidies so that it can outbid the competition from Britain, the Netherlands, the United States, et cetera, to the extent where they are acquiring these assets, particularly energy assets, and sometimes mining assets at valuations, at prices that are very much higher than the valuations.

This has caused some whining, and I can see the other side of it as well. As Commissioner Reinsch is probably about to point out, if you pay too much for something, let's say oil is \$75 a barrel, and then a year later, oil goes up to whatever it traded at this morning, 100 and something--

COMMISSIONER REINSCH: 102.

DR. DREYER: Yes, 102--then maybe you haven't made such a bad deal after all. But the important point here is that it is the Chinese government that is making it possible for these entities to do this, and I think the Chinese are very concerned about what their sovereign wealth can do. Why wouldn't they because they have the world's largest foreign exchange assets.

I would be aware of the other side of the question--that American companies in China are going to change China, because it mostly seems to go the other way. China is able to bend the companies to its own will, as I think President Clinton found out rather early in his presidency. The influence seems to go the other way. I'm reminiscing about the sadly deceased Representative Tom Lantos'

characterization of Jerry Yang as a "moral pygmy" and things like that.

COMMISSIONER WESSEL: Dr. Carlson.

DR. CARLSON: Just briefly, one of the difficulties in answering your question is the general lack of transparency when it comes to the policymaking process in China.

I think that Dr. Dreyer's assessment may be correct, but I also have grad students who are in the field who are trying to figure out actually what the relationship is between companies and various ministries. This is a huge state, it is incredibly complex, and also fairly secretive.

So to assume that there is some sort of direct control, there would be a degree of coordination that exists here that so far I don't think that we have a lot of evidence to support.

COMMISSIONER WESSEL: But let me parse that if I could.

DR. CARLSON: Sure.

COMMISSIONER WESSEL: Understanding that we don't have a lot of transparency and that we don't know how much control, in their view of sovereignty, to the extent you know, do they view Chinese companies, whether doing business in China or in their activities elsewhere, as being within their sovereign control? So that a Chinese entity is a Chinese entity no matter where it does business?

DR. CARLSON: I'd have to say that I don't feel confident about answering the question. Also because it involves money, and as an academic, I don't see a lot of that.

COMMISSIONER WESSEL: I won't touch that question.

DR. DREYER: Mike, I would say that they do view the company as an extension of their sovereignty, but that that doesn't mean the company will always behave that way.

If some member of, or some CEO of that company steps far out of line, you can be sure that that person will be fired immediately, but the trick in China is always not outright defiance, but "how can I sidle around the rules," and you do find these companies sidling around the rules when they feel it's to their economic advantage.

COMMISSIONER WESSEL: Thank you.

HEARING COCHAIR FIEDLER: Vice Chair Bartholomew.

VICE CHAIRMAN BARTHOLOMEW: Thank you. Thank you to both of you for very interesting testimony. June, we miss you.

DR. DREYER: Thank you. I miss you too!

VICE CHAIRMAN BARTHOLOMEW: Nice to have you on the other side of the table, but I learned so much from you when you were on this side, and it's wonderful to have you here.

Dr. Carlson, very interesting, welcome, and your views are very interesting.

I want to follow up on Commissioner Esper's idea or question,

and I find myself thinking that when we talk about sovereignty and the Chinese concept of sovereignty being a cornerstone, it feels like the cornerstone is their own sovereignty, and when it is about other countries' sovereignty, it's a much more porous thing.

So we have examples of the mutual noninterference in each other's affairs, but the Chinese government takes issue with the U.S.' right to protect national security or to include national security implications in foreign purchases of U.S. assets, and yet fences off aspects of its own economy that can't be purchased.

The Chinese government has used business over the years, U.S. business, to lobby for China's political interests in the U.S. I'm thinking particularly on the lines of human rights, and it isn't just here. There was Chinese direct influence in the presidential elections in Zambia.

So there is this real hypocrisy or two-tiered system where the Chinese get extremely protective of their own sovereignty, but when it comes to other nations, it's maybe not so good. Am I wrong in the way I'm thinking about this? I guess that's the way to ask the question.

COMMISSIONER REINSCH: Yes.

VICE CHAIRMAN BARTHOLOMEW: Bill always tells me I'm wrong. But what are your thoughts?

DR. CARLSON: Again, I think one thing to keep in mind is that a lot of the states do the exact same thing, are very protective of their own rights, and then when they look outward decide that it's a sovereignty issue when it suits them or it's a non-sovereign issue and is fair ground when the situation changes.

But I think it's important not to overlook either that when it comes to Chinese foreign policy, while there has been a fairly conservative position to the expansion of the international community's right to intervene in human rights' crises, within Asia. At the same time, let's look at territorial issues, which would seem to be a foundational aspect of sovereignty, however we define it, here China had laid out these expansive claims, right, through Central Asia into the former Soviet Union, and when push came to shove in the '90s, in order to garner regional stability, they accepted the territorial status quo and in many cases accepted less than 50 percent of the contested land even though they had the ability to push fairly easily into Central Asia if they wanted with Kazakhstan and Tajikistan and Kyrgyzstan.

So I think within Asia, Beijing has really shown an ability to kind of calibrate its interests and shelve what would have been sovereign rights in favor of other benefits. So again, I think when we talk about sovereignty, it makes a lot of sense the way the Commission is approaching this. We want to talk about a specific issue area and then how sovereignty plays out within regards to that specific issue

area rather than talking in general terms about sovereignty because it gets very abstract, and that's where then there's also a lot of room to kind of duck and cover.

So that would be the beginnings of an answer. I'm not sure that that's enough but it's something.

VICE CHAIRMAN BARTHOLOMEW: Dr. Dreyer.

DR. DREYER: Yes. I don't see them compromising with regard to Southeast Asia at all. I see an initial "we'll negotiate with you about these disputed territories," but then "we insist on negotiating one on one."

DR. CARLSON: In Central Asia.

DR. DREYER: Okay. But Southeast Asia--

DR. CARLSON: Yes.

DR. DREYER: --we insist on negotiating one on one, and then obviously this is kind of like a--I don't know--an elephant trying to negotiate with--

VICE CHAIRMAN BARTHOLOMEW: A flea.

DR. DREYER: With what?

VICE CHAIRMAN BARTHOLOMEW: With a flea.

DR. DREYER: With a flea, yes, yes. That was their attitude. Then the ASEAN got them to negotiate, but invited them in on observer status and, of course, they dominate the organization. The Chinese are adept at saying to one nation things like "you want to be designated a tourist designation?" or "you want this economic contract?", "we think you ought to sign on to our view on this." And guess what they always do.

This strikes me as a revival of the tribute system except that now instead of the moral sway of the emperor, what you have is trade concessions being used as incentives instead. I also see a creeping assertiveness: that is, as the Chinese economy gets stronger, this is a more powerful lever, and as the military gets stronger, this too is a more powerful lever.

So what looks like a willingness to compromise is because you can give in on the technique, and then proceed to a kind of progressively creeping push because is Indonesia going to declare war on China because a small piece of its territory has now been taken over? No. So again I see that as tactical rather than strategic compromise.

HEARING COCHAIR FIEDLER: Thank you. Commissioner Reinsch.

COMMISSIONER REINSCH: Thank you. Welcome, June. Welcome, Dr. Carlson. First, one of the things you just said struck me. Leaving aside Taiwan for the moment and the South China Sea islands, are there areas on China's land borders where they have

territorial claims that exceed the existing border? India, I suppose.

DR. DREYER: That exceed what?

COMMISSIONER REINSCH: Their existing border. India, I suppose. Anywhere else?

DR. CARLSON: A little bit, there's a little bit of discrepancy along the border with Vietnam, tiny, but it amounts to about the size of this room essentially. The border actually with North Korea isn't entirely settled either, but it's not a matter of real dispute.

COMMISSIONER REINSCH: No one else is interested.

DR. CARLSON: And, again, I think what's fascinating here, and I think June is right to talk about what's going on in South China Sea, however I would still disagree a little bit with her interpretation. I think the 2002 Code of Conduct which China signs on to is a meaningful agreement. It may be just to buy time and the challenge may be--and so we're putting down bets here, speculating on the future--and I think if you look more broadly, there is a bit of a shift going on.

The concern actually isn't so much that China is moving away from a sovereign system. Sovereignty is generally a conservative norm. It's kind of keeping things in place--what's mine is mine; what's yours is yours.

June, referring back to the historical record--I think what we might really want to look at is the degree to which there might be a resurgence or return to a belief in some of the rights that came with it, in a Sino-centric system and a more traditional system, here I am talking about "tianxia," under heaven, and what that might mean.

I don't think that that shift has gone that far, and I think you do look at the record with Central Asia, with Russia, the CBMs with India, and they're accepting the territorial status quo. But then where does Taiwan fit, obviously that is a bigger question.

COMMISSIONER REINSCH: Right. I wanted to exclude that because I think--

DR. CARLSON: That makes sense, yes.

COMMISSIONER REINSCH: --I wouldn't say it's a special case, but it's certainly a different--

DR. DREYER: I think India would be willing to accept the territorial status quo with regard to Arunachal Pradesh, Ladakh, et cetera, but I don't think China is willing to. And every so often I see that there is creeping assertiveness there as well. Stone forts are being built over what India considers the line of actual control and so on. So, there, too, I see the "salami tactics."

COMMISSIONER REINSCH: Let's pursue that. I really had a bunch of other questions, but let's pursue that for just a minute. Do you think that's because they're actually interested in the acreage that

they're building little forts on or is this a tactic in a larger geopolitical strategy?

DR. DREYER: I think it's a tactic in a larger geopolitical strategy. I don't think they care that much about the territory.

DR. CARLSON: I would add that that's not, certainly not unprecedented. The Sino-Vietnamese border war in 1979 was not over the land in question, it obviously had much more to do with the Soviet influence in Vietnam and China's objection to that.

But stepping back from the specifics of potentially creeping assertiveness on the Chinese part, the fact that China has reached these confidence-building measures with New Delhi over the course of the 1990s took Sino-Indian border from being a real potential flashpoint in the relationship to, not demilitarizing it, but really deescalating the chances of military conflict, and I would be shocked if there was outright military exchange there in the near-term future even as these two Asian giants are kind of eyeing each other and trying to decide what their intentions are.

COMMISSIONER REINSCH: Okay. Let me shift back to where Commissioner Esper began, and this may be an unfair characterization. If so, say so. But it seems to me that Dr. Carlson is suggesting that they are gradually, if you will, being integrated into the global community of nations, for lack of a better term, and beginning to adopt sovereignty norms that are more conventional than their historical approach.

Dr. Dreyer, I think, has recognized that evolution, but probably not to the extent that Dr. Carlson has and may be a little less certain about the direction.

Can you both comment, though, on where that takes us in terms of how we deal with them because I'm not sure that I've heard the two of you say wildly different things about what American tactics ought to be even though you may perceive the situation as slightly different?

DR. DREYER: This is in the closing sentence of my testimony where I was rushing to conclude--but it seems to me that the Chinese will at least compromise tactically if they are met with hardline negotiations on the part of the people they are negotiating with.

This is the sort of thing that our negotiators don't seem to be very good at. They don't memorize the historic record. They say incredibly stupid things sometimes because they accept what the Chinese say as truth—"we've always been a centralized integrated nation; all of these territories have been stolen from us; there's been the century of humiliation" as if somehow the Chinese government was not responsible, at least in part, for the century of humiliation. And, "therefore, guys, you owe us." Our negotiations seem to simply accept this.

These people who negotiate do not seem to understand either the historical record or the record of negotiations from ten years ago. Something that I am particularly concerned about is in the last couple of lines of my statement: this new idea that China is a fragile superpower that is too large for the United States to allow to fail, so that somehow we need to compromise in order to keep the government in power because it will be bad for international stability if they fail. I think that's a very self-defeating strategy.

COMMISSIONER REINSCH: Dr. Carlson.

DR. CARLSON: I think your assessment is fairly accurate. I think that there's some distance between Dr. Dreyer and I, but it's not huge, although, when we spin forward to thinking about policy implications, there is probably a greater divergence.

I'd first, though, add because you've placed an emphasis on the fact that these are tactical moves, I think that if you make tactical concessions through a number of iterations, a number of rounds, eventually that kind of catches up. It has implications because your word is sort of on the line, in other words, because of reputational concerns.

It also creates institutions. These , sorts of impacts are unintended, unintended outcomes, and a lot of the change in the Chinese approach to sovereignty actually comes out of the unintended consequences of earlier compromises and the impact then goes deeper.

You can see this when you look into Chinese language publications, for example, in the areas of foreign affairs and security studies, there are scholars who talk in pretty broad terms about how sovereignty has changed. These scholars are very influential people like Wang Yizhou from the World Economics and Politics Institute or Qin Yaqing from the Foreign Affairs College. These are well-placed people. They're not way out on the fringes; these are central figures within the Chinese foreign policymaking establishment. They don't make decisions, but they talk to decision-makers.

And then in terms of policy implications, one thing that I feel has changed over the past ten years or so is that in the 1990s, international pressure led by an American presence was fairly well defined, and China was in a reactive position in terms of the resources at its disposal.

I'm not so sure what the international and American position is now. I think it's maybe a little bit more split up, and also China is in a more assertive position. It has more resources at its disposal so it's going to be harder to influence them to get changes and compromise, and each year, it gets more difficult.

COMMISSIONER REINSCH: Thank you.

HEARING COCHAIR FIEDLER: Commissioner Shea.

COMMISSIONER SHEA: Thank you both for being here today. Dr. Carlson, you said that the idea of sovereignty was a very amorphous concept. You were very helpful, I thought, in your testimony in outlining the four components of sovereignty--territorial sovereign authority; no interference in internal affairs; economic sovereignty; and then jurisdictional sovereignty, meaning the authority of the state, the absolute authority of the state over the individual citizen within China. This is really a question for both of you.

I was just wondering is there is any serious discussion within academic circles in China concerning the sovereignty over ethnic Chinese not living within Chinese territorial boundaries? Is that something that is talked about in academic circles in China?

DR. CARLSON: In my research it doesn't. It doesn't come up that much. I think because this is such a potential lightning rod in terms of defining the degree to which these people are Chinese, and then not only the degree to which they then maybe are beholden to the PRC, but also the obligations that Beijing would have to them, to protect their position.

I'm thinking particularly in Southeast Asia and Indonesia, whenever there is unrest, the ethnic Chinese are blamed, and Beijing has really been criticized on the Web and elsewhere by Chinese nationalists for not doing enough to protect these people, but the discussions among academics about sovereignty have focused more on its role in international politics and then indirectly thinking about what this means for China.

The discussion about China specifically is fairly limited and does hew fairly closely to the party line. You really have to look fairly carefully to find degrees of difference. They exist. I think there is a pretty vibrant debate actually in academic circles but not about this issue. I think it's one that may be somewhat verboten.

DR. DREYER: I really don't know of any debate about this in academic circles. As it concerns a policy issue, if you're talking about Hu Jintao now, I don't think they want to be seen as exercising sovereignty over these people because it could cause them problems and fears in these countries, which are already a little bit afraid of a, "fifth column," to use a Cold War term, a fifth column operating on behalf of China.

I think the real battle in the leadership's mind is that it is a battle of the hearts and minds for these people, and it is not so much exercising sovereignty over them as trying to make sure that they're on the side of the PRC in most issues as opposed to Taiwan.

I happen to have a very dear friend from when we were at Harvard together, who is head of the Taiwan's OCAC, which used to be the Overseas Chinese Affairs Commission, but has recently been name

the Overseas Compatriots Affairs because they're not sure—that is, the Taiwanese are not sure, they're Chinese anymore. She is constantly talking about her problems in trying to deal with what the Chinese are offering to the overseas Chinese communities in terms of money and influence. So that's really where the concern is.

HEARING COCHAIR FIEDLER: Thank you. Commissioner Videnieks.

COMMISSIONER VIDENIEKS: I think both of you mentioned the Law of the Sea Treaty. It's my understanding that the U.S. has not signed it yet; PRC has. It's my understanding that roughly the limits are like 200 miles from the end of the Continental Shelf, and then if there is an overlap like in the case with Japan, they may negotiate or have to negotiate.

Who is right with respect to the resources? Is the Chinese position correct? Is the Japanese position correct? I'm asking this question because we had prior testimony in another hearing that in some states here in the U.S., we don't own the resources underneath our land.

I understand that the Japanese are complaining that the Chinese are drilling at an angle. So, any views on that? Question to both.

DR. DREYER: The United States has not signed the treaty, but we have said that we are going to abide by its provisions, and so it puts us in a kind of limbo.

With regard to the drilling, yes, your recollection is absolutely correct. What the Japanese have said is, "look, we will establish a median line here between us with regard to our claims, and we don't want you to drill on our side." But the Chinese have said consistently "we do not recognize your median line." The Japanese are not saying "you're drilling on our side." They're saying "you're drilling at an angle and so it's affecting our resources."

Every couple of months some group agrees to negotiate. There is some provision for some negotiation. The media seem excessively naive on this: they always print something about an agreement being near--and then it falls apart at the last minute.

With regard to your 200 miles, there are also differences of opinion, and this is in the written statement, about at what point you measure that 200 miles from. Normally it's a straight baseline, but in the case of an archipelagic state--if that's the right way to pronounce that word--a state with a heavily indented coastline, you make other provisions.

The problem for the true archipelagic states such as Indonesia is that they get very peeved with the Chinese, who insist on insisting that they are an archipelagic state so they can get the benefit of the enhanced baseline. Clearly China is not an archipelagic state.

Before coming here, I actually printed out the Law of the Sea and I do not recommend it unless you have insomnia. It was 210 pages and it's sometimes very difficult to understand if you're not an international lawyer.

DR. CARLSON: I think June has been pretty comprehensive on that. I'll just let it stay at that.

COMMISSIONER VIDENIEKS: Okay. One more question. Siberia. It's my understanding that the Russians are not very densely occupying that area and that the Chinese are moving in there. Is there a parallel here, looking ahead maybe a couple decades from now, with Kosovo? And how would that affect the sovereignty views of both states?

DR. DREYER: I know that Russia is worried about it, but somehow I don't think that's the intent. I think if the Chinese government has any view on this at all, it wants what you might call economic dominance rather than territorial sovereignty.

Would you agree with that?

DR. CARLSON: Yes, I would agree. I think that China has no territorial aspirations in that direction but is happy to see an increasing economic influence.

COMMISSIONER VIDENIEKS: Thank you.

HEARING COCHAIR FIEDLER: Thank you. I have a couple questions myself. What are the three most important differences between the United States and China in their views on sovereignty and the three most important implications of those differences?

DR. CARLSON: Umm.

HEARING COCHAIR FIEDLER: And you don't have two hours.

DR. DREYER: Are we being graded on this?

HEARING COCHAIR FIEDLER: I'm trying to figure out where the clashes are here between us and them.

DR. DREYER: I think it's exactly what Dr. Carlson said. It's a wonderful characterization of sovereignty as--

DR. CARLSON: Organized hypocrisy.

DR. DREYER: --organized hypocrisy. And so I think that each one of us, the United States, on the one hand, and China, on the other, is prepared to argue a definition of sovereignty--

HEARING COCHAIR FIEDLER: Excuse me.

DR. DREYER: --that's to our best interests.

HEARING COCHAIR FIEDLER: Wait, wait, wait. I'm not asking an abstract question, and I'm not asking your view of who's right. I'm only asking where are the three areas of difference and what are the implications of them, not who's right.

DR. CARLSON: I think to begin answering that question, the first thing to realize is that the United States is used to being a

dominant power, and as a result doesn't have a lot of particular sovereign concerns.

We don't worry too much about the security of our boundaries, territorial integrity. The Chinese state is built on the skeletal remains of the Qing Dynasty. It's an empire which has become a state, and as a result has a number of sovereignty-related issues that are front and center for Beijing in terms of maintaining national unity, territorial integrity, questions of regime legitimacy, which then make it approach to the sovereignty issue very different the perspective we have here.

I'm not sure that there are three specific things. There are obviously differences on the relationship between sovereignty and human rights, which is preeminent.

I think probably on territorial boundaries, we don't differ all that much. On national unity, even though we may differ about what Taiwan's status should be, I think the United States also agrees that for the most part sovereign states should remain what they are, unified, and boundaries don't change. We don't jump really quickly to recognize normally newly independent states. We have concerns about that.

HEARING COCHAIR FIEDLER: What about overhead, space, going up, over a country?

DR. CARLSON: Oh, I thought you were talking about the ceiling.

DR. DREYER: Yes, I did, too.

DR. CARLSON: I was thinking about what the reference was. I think there that Senator Nelson has really nicely identified some of the challenges we face in space, and I think the difficulty is that sovereignty is a norm which goes back to 1648. Through the post-World War II era, there's been a number of adjustments, basically via development of multilateral institutions, to try and kind of take the edge off of the international politics.

When we turn to cyberspace and space, I don't think that the Chinese have clear position; I don't think we do. This is new terrain, and it hasn't been very well defined.

HEARING COCHAIR FIEDLER: June.

DR. DREYER: Yes. I can certainly agree in the abstract that China is a rising power and maybe the United States is used to being the dominant power, but I have a problem thinking what the U.S. position is on this. And certainly the Bush doctrine, which is probably not going to be around six months from now, as President Clinton, Obama or McCain modify it, is that we won't allow anybody to become our peer competitor.

Yet there are a lot of people in the United States who would be not uncomfortable with the idea of allowing China to rise. One of my

enduring memories of USCC is of a briefing we got from somebody at the CIA who said "as China regains its rightful place of dominance in the world," and I nearly gagged.

Obviously there are people in the United States who are willing to cede that. So I think it depends a lot on not only how China evolves but how the United States evolves.

HEARING COCHAIR FIEDLER: So in the second round, I'm going to come back to you until I get an answer.

DR. DREYER: But sometimes there is something that there's no answer to.

HEARING COCHAIR FIEDLER: Well, no, I mean this--we had an EP-3 incident that was in some form a clash of sovereignty.

DR. CARLSON: Yes.

DR. DREYER: Okay. With regard to--

HEARING COCHAIR FIEDLER: So we might have another one, and I was looking for an answer of where our potential--

DR. DREYER: With regard to the specific issue of the EP-3, I think there's an example of what Commissioner Videnieks was talking about. There we have a difference of opinion on the issue of the rights of our airplanes and ships to transit innocent passage of waters, both in the air and in the water.

There is no disagreement about exactly how far off from China's shore that crash occurred. But there is a difference of opinion between the Chinese and the United States about our right to be there.

HEARING COCHAIR FIEDLER: Okay. I will come back. Commissioner Esper, second round.

HEARING COCHAIR ESPER: Thank you. I'm going to try to put some more detail in these questions since you took my broader questions, but picking up where we just left off, on the EP-3 question and the Law of the Sea.

The Law of the Sea, the text is very clear, black in letter, so it gets to the question of are they interpreting sovereignty to advance their own views on these issues. Based on your understanding of China's view of its sovereignty, how might we see this play out in outer space?

Might we see China push for a treaty or an arrangement whereby overhead reconnaissance is prohibited, which was the basis of their claim against the U.S. in the EP-3 incident, or how might that play out in other aspects of space and how we utilize space? Do you have any views or any thoughts on that?

DR. DREYER: My view on that is you should ask these guys who are going to testify this afternoon who know more about it. But if I put myself in China's shoes, I think what I would say is, "look, you guys may have been first in space, but that doesn't give you any prior

claims to dictate to us what's going on and you have a lot of space debris up there; why are you complaining about our space debris?" Frankly, I think they've got a good case.

DR. CARLSON: And I do think that looking at previous behavior in other issue areas, that the degree to which there's a relative level of consensus in the international community, so it's not just an American position, but one that might be shared with the EU and other actors, there's a greater likelihood of pulling China in the direction of getting on board with some sort of a multilateral agreement. If it's unilateral, I think they will have more of a tendency to react defensively.

HEARING COCHAIR ESPER: This gets into the policy prescription area where Commissioner Reinsch asked earlier what would you propose is the overarching U.S. approach to dealing with China on these sovereignty issues. Is it to further try to integrate them into the international system of multilateral and bilateral agreements?

And then where do you take it from there? Continue to press them or challenge them when they take these differing interpretations or to push them, press them on these sovereignty claims? How would you approach them given their perspectives on sovereignty, the cultural differences, historical claims, so forth and so on? What would you prescribe as the U.S. approach?

DR. CARLSON: I think that it's via the use of international institutions, a strong American leadership, a strongly defined position, and incentives or sanctions. So either incentives or punishment for behavior that we would consider unacceptable, but within an international setting which gives them a little bit more room, one, to feel that it's not that they're being pushed by the U.S., which they will react against, and, two, it brings them into the fold.

And then you do see, particularly in human rights, for example, that once China is in, it doesn't just kind of fall into lock-step with the international community. It also changes the institutions in ways that are favorable to its own positions.

But I think that we can't expect more than that. It is a country which--and I'm not sort of a cheerleader for this--but I think you look empirically, and it's in a stronger position than it was ten or 15 years ago. That's undeniable. It's a reality.

So the question is then how are we going to approach them as they become stronger, not returning to a rightful position if strength, but also not in the reactive position that they were in the early '90s or before? I think that policy then has to be kind of carefully calibrated between not pushing too hard to get a sort of reaction but rather pulling them in, and I think it's possible to do that in space and maybe less so in cyberspace.

I think cyberspace is difficult because they're going to be concerned about regime security and the degree to which cyberspace activity on the Internet could lead to some sort of a democracy movement. Here is probably less room for compromise. But my sense is that there isn't much agreement in international politics what to do with the Internet anyways. What are the rules? It's like the Wild West; right.

HEARING COCHAIR ESPER: Dr. Dreyer.

DR. DREYER: Yes. I frankly don't like the idea that somehow we have to be sensitive to Chinese history and Chinese cultural mores. To a large extent, this is being used against us. We have to understand China had this century of humiliation or we have to understand this is the way China did it in 1402: I think that is a conscious negotiating ploy on their part that we seem to fall for.

I do think we have to be sensitive to the legitimate rights, sovereign rights, if you will, ambiguous as that concept may be, of China, that just because we were there first, we don't get to make the rules for people who weren't there first. So I think they have legitimate grievances against us in that instance.

If we are constantly carping about their space debris without addressing the problem of our own space debris, that's somewhere where we need to be more sensitive than perhaps we have.

The other thing I would say about our negotiating record is that our negotiators are often shockingly ignorant of the things they are supposed to be negotiating about, and we really, really have to have better trained negotiators.

I think there is a problem here. If you're trying to come up with the perfectly positioned negotiator, he or she will have had to have had 86 years of education because they will have to have a law degree and a medical degree and a physics degree, knowledge of Chinese history and speak Chinese and so on. I realize that's very hard. But I think we could be doing a better job on prepping our negotiators on just what the real issues are --just what the prior negotiation record is. I think that's an area in which we're glaringly weak.

HEARING COCHAIR ESPER: Okay. Thank you both.

HEARING COCHAIR FIEDLER: Commissioner Bartholomew.

VICE CHAIRMAN BARTHOLOMEW: Thank you. It's a very interesting discussion. Commissioner Reinsch will probably be annoyed with me yet again because it's more of a comment than a question that I have, but Dr. Carlson, I'm really struck by your optimism and your faith in the fact that signing things changes behavior, and I guess if there's a question imbedded in there, it would sort of be why?

Because if you look, for example, at what the 14 agreements or memoranda of understanding on intellectual property rights signed between the U.S. and China since, it's disastrous.

You mentioned the international human rights organizations, and China's participation on the grounds in which it is participating and being allowed to participate is merely giving cover to other repressive regimes and what they are doing.

I think it's also very interesting that the WTO, which was created as a dispute resolution forum, and filing a complaint was supposed to be about dispute resolution, the way the Chinese have approached it, they have made anybody filing a complaint into it's a hostile act now, which means that their participation in these fora is not necessarily changing their behavior as much as it is changing the nature of the organizations, and that might also be to our detriment. So tell me where this optimism comes from.

DR. CARLSON: There I think I'm actually being somewhat incorrectly categorized. I'm not Pollyannaish about this at all, and as I note in my testimony, it's quite clear that China hasn't lived up to the commitments it's made on human rights, and that there are compliance problems when it comes to the WTO agreement, absolutely.

And it actually brings to mind Jia Qingguo, who is the Vice Dean for the School for International Studies at Peking University, he is a very well-known America watcher in China. Anytime I ever talk to him, he's "cautiously optimistic." When things are bad, he's "cautiously optimistic." When things are good, he is too.

I think that in a way you could categorize my position in the same degree. I think that on human rights, if you step back to looking at a 20 to 30 year trajectory, there have been some improvements. There have been some changes on the ground within China, certainly if you look back to 1979 in comparison to now. That doesn't excuse them for everything else that's going on in terms of arbitrary detention and torture. I see that.

But I do think, it makes sense to look not just in the China case, but comparatively. When countries make international commitments, ultimately, not in all cases, but it does have, it has implications. And again, I think you can make a comparison with Eastern Europe and the Soviet Union, the degree to which those were purely tactical sort of moves in terms of getting involved with Helsinki, and then eventually it brings about some sort of change. It brings about unintended consequences.

IPR obviously is an area where compliance is really weak, but in other sort of regards, I think China has done somewhat better, and also frankly I think it's what other mechanisms do we have in terms of dealing with them. It's not that this is a perfect recipe. It's not that

it's right--it's the best policy. But we don't have a lot at our disposal. I do think that--and this is probably where I'd be agreeing with Dr. Dreyer--that we have less now than we did before.

The last ten years, there's been a change, I think, in this relationship, and I think it's extremely important not to be blind to that, and then not to endorse it, but to accept it as a reality. Then maybe we need to rethink the way that we're then interacting with them both in multilateral settings and bilateral forums as well.

VICE CHAIRMAN BARTHOLOMEW: All right. Thank you. Dr. Dreyer.

DR. DREYER: I see the comparison with Helsinki and Eastern Europe as being imperfect because what induced the Soviet Union to start compromising was the perception of its imminent bankruptcy. We actually have in the not-yet-public record, but soon-to-be evidence of Gorbachev meeting with his generals saying the money isn't there; you're going to have to tighten your belts; and also separate evidence of the moving of the Soviet submarine fleet gradually backwards toward the USSR to save money; of the speech at Tashkent; and so on.

That wasn't Gorbachev being Mr. Nice Guy; that was Gorbachev trying to save the Soviet Union from disintegrating, and his policies were correct. They were simply too little too late.

China is not in that position. It's getting stronger economically, as you pointed out, so I don't think the comparison is correct.

HEARING COCHAIR FIEDLER: I'd like to give you the opportunity, and I don't recall exactly which one of you said in answer to Commissioner Wessel's line of inquiry on transparency. Dr. Carlson, I think the answer went a little like, you know, they're not transparent. They're not transparent; they are state-owned; it's complicated; and we have no evidence that they're doing something else.

So it's an argumentative, logical problem of there's no transparency; therefore, there is no evidence, and therefore we should have the best view of their--

DR. CARLSON: No. Therefore, we should look more carefully and try and gather information in official forums and academic ones. I think the question is then to look at specific issues—for example, energy security. You guys have dealt with this here. Or whether there is a mercantilist policy in Latin America.

Rather than asserting that such a policy exists, it is necessary to try to track down what the relationship is between various businesses and ministries and the rest. I think the issue is that the sort of chain of command in these various areas isn't well known. Certainly, even the relationship between the leadership and the military isn't particularly well defined.

And so the challenge then is to gather more information and before that not to prematurely jump to a conclusion. I have my own suspicions. I doubt that there is a coherent energy security policy in China. I have not been convinced by what I've read that there's that much coordination going on between the businesses and ministries that are involved. I think it's more actors seeking profit. So that was the spirit of the observation which I made.

DR. DREYER: Frankly, I don't understand what transparency means. I've been reading about it for the longest time. The Japanese in particular are always urging the Chinese to be more transparent about their military. What does that mean? "Tell us what you intend to do?" They're not going to tell us that.

HEARING COCHAIR FIEDLER: No. I'll give you the example in his line of inquiry on sovereign wealth funds. Transparency in sovereign wealth funds is what do you own? And, how much money you have and who makes the decisions on how it gets invested. And by the way, who appointed you? Who appointed you? And where is the next tranche of money coming from and what should we expect?

So it's more empirical. Look, I don't believe that the United States always makes its true intent known, nor should it. On other occasions, our intent is very clear even though it might be aggressive. So transparency is defined differently in every different context, but it is empirical; it is information. It is information upon which other people make decisions.

I have a simple commonsensical definition of transparency. I don't know if anybody else differs on that. Does anyone else have any questions? Thank you so much.

DR. DREYER: Thank you for having us.

HEARING COCHAIR FIEDLER: A very interesting discussion. We are going to take a break before we hear from Dr. Sutter. He is not expected actually till 11:15, but if he arrives earlier, we will start earlier.

[Whereupon, a short recess was taken.]

PANEL III: CHINESE METHODS OF ADVANCING SOVEREIGNTY BY NON-MILITARY MEANS

HEARING COCHAIR FIEDLER: We're going to hear in a moment from Dr. Robert Sutter, a professor of Asian Studies at Georgetown University, who has a distinguished, and we have the exact number of years, 33 year career within the United States government including the Congressional Research Service, the Central Intelligence Agency, the Department of State, and the Senate Foreign Relations Committee.

Dr. Sutter was at one time the National Intelligence Officer for East Asia. His most recent book is Chinese Foreign Relations: Power and Policy Since the Cold War.

We're very glad you're here, Dr. Sutter. Since you're alone on this panel, I will exercise my prerogative and violate the seven-minute rule and give you ten minutes to start since actually everybody takes ten minutes anyway.

VICE CHAIRMAN BARTHOLOMEW: So that means you get 12.

HEARING COCHAIR FIEDLER: And then we'll go through a round of questioning. Thank you.

**STATEMENT OF DR. ROBERT G. SUTTER
VISITING PROFESSOR OF ASIAN STUDIES
SCHOOL OF FOREIGN SERVICE, GEORGETOWN UNIVERSITY
WASHINGTON, D.C.**

DR. SUTTER: Thank you very much for the opportunity to testify before the Commission. I'm not sure I will take my full seven minutes, but this is my statement.

My prepared statement that you have focuses on why China's administration sees the United States as the main danger to its sovereign space and what non-military methods China uses to protect and advance its sovereign space.

China has a long history as an aggrieved power, a country whose sovereignty has been violated by other powers. This sense of victimization remains strong today with Taiwan protected by the United States heading the list of what China sees as gross violations of Chinese sovereignty.

China also has a consistent tendency to see larger powers along its periphery as real or potential threats to China's sovereignty. The record of the People's Republic of China in both the revolutionary Maoist period and the reform period since Mao's death in 1976 shows Chinese leaders giving top priority in foreign affairs to dealing with real or potential dangers and pressures posed by the United States or the Soviet Union and their allies and associates in Asia.

To deal with this situation and for other reasons, China's leaders have long given priority to developing China's comprehensive national power. China seeks strong military power backed by economic power, political unity and firm will in foreign affairs in order to protect its existing sovereignty and to advance its sovereign space.

The record of Chinese foreign policy shows that China has adjusted its tactics and approaches to preserving and advancing China's sovereign space. It has done so in light of changed circumstances that affect Chinese calculations of the costs and benefits

of using military and various non-military means.

In the post-Cold War period, China sought to preserve and develop economic and other advantageous ties with the United States, but China was faced with strong U.S. pressure following the Tiananmen crackdown of 1989.

Throughout the 1990s, China adopted a vocal and often confrontational posture in reaction to U.S. pressure. Its strong rhetoric and international activism against U.S. hegemonism was complemented by a Chinese military build-up that advanced following the Taiwan Strait crisis of 1995-1996 and focused on dealing with the U.S. forces in a Taiwan conflict.

By the end of the decade, Chinese leaders came to see this publicly confrontational approach as counterproductive. By mid-2001, before 9/11, they switched to a more accommodating public Chinese posture toward the United States that we see today. China has not moderated its strong military build-up focused on dealing with U.S. forces in a Taiwan contingency, but it has played down public resistance to U.S. hegemonism.

What has emerged is a type of Gulliver strategy China uses to tie down the perceived threats to its sovereignty and interests posed by the United States. Chinese leaders foster ever-greater Chinese-U.S. economic interdependence, which has the benefit of curbing possible U.S. moves to pressure China.

China builds ever-greater economic interdependence among Asian neighbors including close allies of the United States with the result that these countries are more supportive of China and less likely to join with the United States in possible efforts to pressure China.

Very active, adroit, and generally quite positive Chinese diplomacy strengthens webs of relationships with the United States and with China's neighbors in bilateral and multilateral relationships.

These curb possible U.S. pressure against China and reduce the danger that Asian countries will cooperate with U.S. pressure against China.

China's good-neighbor policies and growing economic importance also have advanced China's overall influence in Asia at a time of perceived U.S. inattention and decline in Asia, and they have established norms and practices that make it less likely for Asian neighbors to challenge Chinese territorial claims and sovereign space.

Now, it's important to remember that interdependence, by definition, works two ways. Thus, Chinese efforts to foster positive interdependence as a type of Gulliver strategy against U.S. power and pressure have served the interests of U.S. and Asian powers seeking to engage China.

In particular, the United States and Asian powers following

Gulliver strategies of their own against China. They seek to use engagement to build webs of relationships with China which will constrain Chinese tendencies toward aggressive or disruptive behavior in Asian and world affairs.

In sum, the Gulliver strategies of China on the one hand and the United States and many of China's neighbors on the other seem at present to reinforce stability in Asia and seem to be in the overall interest of the United States.

Now, looking to the future, prudent U.S. policy should be aware that changing circumstances could change the direction of China's recent tactics in protecting and advancing its sovereign space.

China remains a dissatisfied and aggrieved power as far as its sovereignty is concerned. On the one hand, China's current positive approach that builds interdependence with the United States and China's neighbors may deepen and make dealing with sensitive issues like Taiwan peacefully through negotiations easier in the future.

On the other hand, China continues its rapid military build-up focused on dealing with the United States in a Taiwan contingency. In particular, there is no guarantee that changes in the balance of forces and influence in Asia with China rising to regional leadership, as the United States seems less prominent and influential, won't prompt China's leaders to adopt more coercive means against Taiwan and in pursuit of greater power and possible dominance in Asia.

I thank you for your attention. I look forward to your questions.
[The statement follows:]

**Prepared Statement of Dr. Robert G. Sutter
Professor of Asian Studies, Georgetown University
Washington, D.C.**

Thank you for the opportunity to testify before the Commission.

Purpose and overview of findings

At the request of the Commission, this testimony assesses some features of China's rise and interaction with Asia in the post cold war period that demonstrate how China protects what the Commission calls China's "sovereign space" with non-military means and what these Chinese protective actions mean for US interests, especially regarding Asian stability.

The assessment shows that the Chinese administration has focused on the United States as the leading danger to its sovereignty in the post cold war period. In response, and as part of recent Chinese rising economic, diplomatic and other interaction around China's periphery, the Chinese administration has adopted measures to create webs of relationships and buffer zones around China that act as a sort of "Gulliver strategy" designed to tie down and curb real or suspected US efforts to impinge on Chinese sovereignty.

These Chinese efforts coincide with roughly similar Gulliver strategies adopted by many of China's Asian neighbors and the United States that seek to bind the Chinese administration in interdependent relationships, institutions, agreements, and norms that act to preclude disruptive Chinese practices of the past and promote greater stability in Asia. Up to now, the overall effect of the post cold war Chinese efforts, in conjunction with the efforts of China's neighbors and the United States, has been to increase stability and reduce the danger of confrontation in Asia. This trend has been in the interests of the United States.

Looking out, Chinese foreign policy decision making, and the decision making of the United States and China's neighbors, remains contingent on circumstances affecting the Chinese administration's and the other governments' calculus of the costs and benefits of specific courses of action. Thus, if circumstances were to change in ways that prompted China or others to see greater overall benefit in assertive or disruptive actions, differences over Taiwan and some other territorial disputes head the list of possible causes for confrontation and conflict over sovereignty involving China, the United States, and others.

China's focus on superpower threat

Chinese concerns with sovereignty have involved various countries which have territorial disputes with China, and Chinese concerns with sovereignty also have involved the actions by governments and other foreign forces that intrude on Chinese internal affairs and limit the Chinese administration's freedom of action at home and abroad. However, in the history of the People's Republic of China, it seems clear that the greatest threats to China's "sovereign space" have been seen as coming from hostile powers larger than China—superpowers--endeavoring to establish bases of power and influence around China's periphery as means to contain and intimidate China.

This sense of threat to Chinese sovereignty was evident during the Maoist period (1949-1976) of strong emphasis on ideology and revolution at home and abroad, and also was evident during much of the reform period led by Deng Xiaoping. (Deng began the reform period two years after Mao's death in 1976; Deng remained China's key leader until a few years before he died in 1997). Maoist China for decades saw the main threat to China's sovereignty posed by the United States and the US-led containment system in Asia. In the early 1970s, the US opening to China coincided with the emergence of the Soviet Union as the main threat to China's sovereignty and security. Though Deng Xiaoping focused on economic reform at home and abroad, his main foreign policy efforts were maneuvers and measures to prevent the Soviet Union from dominating China and otherwise intruding on China's sovereignty.

Post cold war focus on the US threat to China's sovereignty

The end of the cold war and collapse of the Soviet Union in the late 1980s and early 1990s did not end the Chinese administration's concern with great power threats to China's sovereignty. Following the Tiananmen incident of 1989, the United States intruded much more in Chinese internal affairs, pressing for changes that were seen as a direct threat to the Chinese Communist Party leadership's determination to sustain one party rule in China. The United States also advanced its support for Taiwan and for the Dalai Lama of Tibet, and passed legislation registering opposition to Chinese administration practices in Hong Kong. The United States took a firm stance at odds with China's sovereignty in 1995 by opposing Chinese efforts to expand territorial control in the disputed Spratly Islands, and in 1996 by sending two carrier battle groups to the Taiwan area in the wake of months of Chinese live-fire exercises and ballistic missile tests aimed at intimidating Taiwan's leadership. The United States endeavored to strengthen US security relations with Japan under the so-called Nye initiative begun in the mid-1990s that seemed directed at China, among others.

The Chinese administration sustained a strong and steady buildup of military forces beginning in the 1990s

and lasting up to the present, but its efforts at this time to protect China's sovereignty and other goals also focused heavily on using non-military means to protect China's sovereignty. Highlights of China's non-military efforts included the following:

- China's growing importance as an economic trader and recipient of foreign investment. China's economic ties with Asian neighbors grew enormously as overall Chinese trade grew at twice the pace of the double digit growth registered by China's economy. By the middle of the first decade of the 21st century, China was the largest trading partner with most important Asian economies and a favorite destination for foreign investment from those countries.
- China's promoting good relations with neighboring states through effective and attentive Chinese bilateral and multilateral diplomacy. China's accommodating and attentive diplomacy and frequent exchanges of high-level leaders' visits emphasized common ground between China and most regional governments and placed salient differences behind a curtain of positive communiqués, press releases and leadership rhetoric. The Chinese administration also put aside past suspicion of Asian multilateral groups and endeavored to use the burgeoning range of regional organizations to win good will from China's neighbors and to use the regional bodies to check or entangle possible pressure or initiatives with negative implications for China coming from the United States or elsewhere.

During the 1990s up to mid 2001, the Chinese administration was explicit in repeated public attacks by authoritative Chinese media and officials' statements that the United States—US "hegemonism"—was the main foreign threat to Chinese sovereignty and other interests. At this time, the Chinese administration's accommodating stance toward and burgeoning economic and diplomatic interaction with most neighbors was complemented by harsh injunctions against the "cold war thinking" prevalent in Washington that China saw as endeavoring to strengthen the US military presence and alliance structure in Asia as means to constrain China's rise in power and influence.

China's recent accommodating approach to the United States—a Gulliver strategy

Over time, the Chinese administration found their hard line against the United States was unattractive to many Asian neighbors who did not want to be forced to choose between China and the United States. They also came to judge that such an approach was counterproductive for Chinese interests vis-à-vis the United States. In the immediate cold war period, Chinese strategists had expected the United States to decline in world power and influence. They had expected a "multi polar" world order to emerge, with China and other world power centers resisting and wearing down US "hegemonism" and thereby creating a new order more beneficial to China's freedom of maneuver at home and abroad. In the event, Chinese strategists found this did not happen as the United States loomed more powerful than ever as the 1990s developed.

One Chinese strategist summarized the change in Chinese thinking this way. He said that multipolarity required the other world power centers to resist the US superpower. China found that many of these power centers publicly advocated multipolarity but in practice they were unwilling to resist US power; more often than not they saw their interests best served by collaborating with the United States. In this situation, China did not want to be alone in resisting US hegemonism. So the Chinese administration decided to shift to a more accommodating stance toward the United States as a better way to manage the danger to Chinese sovereignty posed by US hegemonism, and to sustain and advance the economic and other Chinese relationships with the United States that were important for China's stability and development.

As a result of these calculations, the Chinese administration switched to a much more accommodating public posture toward the United States by mid-2001, well before the September 11, 2001 terrorist attack on America. Chinese officials made clear privately that they still opposed US hegemonism but they affirmed that the Chinese administration would generally refrain from public criticism of the United States

in the interests of fostering improved Chinese relations with Washington as well as with China's Asian neighbors.

They also made clear that China intended to use its increased economic and diplomatic engagement with Asian neighbors and with the United States as a means to create a buffer zone of states around China's periphery and to entangle the United States in bilateral and multilateral relationships and agreements. Both the buffer zone and the entangling relationships were seen to make US pressure against Chinese sovereignty less likely to occur, and if it did occur, less likely to be successful. Thus, few of China's neighbors were seen likely to join in any US effort to contain China's rise in Asia, or impinge on Chinese sovereignty over Taiwan and in other ways, as the neighbors would not want to sacrifice their growing positive equities in economic and diplomatic relations with China in following such a hard line US stance. And as China fostered economic interdependence with the United States and became more important to the United States in managing the crisis caused by North Korea nuclear weapons development and other international issues, the likelihood of a US government adopting a hard line against China seemed to decline. In effect, the zone and the relationships were at the heart of a Chinese "Gulliver strategy" designed to safeguard China's sovereign space against US pressure and power.

US, Asian Gulliver strategies toward China

Coincidentally, many of China's neighbors and the United States sought to use their growing engagement with China as Gulliver strategies of their own. Their efforts had the effect of enmeshing China in growing interdependent relationships, commitments, and norms that reduced the chances of China returning to the disruptive and assertive policies and practices China often followed in the region during the 1950s through the 1980s. Specialists saw the Southeast Asian countries and their main regional organization the Association of Southeast Asian Nations (ASEAN) following such an approach toward China since the early 1990s. At the same time, the US Council of Foreign Relations saw US engagement as premised on this kind of enmeshment of China in webs of interdependent relationships designed to curb Chinese aggression and disruption of regional stability.

Implications of the respective "Gulliver strategies" for Asian stability

In general, China's non-military efforts to secure its sovereignty against the danger seen posed by the United States in Asia in the post cold war period have complemented the efforts by many of China's Asian neighbors and the United States to use growing bilateral and multilateral engagement with China as means to reduce chances of disruptive and aggressive Chinese behavior in Asia. These trends have strengthened stability in Asia and appear to be in the interests of the United States.

Outlook

Looking out, these trends toward interdependence and collaboration continue but there is no guarantee that these trends will develop without interruption. The dynamics in post cold war Asia are fluid. Circumstances change, sometimes rapidly. China's post cold decision making in foreign affairs seems best understood as one contingent on and influenced by the perceived costs and benefits for Chinese interests amid prevailing circumstances. The decision making of the United States and China's neighbors also may be best understood as contingent on circumstances affecting those governments' calculus of the costs and benefits of specific courses of action. If prevailing circumstances were to change, China's calculus of costs and benefits could change. Thus, Taiwan's moves toward greater independence or assertive actions by Japan, the United States or others intruding on Chinese territory or other sovereign interests could prompt the Chinese leadership to break the entangling webs of interdependence and take forceful actions to protect and preserve vital interests in national sovereignty. Moreover, the willingness and ability of the United States and China's neighbors to back up their engagements with China with economic, political, and

military power and resolve also seem important in deterring aggressive or assertive Chinese actions in Asia. Were US or other key powers to decline in ability and resolve, the chances of China taking aggressive action to secure territorial or other sovereign interests might increase.

In sum, China's use of non military means to preserve and enhance its sovereign space meshes with Gulliver strategies of the United States and many of China's Asian neighbors. The result is stabilizing and beneficial for US interests. However, the convergence of these respective Gulliver strategies remains fragile and subject to change.

Panel III: Discussion, Questions and Answers

HEARING COCHAIR FIEDLER: Thank you very much. Commissioner Esper.

HEARING COCHAIR ESPER: Thank you for your opening remarks, Dr. Sutter. Very interesting. You outlined the Gulliver strategy, so to speak, whereby China attempts to engage the United States through greater integration, but what other strategies and techniques might Beijing pursue, non-military ones, in order to advance its sovereignty?

This is the fundamental question for the panel today. What other methods might we see or have you seen them use historically to advance or protect their sovereignty?

DR. SUTTER: History is full of episodes of aggressive Chinese behavior toward the region, particularly in the Maoist period. My point and my sense of what's happening now is that China's approach to the Asian region is not only reflective of China's confidence in its economic growth and its adroit diplomacy, but it's also very defensive.

And so to have aggressive aspects to their approach to the region is difficult to do at this time. They're not in a command position in my judgment. Specialists will disagree on this issue. In other words, some see China very confident, on the march, but others will say there's a lot of cause for diffidence and uncertainty in China, and I'm more on the latter side.

In particular, the main thing they worry about is U.S. power. The United States is very powerful in Asia-Pacific, and so to try an offensive approach, an aggressive approach--they did try it to a degree in the 1990s, and it failed. This was a very overt effort to be assertive against U.S. power and pressure, and so I tend to say for the time being this isn't going to happen.

They're sort of stuck with this Gulliver strategy. Would they like to have a more assertive policy toward the United States and to expand China's sovereign space in the region? I think so. Can they do it? No. My sense is they recognize this would be counterproductive if they tried.

And so what could they do? They could do all sorts of things.

They could have aggressive approaches toward Taiwan. They could have aggressive approaches toward the South China Sea. They could be very assertive vis-à-vis Japan and other things. There is all sorts of things they could do, but I think the circumstances and the cost and benefits as seen from the Chinese leadership are such that the ability to do so is quite limited.

HEARING COCHAIR ESPER: But might you be able to catalog a standard set of practices that they use to effect their positions? For example, with regard to China's image abroad, including human rights, they pursued the Olympics. A couple years ago with regard to Taiwan, they passed domestic legislation that presumably could be a cause for action against Taiwan. Those are just two examples. One, very legalistic; the other, arguably a strategic communications play or the marketing of China.

DR. SUTTER: Uh-huh.

HEARING COCHAIR ESPER: Have you seen these activities on other issue areas, and what else would you include in that set of non-military means, and then the ultimate question, how might we see them employ these techniques with regard to cyberspace and outer space?

DR. SUTTER: It's a very complicated question that you're asking, and I'll do the best I can to answer it. I guess the thing that I'm impressed with is how the Chinese administration constantly has to adjust to changing circumstances.

The first big change that happened in the early part of this decade is energy security. The Chinese had to adjust to this. They became so dependent on energy and they needed so much more energy because they're putting so much effort into high-energy industries in China, this caught them by surprise, and so they had to adjust to this situation in a way that this is a real security dilemma for them because they don't control the lines of communication that their energy that comes from abroad comes through.

How do they deal with that situation? They have to adjust to this, and they have tactics for dealing with the sort of thing which is basically trying to avoid major commitments or major risks or major costs that would change basically what they see for the time being as on the whole an advantageous position for China in the region and in the world. I think they're basically satisfied with what they're getting from the world to this point.

They're not satisfied about their sovereignty, but basically for the time being they're satisfied with their position.

The latest thing that's come down the pike, and this is just in the last year or so, is climate change. How are they going to position themselves on climate change? So this notion that people have that the Chinese leaders have this strategy, they have this way of thinking that

somehow is going to tell you what they're going to do, I think it isn't borne out by the record of what you see the Chinese doing.

You see the Chinese often scrambling. You know what I'm saying by scrambling? They're trying to deal with changed circumstances that they don't control and this is a big determinant of how they act, and these two examples I've just given you are just things that if I were doing a book about China in 1999, I wouldn't have put this in the book. Climate change? I wouldn't put that in there. And energy security? Probably not.

But these things have just, these are fundamentally important for the position of China in the region, for the position of China in the world, and so they scramble to come up with effective strategies to deal with this situation. So my point is that Asian conditions are changing and they will have to continue to adjust. And they don't control it.

HEARING COCHAIR ESPER: Okay. Thank you.

HEARING COCHAIR FIEDLER: Commissioner Wessel.

COMMISSIONER WESSEL: Thank you, Dr. Sutter, for being here today. I'd like to ask some questions about your literature reference, the Gulliver. I guess that would mean that the Chinese view themselves as the Lilliputians in this endeavor.

DR. SUTTER: Uh-huh. You don't want to take this too far, sir.

COMMISSIONER WESSEL: No, I'm not taking it too far, but--

HEARING COCHAIR ESPER: 1.3 billion of them.

COMMISSIONER WESSEL: 1.3. Yes, that's true. My question is we've seen, and clearly we're in a political time right now, but increasing concerns in the U.S. about the power of China, the migration of manufacturing, et cetera.

Has the changing perception of the public here in any way affected Chinese views as to their sovereignty, the tools, as Commissioner Esper was just talking about? Do they understand that many don't view ourselves as the Gulliver anymore but maybe a lot of Lilliputians on both sides of the Pacific?

DR. SUTTER: Thank you for your question. When I assess this kind of situation, I don't see fundamental change in how the Chinese view the United States at this point.

COMMISSIONER WESSEL: Do they understand--

DR. SUTTER: They understand us very well.

COMMISSIONER WESSEL: But they understand the changing viewpoint?

DR. SUTTER: The view in the United States, yes, they understand this very well. And sometimes they think it's a trick. They say this. I just read a piece by the Foreign Affairs Journal that said they claim that the CIA uses personal power parity to designate

China's economic power because it's a trap to get China to do more in commitments to international aid and to pay more in the U.N. and other such things, that this was a scheme for the United States to do this.

Now, this is probably just one extreme view, but I think they dismiss this kind of talk. Frankly, I think they do it with good justification, in my own judgment. As a specialist looking at this issue, the opinion in the United States is one thing; the actual reality of the United States is something else it seems to me.

Several of you have been through these cycles before. Americans get very excited about rising powers and get very nervous about the United States in that context, and we're in an emerging recession. This is a time that we often get this way. And there are realities here. There's no question about that. Big realities. China is rising, but the point I would raise here is that I've examined this very carefully. U.S. power is overwhelming vis-à-vis China, and the things I look for that might help you in understanding--at least how I feel about this--look for China to undertake major commitment, major cost, major risk in areas that they wouldn't ordinarily do it.

They don't do this. They don't do this at all. And there's only one power in Asia that takes major costs, major risks and major commitments, both in the security area and in the economic area, and that's the United States, and Asian government leaders--and I've talked to 175 of them over the last four years--they understand this completely, and they say we need this.

I can go into chapter and verse on why they need it, but it seems to me the Chinese understand this, too. The Chinese officials I've talked to, they understand this too, and I don't think it's just spin. I'm an old CIA analyst. I know what denial and deception is. It may be partly denial and perception, but I think it's reality as well.

What I see coming from China is that, no, they've made this change as of 2001, change in that they said the U.S. is going to be the dominant power for some time to come; we're working in that context; this isn't changing fundamentally. And thus far I haven't seen any indication that they see a big change.

COMMISSIONER WESSEL: So that would lead me to believe that any claims of unfairness--and this goes back, as you're pointing out, historically, issues with Japan that the U.S. has had in rise, fall, and all the various other historical approaches--that our belief that trade is unfair and unbalanced is an inappropriate approach for us to take in that they are a rising power who deserves more.

For example, global warming. They believe that we've been able to harvest many of the benefits and it's now their turn. Am I correct?

DR. SUTTER: No, I'm not saying that. I'm just saying be

confident of U.S. power.

COMMISSIONER WESSEL: I am confident of U.S. power. I'm interested in how China perceives us at this point and our current thinking.

DR. SUTTER: On dealing with issues like trade unfairness?

COMMISSIONER WESSEL: Yes. Yes.

DR. SUTTER: I think they're worried. I think they're quite worried about the trends in the United States. I think this is the key area that they're most worried about because they seem to have a good relationship with the administration, but this is something that's coming from within the country--the United States--this pressure for fair trade rather than free trade, and I think they worry about this because it's very hard to control.

If the U.S. goes into a recession, this is even harder to control politically, and so the administration, even if it's a free trade administration like the Bush administration, can't control this very well. So they worry about that element.

I think on the whole they feel there's a sort of stasis in U.S.-China relations which is basically satisfactory for them, and they see it as satisfactory for the Bush administration as well. Both sides emphasize the positive; they tend to put aside, not give a lot of emphasis to, the differences between our countries, which are very long and very many, and on the whole that works.

But in this area it doesn't work so well, and this is getting worse from their point of view. And so the pressures, yes, I think they anticipate there could be more pressures from the United States and they're watching this very carefully. And what they can do about it is react.

I don't know--they can maybe adjust their currency and they seem to be speeding up the devaluation of their currency. They may be able to do something on IPR and things of that nature, but I think the pressures are something that there is just this enormous trade deficit that we have with China, and I don't think they have a good answer for that one.

So I think this is going to be a big problem for U.S.-China relations, and the question is how big? And I don't think they feel they can really control it so they're just going to have to react to it.

COMMISSIONER WESSEL: Thank you.

HEARING COCHAIR FIEDLER: Commissioner Bartholomew.

VICE CHAIRMAN BARTHOLOMEW: Thank you, Dr. Sutter. It's always interesting to hear your testimony. Thank you both for coming here today and thank you for all the service to the government of the United States over your different careers.

Former Commissioner Tom Donnelly, who no longer serves on

the Commission, used to talk about the problem of free riders. I mean that the U.S. is bearing the cost of maintaining peace in Asia and peace other places in the world and other countries are benefiting. As you were talking I found myself thinking about the Sun Tzu concept-- that you defeat your enemy before you even have to go to the battlefield.

So there is this economic growth and this increased network of relationships, diplomacy, political, all of these things that are going on if we talk just in Asia. How do we reconcile that with this view that the Chinese recognize that they aren't doing, maybe they aren't doing anything aggressive because they don't need to do anything aggressive in order to accomplish what they want to accomplish? We don't know a whole lot about their intentions.

And then the second piece I would put out there is if that's the case, how do we deal with growing concern or think about or even reconcile growing concern in India about China's growth, and the whole sort of triangulation that is going on, U.S.-China-India and some of the other countries that have been participating, even Singapore?

DR. SUTTER: Thank you. I think China is taking advantage of the existing order in the Asia- Pacific region. I think it benefits from this in many respects.

But there are down sides for China, too. And the down sides for China are that they still receive a lot of pressure to change their political system and this is a great indignity to them. The U.S. is building up a closer military relationship with Taiwan. This is a gross violation from their point of view.

The U.S. remains the dominant power in Asia. It builds alliance and military relationships with countries all around China's periphery, and they have to be quiet about this because if they make a big fuss over it, they'll be seen as confrontational and that didn't work in the 1990s, and they probably judge it won't work very well now.

The U.S. is very dominant in the world, and they don't like that either. So they have to just sort of eat this for a while, maybe a long time. And I don't think they like it one bit.

So those are down sides for them. But the upside is that they are able to advance their economy and influence in the region, and I think how significant is this? This is economic advancing, which they do for a variety of reasons, not just to spread their influence, but they have to keep their economy going. They have to keep stability on the periphery. They have to isolate Taiwan. They have a whole list of goals that they do in pursuing this.

But spreading their influence is part of that, and does that come at the expense of the United States? I don't think very much actually,

but they do do that through trade and through diplomacy, adroit win-win diplomacy.

But there are other ways of looking at this, which show that this advance while significant is not overwhelming, and so is this going to put China in a position to call the shots in Asia, to be the kingpin, to be the godfather of Asia, you know, this kind of thing?

No way. And you mentioned India. When I interview government officials throughout the periphery of China, they're all like India in one sense. They want to be independent. They don't want to be dominated by China and they're focused on this. They're very focused on this issue, that China is the rising power. They're focused on this.

And so they are very wary. So they cooperate with China in all these areas where they can cooperate because it's advantageous economically and so forth. But at the same time they do what many people call hedge--contingency planning--and they're all doing it. Laos doesn't do it much, but most of the others are doing it. And we're a big part of the hedging. They want the Americans to be here, be right here next to them, as China rises.

VICE CHAIRMAN BARTHOLOMEW: Just in case.

DR. SUTTER: We're big and we're powerful, and so at the end, what does China get? It gets what it wants immediately, which is economic progress, stability at home, legitimacy for the administration in China, and keep the system working. That's the main thing they want.

Do they want to dominate Asia? Maybe. But is that really the driver of what they're doing? I don't think so. I think they're trying to deal with contingencies, keep themselves in power and advance their comprehensive national power. But they have to look further out for any sort of situation where China will be dominant because the U.S. is there, and it's a real pain in the neck in a lot of ways, and it's not going away.

This is how I see it anyway. And I get confirmation by, not so much by reading U.S. media or--Western media gets very excited about China's rise--but by talking to officials in the region off the record, and there you get a very different perspective.

HEARING COCHAIR FIEDLER: Thank you. You said--I'm going to ask a question myself--you said--I think the exact quote was that "China is not satisfied with its sovereignty situation."

DR. SUTTER: Uh-huh.

HEARING COCHAIR FIEDLER: Can you get specific? What are they not satisfied with vis-à-vis sovereignty?

DR. SUTTER: The head of the list is Taiwan.

HEARING COCHAIR FIEDLER: Okay.

DR. SUTTER: They want Taiwan to be part of China for a whole range of reasons. They have sovereign claims to the South China Sea or the islands in the South China Sea. All that is Chinese territory. I mean that's, they want that at some point.

The claims and differences they have with Japan and the sea claims as well as the Senkaku and Diaoyu Islands. It's very important. So territorial claims. All of China's territorial claims they feel are legitimate and should be respected and that's a goal of the Chinese administration.

A second goal that deals with the concept which this hearing is focused on, on sovereign space, they don't want to be in a position where a big power is dominant around their periphery. Now this is derived--they don't say this--but this is derived from the record.

Just look at what they've done, and this isn't just Mao Zedong. Mao Zedong obviously challenged the United States in Asia and challenged the Soviet Union directly. And he risked nuclear war with both powers many times to do this.

But Deng Xiaoping did it, too. When the Soviet Union was dominant in surrounding China, that's what, day-to-day, that's what Deng Xiaoping was focused on in foreign affairs--how to deal with the Soviet threat. Remember the Soviets were in Vietnam, they had a relationship with India, they had a very active fleet along the periphery of China, as well as all along the Sino-Soviet frontier.

He worked very hard to deal with this. Now that ended with the Cold War ending, but following that was the United States, which was very obnoxious from the Chinese point of view after Tiananmen, pressuring the Chinese in the core area of interest of China--this is their legitimacy of the regime--saying you got to change your political system, and the Chinese say that's what we're here not to do.

That's sovereignty. That's internal affairs, and the U.S. is seen as this kind of an adversary by many in China over the years, and so this, if the U.S. has the ability to do something about this, it's because it's often around the periphery of China, from a security point of view and an economic point of view, but particularly security, and so they resist that as well.

HEARING COCHAIR FIEDLER: What are the most substantive and volatile sovereignty issues between China and the United States directly?

DR. SUTTER: Today Taiwan is the most important one with the U.S. supporting Taiwan's separate status and security vis-à-vis the pressures from China.

HEARING COCHAIR FIEDLER: Second?

DR. SUTTER: Now the second I would put is the U.S. pressure on China to change its political system. This is a direct affront to

Chinese sovereignty. You could talk about economic pressures to hold China back so that it doesn't have the right to, doesn't have a free path, as it sees it, to economic growth and development, and I'm sure there are other things that you could see, but those are the main ones.

And behind them is the U.S. relationship with Japan, which is very supportive of, of course, Japan's position, and how the U.S. looks at this relationship as a way of giving the United States strategic position in Asia which is very useful for dealing with rising China.

HEARING COCHAIR FIEDLER: How do you view our differences in our view of space sovereignty?

DR. SUTTER: These are differences. This goes back to the basic point that China doesn't like the U.S. being the dominant power in the world and the U.S. controls the commons. It controls space, it controls the sea, it controls the air, in common areas of the world, and China doesn't like that one bit.

But that is not high, I think, on the list that they're prepared to deal with today, but this is a multipolar world which China ultimately hopes to achieve would have the United States being only one of many powers that would have influence over these kinds of issues. So, yes, this is an issue for China. It's been an issue for a long time, but it's not one that they put high on their list except at various--sometimes they raise it, but it's not that high on their list.

HEARING COCHAIR FIEDLER: I'll come back to that. Yes, Commissioner Slane.

COMMISSIONER SLANE: Thanks for your testimony. Do you see pressure being brought regarding their environment and trying to do things to start to clean it up?

DR. SUTTER: The pressure on China from the environment, I think, is enormous. I guess the word is "sustainable development." How do they have sustainable development?

The leaders of China articulate a position that they understand that this is a very difficult proposition for them and that they have to do something about it, and they have to do it soon, and so that's the intention.

But what I'm waiting to see is will they actually do it? And the reason I'm a little skeptical about this is that many of you remember Li Peng. Remember Li Peng? He was Mr. Environment in China. No, I'm not kidding. If you go back and see what he said about environment, it's very similar to what the Chinese leadership is saying now: we need 1.5 percent of our spending of GDP on environment. That's what Li Peng said.

That was over ten, that was in the early '90s so how long ago was that? 15 years ago--they've been saying this. So I'm waiting to see will they spend 1.5 of GDP on environment?

The reason they don't do this is the tradeoffs. The tradeoffs are so hard and so here they have a situation. And the main tradeoff is growth, economic growth, and they need economic growth in order to develop, but also to make sure stability continues in China. You can have instability because of environmental issues, but you can have a lot of instability because of lack of growth. And it seems that growth wins in these debates in China.

I think the Chinese are still in the midst of this debate, and so I don't know what they're going to do. At the National People's Congress, I know what they're saying as a result of the 17th Party Congress and things that; they emphasize this and they say there's a lot more emphasis on this. We're going to do a lot more and this sort of thing, and yet where's the money going to come from? So I try to watch the money. And I haven't seen it yet. There's some, but I haven't seen it yet. And some of the benchmarks I'm looking at are the following:

Number one, I mentioned earlier, energy. They've gotten themselves into a situation over the last six or seven years where state-owned enterprises that are involved in high energy use have become very prominent and have grown a lot and they seem very important for the economy. And so the energy use in China has ballooned by industry. This isn't Chinese people getting in cars and burning oil. This is industry.

This took them by surprise. Will they stop this? How do they stop this? Well, if they stop it, those state-owned enterprises are going to have unemployment or less employment, less growth. Will they do that? I'm really watching to see if they will do that.

The second thing is energy efficiency, the use of efficiency. As you know the efficiency of use in industry in China is very, very poor.

They could save a lot of energy and help the environment by putting in the inputs that would make their energy use much more efficient. Do they do that? Not yet. Some.

But it's costly to do that and they don't have the money, I guess, to do this, or they don't give the priority to spend the money to do this sort of thing. So I think we really do need to watch the fine print. This is a little nerdy. You have to look and see what they're doing and so forth, but if you don't do this, and you just take their declarations at face value, then I would give you Li Peng's remarks in '92. Look at what he said, too.

I would just watch this carefully and so my sense is it will be gradual. We're not dealing with a leadership that seems to have tight power. We're dealing with consensus type of decision-making. Hu Jintao is obviously first among equals, but he's not dominant. And so he has to deal with these people that have important interests in these

state-owned enterprises that are very inefficient and yet are very important for growth, and he has to listen to environmental concerns, and he has to balance it all out and you get sort of a slow approach.

I would envisage a slow approach. That's my sense. I wouldn't expect dramatic change, and now in managing climate change issues, from a diplomatic point of view, they're very active. They're very prominent. They have an ambassador. They have a statement.

They're organized on this issue to manage the international pressures that they'll get because they're such a big producer of gases that cause global warming, but cost things, things that will cost, I think they're very reluctant to do because of these tradeoffs that they face. Not because they don't want to. It's the tradeoffs are just too strong.

HEARING COCHAIR FIEDLER: Commissioner Videnieks.

COMMISSIONER VIDENIEKS: A brief question. I think I heard you say that sovereignty requires growth. It requires stability and stability requires growth.

DR. SUTTER: Yes.

COMMISSIONER VIDENIEKS: Is there a probability that China may try to externalize instability like other countries have done in the past, and if that were to be the case, how would they, in which direction would they and how would they, if they would, externalize instability?

DR. SUTTER: Okay. It's a very useful question. I appreciate your asking it. I guess what you mean is that China would somehow focus on an external concern to muster--

COMMISSIONER VIDENIEKS: Yes.

DR. SUTTER: --support internally. Mao Zedong used to do this all the time. He'd use foreign issues to mobilize support internally and so forth. This is very hard to do if you're not sure you're in control, and I think the administration of China is still careful about causing anything that would be significantly disruptive, that could somehow turn against them, and so I think they'll tend--the administration of Hu Jintao, following in the tradition of the previous administration, will probably continue to avoid this kind of a situation.

They seek stability overseas. They don't want big trouble. You say if circumstances were to change significantly in China, the big economic downturn, recession, there's a crisis for the leadership, would they then look at Taiwan as a place and say, well, we're really tough on Taiwan so let's rally the troops on Taiwan, get nationalistic fervor and so forth to work for us? They could do that.

But I don't think that's their choice at all because it's dangerous. It's very dangerous for them. It could lead to conflict with the United States which is disastrous for their economy, for their stability, and

they've worked so hard to try to keep the situation around their periphery stable. So I don't think they'll do it, and I don't think the conditions now warrant this at all. And I think it's basically a leadership that is very risk adverse.

COMMISSIONER VIDENIEKS: I was thinking of the analogy of a man on a bicycle. You have to keep moving. If you stop, you fall.

DR. SUTTER: Right.

COMMISSIONER VIDENIEKS: But you're basically saying, if I understand correctly, the projection is it won't happen?

DR. SUTTER: I think what they have to keep moving and doing is keeping their economy growing. That's what has to do keep moving. And if that keeps moving and they keep stability otherwise, I think they're okay, and they say they have this strategic plan, and so their focus for the next, until 2020, to focus on this strategic opportunity, and they don't want to mess it up by getting into a conflict with the United States or some other country. And I think that makes sense for them. I think that makes sense for them.

HEARING COCHAIR FIEDLER: Commissioner Esper.

HEARING COCHAIR ESPER: I guess this is round two.

HEARING COCHAIR FIEDLER: Yes, this is round two.

HEARING COCHAIR ESPER: Dr. Sutter, going back to the Gulliver analogy, I assume that some of the ropes by which we would be tied down and entangled with China are multilateral agreements, treaties, things like that.

DR. SUTTER: Yes.

HEARING COCHAIR ESPER: China would see this as a way to safeguard its sovereignty. To what degree does the United States have confidence that China itself would abide by those same agreements and treaties, or are their actions merely tactical?

DR. SUTTER: It's a very good question. I think for now you can say yes, it would be too costly--I guess you get a sense now I'm very much a realist about these sorts of things. I'm always looking at costs and benefits, and my experience in dealing with the Chinese over, the Chinese administration over the years is that I think they're pretty realists too.

The Chinese cost in breaking agreements at this point is pretty negative. It would be pretty bad, be pretty high for them. And so I think they want to avoid this. I think we could have pretty good confidence that they would abide by these agreements.

Can you say that's always going to be the case? I wouldn't say it's always the case. It could change with changing circumstances. And the key circumstance is confidence the Chinese would have in their power, in their ability to call the shots, if you will, in international affairs, and I just think they're such a long way away

from that.

That may be a goal that they have, but I think they're so far away from this that I think we can have some confidence because the international pressures that they would feel from doing this kind of thing would be quite significant and would remain significant insofar as the nations of the world, led by the United States, continued to think that Chinese implementation was important.

As they become even more interdependent economically and otherwise with countries in the world, the cost to them breaking significant agreements is very high.

HEARING COCHAIR ESPER: What about short of breaking them? What about not fully implementing them?

DR. SUTTER: I think a lot of countries will always try to get around the issues, finesse them if you will, if it costs them. But I think that if they're--so these fuzzy ones are hard to--you're right. If it's not a bold ending of the agreement, but it's sort of undermining the agreement, yes, they may try that, and other countries do that, too. I don't think that's unusual international behavior, frankly speaking.

HEARING COCHAIR ESPER: I ask because hearing from you and from the previous panel, we, or at least I, get a sense that the Chinese take a very clear view of sovereignty and are the first to defend their views on sovereignty and the notions of mutual interference. So it begs the question, if they're going to take such a hard-line view on protecting their sovereignty and doing so through agreements and treaties, one might expect them to be equally diligent in living up to their end of such agreements.

DR. SUTTER: Yes.

HEARING COCHAIR ESPER: The one that we discussed this morning, and you mentioned briefly, was the Law of the Sea Treaty, which is a very long-established treaty, and they signed on to it, and yet we've learned of a number of likely infractions of the treaty, and different interpretations of what the treaty text may say.

DR. SUTTER: Yes.

HEARING COCHAIR ESPER: And so it does beg the question as to whether treaties and agreements are signed on to in order to polish the image of the PRC internationally, in order to assure countries of China's peaceful rise, and similar purposes, but meanwhile because they have other objectives, whether it may be securing their lines of communication or acquiring natural resources, they're going to finesse the treaty--

DR. SUTTER: Yes.

HEARING COCHAIR ESPER: --to achieve those ends.

DR. SUTTER: I think that's very accurate. I think the WTO is the one I would look at. They signed on to WTO, they have a lot of

commitments, and yet the record is sort of mixed.

HEARING COCHAIR ESPER: Let me jump ahead since I'm running out of time then. Let's use the energy example, because on energy and sovereignty China has taken a different approach. Rather than buying oil in international markets, it seems to be going straight to the wellheads. It's establishing relationships with oil-producing regimes.

We've talked about its activities in the South China Sea, its willingness, so to speak, to redefine its obligations under the Law of the Sea Treaty to effect those ends.

So it gets back to the first question I asked: what might we see China do when we start talking about other realms such as outer space?

Could we see them trying, as we do now, to push for a new type of outer space treaty? Could we expect them to live up to the terms of the treaty? Could we see them take an approach globally where they're dealing bilaterally with other states in order to gain agreements that might seek to constrain the United States in space?

What might we see come out of their playbook based on how they've approached other areas?

DR. SUTTER: I think the playbook in this area has been longstanding, and they're trying to limit the U.S. dominance of this commons. They're trying. This is what they're trying to do--I mean the idea of sharing this and so forth. I think that the goal--that goes back to superpower dominance of space.

They've been against that for a long, long time, and so I think trying to do in this case, I think it's pretty heavily that the goal is to limit--is multipolarity as far as the use of space is concerned, and I'm not sure the U.S. is going to buy that. I think the U.S. is going to resist that in one way or another because power realities are such that the U.S. is just dominant in this area. I think there will be resistance, and there has been for many, many years.

This goes way back--Conference of Disarmament, all these kinds of discussions against it, and so the Chinese have been pretty consistent on this issue.

HEARING COCHAIR FIEDLER: Commissioner Wessel.

COMMISSIONER WESSEL: Thank you. Let me ask you a question about, if I can, the extent of China's sovereign interests, if you will. As it has grown as a power, are there any activities that China has engaged in which you think they are doing for reasons other than expanding the sovereign control, or as you, I think, gave the top three reasons of their other reasons, meaning Taiwan, internal control, et cetera, are there any eleemosynary activities they engage in?

DR. SUTTER: You're going to have to help me.

COMMISSIONER WESSEL: Any charitable activities they

engage in.

DR. SUTTER: Yes.

COMMISSIONER WESSEL: And as you, for example, on the flip side of that, when the U.S. engaged, for example, in tsunami relief, did they view that as a desire by the U.S. to expand or maintain its sovereign influence or simply as a charitable activity? Are we going to see any engagement of China on a different level beyond simply sovereign control, expansion, retention, et cetera?

DR. SUTTER: Yes, I think we will.

COMMISSIONER WESSEL: Have we seen any yet?

DR. SUTTER: Yes, I think so because I think there's so many of these issues the motives mesh. It's not just sovereignty. It's what are national interests for China? Several of us this morning have talked about image. Image is very important for China, and so to have a good image, you have to look like you're altruistic sometimes, and you have to look like you're willing to help. You have the sense of the common good.

The Chinese do this in a lot of different ways. They do it in ways that don't cost them very much, but they do do it, like peacekeeping. You know they do peacekeeping, a lot of it, and I assume they get paid for this, but still their people are at risk when they do this. That's important.

I think there are a number of other things. The tsunami relief is a good example of that. They obviously saw that the world was very much responding in a strong way. This is in Asia--they had to take a big role and they tried as best they could to play a role there.

COMMISSIONER WESSEL: But did they do that because they were concerned about their presence and image or again charitable and how do they view us? Is everything directed towards the retention of power?

DR. SUTTER: It's heavily state-centered, state interest-centered. When they think about issues, in my experience, it's heavily state-centered. So globalization. Do you think globalization is going to benefit the world? Maybe. But they want to make sure it benefits China.

I think this is fairly typical of the Chinese administration and I'm not sure it's atypical of other countries. I think many countries are like this so there's a reason for these kinds of things, a state reason, and so image is important, and the idea of altruism by countries, I look at my own country--I'm not sure how altruistic my country is. So I don't say the Chinese is an outlier in this regard. I think it's quite common the way they deal with these issues.

COMMISSIONER WESSEL: We may differ on a couple of issues, that--

DR. SUTTER: Sure. I'm sure we do.

COMMISSIONER WESSEL: --were raised today but we don't need to go through that. Thank you.

HEARING COCHAIR FIEDLER: Let me make a couple of comments and ask you a quick question. On the question of Li Peng, when I originally read those statements, I was always mindful of the fact that his son ran Huaneng Power and his daughter ran China Power, and they produced more coal-fired power plants in China than any other two human beings.

DR. SUTTER: You know more about this than I do.

HEARING COCHAIR FIEDLER: Because I never believed it.

VICE CHAIRMAN BARTHOLOMEW: Just one of those little ironies.

HEARING COCHAIR FIEDLER: A second comment and point. We always hear testimony and we always discuss growth and never-ending growth as in China's interest. Has there ever been an economy that experienced never-ending growth without a recession?

DR. SUTTER: [Shakes head.]

HEARING COCHAIR FIEDLER: So there's going to be one; right?

DR. SUTTER: Yes.

HEARING COCHAIR FIEDLER: So his questions to the reaction of what they're going to do are important, and your answer was important, but I just wanted to make the point that it is more than a little inevitable that there's going to be a serious bump in the road that creates, quote-unquote, "instability."

That gets to my last question. In your interesting Gulliver strategy discussion, the constraints that interdependence creates on both countries, if we only view the United States and China, in your view, who is constrained more? The United States or China? Who is more dependent on the bindings? The United States or China?

DR. SUTTER: Okay. On instability and recession, I agree. I was anticipating political instability in China before the recession. I'm not so sure now. In other words, I thought that you have to have this transition somehow in China; this authoritarianist system can't last forever, it seems to me. So I'm not sure which one is going to happen first.

But either one would be a big bump in the road and that could lead to a lot of uncertainty as to which direction the leadership would take.

I think China is much more constrained than United States, on your second point. This administration and the United States government has legitimacy. It's a fundamental strength of the United States, and the United States is so powerful in non-governmental ways;

in other words, it has all these enormous civil societies and ways of dealing with issues that people just do it themselves.

And China has neither one of those. And so this makes them very concerned about keeping stability and legitimacy and so forth and, therefore the U.S. can then go off and do something that maybe would be difficult to justify in some way, but it has the ability to do that.

I think China is very constrained because the costs of moving in these directions, they're just not as much in control of the international situation.

HEARING COCHAIR FIEDLER: Thank you. Anyone else? Yes, Dan.

COMMISSIONER SLANE: Dr. Sutter, is it a fair statement that if we want to look at China's foreign policy, it's really dominated by economic growth?

DR. SUTTER: Economic growth is, my view is that China doesn't have a clear strategy in foreign affairs. It has goals that are clear and economic growth is one of them, but they have nationalistic goals, too. And sometimes they can be just as important, maybe even more important than economic growth.

That's why Taiwan is such a big problem because that could, the Chinese leaders say we will, if Taiwan declares independence, we will put aside all these other priorities, and we will use force to prevent Taiwan from going independent. I believe them when they say this. And so in that condition, economic growth doesn't dominate; economic growth isn't the dominant determinant. That's nationalism, that's territorial sovereignty, integrity, and so forth.

And so when you add up, you put the goals of the Chinese administration together, it makes it really hard to come up with a coherent strategy, and so what you have is an approach, approaches, to deal with these different areas. You have a national development strategy. You have a national unification strategy. You have a national defense strategy. And these are sometimes different and they lead to clashes.

So the picture I have of China is that, is of a leadership trying to manage these different conflicting goals, sometimes conflicting goals, as they move ahead, and no one--economics is very important, and it's often dominant, but it's not the whole story.

HEARING COCHAIR FIEDLER: A quick sovereignty question. When we were at the Academy of Military Sciences last year, essentially these colonel level officers, one, I believe maintained or posited that China essentially owns the airspace over its country all the way to infinity. Is there any other country that maintains a position similar to that?

DR. SUTTER: Jeepers, I don't know. I would just off the top of my head, how about Russia?

HEARING COCHAIR FIEDLER: But the Russians run satellites over us so it's kind of a bit of a problem. I don't think the Russians have ever maintained that.

HEARING COCHAIR ESPER: They were the first to launch a satellite.

HEARING COCHAIR FIEDLER: And I don't know of any other major or rising--

DR. SUTTER: Is that the official Chinese position though? Be hard to justify in this day and age.

HEARING COCHAIR FIEDLER: I don't know that there is an official Chinese position on space. Actually we're going to try to get to that this afternoon, I trust.

DR. SUTTER: Yes.

HEARING COCHAIR FIEDLER: One other thing, my question on the constraints, you sort of raise another issue in my mind when you talk about Taiwan. So I'll accept your argument that they will at some point decide that economic growth is less important than taking Taiwan if Taiwan declares independence.

The question I have is, is the response of the United States because of the Gulliver strategy, is our dependence so great that our response is feeble or strong?

DR. SUTTER: Yes. It's something that--

HEARING COCHAIR FIEDLER: And our strategic ambiguity on this, we leave it up in the air what we're going to do, and I understand that. But the question really is: is our dependence so great on China economically that we may look the other way or not quite exactly look the other way, but do something--

DR. SUTTER: I think there are all sorts of reasons why the United States might look the other way, and economics is one of them.

The other is it would be a terrible war, could be a terrible war. And so casualties and so forth could be enormous in this kind of a conflict.

And so I think this is something that the United States definitely doesn't want to do and China definitely doesn't want to do. So we do have sort of a deterrent type of situation in the cross-Strait relationship for the time being.

But has U.S. willingness to lean forward on this issue or lean backward on this issue been evident over the past decades? Yes, very much so. If you go back to the Nixon-Kissinger approach to dealing with Taiwan, I think the record is pretty clear, they expected this thing to sort of be settled in some way, and it wouldn't be a problem anymore. And we really didn't get a terribly firm position until the Taiwan Relations Act, which is a reaction of the Congress to the

Carter administration's approach.

And then there was a big debate, enormous debate, over this issue, and so the record of the United States, and then Reagan gave more confidence to the United States. There was a very negative feeling in the United States about the military and about its ability to do anything in the late '70s and early '80s.

We really did think the Soviet Union was going to dominate Asia in those days, and so it goes up and down, and George Bush was very forward leaning in saying we'll do whatever it takes to help Taiwan to protect itself when he said that in 2001, and now today with Iraq and the Middle East, yes, it's a very vague situation. So do we have any assurance of what the U.S. will do?

No, it's--but the Chinese, if the worst case, and the Chinese saw that Clinton, who they didn't think was a very firm national security leader, sent two carrier battle groups to the Taiwan Strait. So they said, okay, well, if he'll do this, then I think they work under that assumption.

HEARING COCHAIR FIEDLER: Thank you very much. Appreciate it greatly.

DR. SUTTER: My pleasure.

HEARING COCHAIR FIEDLER: We will adjourn for lunch and return at 1:15.

[Whereupon, at 12:15 p.m., the hearing recessed, to reconvene at 1:26 p.m., this same day.]

A F T E R N O O N S E S S I O N

PANEL IV: CHINESE METHODS OF ADVANCING SOVEREIGNTY BY MILITARY MEANS

HEARING COCHAIR ESPER: Thank you. The discussion for Panel IV will be China's methods of advancing its sovereignty by military means.

I'm pleased to introduce today's witnesses. They are Mr. Peter Dutton, associate professor of strategic studies at the Naval War College, and Mr. Roy Kamphausen, the Vice President for Political and Security Affairs.

I note that Mr. Dutton is a retired Navy commander and judge advocate. He's an associate professor of joint military operations at the Naval War College and an adjunct professor at Roger Williams University School of Law.

He's a founding member of the College's China Maritime Studies

Institute and writes on issues related to U.S. and Chinese perspectives on maritime international law as they relate to security.

Mr. Kamphausen, as I said, is Vice President for Political and Security Affairs and the Director of the National Bureau of Asian Research. Prior to joining NBR, Mr. Kamphausen served as a U.S. Army officer, a career that culminated in an assignment in the Office of the Secretary of Defense as Country Director for China, Taiwan and Mongolian Affairs.

Prior postings included assignments to the Joint Staff as an intelligence analyst and later as the China Branch Chief in the Directorate of Strategic Plans and Policy.

He's fluent in Chinese and he's an Army China Foreign Affairs Officer having served two tours at the Defense Attaché Office of the U.S. Embassy in the People's Republic of China.

Gentlemen, thank you both today for being here. We look forward to your comments. As you may have witnessed from other panels, we'll give you seven minutes to present your views orally and, of course, any written statements will be entered into the record.

Before you begin, and we'll begin with Mr. Dutton, I'd like to turn to my colleague, Commissioner Fiedler. Do you have any comments?

HEARING COCHAIR FIEDLER: No. Just welcome, gentlemen.

HEARING COCHAIR ESPER: Thank you. Mr. Dutton, over to you.

**STATEMENT OF MR. PETER A. DUTTON
ASSOCIATE PROFESSOR, CHINA MARITIME STUDIES
INSTITUTE, NAVAL WAR COLLEGE
NEWPORT, RHODE ISLAND**

MR. DUTTON: Thank you very much for the opportunity to present my views today. I'm quite sincere having been to the morning panels in saying that it's an honor to be included among this learned company. But before I begin, I have to dispense with the usual disclaimer since I am a Department of Defense employee by saying that the views that I have are my own and not necessarily those of the Department of the Navy or any other government agency.

I will, however, focus my comments today on the maritime domain since that is my background and my experience. China is primarily in my view seeking to extend and consolidate its sovereignty rather than to protect it per se. Its strategy is two-pronged.

First, China is actively challenging the international community for authority in areas under its jurisdiction such as the Exclusive Economic Zone 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 airspace.

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 Sea and, of course, to the maritime zones that would 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. That said, there's a clear military component to this non-coercive aspect of China's efforts to expand and consolidate its control over the maritime periphery.

Several articles in recent issues of the daily newspaper Renmin Haijun, for instance, have described Chinese perspective on three what they call new types of modern warfare, specifically legal warfare, psychological warfare and public opinion warfare.

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, quote, "farsighted to discern any problems before they actually arise" in order to "provide a legal pretext for military action" and to "engage in legal contexts to vie for the legal initiative" in order to "safeguard national sovereignty and territorial integrity."

There is, of course, in addition to legal warfare, also a traditional military component to China's sovereignty extension and consolidation strategy, quote, "when reason fails and there are legitimate grounds, categorically adopt unyielding military means."

It is the blend of coercive and persuasive capacity that appears to underpin China's approach to consolidating and expanding its sovereign maritime interests.

My written submission goes in some detail into a couple things I'll just touch on now. One is that China, beginning in the April 1 EP-3 incident, took advantage of that opportunity to enunciate a new approach to its view of sovereignty in airspace off the littorals.

It has followed up more recently with statements about an intention to create an Air Defense Identification Zone. I view these in terms, we often see the term used, "anti-access strategy." I think disruptive strategy might be a little bit better term. The ends being to achieve anti-access, but the means and the ways are disruptive in nature.

Third, in terms of sovereignty consolidation, my paper discusses

the East China Sea dispute in some detail. I've written extensively on that particular topic, and if it's of interest to the commissioners, I can provide copies of the articles on that as well.

Fourth, I believe China is also using its version of sovereignty in order to achieve another strategic objective which is to gain regional predominance. I heard this morning's panels discuss the concept of sort of restoration of the tributary order.

I write a bit about that in my brief, but obviously it's not exactly the imperial tributary order, and I don't think the panelists intended to convey that, but it is clearly something that harkens back to a primacy of position, a predominance--is the term I use--of China's position in East Asian or I should say Asian affairs.

A couple of authors that I think are at prominent places, not only in universities in China but also prominent places within those universities, include Wang Yiwei at Fudan University in Shanghai and Qin Yaqing at China Foreign Affairs University, are writing fairly extensively on this particular topic.

In order to prevent American interference in China's sovereign interests, if force ever becomes necessary, some Chinese strategists see preemption as the logical extension of China's active defense strategy in order to maintain domestic and international legitimacy and legitimacy is key in my view in understanding some of the Chinese perspectives.

In order to achieve that legitimacy for preemptive use of force, the PLA would need to be seen as defending some aspect of Chinese sovereignty. Fundamentally, what this does is it encourages those who are thinking about legal warfare or other aspects of warfare to ensure that there are sufficient triggers of sovereignty, that if it ever became necessary to use preemptive force, that they would be available in order to legitimately paint a picture that the preemptive use of force is actually a defensive use of force as opposed to an aggressive use of force.

This presents many challenges for us, not the least of which is, number one, that we will be required to--well, we see them contesting our framework in which command of the commons belongs to the international community, but specifically to the United States in the maritime domain. They're challenging it in the littorals very specifically.

Second challenge that Chinese perspectives on sovereignty brings up, as was discussed this morning, is the Chinese viewpoint on international responsibility or rather lack of international responsibility for human rights abuses.

And third, it's very clear that a challenge exists by China to begin to redefine the international system, more along the lines of a

system familiar to China's long-term history. China has some aspects of the current system that they are dissatisfied with and the many think tanks in China are beginning to take this question very seriously and to begin to articulate and reframe some concepts of international relations more along the Chinese traditional lines of sovereignty and the concepts related to it.

Consequences--well, I'll skip that since I see my time is quickly running out. For us we need to begin to engage the People's Liberation Army and their entire military at all levels. I think that's very important.

Second, we, of course, need to continue to actively pursue military surveillance and reconnaissance programs. Although this will be a source of friction, it's a source we must accept.

Third, we need to commit to protecting traditional navigational freedoms of the sea and the air and protecting the historical balance of rights between the coastal states and the international community.

Finally, my view is we need to remain prepared to confront the PLA if necessary. Continuing America's commitment to a strong naval presence is, number one, our critical, a critical requirement for us to be able to maintain our core interest, our core strategic strengths of strategic mobility and command of the commons, the maritime commons on which our strategic posture, our national security strategy relies.

So these are our best means of protecting our national interests while attempting to move beyond the current challenges that exist in regional security in Asia.

Thank you.³

HEARING COCHAIR ESPER: Thank you, Mr. Dutton. Mr. Kamphausen, over to you.

**STATEMENT OF LTC (Ret.) ROY D. KAMPHAUSEN
VICE PRESIDENT, POLITICAL AND SECURITY AFFAIRS
AND DIRECTOR, THE NATIONAL BUREAU OF ASIAN
RESEARCH, WASHINGTON, D.C. OFFICE**

MR. KAMPHAUSEN: Good afternoon, Chairman Wortzel, Vice Chair Bartholomew, today's hearing cochairmen, Mr. Esper, Mr. Fiedler. It's a real honor to be here to talk about this important issue being considered by the Commission.

I should also begin by noting that while the research sponsored by my institution, the National Bureau of Asian Research, has informed the views I express today, they are my own nonetheless and

³ [Click here to read the prepared statement of Mr. Peter A. Dutton](#)

do not represent institutional perspectives.

In my written statement, I put forth an argument that the PRC uses its People's Liberation Army to protect and advance Chinese sovereignty interests in four ways, and I'd like using the time available to briefly highlight points from my statement.

First, I argue that the PLA advances Chinese sovereignty at its most fundamental level by engaging in an ambitious program of military modernization. And the Commission is well aware of many of the dimensions of this program. It's an integrated and comprehensive effort now in its second decade.

While it's true that many of the details of this effort suffer from a lack of Chinese transparency, it seems to me the end goal for the process is quite clear and it bears on our considerations today.

And that is that in general terms Beijing seeks a military that is commensurate and befitting of China's status as a regional leader and rising global power. And so achieving this end state is an essential component of defending China's sovereignty.

At a second level or second method by which China's military supports the enlargement of Chinese sovereignty includes the specific ways in which the PLA enhances China's status as a stakeholder in the national system. And I argue they do so in at least two ways.

First, the PLA is much more actively involved in supporting U.N. peacekeeping operations. As recently as 2004, China was playing a much smaller role in support of U.N. PKO. However, since that time PLA contributions to U.N. peacekeeping operations have increased dramatically.

In fact, according to U.N. statistics from January 2008, China is now the largest provider of troops to U.N. peacekeeping operations among the P-5 members of the U.N. Security Council, measured both in terms of numbers of troops in the field--nearly 2,000--and in mission participation.

Interestingly, the PLA currently supports 13 missions, currently, and that's the total number of missions that the PLA participated in a nearly 14-year period previously. Remarkable change there.

Now, increased support for U.N. PKO is a practical way to enhance Chinese sovereignty by demonstrating the status quo nature of Chinese power in the international community's most prominent institution. This support would also appear to have the practical benefit of creating a positive environment in that institution for the more specific demands China might make that have explicit links to specific Chinese sovereignty questions.

Secondly, the PLA also acts to enhance China's international status by increased participation in multilateral operations and exercises, in large part because these exercises, mostly conducted

under the rubric of the Shanghai Cooperation Organization, are focused on counter-terrorist activity, counter-terrorist operations. And so leading regional coalitions in counterterrorism activities serves important regional and global goals; hence, the enhancement they provide to a greater stakeholder position.

However, conducting CT also enhanced sovereignty in China's specific case because of the linkage that Beijing has made between terrorists and separatists.

A third way in which China's military enhances national sovereignty claims is through a much more active program of military engagement in Asia. These activities range from the "presence" missions, primarily conducted by the Chinese Navy, that show the flag and serve to reinforce a regional impression of increasing Chinese military activity, and continue to increased air surveillance, submarine patrols, surface patrols, and so forth, including in contested areas, and it's an honor to participate with Mr. Dutton today, who has done such important work on many of these issues.

Now none of these actions are unique to China and they're certainly permissible under customary international law and U.N. Convention on the Law of the Sea, but two points are noteworthy. First, the PLA has very rapidly adopted this much more activist posture, and the rate of change itself has raised concern in many quarters.

Secondly, and more importantly I think, it appears that the actions are taken as part of an integrated political-military effort to bring about policy resolution on some of these difficult issues on terms more favorable to China. It's a natural course of action, natural approach, but it does appear to have an integrated political and military set of components to it.

The fourth and final way in which the PLA acts to support Chinese sovereignty is by undertaking the deterrent actions that constitute the military component of a national strategy to prevent de jure Taiwan independence. These deterrent actions include the preparations for actual military operations against Taiwan, and here preparations should not be construed to mean that conflict is inevitable, as all militaries prepare for a range of contingencies, many of which are never executed.

But they are conducting this preparation nonetheless. And the deterrent actions also include the accelerating development of China's ballistic missile forces which could administer punishing strikes on Taiwan on very short notice currently.

This capability, this latter capability, has already achieved a degree of military deterrent effect in Taipei, and has certainly complicated security planning elsewhere including in the U.S.

But beyond simply acting to prevent Taiwan independence, the PLA is also putting into place a series of capabilities that would deny or delay the arrival of foreign forces in the western Pacific in the event of a Taiwan crisis.

The purpose of these capabilities, it seems to me, appears to be an effort to delay or deny the military actions of foreign forces that would fundamentally endanger Chinese sovereignty claims on Taiwan, so there's both an operational and tactical component to this, and there's also a more theoretical sovereignty component to it.

Well, in conclusion, let me make one quick point about implications. A more robust Chinese military activity, set of military activities, in the Asia-Pacific region to enhance Chinese sovereignty may lead to two somewhat opposing outcomes:

If China's growing military power is deftly wielded and its strategy of pragmatism, noninterference, and an increased participation in international fora is sustained, Beijing might enhance regional security, as it understands it, because its neighbors recognize, might recognize, the stabilizing value of increased Chinese military activism on their own terms.

At the same time, however, this activism is risky from Beijing's perspective, particularly as it pertains to Taiwan, as this effort might further marginalize Taiwan within the international community and, thus, opposition to the mainland's efforts would be hardened within Taiwan.

Consequently, a chief goal of China's military program to advance sovereignty could be put at risk by the very means that they are undertaking to accomplish it.

This concludes my statement. I'm very happy and look forward to your questions. Thank you.⁴

Panel IV: Discussion, Questions and Answers

HEARING COCHAIR ESPER: Thank you, Mr. Kamphausen. We will begin the questioning now. I'm going to turn first to Commissioner Fiedler, my cochair, and then he'll be followed by Commissioner Wortzel and Commissioner Reinsch.

HEARING COCHAIR FIEDLER: A quick question, Mr. Dutton. I was reading through your testimony on the Continental Shelf and was struck by your mention of Chinese scholars claiming back to the Ice Age that the Continental Shelf was mainland actual ground, and it has receded since the Ice Age.

⁴ [Click here to read the prepared statement of Roy D. Kamphausen](#)

Do you know any other significant scholar and any major power that has made a similar reach backward?

MR. DUTTON: I don't.

HEARING COCHAIR FIEDLER: To justify their claim of sovereignty to Continental Shelf?

MR. DUTTON: I don't actually. I will say that it is even within the Chinese context a bit of hyperbole, but I used it on purpose because it really demonstrates the sort of sense of national attachment, the sense of ownership that is existent and perhaps even fostered within Chinese society over the maritime reaches, the periphery off their coastline as a matter of the extension of their continental sovereignty.

There is a thread of international law that does sort of support that general concept. That's where the Continental Shelf ownership rights came from, and my point is that the Chinese have taken it at least a step further than it was initially drafted to be.

HEARING COCHAIR FIEDLER: Thank you. Mr. Kamphausen, the reference to Taiwan, the Straits, and Mr. Dutton's earlier reference to disruptive strategies in reference to what is otherwise known as anti-access, what is the most significant change between the time President Clinton sent the fleet in in 1996--was it--to 2006 that makes that a riskier venture for the United States?

MR. KAMPHAUSEN: I think there are three areas. The first is improved Chinese space capabilities including their own reconnaissance and abilities to perhaps counter the satellite capabilities of other countries.

Second, a dramatically improved conventional attack submarine force.

And third, what we understand to be an evolving capability to put maneuverable ballistic missiles, to be able to target maneuverable ballistic missiles against ships at sea, aircraft carriers, for instance.

So I think the three of those capabilities, while they were probably certainly entrained in the mid-'90s, now are much more mature and pose much greater risk to American forces in the western Pacific in an operational crisis.

HEARING COCHAIR FIEDLER: Mr. Dutton, you're shaking your head yes; you agree with everything? Anything to add to that?

MR. DUTTON: I do agree with all of those. A fourth thing that comes to mind, though, would be increased experience frankly, that the Chinese are much more experienced at venturing beyond the littoral region and threatening the United States' ability to project forces into the Taiwan Straits area if necessary.

So in addition to increased capabilities, we see some steady, incremental increasing in experience.

HEARING COCHAIR FIEDLER: Since both of you have served for a long time within the government in the defense community, was their rapid ability to deny us access or increase the risk of us taking that action a surprise? Anticipated?

MR. DUTTON: I can say from my own perspective it has not been a surprise given the stated objectives. It's a relatively low-cost approach to achieving either sufficient deterrence or the ability to succeed in your strategic objective without having to overcome the enemy. And so it has seemed to me, as I've watched it develop, to be a sensible approach from that perspective in that it's an efficient approach to that objective.

HEARING COCHAIR FIEDLER: Let me rephrase the question. I understand let's say you weren't surprised; what about the government in general, I mean people in policymaking positions? Were we taken aback by this rapid ability to question our ability to move into the Strait?

MR. KAMPHAUSEN: I think since the Straits' crisis of '95-'96, it's been generally understood by American defense and security policymakers that the Chinese have conceived of an American role in a Taiwan crisis much more seriously. And so on that basis, while the specific dimensions of the capabilities didn't become evident until some years later, that they would have to prepare for U.S. involvement was clear from the late '90s.

HEARING COCHAIR FIEDLER: Thank you.

HEARING COCHAIR ESPER: Commissioner Wortzel.

CHAIRMAN WORTZEL: Gentlemen, thanks for your testimony. The written and oral both were great. I have two questions, and I will ask that each of you to respond to them.

The first is how do you either explain or interpret Beijing's patience in resolving its regional disputes over sovereignty? Are there temporal limits to that patience or is it a question of military capability?

The second is if you believe we should have a framework to talk about issues of sovereignty and freedom of the seas, what mechanisms would you recommend or how can we advance a framework in which China and the United States can reach some tacit understandings, if not agreement, about what is the military use of airspace or maritime space versus the American approach of nonaggressive use of that same space?

Can we come up with some way to address that?

MR. DUTTON: From my perspective, patience over the maritime dispute resolution process, both in the East China Sea and the South China Sea, is reflective of the fact that China has larger goals in mind than simply the settlement of each of the disputes.

My view is that the East China Sea issue is fundamentally about--I use the term "shouldering"--I'm a soccer player--right--shouldering for predominance in Asia frankly. They recognize that outside or rather from within Asia, Japan is their only real rival and that by maintaining a managed confrontation, an approach of managed confrontation in the East China Sea, China gains a lot.

Number one, they're able to maintain the strategic communication that Japan is trying to, yet again, encroach on the territory of other Asians and that China is much more a cooperationist and would never do such a thing.

In the South China Sea, similarly, China, I heard testimony this morning about tactical versus strategic designs, and I would agree with that. Their long-term strategy, I think, remains to achieve full sovereignty over that region, but they're willing to make some sort of tactical concessions in the short term in order to, again, maintain a strategic communication with the ASEAN states that they are the good neighbor, and that they're willing to be, that they're not confrontational, they're not aggressive.

So within the Asian sphere, maintaining these confrontations and dealing with them in different ways maintains this, furthers their strategic interest of achieving regional predominance.

Additionally, within the international sphere, there's always a juxtaposition with American use of force to achieve its objectives as opposed to China's positioning itself as the peaceful negotiator to resolve its perspective. So that would be my first answer.

Second, in term of framework with dealing with some of these issues would be--I have to say I am actually a supporter. My eyes are wide open, but my eyes are open to the fact that I think we would benefit from full membership in the United Nations Convention on the Law of the Sea.

And fundamentally, it's because there are really two problems that we are confronting by remaining outside it. One of them is that the 155 countries are members of the Convention and China is actively pursuing them from within the mechanisms of the Convention.

China, for instance, Gao Zhiguo, a gentleman I respect, was just appointed to the International Tribunal of the Law of the Sea. The United States doesn't have a member on that panel.

In other words, the Law of the Sea and the conversations about the Law of the Sea are going on without us because we're not members of the Convention.

Secondly, what that does, it feeds into China's strategic communications frankly, that we are outsiders, that we use aggression rather than accommodation to solve our problems, whereas China is much more accommodationist.

What that does leave us with is in order to maintain our perspectives on the Law of the Sea, and I don't think we need ever to give up one iota of them were we to join the Convention or not, what we are constantly having to deal with is friction--right--because instead of having the avenue within the mechanisms of the Convention to deal with these issues, we're constantly on the outside, asserting freedom of navigation, for instance.

I also believe the Maritime Military Consultative Agreement is a good process. It's a good start of a process. Perhaps an Incidents at Sea Agreement similar to what we had with the Soviet Union and the Dangerous Military Activities Agreement that followed it, I think, would be a good process for us to begin with China so that there is actually a mechanism by which when the next EP-3 incident does occur or the next Bowditch incident does occur, we'll have a mechanism to begin to talk about that rather than having to ad hoc invent an answer every time.

CHAIRMAN WORTZEL: Mr. Chairman, if we have time.

HEARING COCHAIR ESPER: Absolutely. Mr. Kamphausen, if you can answer the questions, please.

MR. KAMPHAUSEN: Chairman Wortzel, with regard to your first question, how do we explain the appearance of tolerance or temperance or patience in solving disputes, and, you know, as little as two decades ago, there were more than a dozen land disputes and a large number of maritime disputes as well.

I think the answer is not a cultural one. I think it's based on Chinese interests. I would commend to the Commission some work done by a professor at MIT, Taylor Fravel, who has really done a very systematic approach to understanding each one of the border disputes that China has, and his conclusions are pretty interesting, including that China resolves them for a variety of reasons, not only when they're in a position of weakness but sometimes when they're in a position of strength.

Now, that very flexibility, though, points to another aspect, which is a bit of a conundrum, if you will. Why would they demonstrate this flexibility when they hold the principle of the inviolateness of their territories so highly? In other words, why would they ever give up one inch?

I think we need to hold our understanding of their approach somewhat in a bit of tension because both of those aspects are present.

But I think it does go to an understanding of their proper regional role and over time they see a variety of methods that will get them to the place of preeminent position in the region, and part of that is they got to have their borders fully demarcated, period.

With regard to a framework, I agree with what Mr. Dutton has

said. As a participant in several years' worth of those Military Maritime Consultative Agreement talks, our fundamental issue was that we wanted to be able to operate safely in the air and maritime domains under the rubric of UNCLOS, and the Chinese concern was that we were there in the first place, and it posed a national security threat to them even though we were operating properly as permitted under UNCLOS.

When our response to them would be we're allowed to do this, they would say, well, you're not party to the Convention and while we understand that your military have modified your operating patterns so that you are in concert with it, your country is not a signatory, you're not a member. And they would kind of hedge us off at the starting point and we were not able to use membership that we shared with them as a tool to move forward the accomplishment of our own interests.

So I think that's the first answer to your second question. The second part is do we need a bilateral arrangement? I would urge that we think very seriously and very hard about whether that's indeed necessary. We could well create or in this case recreate a phenomenon which occurs in many other dimensions in which we have a special China rule, and so we establish a bilateral U.S.-China arrangement or agreement that governs our activities and now it is separate and apart, and frankly from the Chinese perspective, they'll pay more attention to it than the broader international rules that might be in play.

So I think that we need to push our interaction with the Chinese on this point to the broader international framework. I think we need to bear in mind, too, that those specific agreements that were struck with the Soviet Union reflected an entirely different era and a military whose capabilities were global at the time. We didn't have UNCLOS, at least in the case of the INCSEA, and so the environment has changed such, and establishing I guess a separate U.S.-China arrangement to govern these things I think may not serve our own interests so well over the longer term.

HEARING COCHAIR ESPER: Good. Thank you. We'll now turn to Commissioner Reinsch and then he'll be followed by Commissioner Mulloy and then Commissioner Bartholomew.

COMMISSIONER REINSCH: Thank you. Let me pursue this last topic a little bit more but in an informal rather than an agreement context.

Can either of you comment on the current state of naval cooperation between China and the United States, meaning military cooperation, not merchant fleets?

MR. DUTTON: Right. There's relatively little interaction and in a formal approach that I can see. There are certainly high level

exchanges and there are academic exchanges. I've participated in those. There are conferences, et cetera. We certainly don't see, other than in Hong Kong, we don't see a ship visit program. We don't see any real exercises. I think if memory serves correctly, there was a brief passing exercise at one point, but no exercise program.

COMMISSIONER REINSCH: Is this because we're reluctant or they're reluctant or both?

MR. DUTTON: I don't know the answer to that.

MR. KAMPHAUSEN: We actually have done a couple of very rudimentary naval search and rescue exercises in the last couple of years, but they're really basic. And at an operational level, the Department of Defense has constraints that the Secretary must report to Congress that he has not authorized interaction with the Chinese military that might materially or substantially improve their capabilities in 12 different categories.

So there's a real reluctance, frankly, to lean forward too much in the operational domain from defense perspective.

COMMISSIONER REINSCH: I'm tempted to ask both of you if you think that's a wise policy, but I think that I'll probably not pursue that under the circumstances. Are there some areas where cooperation might be mutually beneficial and useful in areas like combating piracy or environmental cleanup, keeping sea lanes open, things like that?

MR. DUTTON: I can certainly address that. I'd like to point out, first of all, that there's actually a tremendous amount of Coast Guard cooperation. I don't know if you're familiar.

COMMISSIONER REINSCH: Maybe you could elaborate on that a little bit.

MR. DUTTON: Yes. No, there is. I would invite you to have someone from the Coast Guard give you more detailed answer. But I have personally observed the extent to which the Coast Guard officers in China, and there are Coast Guard officers of the United States Coast Guard in China, have access to their port facilities and cooperation and rather open access and agreements to ways that foster trade and that foster safety and security at sea.

I think that I personally believe that's a good basic building block from which we can begin to build maritime cooperation with naval capacity as well.

There are a couple of things we need to overcome, and one of them is our fundamental disagreement about some of the authorities that exist in order to use our capacity--right--to jointly or even in some coordinated fashion build security in the maritime domain in the Asian region, and for instance, there just is not a clear common understanding of the circumstances under which it is legitimate for a country to stop another country's flagged vessel and to board and

inspect it.

There's not been a clear agreement on that. So coming to terms with some of the authority issues would then, I think, enable us to bring to bear our capacity, the physical capabilities in order to build maritime security.

I think I'll leave it at that.

COMMISSIONER REINSCH: Mr. Kamphausen, do you want to comment as well or not?

MR. KAMPHAUSEN: Just briefly. I think that sometimes we develop activities and we pursue the activities in search of a policy. And this is a case in which I think we could get to a point where we would really be at a lot of risk. As Mr. Dutton said, the authorities would matter.

COMMISSIONER REINSCH: What would the risk be?

MR. KAMPHAUSEN: I guess we have to think about why we would operate together and then what we might accomplish in a real sense once we practiced it a bit. And then beyond that, consider the implications for the region, especially for our alliance partners in Japan and South Korea and elsewhere, including Australia and so forth.

I think the authority under which we would actually operate together needs to be pretty fixed at an early point before we can do that.

MR. DUTTON: May I return to this issue for a second? I want to point out that I think that the navies or the joint maritime strategy that came out this fall does a pretty good of articulating a strategic vision and purpose behind doing joint operations. And so I think perhaps my colleague and I disagree a little on that.

Fundamentally, it's a shift, I think, because whereas in the past we were focused on national security and the self-defense authorities to use force in the maritime domain, the shift of the maritime strategy, in my view, is that we're now focused on ensuring stability so that the disruptive actors in the world that are intent on disrupting many things, including the global economy, are unable to do so because states have brought their policing power authorities to that common domain.

We need to come together to understand what the common authorities of the policing powers of the international community are, true, but I think there is a basis for working together to build security in the maritime domain with China. We are both significant stakeholders obviously in the global economic order and our interest in stability at sea mandates that we have some kind of approach to overcoming piracy, terrorism and other disruptive actors in the maritime domain.

MR. KAMPHAUSEN: I guess my point was--

COMMISSIONER REINSCH: Keep going.

MR. KAMPHAUSEN: I wasn't clear, I don't think. My point was if we don't have established rules of the road for how we operate together, how could we consider actually operating individually in proximity to each other? How could we consider operating together if we haven't sorted out that most fundamental thing?

In many respects, we have not accomplished that. And so it strikes me that's the first step. We need to nail that down and then we can think about operating together, and then we have to deal with the other issues including the proper accountability to Congress on what its expectations are with regard to the activity.

COMMISSIONER REINSCH: Thank you.

HEARING COCHAIR ESPER: I would turn to Commissioner Mulloy, but as a matter of comment, though, personally knowing a little bit about the Law of the Sea, I've heard both of you and maybe in a previous panel as well, comments about the treaties gray areas, but the Law of the Sea Treaty is fairly extensive and outlines authorities across the board in several areas.

I'm a little confused by your comments, Mr. Dutton, about what the rules of the road are with regard to boarding and piracy and things like that. The treaty is fairly extensive regarding these matters, including the details and limits of the phases of the coastal zones and EEZs and everything else.

This gets into the question that a couple of us raised earlier about how China seems to interpret the Law of the Sea Treaty toward its ends and not necessarily as clearly as one might expect from a country that seems to be fairly hard-line with regard to sovereignty.

I just say that as a matter of comment, and if you want to comment later, feel free to. At this time I want to turn the questioning over to Commissioner Mulloy.

COMMISSIONER MULLOY: Thank you, Chairman Esper. This is directed to Mr. Dutton and then we'll bring you in, Mr. Kamphausen. Mr. Dutton, Mr. Kamphausen, on page one of his testimony, says that the PLA is engaged in an ambitious program of military modernization that contributes to an increase in comprehensive national power, and those words are capitalized. So I presume they mean something.

What do those words mean in your mind, "comprehensive national power"?

MR. DUTTON: Comprehensive national power in my mind would encompass all of the instruments of national power that could be brought to bear on any issue of consequence in the international arena.

Certainly, they include the traditional diplomatic capabilities, military capabilities, economic power, your ability to communicate

your strategic message.

For the United States, it certainly includes--I heard reference earlier today to other powers such as the power of our economy, our domestic system, our volunteerism, for instance. There's a lot that encompasses what a nation has.

COMMISSIONER MULLOY: Do we use that term in the United States, "comprehensive national power"? Is that a term that the Chinese use or is that one that we use or is that one that everybody uses to talk about their--

MR. KAMPHAUSEN: It's a peculiar term that they use.

COMMISSIONER MULLOY: It's a peculiar. What does it mean, Mr. Kamphausen, in your view? Has he got it right or?

MR. KAMPHAUSEN: Yes, sir. I talk about it a little bit further on getting into the second page, and it really is all the elements of national power, using our terms.

What's slightly different about it is that, and this harkens back to Soviet days in some respects, some Chinese theorists actually apply values, numerical values, to each of these components in varying forms, and it serves a policy function in their own policy formulation process because they make decisions then based on how they can advance the overall number most advantageously.

If I say anything more about it, I will quickly get out of my depth. The reason I raise it, however, in this context is what's important is balance, and for a period of two decades or more, the military modernization component or the military component, defense component of comprehensive national power lagged the other components, and so there was, I believe, a decision made that in part some catch-up was required, and that started in the early to mid-'90s, and that's a fundamental decision based on their understanding of how a country gets big and strong, and your military has to be strong for you to achieve that.

COMMISSIONER MULLOY: So they want to be big and strong?

MR. KAMPHAUSEN: They want to be big and strong and they want to be balanced as they accomplish that.

COMMISSIONER MULLOY: Can I ask you this? On page two of your testimony, Mr. Dutton, you talk about that the Chinese integration including economic integration has accounted for their rise in power. So my understanding is this--and let me ask you both--Deng Xiaoping--I mean Mao, they wanted to build a stronger China. Mao tried to do it by throwing the foreigners out and Deng Xiaoping made the judgment, no, we need to bring the foreigners in. We need to bring their technology; we need to bring their economics in to help us build our comprehensive national power.

Is that your understanding? Has that been a successful strategy?

MR. DUTTON: I guess in broad terms it's my understanding. Are you asking me? I think so. Certainly it has been a successful strategy in that they have integrated and found a very successful place within the global economy and frankly the global system as a whole.

COMMISSIONER MULLOY: Is that your understanding, Mr. Kamphausen?

MR. KAMPHAUSEN: Yes, sir.

COMMISSIONER MULLOY: If you compared the comprehensive national power of the United States in 1980 versus China in 1980 and then compare our comprehensive national power now to China's now, has there been some change in the relative comprehensive national power of the two sides?

MR. DUTTON: I'm not sure I'm entirely qualified to answer that, but I think just from a generic perspective, yes. China has articulated its desire to rise and it has done so.

COMMISSIONER MULLOY: And what about you?

MR. KAMPHAUSEN: I think anecdotally we could agree with that judgment. I think we want to really study it harder, but certainly they have made dramatic strides, primarily in the economic dimension, since 1980.

COMMISSIONER MULLOY: So do you think the economic policies we followed toward China have helped build its comprehensive national power?

MR. DUTTON: I'm not an economist enough to answer that. I'm sorry.

COMMISSIONER MULLOY: What about Lieutenant Colonel Kamphausen?

MR. KAMPHAUSEN: I think it's the policy of seven American administrations to pursue comprehensive engagement with China, and there's a consistent core to the policy of Republican and Democratic administrations to accomplish that end.

Certainly it's my best understanding that those decisions were made to improve the position of the United States and to benefit American citizens primarily. They were not taken as a means to advance China. That was certainly a secondary benefit, but it wasn't the intent of why those administrations have taken that policy.

COMMISSIONER MULLOY: Thank you.

CHAIRMAN WORTZEL: Can I make an interjection? I have a short interjection because I've actually done a lot of work on the genesis and evolution of the concept of comprehensive national power in China. It was actually a Japanese scholar of national security that used it in a book I think in the early 1980s. It was then picked up in the Chinese National Defense University in texts and lifted almost wholly in terms of characters from the Japanese, but then developed

significantly inside China primarily in the late '90s. And it's analogous to what the United States calls the elements of national power.

HEARING COCHAIR ESPER: Thank you, Chairman Wortzel. We'll expect a paper on that--

VICE CHAIRMAN BARTHOLOMEW: He's probably already written a book on it. Sign it and hand out copies.

HEARING COCHAIR ESPER: Commissioner Bartholomew, then Brookes and Videnieks.

VICE CHAIRMAN BARTHOLOMEW: Thank you. Since the issue of expanded exchanges or joint exercises has come up, and people danced around the issue of one of the biggest risks--I mean we have just seen lately more evidence of Chinese intelligence activities here in the United States, and the concern of a number of people in Congress has been that the Chinese would learn far more from exchanges and/or from joint exercises than we would, and that the kinds of things that they might learn could help to build their capacity in a way that might not be very helpful for us.

A second comment, I think, Mr. Dutton, you did mention it, but on the counterterrorism, the Chinese have used the counterterrorism concept to deal with what they call separatism and also to crackdown on the Uyghurs. I think that we always need to be cognizant that what we think of as counterterrorism and how they're using counterterrorism can be different things, and there are a lot of human rights abuses that are taking place, frankly in too many places, under the guise of counterterrorism.

But the question that I, and there's been a subtext that I've been hearing, perhaps erroneously, throughout much of this day, that because the Chinese are not being aggressive in the region, then somehow what's going on is okay, that the threshold is whether they act aggressively or not, and I think when there is concern that what they are doing while they are not acting aggressively is that they are building a framework militarily, they're building a framework legally, and they're building a framework diplomatically to achieve the ends that they want to achieve without having to act militarily or aggressively.

I want to make sure that some sense that just because they're not acting aggressively doesn't mean that people are lulled into thinking all is quiet on the eastern front, I guess, is what I should say.

But my question actually, Mr. Dutton, I find it really interesting, and I'd like to take you out of the maritime domain a little bit. In a comment that you made, you cite from Renmin Haijun about legal warriors must be farsighted 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 the paragraph before that that you say that they're best, at least in the maritime domain, best seen as primarily seeking to extend and consolidate sovereignty rather than to protect sovereignty per se.

Do you think that this kind of approach is taking place outside the maritime domain also? I mean it's a preemption of sort. It's a legal preemption, but it's trying to identify problems and create a framework in which the problems never become problems, but sovereignty could be expanded.

I'd ask that of both of you.

MR. DUTTON: I think the answer is probably yes, and China has a very long view, in my experience, with their strategic objectives, and this is kind of a characteristically Chinese approach to their problems. Remove any potential future barriers including any--as I intimated earlier, one of the barriers that they've got to remove is they cannot be seen as aggressively using force, right, so they've got to, in part, extend their sovereignty and their sovereign interests so that as a threat exists that they cannot tolerate, they have to have a self-defense type argument to respond to it.

So I would sense that that would not be simply limited to the maritime domain, and by maritime domain I mean the water and airspace above it.

VICE CHAIRMAN BARTHOLOMEW: Airspace, too. Okay.

MR. DUTTON: I've just completed an article on that issue.

VICE CHAIRMAN BARTHOLOMEW: Colonel Kamphausen.

MR. KAMPHAUSEN: I'm not sure I have much to add except that the maritime domain appears to offer more flexibility, and I say that as neither a naval officer nor a lawyer.

There is a hardness to the continental dimension that might reduce the flexibility that you referred to, but I think at another level, we certainly ought to be aware of the efforts that would appear to set the preconditions that would be more favorable to a Chinese interpretation of issues, whatever the issue is under consideration.

I mean we don't want to quote Sun Tzu--

VICE CHAIRMAN BARTHOLOMEW: I did this morning. Go ahead.

MR. KAMPHAUSEN: But, if you can set the conditions in such a way that you achieve your outcome, then it's obviously a much more preferable course of action.

VICE CHAIRMAN BARTHOLOMEW: You just did it more eloquently than I did, but I did do that this morning. But I'll just take another minute, which is if you talk about land being harder than water, what do we do about air? You mentioned it, but that's

similarly--soft is not the right word, but--

HEARING COCHAIR FIEDLER: Ephemeral.

VICE CHAIRMAN BARTHOLOMEW: Ephemeral. Ephemeral--less tangible and is the source of potentially so much difficulty.

MR. DUTTON: It certainly is. It's the same as the maritime domain, and there's a real difference between the boundary dispute resolutions on the land than at sea, I think, in part because territorial dispute resolution--territory meaning terra firma--it's either your sovereign space or it's not. It's a black or white issue.

In the maritime domain, I guess perhaps we have a little different perspective actually on United Nations Convention on the Law of the Sea because I think there is, there is just some fuzziness in there, in particular, in relationship to the Exclusive Economic Zone.

The United States I think has very much the consensus perspective, and we are correct in our perspective on what the Exclusive Economic Zone is and the balance of coastal state and international community's rights. I have no quibbles at all with that.

That said, there is enough ambiguity in the text of the Convention that it allows countries such as China and a few others to claim a different perspective and have some basic legitimacy for that perspective. Not much, let me say.

So the problem is that sovereignty in the airspace and on the sea space is not a black or white issue, even off of our own coasts. There is a zone in which there is a blend of rights that belong to the international community and to the coastal state, and there is definitely a contest over the extent of the international community's rights and the coastal state's control in that zone, particularly in the zone between 12 nautical miles and 200.

MR. KAMPHAUSEN: If I may add, it's always risky to cite a person that you're sitting next to on a panel, but Mr. Dutton has done some very important work on this, and if my understanding of some of the things he's written is correct, it's not the case that our interests or our positions would always be in opposition to the Chinese position.

I'm thinking of the Han incident in 2004, and if I remember correctly, the way you characterized it is there may be some consonance of American and Chinese positions as it pertains to passage of a strait in territorial waters, for instance.

And so I think we don't want to leave with the impression that we are always in opposition to each other as it pertains to Law of the Sea issues.

MR. DUTTON: Just a quick clarification.

MR. KAMPHAUSEN: Did I get it close?

MR. DUTTON: Yes. We would not have had an issue. We would not have had an issue with the transit passage of the Han

submarine in 2004 in the Ishigaki Strait. It was Japan and China that had the issue as to whether that was legitimate or not. We sort of stayed on the sidelines because transit passage of submarines in an international strait underwater is perfectly fine from the U.S. perspective.

VICE CHAIRMAN BARTHOLOMEW: Thank you.

HEARING COCHAIR ESPER: Commissioner Brookes.

COMMISSIONER BROOKES: Thank you, gentlemen, for your testimony. I just wanted to go over a few things because you've given us a lot to think about and it would probably be worthwhile reading the transcript after this. I have a few questions for you.

Do you perceive that there's a hardening of views in China in terms of the issue of sovereignty? Is there a hardening of views because you've introduced a number of new things here, such as legal warfare that I hadn't heard of before?

That's the basic question--is there a hardening of views on the issue of sovereignty within the Chinese government?

MR. KAMPHAUSEN: I think the answer is yes and no. As we talked about earlier--Chairman Wortzel's question--in some respects there has been a very flexible approach to solving border disputes which is a core component of sovereignty issues. So in that respect, I don't know if you'd call it hardening or softening, but it's more flexible.

However, in the case of Taiwan, there definitely appears to be a hardening--right--and the last decade has seen the development of a national strategy of which there is a military component to deter Taiwan independence, on the one hand, and also prepare to deal with reinforcing third-country forces that would be entering the region.

I think you could characterize that as a hardening of policy, and as I argue in my statement, fundamentally because of the risk to China's claim of sovereignty on Taiwan, that they have to take that course of action.

MR. DUTTON: I've only got one thing to add to that, which is that to the extent over the last 15 years or so that there's been a hardening. Some commentators have mentioned that, and frankly I've read the Chinese having said the same thing, that the legitimacy of the Chinese Communist Party now rests, since the opening and realignment of the government, on two things fundamentally: economic growth and protection of sovereign interests. That is it; right.

And so as other sources of legitimacy fade for the continued governance of the Chinese Communist Party, then perhaps that is a reason why we are seeing a resurgence of sovereignty as a critical issue.

COMMISSIONER BROOKES: Let me put a finer point on it.

What about the Exclusive Economic Zone? Is there a hardening of opinion on sovereignty over the 200 mile EEZ? I think the two other things you pointed out, I think are pretty basic. But what about this issue which I think has tremendous potential consequences, economic, political, even security consequences. That's something I would wonder if you could comment on?

MR. DUTTON: Yes, I can comment on that. There's a whole series of actions that we've seen, certainly beginning really with the EP-3 incident, perhaps even earlier, the Taiwan Strait crisis, 1996, and the Chinese statements that the Taiwan Strait is their water, and that we are violating their sovereignty by sending aircraft carriers through there.

More recently, the movement toward development of Air Defense Identification Zone. I haven't actually seen the Chinese statement on that although I have talked with academics and government officials who do confirm it.

The bottom line is in my view that they are actively pursuing this, although it was somewhat opportunistic, number one, based on events, and, number two, remember that they, I think, are using this opportunity to craft the Law of the Sea, to try to craft the Law of the Sea in that direction, right, to more and more coastal strait control at the expense of the international community, which China didn't accede to the Convention until 1996, if I remember correctly. So that would explain some of its newer positions.

COMMISSIONER BROOKES: Do you have something to add to that, Roy?

MR. KAMPHAUSEN: I was just going to say that whether their views have hardened, we certainly see more, a greater willingness to actually pursue what they want to see occur in terms of foreign militaries operating in their EEZ. They're much more assertive, much more willing to challenge foreign militaries who may be operating in a permissible way. So I don't know if their position has changed, but they are certainly pursuing their end in a much more assertive way.

COMMISSIONER BROOKES: And what are the main drivers for this in terms of EEZ? What do you see as the main drivers for the Chinese attempt or desire to extend sovereignty to the EEZ?

MR. DUTTON: There are drivers in two senses. First is the reason that we're seeing more of this now is I think they have the military capacity and sort of other international strengths that allow them the political space within which to confront us.

The drivers for it I think are a couple of things. One of them is just that basic sense of their own sovereignty, taking the long view, thousands of years of Chinese history and their sense of that real ownership over the maritime domain as they have defined it.

Secondly, it's part of this disruptive strategy, in my personal view. It's part of the disruptive strategy, which is to say that the more that they can push back with law, right, push back the American forces and attempt to delegitimize Americans' use of free navigation for ISR information, surveillance and reconnaissance missions, intelligence missions or for hydrographic surveys in the Exclusive Economic Zone, the Bowditch, for instance, and for other military exercises, sea basing, as I've seen mentioned in Chinese issues. The more that they can delegitimize these activities, the more they then make it harder.

There's just a cost, a political cost to the United States in terms of friction when we insist on our right to have these things.

COMMISSIONER BROOKES: I agree with you, but I would have said that perhaps something like energy resources would be a significant driver, especially over some of these things regarding the Continental Shelf, the South China Sea, considering China's significant energy consumption. You see it the other way? You see it as more of a national sovereignty issue as opposed to economic?

MR. DUTTON: I do, and let me clarify.

COMMISSIONER BROOKES: Even though they have an increasing capability to enforce sovereignty over these areas?

MR. DUTTON: I do. Here's the bottom line for me: that if China were really that concerned about energy, they could have formed a cooperative approach in the East China Sea and harvested the energy underneath the East China Sea with Japan a long time ago. If they were really that concerned about that energy, it could be part of the global supply of energy today. Right.

The way that they've begun to do small steps in the South China Sea, they could have done this a long time ago. So my view is it's not about the energy; there's something else going on.

Now, they are preserving their long-term interests in sovereignty in that domain, right, that long-term strategic approach, leaving most of the resources there.

MR. KAMPHAUSEN: I would just add, I think one of the drivers is a desire at a national level to create strategic space off their eastern seaboard, and so there's nothing magical about the 200 nautical miles, but it is afforded by international convention, and it presents an opportunity to create the space that they don't otherwise have.

And that has particular manifestation in how the U.S. forces operate in the Asia-Pacific, as you know. I think my own thinking on this has evolved a little bit. It's not just that they want to keep the United States further away from China, although we certainly have seen that, including in your own tenure in the Pentagon, but it's more broadly an effort to create more strategic space off the eastern seaboard.

COMMISSIONER BROOKES: Okay.

HEARING COCHAIR ESPER: Good. Thank you. Commissioner Videnieks.

COMMISSIONER VIDENIEKS: Good afternoon, gentlemen. In answering Commissioner Reinsch's question about the possible cooperation, naval, I didn't hear the "thousand ship Navy" mentioned once. Is that thing dead?

A question to both of you: is that concept or proposal dead now or still being considered or is it disinterest, postponement? And then I'll ask some other questions, too. The other question is can you all rank PLA's capabilities by branch? Globally and regionally?

MR. DUTTON: I'll take the first one. The thousand ship Navy I think certainly very much continues to be a concept that is important to our national maritime strategy, although I think it has been recoined to the "global maritime force." I don't see the term "thousand ship Navy" used very often.

And fundamentally it's behind the idea of a cooperative strategy to achieve common objectives of security in the maritime domain to ensure freedom of navigation but also to ensure the free flow of commerce at sea without the disruption of things such as terrorism and piracy.

So this cooperative approach is playing out in many parts of the world, certainly the Gulf of Guinea today, off of the Horn of Africa, and in numerous other places in which we are actively cooperating to achieve that kind of security.

MR. KAMPHAUSEN: Commissioner, the second question I guess is mine. And I don't think I can do what you've asked without a significant amount--

COMMISSIONER VIDENIEKS: We keep talking about the growth one can project, but how big are they now by service and does it exceed the needs? Do the sizes of the various services exceed the needs of protecting sovereignty?

MR. KAMPHAUSEN: Okay. What I was going to suggest in response to your first formulation was that I think it's more helpful, in terms of framing the questions in a way that you can answer, is to think of specific operational circumstances in which forces might meet each other and then to consider in a net assessment sort of way the capabilities that opposing forces might potentially come up with.

I think to simply think in the naval versus naval or air versus air discussion, I don't think it gives us the fidelity that we need to answer the fundamental question that you asked which is--

COMMISSIONER VIDENIEKS: One always has a contingency factor. There is a contingency factor in all planning. In this case, I was basically saying where roughly do they rank? Let's say SIPRI or

somebody were to rank the capabilities of the various militaries, where would PRC fall in terms of land, air and sea?

MR. KAMPHAUSEN: I think that if we try to answer that question in a quantitative way, we'll end up with conclusions that maybe aren't very helpful. I don't think it's simply a function of counting the airplanes, counting the ships, counting the tanks. That is useful data. It can feed models, but I don't think it helps.

COMMISSIONER VIDENIEKS: Well, globally or regionally? Maybe theater concentration?

MR. KAMPHAUSEN: I would be prepared to say in a regional context that China's expectation of its armed forces is that it will be the preeminent armed force in East Asia, and I don't know the time line for that.

But currently, it lags at least Japan in terms of how they would operate in a joint air-maritime environment.

MR. DUTTON: I can give you some broad responses to that, but first of all, I agree with Colonel Kamphausen that it's almost comparing apples to oranges in part because we have fundamentally different strategic objectives. That if we recognize that their strategic objective is to deny us access at a critical time and in a critical place, right, to allow them to achieve their military consolidation over Taiwan, then do they have the capacity to do that?

They're certainly rapidly approaching that with the development of the submarines, their mine capabilities, their ability to disrupt our command and control and ISR capabilities, their attempts to disrupt our allies and our legitimacy, so they're actively building in that capacity.

But I would note that they have little to no strategic mobility capability at all--they have very little ability to project any forces beyond their littoral region.

They do have submarines, as we know, and their ability to move those out into the blue waters of the Pacific as part of that anti-access strategy, but that's not the same as a strategic mobile capability. So I think we're comparing apples and oranges.

COMMISSIONER VIDENIEKS: Well, it's tactical. You're basically saying it's a tactical capability to do pursue objectives that are close to tactical--

MR. DUTTON: I think it's important to look at the two objectives and then to assess forces in those lights, yes. I see no evidence, by the way, that they have moved to a strategic objective of projecting power at this point in time.

COMMISSIONER VIDENIEKS: Thank you. Thank you both.

HEARING COCHAIR ESPER: Thank you. We're going to go a second round beginning with Commissioner Wortzel to Commissioner

Fiedler, but first I have a couple of questions. My first question for either of you --I want you to answer this--if you were asked to be the National Security Advisor for the next president, what are the two or three things you recommend he or she do with regard to China in the context of these issues we've been talking about this afternoon?

MR. DUTTON: Wow. My first--

HEARING COCHAIR ESPER: I mean broad-brush.

MR. DUTTON: I was actually thinking last night about a similar question which was fundamentally have we committed, have we as a country committed to maintaining primacy at sea, which is the fundamental value of our national security strategy for projecting power? Have we committed to that? I don't know the answer to it.

I don't know that we even have the resources to continue to commit to that. But the alternative fundamentally is to choose to find a way to manage major powers who are capable at sea, who are capable at sea.

HEARING COCHAIR ESPER: I want to broaden the question a little bit. I don't want to talk focus on the sea. I'm really more concerned about China in all domains and certainly the specific domains we were talking about today--cyber and outer space. How would you deal with China so that we maintain the position we want to maintain in all those various domains vis-à-vis China?

Some panelists this morning recommended further integration in a variety of international regimes and institutions and agreements. You both have talked today about the maritime construct, but I'm just wondering if there's anything that comes to mind that you see lacking now, or ideas that you've had that think would help the United States advance its interests and deal with China in a constructive way?

MR. KAMPHAUSEN: I'll mention a couple, commissioner. The first is I think I would offer we should encourage and welcome China's stakeholder status in the security domain while fully recognizing the challenges and risks that might bring. It strikes me that there is more opportunity to achieve our own purposes in that if we were to welcome that than if we were to hold it at arm's length.

There are trends that would potentially put at risk U.S. alliance relationships, and we have to be very cognizant of that, and we could also easily anticipate the Chinese, even without our cognizance, characterizing a changed U.S.-China relationship as creating a de facto condominium of power in Asia, that would essentially cut out America's alliance partners especially Japan. So we have to be very cognizant of that.

On the other hand, I think if we go about it in a very hard-headed sort of way, welcoming their status, their participation as a stakeholder in international security challenges would be, I think, a

potentially positive development.

The second is there's no substitute for the strength of a robust forward-deployed American posture in the region. So no change on that front. I think, and the two go hand-in-hand. If you propose welcoming China as a stakeholder in the security domain, at the same time, you have to maintain that very strong and traditional forward-deployed American posture in the region.

HEARING COCHAIR ESPER: Okay. Mr. Dutton, anything to add?

MR. DUTTON: Yes. My answer follows on the same idea, that I'm assuming that we're not going to, in the future, continue to try to remain the primary, the only superpower, and that because China will rise--in doing so, by trying to remain the primary superpower or the primary major power, we would be inviting conflict.

That said, the other way of dealing with China in the future is to accept the fact that there will be plural powers. We will want to try to be the predominant power among the plural powers. And recognizing that other powers will have interests and we must find ways to grind out the tensions between other powers when they're significant enough to cause us serious discomfort if we don't.

Obviously, maintaining our strength is one way. Bilateral agreements in a host of ways are another. Multilateral agreements and encouraging participation in multilateral agreements are another.

And finally I'd mention engagement. I just think that the more we become familiar with each other, the better off that we will both be recognizing that we have to figure out a way in the future to live with a powerful China.

HEARING COCHAIR ESPER: Okay. Thank you. Commissioner Wortzel.

CHAIRMAN WORTZEL: Is there some international regime or agreement or convention on how far out an Air Defense Identification Zone may extend by a state and that would cover what intercept actions are permitted inside that ADIZ, inside a country's ADIZ?

MR. DUTTON: The short answer is no actually. The International Civil Aviation Organization does have rules that govern civil aircraft--but now we're talking about state aircraft, military aircraft in particular. And really there's the sovereignty in the air, and the American perspective, and I believe the correct perspective, is very much like sovereignty on the land, which is it's either on or it's off.

There is within 12 nautical miles of the coastline above the territorial sea, that is national airspace, fully sovereign. Outside of it, it is international airspace, fully international in character.

As such, a coastal state, in my view, has the full right to use that space, not exclusively, but to put the international community on

notice that it has a security interest is as much of that space as it wants to. Now, that doesn't mean that the balance of rights and responsibilities in that airspace have altered one iota, and Air Defense Identification Zone, in my view, is simply a notice to the international community of two things:

One, a security interest in that space; and, two, an intent to inquire as to unknown contacts and their character just to make sure that they're not threatening. And the intercept procedures are just really kind of a matter of respecting the due regard standard, which is to say the international community, as well as the coastal state, has a right to fly aircraft there, as long as we respect each other's safety of flight.

CHAIRMAN WORTZEL: Are unmanned aerial vehicles still part of that or are cruise missiles? Practically speaking, a cruise missile could pass through or transit a country's Air Defense Identification Zone in innocent passage while targeting something else.

MR. DUTTON: Yes, absolutely. In other words, the fact that an Air Defense Identification Zone exists, in my view, does not alter the rights that the international community has to use that space. Right. As long as they are not threatening the coastal state, then it's a legitimate use of the airspace in my view.

CHAIRMAN WORTZEL: Do you have any idea what the Chinese intend to do with this?

MR. DUTTON: I'm not a Mandarin speaker. I'm in the process of translating articles on that issue now, and I cannot say with any specificity what they intend to do, but they're looking very seriously at this, both from an academic perspective and from a government perspective, and from a military perspective.

HEARING COCHAIR ESPER: Thank you. We next have, in the ten minutes or so we have left of scheduled time, Commissioner Fiedler and then Commissioner Mulloy.

HEARING COCHAIR FIEDLER: I have just a very quick question. I am not a reader of Chinese sovereignty literature or theoretical military journals, but I am interested, and I could probably ask Commissioner Wortzel this if you don't have the answer. Is there any generational difference--let me just preface this by, we met some very interesting, smart, young officers at the Academy of Military Science last year, fascinating discussions. Now, in the advocacy of these harder-line sovereignty positions, are the young folks a little more aggressive on this, less aggressive than older theoreticians or established thinkers? Or not? Or is there greater nuance to that discussion?

MR. KAMPHAUSEN: I don't think we know enough to make a set of judgments about that, but there are a couple of points that maybe

are worth offering in consideration of it.

The first is it's nearly universally the case that the younger generation of officers are more internationally savvy. Their foreign language skills are generally much better. Certainly their English language skills are much better than the generations preceding them. And they're part of the Internet generation and nearly full participants in it.

But we ought not conflate that with a sense that they are more sympathetic to the interests of the West, for instance, nor should we conclude that they are any less ardent in the pursuit of the missions that are given to them in support of national interests.

So while the interaction can be more pleasant, it doesn't necessarily mean that we are closer in terms of how we look at things.

And I offer that--

HEARING COCHAIR FIEDLER: I wasn't implying that our exchange was that way.

MR. KAMPHAUSEN: I think there are some who, in my judgment, perhaps make that mistake and it's important to understand.

HEARING COCHAIR FIEDLER: No, yes. No, we don't.

MR. KAMPHAUSEN: I wasn't suggesting you were, commissioner, but I think we need to think that they can be hard-headed in pursuit of their national interests as their predecessors, just maybe more adept in how they do it.

HEARING COCHAIR FIEDLER: Mr. Dutton.

MR. DUTTON: I'm trying to remember actually. From anecdotal experience, I think I would agree with that--but I'm not sure what to attribute it to--that senior academics, senior government officials, even the older generation, is definitely more nuanced in their thinking than my experience of discussions with some of the younger, particularly the international lawyers. There's rigidity to some of the approaches of young lawyers now. Maybe that's inexperience; maybe it's just reflecting a perspective. I don't know. But I do see more nuanced, more reflective understanding with additional gray hair.

HEARING COCHAIR FIEDLER: Thank you.

VICE CHAIRMAN BARTHOLOMEW: Not all additional gray hair.

HEARING COCHAIR ESPER: Thank you.

COMMISSIONER REINSCH: I vote for gray hair, definitely a plus.

HEARING COCHAIR ESPER: Commissioner Mulloy.

COMMISSIONER MULLOY: Thank you. Could be the younger people are feeling their Cheerios. This is to Mr. Dutton. Mr. Meek, who is going to come and testify on the next panel, he's the Associate General Counsel of the Air Force. He mentions the same issue that

you mention on page four of your testimony. That is the issue of the Exclusive Economic Zone (EEZ).

My understanding is the Chinese have signed and ratified the Law of the Sea Convention. The United States has signed it, but we haven't ratified it.

MR. DUTTON: Yes.

COMMISSIONER MULLOY: But we admit that at least the EEZ is customary international law, so the Chinese contend— that the term "freedom of navigation and overflight in the EEZ" does not apply to military and reconnaissance activities, and we contend that it does, that we can do that within the Exclusive Economic Zone.

Is there a tribunal that we could take this to? There is a tribunal I know. Can we take it even if we're not a party to the Convention or is there an alternative tribunal like the International Court of Justice that we could take this to if we wanted really to get this resolved one way or the other and know what international law really would think about it?

MR. DUTTON: The tribunals that are established by the United Nations Convention on the Law of the Sea have, my perspective is, have developing jurisdictional authority. It's not real clear exactly how much authority that the tribunal, the International Tribunal of the Law of the Sea, will ultimately have.

Certainly, the International Court of Justice would hear this case if both sides asked it to, I suppose. My point is I don't think we would want to take it to either one of the tribunals.

COMMISSIONER MULLOY: Why?

MR. DUTTON: Well, sometimes the answer isn't one that you're going to want to accept.

COMMISSIONER MULLOY: Okay.

MR. DUTTON: Fundamentally, my view is that the International Law of the Sea was advanced significantly by the United Nations Convention on the Law of the Sea. Whether you view it as a reflection of customary international law or whether you view it as new treaty law, it was moved forward significantly, but that said, there's still a lot of unanswered questions and there are fundamentally three ways to resolve those questions.

One is by the customary law development of state practice, and it is always the most favorable, in my view, is fundamentally to work it out as grist for the mill among states and to have the accumulation of approaches to resolve how this will work out over time, how each issue will work out over time. The second, of course, is to further redefine the details of the treaty itself, and then the third is to take it to some international tribunal.

The problem with an international tribunal is that sovereigns

have to accept the results, and that's a very challenging thing to do.

COMMISSIONER MULLOY: We do it all the time in the WTO. Thank you.

HEARING COCHAIR ESPER: Gentlemen, I think our fellow commissioners have run out of questions. I want to thank you both for appearing today. It's been a very interesting discussion, and I appreciate your expert advice and insights and hope that we can have you back sometime. Thank you very much.

MR. KAMPHAUSEN: Thank you.

MR. DUTTON: Thank you, sir, it's my pleasure.

HEARING COCHAIR ESPER: This panel is adjourned.

[Whereupon, a short recess was taken.]

HEARING COCHAIR ESPER: Good afternoon. I'd like to welcome everyone to the fifth and final panel of the day, which deals with China's views of sovereignty in outer space and cyberspace.

PANEL V: CHINESE VIEWS OF SOVEREIGNTY IN SPACE AND CYBERSPACE

This afternoon, for the last panel, I'm pleased to welcome Mr. Philip Meek, Associate General Counsel of International Affairs of the Air Force General Counsel's Office; and Dr. James Lewis, senior fellow, Center for Strategic and International Studies.

By matter of introduction, let me just elaborate on the biographies of our two panelists. Mr. Meek is responsible for rendering legal advice on a wide variety of international and operational law issues, principally involving space law and policy, information warfare, the law of armed conflict and arms control.

Prior to accepting his current civilian position, he served as an Air Force judge advocate retiring from active duty in 1995 with the rank of colonel.

His senior military assignments included the Director of International and Operations Law, Headquarters, United States Air Force. Welcome, Mr. Meek.

Jim Lewis is a senior fellow at CSIS and directs its Technology and Public Policy Program. Before joining CSIS, he was a member of the U.S. Foreign Service and Senior Executive Service where he worked on national security and technology-related issues, including global arms sales, encryption, space remote sensing, and high-tech trade with China. Dr. Lewis, pleased to have you here today as well. Thank you.

Gentlemen, what we'll do, as is standard practice, is give you both seven minutes for opening remarks. Your prepared testimony will be entered in the record, and with that, I'll ask my cochair,

Commissioner Fiedler if he has any comments?

HEARING COCHAIR FIEDLER: No, just thank you for coming, gentlemen.

HEARING COCHAIR ESPER: Okay. Mr. Meek, if you would, please, go first, followed by Dr. Lewis.

**STATEMENT OF MR. PHILLIP A. MEEK
ASSOCIATE GENERAL COUNSEL (INTERNATIONAL AFFAIRS)
DEPARTMENT OF THE AIR FORCE, WASHINGTON, D.C.**

MR. MEEK: Thank you very much for the introduction. I would like to thank the Commission for inviting me here today to talk about a subject near and dear to my heart, which is space law and policy primarily, although I also work a bit in the cyberspace arena.

I would like to state, as the other government employees have stated, that these are my personal views and they do not necessarily reflect the views of the Air Force or the Department of Defense.

With that behind me--that's the first question my boss always asks me when I get back from a conference--at the outside of my remarks, I'd like to note that the People's Republic of China has not, to my knowledge and as a result of my research, published any official documents setting forth specific claims of sovereignty in outer space or cyberspace.

Likewise, there's little or no transparency in its doctrine or implementing policies concerning either space or cyberspace. So as a result of that, we have to rely on publications and trying to look at the various levels and the ranks of the individuals, what organizations they're with, and then in my case, since I don't speak Chinese, talking to Chinese experts and asking who is this person, what level are they in, how should I look at their comments. And so my views are based on those readings and discussions with some of the other China experts.

Space law as a discipline is a fledgling discipline. It came into being, although there have been some prior discussions, really on October 4, 1957, when Sputnik was launched. That was a critical date also for the purposes of our discussion today, which I'll get into, on some of our disagreements, possible disagreements with China.

On that date, when Sputnik was launched into orbit, it passed over the territories of all of the countries below, and no countries raised objections that it was violating their territorial airspace.

There had been a lot of academic work in this area before, a lot of views expressed. When it happened, everybody sat there and looked, waited, nobody said anything. So that became the first principle in outer space, the freedom of navigation and overflight, no

territorial claims in space.

This principle developed over the next few years, through more satellites being placed into orbit. In 1967, the Outer Space Treaty, which is the grandfather of all space treaties, was concluded. Its three most important articles or three of the more important ones at the very front of the treaty, which specifies their importance, are the principles of freedom of navigation and overflight in space, the inability to make territorial claims in space. Also two or three articles specifically mention activities that are consistent with international law.

So whenever I start reviewing proposed space actions or activities, that's where I start. It's the Outer Space Treaty and those three principles.

Interestingly, the Outer Space Treaty does not define space. Some countries have tried to use this to their advantage. Nevertheless, there's been a wide variety of opinions voiced, over 50 or 60 proposals, to define outer space, but the one common denominator of all of them is that they are all very subjective because the line between space and air space is very subjective, and it can vary depending on weather, temperatures, conditions, winds, various things.

There has never been a consensus definition, and one of the reasons it is not in the Outer Space Treaty was that the negotiators never came to any agreement on a definition. It was in the too-hard box and it was simply set aside.

It's also interesting to note that there's no definition in international law of the limits of airspace, territorial airspace, so you have neither a definition of space or of airspace whether territorial or the international.

I'm not aware, on the cyber front, I'm not aware of any international cyber treaties that are comparable in scope and application to the Outer Space Treaties.

Most regulations in the cyber realm are domestic laws. Whereas a state may impose laws, regulations, directives, on not only its citizens but countries that do business there, there's no correlative international mechanism of which I'm aware. One thing I want to point out here, because it's applicable not just in cyberspace but outer space, there's been some discussion earlier today concerning some Chinese domestic legislation incorporating some of their sovereign claims. Those claims are effective within that nation state, but they are not determinative of an international law question or recognition of those claims.

For instance, China may pass a domestic statute that incorporates a particular location like the South China Sea into its national territorial sovereignty; that does not mean that the other nations of the world may recognize it. They may or they may not. They may take

actions to disagree with it.

For instance, in the United States, we have a program referred to as the Freedom of Navigation Program, which is specifically for the purpose of challenging excessive claims by governments.

In looking at the various approaches that China takes, for instance, in non-military activities, Professor Dutton, I believe it was, referenced some of the measures of media warfare, psychological warfare, and law-fare.

When I mention the term "law fare," people look kind of quizzical or they laugh or whatever. It's not a joking matter. It's really a very serious effort by the Chinese, not just by the Chinese, by other governments as well, but particularly crafted by the Chinese, to try to create some legitimacy for their own activities or what they may want to do in the future, and it's something that needs to be watched very closely.

Legal warfare, as was mentioned, is where a state asserts a legal position to provide justification for its own actions and to deny the legitimacy of a resistance to that.

From a legal perspective, the most troublesome indicators of China's apparent assertions of sovereignty in space are the increasing number of publications by influential Chinese authors advancing the principle that China's sovereign territory extends through outer space.

As justification for the position, Chinese authors assert that their territorial claims to outer space are not inconsistent with international law because there is no internationally accepted definition of outer space that has a demarcation point at which national airspace ends and outer space begins.

And then they extrapolate the lack of a formal definition into a claim that essentially asserts Chinese sovereignty over all of the outer space over territory.

However, any such Chinese assertion of sovereignty would be completely inconsistent with international space law. Article II of the Outer Space Treaty clearly establishes outer space is not subject to national appropriation by a claim of sovereignty or by means of use or occupation or by any other means. Those are all the words. Covers the waterfront.

In addition, the Chinese authors often overlook the historical context of the definitional debate of outer space. It wasn't at the higher reaches of space. That wasn't the real issue. The issue was the lower demarcation where you left territorial airspace and entered outer space. So most of the claims of territorial, claims in outer space have dealt with the geostationary orbit or the geo-orbit, 22,500 miles out, not at the very lowest levels.

However, the Chinese claim extends to all of outer space. It's

not limited to the geo-orbit. It's not limited to lower orbits. It is literally a vertical projection of their territory through outer space.

Insofar as intelligence, surveillance and reconnaissance satellites and activities in outer space are concerned, influential Chinese writers of the PLA assert that these ISR activities are in preparation to engage in warfare and as such are not considered within the concept of Freedom of Navigation.

This is particularly worrisome from the U.S. perspective because of our significant reliance on space. It could be construed as a warning that ISR satellites passing over Chinese territory may be engaged. Not all Chinese authors agree with that position and some recognize the benefits of China adhering to the conventional space law concepts.

The thing we have to watch here is if China continuously asserts this principle and they are not engaged at either the diplomatic level or writings, then it starts to become kind of an accepted idea that maybe sovereignty does not end at the limit of territorial airspace.

In a later time if they were to take an aggressive action, for instance, the engagement of an ISR satellite, they might assert the position that the international community was on notice of their claim and had not rebutted it.

Other than possible endorsement of this position, by proffering this over a couple of years, China could also be attempting to establish this legal predicate for military action.

There was a similar claim, but limited to the geo-belt, by eight equatorial countries called the Bogota Declaration. And they were making that claim, not only on the basis of a lack of a definition of outer space, but also on the grounds that the satellite in geo-orbit stayed in the same relative fixed place over its territory, and it had an economic benefit. They were basically trying to extend that economic benefit from space.

The Bogota Declaration has been rejected by all the nations of the world except for those eight countries. It does not have support and my research did not find that China ever supported it or really made any comment one way or the other. So, hopefully, if China were to continue its exertions, perhaps the only countries that might try to agree with them, because it would support their position, would be the Bogota group. But as I said, that claim is rejected by the nations of the world.

What capabilities does China have to deny access? Everybody is very familiar, I'm sure, with the very expansive counterspace program the Chinese have. It deals with direct ascent ASAT missiles, jammers, GPS jammers, direct energy weapons, lasers. It's a very broad program.

If you want to look to hard evidence of their capability to deny access by the U.S., all you have to do is look at the Chinese ASAT test of January 2007 or the blinding of a U.S. satellite with a laser in September 2006 or the capability of China to jam satellite communications.

In the cyber realm, China has already emerged as a leader in cyber warfare. They are very good at this. In the U.S., there's been much publicity on certain efforts that appear to originate from China that are attacking into U.S. computers.

The last thing I would like to skip to here is the claim of China in their EEZ. We've talked about it here a little bit this morning. The Chinese have, by their act of June 1998, the Exclusive Economic Zone and Continental Shelf Act, basically included some words in there that are not consistent with an EEZ; specifically, China included their security laws and regulations.

This is basically trying to establish a security zone in the EEZ. That is not what an EEZ is. EEZ is economic exploitation. The U.S. continuously resists this. However, if this goes unchallenged for the space realm, it is one of those domestic legal initiatives, that legal warfare I was talking about that references a claimed legal basis for engagement of ISR satellites passing over.

So one thing I would suggest that we do is to continue to watch for Chinese legislation which may be kind of a notice as to where they are going, at least on a law-fare front, to support some of their other military activities.

I think I'll hold it right there. Thank you, sir.

[The statement follows:]

**Prepared Statement of Mr. Phillip A. Meek
Associate General Counsel (International Affairs Affairs)
Department of the Air Force, Washington, D.C.**

"China cannot accept the monopolization of outer space by another power."

Bao Shixiu, Senior Fellow, Academy of Military Sciences of the People's Liberation Army.

I would like to thank the U.S. – China Economic and Security Review Commission for inviting me to testify before the Commission today. I appreciate the opportunity to discuss the legal aspects of China's views on sovereignty in outer space and in cyberspace, two closely interrelated domains. The members of this Commission are very much aware of the interest of the United States in China's views on sovereignty in space, not only in terms of our bilateral relationship with China, but also in the way other nations may be influenced by watching China's claims and actions, and the U.S. response thereto.

I would like to state that the views I express today are my personal opinions, and do not necessarily represent the views of the Department of the Air Force, the Department of Defense, or the United States Government.

At the outset of my remarks, I would like to note that the Government of the People's Republic of China (PRC) has not, to my knowledge, published any official documents setting forth its specific claims of sovereignty in outer space or in cyber space. Likewise, there is little to no transparency in its doctrine or implementing policies concerning either space or cyber space. Accordingly, we must rely on publications of articles in the media written by influential individuals at high levels of the Chinese government and academia, and study the actions of the People's Liberation Army (PLA) in the terrestrial domains of land, sea and air, to discern, where possible China's views concerning the space and cyber domains. This is a challenging process with the obvious possibility of making erroneous judgments due to a lack of information.

As a prelude to addressing the questions posed by the Commission in the letter of invitation to testify here today, I would like to provide the Commission with a short summary of the overarching framework of space law and cyber law relevant to our discussion. This background discussion will lead us into the discussion of China's views on sovereignty in space and cyberspace, and how those views fit within existing international law. Finally, I will address the national security space implications of China's potential assertions of sovereignty in space and cyberspace.

Space law is a fledgling, but nevertheless increasingly important, discipline within the larger field of international law. One can argue when space law came into being, but for all practical purposes it occurred no later than October 4, 1957, when the Soviet Union launched Sputnik and its orbit passed over the territories of the countries below without any objections that Sputnik was violating their territorial airspace. That was a critical moment in the development of space law, and a moment that is central to our discussion here today.

The most important sources of international law governing outer space are four multi-lateral treaties negotiated under the auspices of the United Nations. The primary space treaties with implications for national security space activities are the Outer Space Treaty of 1967, the Rescue and Return Agreement of 1968, the Liability Convention of 1972, and the Registration Convention of 1975.

The United States, China and most major space powers are States Parties to those four treaties. Of those treaties, the Outer Space Treaty is by far the most important, indeed it is the "grandfather," of all space treaties. It was the first United Nations treaty that established broad principles for activities in outer space. Any analysis of the legal aspects of China's assertions of sovereignty in space should begin with the Outer Space Treaty. Its most relevant provisions with national security implications are:

- 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...and shall be the province of all mankind. Outer space...shall be free for exploration and use by all States...on a basis of equality and in accordance with international law, and there shall be free access to all areas of celestial bodies. (Art. I)
- Outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means. (Art. II)
- States Parties to the Treaty shall carry on activities in the exploration and use of outer space, including the Moon and other celestial bodies, in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international cooperation and understanding. (Art. III)

- 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 ...exclusively for peaceful purposes. (Art. IV)

Interestingly, the Outer Space Treaty does not define “space” or “outer space.” The demarcation point between airspace and outer space is still an open question, although it has been studied since before Sputnik rocketed into low earth orbit in 1957. One complicating factor is that the term “airspace” has never been defined in international law. Other factors are the various schools of thought that have been proposed as the basis for developing a definition that would be acceptable in the international community. No consensus has ever been reached, and it is unlikely that this issue will be resolved in the foreseeable future.

Concerning the “peaceful purposes” language in Article IV of the Outer Space Treaty, the majority of States Parties to the treaty interpret that language as meaning “non-aggressive” and not as a prohibition on military activities in space. Under the U.S. view, “peaceful purposes” allows defense and intelligence-related activities conducted in pursuit of national interests. This is the logical interpretation of the term when considering the Outer Space Treaty as a whole, and also considering the fact that militaries have been in space since the first satellites were launched into low earth orbit in the 1950s, and since the first cosmonauts and astronauts ventured into outer space. That interpretation is also consistent with the practice of the majority of other space-faring nations. Significantly, the number of nations conducting military and intelligence activities in space increases every year.

Although the People’s Republic of China has not issued any formal statements concerning its interpretation of “peaceful purposes,” the writings of influential Chinese authors suggests that China may consider the phrase “peaceful purposes” to mean “non-military.” This interpretation seems inconsistent with China’s well-developed People’s Liberation Army (PLA) space weapons programs, and the fact that the Chinese taikonauts (astronauts) are fighter pilots selected from the PLA Air Force. In addition, this interpretation is inconsistent with the existence of Chinese reconnaissance/imagery satellites, presumably military in nature, 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, 2007. One explanation of what may be China’s interpretation of “peaceful purposes” to mean “non-military” could be its perception that such an interpretation would give it favorable international media exposure, notwithstanding the reality of their significant military involvement in space.

I am not aware of any international cyber treaties that are comparable in scope and application to the outer space treaties. Most regulation of the cyber realm is in the form of national laws and regulations. This is true for both the U.S. and China. The international cyber treaties that exist are primarily in the areas of criminal law, privacy, and intellectual law such as copyrights and patents.

Is China attempting to protect or advance what it considers its sovereignty in the outer space and cyber space domains? What non-military measures has China undertaken or is it considering?

As an overlay to responding to these questions, we should recognize China’s *modus operandi* to combine several interrelated non-military components into a coordinated political approach with the objective of justifying the legitimacy of future military warfare. These components include at a minimum media warfare, psychological warfare, and legal warfare.

Media warfare is the utilization of the news media and information resources to develop a favorable environment to achieve a propaganda victory, and to break the adversary’s will to fight. Psychological

warfare encompasses planned psychological operations to convey selected information and indicators to foreign audiences to influence their emotions, motives, objective reasoning, and ultimately the behavior of foreign governments, organizations, groups and individuals. The purpose of psychological operations is to induce or reinforce foreign attitudes and behavior favorable to the originator's objectives. It includes deception, which is utilized to mislead and surprise an adversary so that wrong decisions and actions are taken. And it includes schemes to create divisions among leaders, their subordinates and other organizations.

One has only to read the comments of Chinese officials and articles in daily newspapers and publications, listen to television programs, and watch China in action in various United Nations fora such as the General Assembly, Conference on Disarmament, and the Committee on the Peaceful Uses of Outer Space to recognize that media warfare and psychological warfare are in full swing. These non-military measures are most likely used for the purpose of developing negative international public opinion concerning the U.S. National Space Policy and our various military space programs.

The last of the three components is legal warfare, wherein a state asserts legal positions to provide justification for its own military actions, or to deny the legitimacy of the adversary's resistance. Such legal justifications are intended to engender international support while mobilizing its own military forces to engage in warfare. Across a number of fronts, China could be in the process of laying the legal foundations for possible conflict in outer space and cyber space.

From a legal perspective, the most troublesome indicators of China's apparent assertions of sovereignty in space are the increasing number of publications by influential Chinese authors advancing the principle that China's sovereign territorial airspace extends through outer space. As justification for its position, Chinese authors assert that territorial claims to outer space are not inconsistent with international law because there is no legally accepted definition of "outer space" that defines the demarcation point at which territorial airspace ends and outer space begins. They then extrapolate the lack of a formal definition into a claim that, essentially, asserts China's sovereignty over all of outer space above its territory.

Any Chinese assertion of sovereignty in outer space would be completely inconsistent with international space law. Article II of the Outer Space Treaty, 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. In addition, the Chinese authors' argument overlooks the historical context of the definitional debate, which basically revolves around the minimum altitude above the earth at which orbital flight can be sustained, i.e., low earth orbit. You do not need a formal legal definition of outer space to recognize when you are in outer space.

Insofar as intelligence, surveillance, and reconnaissance (ISR) activities in outer space over the territory of China are concerned, influential Chinese writers of the PLA assert that these ISR activities are preparations to engage in warfare, and as such are not considered within the concept of freedom of navigation embodied in the Outer Space Treaty. This would be a particularly worrisome legal position for China to take since it could be construed as a warning that ISR satellites passing over Chinese territory may be engaged. Not all Chinese authors agree with this position, however, and some recognize the benefits to China of adhering to conventional space law precepts.

By proffering these arguments over a period of years, China could be attempting to establish the legal predicate for military action in the future. It could also be testing the waters to see if its assertions of sovereignty in outer space garnered any support – or at least no vocal objection - in the international community. In that regard, eight equatorial states (i.e., Brazil, Colombia, Congo, Ecuador, Indonesia, Kenya, Uganda and Zaire) signed the Bogota Declaration in December 1976. This Declaration set forth territorial claims to the segments of the geostationary orbit over their respective countries. The basis for

this assertion of sovereignty was twofold: (1) there is no agreed definition of “outer space” under the Outer Space Treaty, and therefore the nonappropriation principle of Article II impliedly does not apply to the geostationary orbit, and (2) a satellite in the geostationary orbit appears to be stationary in the sky, when viewed from the earth, and is fixed on a given point of the Equator. The Equatorial countries declared that the geostationary synchronous orbit is a physical fact linked, in effect, to their respective territory on Earth.

Other than possible endorsement from the countries that signed the Bogota Declaration, China should not garner support for their position since it would undercut significantly, if not eliminate, the fundamental principles of nonappropriation and freedom of navigation in space. The Bogota Declaration has never been recognized by the other parties to the Outer Space Treaty and is generally disregarded. Nevertheless, a coordinated action by China and the countries that signed the Bogota Declaration could be problematic.

Because China is opaque in its space and cyber space policies and doctrine, and because it has not issued formal government documents through diplomatic channels or otherwise explained its positions, it is difficult for the nations of the world to engage the PRC government in the event of disagreement with their policies. If challenged, China can always deny that the writings of particular authors reflect its official position. Conversely, if China takes action consistent with the positions espoused by the various theorists, including the use of the PLA to enforce its sovereignty claims, it could assert that the international community was on notice as to the Chinese legal positions articulated by individuals in positions of authority over a period of years.

What capabilities does China have the capacity to deploy to deny access to what it views as its sovereign space in either outer space or cyber space?

The OSD 2007 Report states that China is deploying advanced imagery, reconnaissance, and earth resource systems with military applications. Further, the Report notes China’s robust, multidimensional counterspace program, including satellite communications jammers, GPS jammers, direct ascent ASAT missiles, and a range of other technologies being pursued such as directed-energy (e.g., lasers and radio frequency weapons) for ASAT missions.

As hard evidence of China’s capability to deny access by the U.S. and other countries to outer space over Chinese territory and elsewhere, we need to look no further than the Chinese kinetic ASAT test of January 2007 that destroyed a Chinese weather satellite in orbit, or the blinding of a U.S. satellite with a laser in September 2006, or the capability of China to jam common satellite communications bands and satellite navigation receivers.

None of these counterspace weapons are prohibited under current international law. However, when coupled with China’s continuous pursuit in the United Nations Conference on Disarmament of a space arms control treaty it has cosponsored with Russia, to wit, the Prevention of an Arms Race in Outer Space (PAROS) treaty that would ban the deployment (but not the research, development, testing and production) of these counterspace weapons into outer space, one has to wonder about the purpose of such a well-developed counterspace program. At a minimum, there is a contradiction between China’s oft-stated commitment to an outer space free of weapons and its extensive counterspace weapons program that has not been explained.

In the cyber realm, China has already emerged as a world leader in cyberwarfare. The OSD 2007 Report on China notes that the PLA is investing in computer network operations (CNO) concepts including computer network attack, computer network defense, and computer network exploitation. The PLA sees CNO as critical to achieving “electromagnetic dominance” early in a conflict, and to that end has established information warfare units to attack enemy computer systems and networks.

Some analysts attribute computer network attacks originating from China to highly skilled civilian, non-governmental “gray hat” hackers who are unofficially affiliated with the Chinese government. These professional “gray hats” can be mobilized to attack computer systems if needed, but they are not, under this thinking, formal agents of the state. The actions of these civilian hackers would give the PRC deniability, while at the same time significantly increasing the frequency and lethality of cyber attacks against military and civilian targets within the U.S. or other nations.

Based on China’s historical actions to protect its sovereignty in other areas, what actions might the United States expect to see China take in the coming years with regard to outer space and cyber space?

Recall the earlier discussion of legal warfare as exercised by China. It is significant to note that in June 1998, the PRC passed the “Exclusive Economic Zone and Continental Shelf Act.” This Act created an exclusive economic zone (EEZ) with 200 nautical mile limits from its coastal baseline, and claimed the right, *inter alia*, to broadly undefined powers to enforce laws in the EEZ, “including security...laws and regulations.” Based on the Act, the PRC does not recognize the airspace above its EEZ as “international airspace” and has interfered with and protested U.S. reconnaissance flights over its EEZ. The U.S. has protested this sovereignty claim as a violation of international law numerous times since this law was passed, but to no avail. This law forms the domestic legal basis for China’s interception, harassment, and engagement of U.S. aircraft flying in the EEZ.

Remember that in 2001, Chinese fighter aircraft intercepted an unarmed US Navy EP-3 reconnaissance aircraft flying in international airspace. One of the Chinese fighters collided with the EP-3. The EP-3 suffered extensive damage and made an emergency landing in China, where officials detained the aircrew for a period of weeks. China had for many years objected to these reconnaissance flights in their EEZ, alleging that the flights equated with preparations for conflict. Although these flights by US Navy aircraft were lawful under international law, China nevertheless deployed military fighter aircraft to harass the Navy EP-3, with unfortunate results.

Since Chinese authors have voiced similar objections to ISR satellites passing over China’s territory and its EEZ, it is conceivable that China would assert the rationale of the Exclusive Economic Zone and Continental Shelf Act as their claimed legal basis for any attacks on these satellites in outer space. Further, China might extend its actions beyond ISR satellites and enforce any alleged territorial claims in outer space by engaging commercial communications satellites and direct broadcasting satellites that pass overhead and broadcast materials China considered objectionable or a threat to its national security.

Therefore, a factor to watch is whether China institutes domestic legislation establishing Chinese territorial jurisdiction in outer space based upon vertical extensions of China’s boundaries. This action could be evidence of the legal warfare initiatives discussed previously, and definitely would be a cause for concern. China has a history of using military force in other areas of contested jurisdictional claims, such as in the Spratley Islands, and in boundary disputes with Viet Nam and India. We should consider the possibility that China may exert similar force in space, and we should plan accordingly.

On the cyber front, we might expect China to pursue more actively a range of domestic legal measures, such as the revocation of business licenses or the institution of lawsuits, against commercial entities that decline to abide by China’s requests to cease sending certain materials or information over the internet. If those legal initiatives failed, China might resort to computer network attack to remedy what it perceives as a security threat to China.

If China is able to successfully assert its views on sovereignty in outer space and cyber space, what impact will this have on the United States, especially U.S. national security?

Given the significant reliance of the U.S. on its space assets and the benefits it and other nations receive from the permissive outer space legal environment, any Chinese efforts to undercut that well-established legal regime would affect the national security of the U.S. and other space-faring nations adversely. In this context, I am not limiting national security impacts to military and intelligence considerations only; rather, national security considerations must include the critical contributions of the civil and commercial space sectors as well as economic considerations. Any attempt by China to establish territorial claims in outer space would strike at the very core of space law and should be strongly opposed at all levels of government.

China's potential assertions of sovereignty in space are not just a bilateral issue between the U.S. and China. All nations that benefit from space would be affected adversely. The global economy is dependent upon the fundamental principles of freedom of navigation in outer space, and upon the inability of nations to assert territorial claims in space.

Ladies and gentlemen, it has been a privilege to appear before this U.S.-China Commission today. I look forward to your questions.

HEARING COCHAIR ESPER: Very good. Thank you, Mr. Meek. Dr. Lewis.

**STATEMENT OF JAMES A. LEWIS
CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES
WASHINGTON, D.C.**

DR. LEWIS: Thank you and thanks to the Commission for the opportunity to testify. I thought the questions that you posed were both interesting and difficult. So I'll try and respond to some of them.

On China's views on sovereignty, and some of this, of course, you've heard over the course of the day, even though they're shaped in part by the belief that China is only reclaiming its rightful position as a great power after decades of exploitation, China's thinking on sovereignty is also shaped by the Cold War.

China at times still describes the U.S. as hegemonic. Hegemony is one of these Cold War leftovers. It explains the U.S. actions as being taken solely to reinforce America's global dominance and includes notions like American empire, hyperpower.

Please note that these explanations are not confined to China. It's part of a larger collection of ideas accepted by many in Europe, Latin America and other regions.

One problem for the U.S., though, is that China's conceptual map for international relations is shaped by its experience of imperialism and the Cold War.

The result is that China can easily misinterpret actions taken by the United States. That the U.S. is not a hegemon or an empire does not mean that China or other nations are not seeking to constrain our power.

To the extent that the notion of hegemony influences Chinese

thinking, it means that existing rules and structures for international activities are seen as intended, seen by China as intended to benefit the hegemon and for that reason not entirely legitimate or deserving adherence.

This is a theme often heard in negotiations, that China should not be bound by international conventions created without its participation or consent. This is often accompanied by the suspicion that international conventions are actually designed to keep China at a disadvantage.

There is a powerful sense of grievance among the Chinese, and this combination suggests to me that it's not so much that China is seeking to expand its own sovereignty or control as much as it is reluctant to recognize or respect international norms or the sovereignty and control of others when these interfere with China's pursuit of its own interests.

All nations engage in the calculus of deciding when self-interest outweighs other considerations, but China's decisions tend to cluster more on the self-interested end of the scale.

China's poverty and experience before 1945 are sometimes held as justification for this, along with pointed comparisons of U.S. actions that appear to run contrary to international norms.

Sovereignty and self-interest in China are closely linked to three goals that guide action and thought. These goals are: preventing any internal activity that could undermine the party's control; restoring sovereign control over Taiwan; and rebalancing or reconstructing the international order to give China more weight and influence.

China's activities in cyberspace and in space are undertaken in pursuit of these goals. The primary purpose of China's space program is political. China's attitude toward sovereignty in space, as you've heard, is best seen as an unwillingness to defer to other nations.

Space exploration has a political dimension in that it demonstrates the return to greatness and an emerging superiority. Hu Jintao described the success of China's manned space flight as, quote, "a historic step taken by the Chinese people in their endeavor to surmount the peak of the world's science and technology."

So that "surmount the peak" phrase is very interesting to me. China has been very circumspect in its official statements about space, again as you've heard, since it has no desire to begin a race with the United States and others.

Thus, while we can find statements about exploring the moon and exploiting its resources, there are no stated claims to sovereignty and ownership. There are occasional statements in the official Chinese press about how China's, quote, "gorgeous red flag" will wave over the moon and that implies a degree of control, but the Chinese themselves

appear not to have thought through the issue, perhaps because owning the moon is such a distant eventuality.

To some extent, China's unwillingness to defer to existing international norms when it comes to space or cyber space creates additional risks and the risks of sliding into more overt conflict.

China's decision-making process for security is weak and disjointed, increasing the likelihood that Beijing could miscalculate the cost of advancing its sovereignty or flouting international norms.

There is also a strong emotional nationalism in China that party leaders both exploit and fear. This emotional nationalism combined with the weak decision-making could perhaps lead to unfortunate choices for Beijing, a choice between military confrontation or a loss of regime authority.

Chinese anti-satellite efforts are a good example of this. China underestimated the foreign reaction to its tests. It seems that in deciding whether to shoot a satellite, China's leaders may have neglected to consult their own foreign ministry and thus were surprised by the outcry over the tests.

China had denied for years that it was building anti-satellite weapons and urged, as it continues to urge, a treaty banning weapons in space. Its leaders seem to have underestimated the effect of the test on the credibility of these statements.

The motives and the decision-making process, to the extent we know it, that lay behind China's ASAT tests have serious implications for the idea of an outer space treaty. There are many technical reasons why such a treaty would be easy to evade. Verifying compliance would be difficult if a country wanted to conceal programs. And in cases of countries like China and Russia, which do not always observe international norms, treaties make an inadequate guarantee for security.

There are measures that could let a space weapons treaty succeed, but they would involve transparency and intrusive compliance measures that I do not believe Russia or China would accept.

Similarly, alleged Chinese activities in cyberspace demonstrate an unwillingness to accept international norms and perhaps a miscalculation of the risks of their activities. This summer leaders in France, Britain, Germany and the United States all remonstrated with China over its alleged cyber intrusions.

If China was responsible, and it likely was, it suggests that China underestimated the risks of being caught or believed it could disregard the consequences. That said, China's primary interest in cyberspace is to prevent it from becoming a domain where the regime's control can be challenged.

There are other goals, of course: the use of information

technology to aid economic growth; espionage; and of course information warfare against potential opponents like the United States. But the central focus is on securing cyberspace to prevent domestic political challenges.

China has the most sophisticated controls of any nation in cyberspace. Its regulations apply its existing political restrictions on speech and information sharing to the Internet. They're reinforced by a complementary system of voluntary compliance and self-regulation among network service providers. And finally, China has launched an expensive project to build computerized monitoring of all domestic communications.

It is not clear, however, that these activities represent an effort to expand sovereignty into new domains. This is not because the Chinese government has officially renounced the pursuit of hegemony--I'm sure the members of the Commission find this to be a comfort--but because China does not plan to increase its territory nor does it seek to force other nations to adopt its model of government.

China would like to be the most influential nation in Asia. It would like to see U.S. global influence reduced and the party would like to remain unchallenged in its control. These are the political objectives that Chinese activities in cyberspace and space are pursuing and they're part of a larger strategy to help achieve them.

This has been only a cursory summary of a very complex topic, one that the Commission, though, has rightly identified as crucial to our bilateral relationship. China's views toward sovereignty include outward facing goals of asserting China's status, increasing its power and influence, and they also have inward facing goals of protecting regime authority.

It's worth bearing in mind that while some of China's approach to sovereignty is specific to maintaining the power of the current regime, many of the policies that China currently pursues that emphasize the restoration of national power and assertiveness would probably be advocated by any Chinese government, democratic, Communist, Taiwanese, whatever. I think this is just something innate to China right now.

From China's perspective, its views on sovereignty and its actions in cyberspace and outer space are reasonable and justified.

The issue for the U.S. is that the action China takes to restore its sovereignty or to preserve its current government can work against the United States and increase the likelihood of conflict.

A U.S. strategy that takes the necessary steps to maintain our military power and economic competitiveness while persuading China that sovereignty and adherence to international norms are not incompatible offers the prospect of a cooperative relationship that is in

both countries' interests.

I had more that I was going to say--the Treaty of Westphalia because you can't talk about sovereignty without saying Treaty of Westphalia--but in the interest of time, I'll stop now.

[The statement follows:]

Thank you for the opportunity to testify. The questions the Commission has posed concerning China's views on sovereignty are interesting and difficult. Many Chinese would say that China's sovereignty was only restored in 1945, after more than a century of foreign domination. The ruling Communist Party would of course say that sovereignty was not restored until 1949, when it came to power.

This historical context is important for understanding China's views on sovereignty. Beginning in the early 19th century, China was occupied, divided and controlled first by European powers and then by Japan. This occupation did not end until 1945. The European and Japanese occupations help explain some of China's hyper-sensitive reaction to what it terms interference in its internal affairs. China's thinking is shaped in part by the belief that China is only reclaiming its rightful position as a great power after decades of exploitation.

China's thinking on sovereignty is also shaped by the Cold War. Between 1950 and 1990, China rejected and vociferously criticized the international order created by the U.S. and its allies at the end of the Second World War. China still at times describes the U.S. international as hegemonic. Hegemony is another leftover from Cold-War propaganda. It explains U.S. actions as being taken solely to reinforce America's global dominance and includes notions like American empire, hyperpower, and other dubious constructs. Please note that this conceptual map for explaining U.S. policy is not confined to China - it is part of a collection of wooly ideas accepted by many in Europe, Latin America and other regions.

One problem for the U.S. is that China's 'conceptual map' for international relations is shaped, and to some extent distorted by China's experience of imperialism and the cold war. The result is that China will take actions that make sense from their perspective but not from anyone else's. In particular, this different conceptual map can lead China to misinterpret actions taken by other nations, particularly the United States.

That the U.S. is neither a hegemon nor an empire does not mean that China, along with other nations, is not seeking to constrain or reduce U.S. power, however. To the extent that the notion of hegemony influences Chinese thinking, it means that existing rules and structures for international activities are seen as intended to benefit the hegemon and for that reason, not entirely legitimate or deserving adherence.

This is a theme that is often heard in negotiations with the Chinese: that China should not be bound by international conventions created without its participation, input, or consent. This statement often accompanied by the implied suspicion that these international conventions are also designed to keep China at a disadvantage. There is at times a powerful sense of grievance among Chinese. The U.S., perhaps unfairly, is one of the principal targets for these grievances. The combination suggests that it is not so much that China seeks to expand its own sovereignty or control as much as it is unwilling to recognize or respect the international norms or sovereignty of others, particularly when these interfere with China's pursuit of its own interests.

Norms are expectations or models for behavior. There is an international norm, for example, against supplying WMD technology to others. Norms are not usually legally binding, but they can be codified in a regime (like the MTCR) or a treaty (as in the Council of Europe Cybercrime Convention). A normative approach to international relations would focus on how things should work rather than how they actually

work. Adherence to international norms limits sovereign power, but behavior by a country that is contrary to a norm may result in embarrassment or stigmatization. One of the anomalies of the current international environment is that while the number of norms governing international behavior is increasing, the influence of these norms appears to be in decline.

All nations engage in the calculus of deciding when self-interest outweighs other considerations, but if policy decisions range from adherence to norms to pursuit of self-interest, China's decisions tend to cluster more on the self-interested end of the scale. China's poverty and unhappy experiences before 1945 are sometimes held up as justification for this, along with pointed comparisons with actions the U.S. takes that appear to run contrary to international norms.

Three specific goals guide thinking and actions on China's sovereignty: an immediate and continuing goal of preventing any internal activity that could undermine the Party's control, a mid-term goal of restoring sovereign control over Taiwan and a longer term goal of rebalancing or reconstructing the international 'system' to give China more weight and influence. Some of these goals, of course, create the potential for conflict with the United States.

China's activities in cyberspace and in space are undertaken in support of these goals. It is not clear, however, that these activities represent a Chinese effort to expand sovereignty into new domains. This is not because the Chinese government has officially renounced the pursuit of hegemony - it has, and I am sure the members of the Commission find this to be a comfort - but because China is not fundamentally expansionist. It does not plan to increase its territory nor does it seek to force other nations to adopt its model of government. China would like to be the most influential country in Asia, it would like to see U.S. global influence reduced, and the Party would like to remain unchallenged in its control. These are political objectives and China's cyber and space activities are tools to help achieve them.

The primary purpose of China's space program is political. China's activities in space are primarily to affirm or enhance prestige and influence rather than build a continuous military presence. The long-term goal is to make space an integral part of China's national power.

China is the most active space power in Asia and has been building its space capabilities since the 1950s. The most visible return to China has been in prestige. China uses its space program to announce its great power status and to lay a claim to regional dominance. A White Paper on space put out by the State Council - the equivalent of the U.S. National Security Council - calls for "eye-catching achievements." China's President Hu Jintao described the success of Shenzhou 5 as "an historic step taken by the Chinese people in their endeavor to surmount the peak of the world's science and technology."

China's manned orbital missions are only part of an ambitious program for space exploration. This includes both human and robotic efforts. China is working on a separate unmanned lunar exploration program. The lunar program has three phases planned over the next twelve years. Chang'e 1 is now orbiting the moon. The second phase will land a craft on the moon by 2012. The third phase will return lunar samples to China by 2020. China hopes that success for Chang'e will help set the stage for a manned lunar mission. China does not yet have a launcher with sufficient payload for a manned lunar program, but it has begun an R&D program for the next generation of launch vehicles.

China's attitude toward sovereignty in space is best seen as an unwillingness to defer to other nations, but China has been very circumspect in its statements, since it has no desire to begin a race with the United States or others. Thus, while we can find statements about exploring the moon and exploiting its resources, there are no stated claims to sovereignty or ownership. There are occasional statements in the official press about how China's "gorgeous" red flag will wave over the moon that imply a degree of control, but the Chinese themselves may not have thought through the issue, if only because this kind of lunar activity is a

distant eventuality.

To some extent, China's unwillingness to defer to existing international norms when it comes to action in space or cyberspace risks sliding into more overt conflict. China's decision-making process for foreign policy and security is weak and disjointed, increasing the likelihood the Beijing could miscalculate the costs of flouting international norms. We know that the Chinese can miscalculate the risks of activities. There is also the strong emotional nationalism among China's populace that Party leaders both exploit and fear. This emotional nationalism could perhaps lead to public demonstrations that would force Beijing to choose between military confrontation or a loss of regime authority.

China's anti-satellite efforts are a good example of the weaknesses in China's security and foreign policy decision-making processes. China underestimated the foreign reaction to its test. It seems that in deciding whether to shoot at a satellite, China's leaders may have neglected to consult the foreign ministry and thus were surprised by the outcry over the test and resultant debris cloud. China denied for years that it was building anti-satellite weapons and urged, as it continues to urge, a treaty banning weapons in space. Its leaders seem to have underestimated the effect of this test on their international credibility. This miscalculation reflects a degree of parochialism in Chinese security policy, a lack of experience in international politics, and a certain degree of hubris born of China's tremendous economic success.

The motives and decision-making process (to the extent we know it) that lay behind China's ASAT test have serious implications for the idea of a treaty with China and others banning weapons in space. There are many technical reasons why such a treaty would be easy to evade. Verifying compliance with a treaty would be difficult, if not impossible, if a country wanted to conceal programs. In such cases, countries like China or Russia, which do not always observe treaty commitments or norms - Russia's cyber attack on Estonia is a good example of this lack of regard - make them unreliable partners and treaties an inadequate guarantee for security in space. There are measures that could allow a space weapons treaty to succeed, but they would involve transparency and intrusive compliance measures that I do not believe either nation would accept.

Similarly, alleged Chinese activities in cyberspace demonstrate a similar unwillingness to accept international norms. This summer, leaders in France, Britain, Germany, and the United States all remonstrated with China over its alleged cyber intrusions. If China was responsible, and senior officials in several nations were willing to attribute the attacks to China, it suggests that China may have underestimated the risk of being caught or believed that it could disregard any consequences.

China's interest in cyberspace goes well beyond international relations, however. Cyberspace has domestic political implications that space does not. China's primary interest in cyberspace is to prevent it from becoming a domain where the regime's control can be challenged. There are other goals, of course, including taking advantage of information technology to aid economic growth, using cyberspace for espionage purposes, and preparing for information warfare against potential opponents like the United States, but the central focus is on securing cyberspace to prevent domestic political challenges.

These efforts go well beyond attempts to block access to foreign websites. China has the most sophisticated controls of any nation on cyberspace. Its regulations apply existing political restrictions on speech and information sharing to Internet users, Internet cafes, ISPs and other network service providers. For example, China's Internet regulations incorporate key provisions of the 1993 State Security Law that gives the Ministry of State Security (MSS) the authority to take action against individuals whose conduct harms the PRC state security. Portions of the State Security law are incorporated without change in Internet regulations. The most important provisions include prohibitions against subversion or the overthrow of the socialist system; providing state secrets to an enemy; or engaging in sabotage. The Ministry has the discretion to decide when an activity falls into one of these prohibited categories, giving it

a very broad authority.

These political regulations are reinforced by a complementary system of voluntary compliance and self-regulation among the larger private networks and service providers. China has several government entities whose mission is Internet security and control, including the Ministries of Culture, Information Industries, Public Security and State Security. Part of the work of these Ministries is to subsidize research and development of technologies that would expand control. China has launched an expensive “Golden Shield” project to build computerized monitoring of domestic communications.

Statements by some Chinese officials suggest that they see China’s sovereignty diminished by a dependence on foreign technology. In part, this is because this dependence is believed to create a strategic vulnerability. A 2004 editorial in People’s Daily explained that China needed its own IT industry, as “Strategists reveal that in peacetime, the U.S. sells virus-carrying chips as ordinary commodities to other countries. When needed in war-time, the United States can remote control and activate the virus at anytime, making ineffective or paralyzing the enemy’s command and weaponry systems.” This charge makes little sense, but it is indicative of the unhappiness felt in China over the lack of indigenous technology.

Chinese concerns over management of the Domain Name System (DNS), the top-level domain for China, and the use of Chinese characters, also reflect a concern over the appearance of a diminished sovereignty. China is one of the nations that object to the management of DNS by ICANM, a private corporation with some remaining ties to the U.S. government. China has created domain names using Chinese characters and made them available for use only inside China. In part, Chinese concern over the DNS reflects its desire to expand control over the internet and information resources, but it also reflects a degree of nationalism and concern over sovereignty.

This has been only a cursory summary of a complex topic, but one that the Commission has rightly identified as crucial to the bilateral relationship. China’s views towards sovereignty include the outward-facing goals of asserting China’s status and increasing its power and influence, and inward-facing goals of protecting regime authority. It is worth bearing in mind that while some of China’s approach to sovereignty is specific to maintaining the power of the current Chinese regime, many of the policies China is pursuing that emphasize the restoration of national power and assertiveness would be advocated by any Chinese government. .

From China’s perspective, its views on sovereignty and its actions in cyberspace and in space are reasonable and justified. The issue for the U.S. is that the actions China takes to restore its sovereignty or to preserve its current government can work against U.S. international influence and may increase the likelihood of conflict. That said, a U.S. strategy that takes the necessary domestic actions to maintain military power and economic competitiveness while persuading China that sovereignty and international norms are not incompatible, offers the prospect of a cooperative relationship that is in both countries’ interest. We should conclude by noting that that U.S. policy has for more than a century supported the restoration of China’s sovereignty and as China continues to recover from its long twilight under imperialism and communism, there is no reason why this policy should not continue to hold.

Panel V: Discussion, Questions and Answers

HEARING COCHAIR ESPER: Thank you, Dr. Lewis. Thank you both. We have several commissioners who have questions and we’ll go in this order: Commissioner Wortzel, then Fiedler, then Reinsch, then Mulloy, then Videnieks.

So with that, Chairman Wortzel, over to you.

CHAIRMAN WORTZEL: Gentlemen, thank you for your scholarship, your time, and your testimony. In 2007, we met as a Commission with military officers of the People's Liberation Army at the Academy of Military Science in Beijing, and these officers acknowledged that if a nation could attribute the source of a cyber attack to another state or its military, it could be an act of war and the injured state could respond even with a kinetic attack, not necessarily with a responding cyber attack.

Now I'd be interested in your positions on that issue and whether you could discuss for us when cyber penetrations or cyber attacks move from being acts of espionage or target identification inside a network to acts of war?

DR. LEWIS: I'll go first. It's interesting that you bring up these issues because I've been involved, even this morning, in discussions with people from the various National Labs about the question of deterrence and when is an act of war.

What I pointed out to them is if you--let me give some flamboyant examples. You can steal an intelligence gathering ship, imprison its crew, torture them, and that is not an act of war. You can kidnap the chief of station of a CIA station, take them back to your nation's capital and torture them to death, and that is not an act of war. You can detonate a truck filled with explosives in front of a U.S. military housing complex, and in these cases, we have pretty good attribution, and that is not an act of war.

So one of the issues I think for the U.S. response is that the military would like clean lines. This happens, it's a green light; that happens, it's a red light. In fact, it's always going to be a yellow light, and it's always going to be a political decision.

Attribution is a key problem. If we had better attribution, I think you would see the number of these incidents going down. Deterrence is a key problem, and how you achieve deterrence when you have weak attribution and when you don't know the collateral damage is a very difficult question. This is not Cold War style deterrence because the network we attack in response might very well be our own network, and there is no way to tell.

The opponent we attack because they appear to be responsible, at least the way things are configured now, could actually not be the guilty party. It's relatively easy to hide your actions. All these things work against that kind of response: the political dimension; the technical difficulties.

I think what we can do is we can change the calculus our opponents use. Right now, and one of the things I thought this summer is if it was the Chinese, and we all assume it was the Chinese, they

appear to have thought that there was almost no penalty for engaging in these activities.

How could we get them to rethink the cost of doing this? I'd say that the complaints from the other nations who are our NATO allies provides us an opportunity to help the Chinese rethink. Long answer. Sorry.

CHAIRMAN WORTZEL: No. It was a long question.

MR. MEEK: I think in the legal community at least, and I think also in the diplomatic community, we've shied away from the term "act of war" for a very specific reason, and that is when you use the term, it almost locks you into a very small response set. The one thing that we think the government would want to do, and particularly in a cyber arena, is, as Dr. Lewis says, to ensure correct attribution because of how easy it is to hide yourself in cyberspace. So the last thing you probably want is a quick reaction where you think the target is in cyberspace, because it may not be the target and you may be significantly compounding your international problem with a quick response.

That's very frustrating to military commanders many times because they would like to act quickly because they want to cut losses.

But that may not be possible. A good example of that might be the Estonia case that happened recently, and also attacks in the U.S., I believe it's been established, if I'm correct, even those attacks, many of them that were thought to come from China actually originated from the U.S. and some other places.

It's very easy to jump to a quick conclusion when you are in a period of heightened tensions in the world; that's a good time for a spoiler to come in and commit an action that you would respond to quickly thinking it was "Country A" and it's really somebody else with a different agenda.

So the cyber world has some very much more difficult problems than posed in your normal law of armed conflict analysis.

Also, the cyber world presents another different problem and a difficult problem. It doesn't follow your normal paradigm of warfare or the law of armed conflict scenario because you're not going to have the CNN effect of blood and guts and people dead and wounded. You're going to have things happening to machines, or you're going to have things happening to the stock market or maybe things happening to a GPS and other satellite services.

You're talking about a lot of inanimate objects that are being affected. That doesn't necessarily turn people on, and so when you talk about--the reference was here when do you go kinetic? Well, it's going to probably take a very significant adverse impact and with a very sure attribution to result in a kinetic attack on who you think is

the perpetrator.

So there are a lot of things in that equation that are, from an analytical standpoint, much more time consuming that you may normally have in an armed conflict scenario.

As far as when you know when you transfer from say espionage or computer network exploitation or whatever terms to conflict, I don't know that there is necessarily a black and white line. Once again, people like black and white lines. That is not the nature of cyber warfare. It's just simply not. And so what you end up doing is having to look at a wide range of information.

You have to rely on your intelligence community, your law enforcement community. It's a broad-based government home security effort, and that is one area, in my mind, where we could benefit from, and we are working on it now. We could benefit from more integration of activities, cooperation, because time is of the essence because the longer you go, the more difficult, the more damage you may be sustaining.

Thank you.

HEARING COCHAIR ESPER: Okay. Thank you, Mr. Meek and Dr. Lewis. Commissioner Fiedler.

HEARING COCHAIR FIEDLER: I'd like to follow up on this discussion. Then if I have time I'll ask my second question. Whether unfair or fair, your answers seem to avoid his question. So you said essentially that it was difficult to attribute and we've got to be careful about what the size is, and you gave the flamboyant examples of acts of war.

By the way, I could give many examples of acts of war that we have not responded to immediately. So the implication that an act of war requires an immediate response I don't think is generally acceptable.

The power grid went out in some fashion yesterday in Florida, not because of any cyber warfare there, but that I suspect caused some "blood" on CNN, if you will, in the way of traffic accidents and a few other things. So if the power grid went out covering 60 percent of the population of the United States due to a cyber attack--forget that we can figure out who did it yet--is that an act of war, whether it's a terrorist on a single computer or 5,000 people working in concert in Shanghai?

MR. MEEK: I think you hit one very good point right there and it's when you mentioned the individual. Acts of war are generally attributed to nation states, not to individuals.

HEARING COCHAIR FIEDLER: Yes, but we're in an alleged war now, and actually I'll remove the word "alleged." We're in a new form--I mean you said the paradigm was different. Yes, okay, the

paradigm is different. We all understand that the paradigm is different since 9/11 among other things.

So it's still an act of war, but let's take the individual out of it and say it was the state. Is that an act of war? 60 percent of our population.

DR. LEWIS: You have a dilemma. One way to think about this is, okay, so this happens, and you go to the President or the Secretary of Defense and you say we'd like to respond using military force but we aren't sure about the target, and we don't know if we'll be hitting our own stuff.

HEARING COCHAIR FIEDLER: No, wait, wait, wait, wait.

DR. LEWIS: You'd be thrown out of the office.

HEARING COCHAIR FIEDLER: No, no. I didn't say I was walking--first, I'm trying to determine who did it and what their intention was. I'm not talking about walking in and saying, please, sir, could we pull the trigger against somebody that we don't know.

Okay. Let's take the act of war out of it. Is it an act of aggression against the United States to take down 60 percent of our electrical grid? Yes; right. So your answer before was not an improper answer; I just said it avoided it. You are worried about attributing it. I'm worried about attributing it, too, but it's still a serious act.

MR. MEEK: What has happened in the past is where we have, based on our intelligence, based on tracebacks, based on the determination, we have found the location of perpetrators, let's say individuals.

HEARING COCHAIR FIEDLER: And we've been wrong.

MR. MEEK: And we've been right.

HEARING COCHAIR FIEDLER: Yes.

MR. MEEK: And what we've done is we go to the host government and we say we've tracked it to this point and you should take some criminal, criminal action against these individuals. Now, it's been relatively small scale.

HEARING COCHAIR FIEDLER: Yes.

MR. MEEK: We haven't had something large. When you move into a huge scale effect, sure, it raises up the ante, but that's part of the discerning process that you have to determine. I don't think that you would want, even assuming a 60 percent loss, you've got to know that you've got the right target that you're going to strike and, yes, perhaps in Phil Meek's opinion, you could go in with a kinetic attack, certainly with a 60 percent load down, if that's where you think your best alternative is. But you better be right.

HEARING COCHAIR FIEDLER: I think it's understood by everyone that we always ought to be right. A quick question, and it's a

legal question. Do the Chinese run reconnaissance satellites over the United States? I must beg ignorance. I presume they do.

MR. MEEK: Yes, sir.

HEARING COCHAIR FIEDLER: Okay. So if they maintain, theoreticians maintain that there is no, I mean they own the space above their country, but yet they violate it in terms of running reconnaissance, does that neutralize their legal basis for arguing?

MR. MEEK: No, no. The presumption there would be that they would have to apply it reciprocally.

HEARING COCHAIR FIEDLER: Right.

MR. MEEK: And a lot of countries do not apply it reciprocally. For instance, they may take the position that the U.S. could have a similar basis to engage the satellite, but they're not saying anything.

HEARING COCHAIR FIEDLER: Right. Okay. Thank you very much.

MR. MEEK: That's one of the difficulties with their own position. And that's pointed out by a lot of their own personnel. They see the benefits and they see the disadvantages.

HEARING COCHAIR FIEDLER: That's right. Yes, that was my point actually in asking the question.

HEARING COCHAIR ESPER: Thank you. Commissioner Reinsch.

COMMISSIONER REINSCH: Thank you. I have to say this, the act of war question leaves me a bit cold for the reasons Dr. Lewis cited. If you can't attribute it, I don't know that it matters much what you call it. You can't do anything about it unless you know what your target is, which is why I want to change the subject.

Dr. Lewis, you mentioned in your testimony, and I'm inclined to agree with you, that in the cyber security area the Chinese primary objective is domestic control, and I think that's right.

Looking at that for a minute and looking at those efforts, who's winning? Are they succeeding?

DR. LEWIS: I think right now the balance of technical opinion would be that the Chinese government is succeeding, right, and why that is may rely more on technical measures, but if you look at what Chinese Internet users try and access, it's mainly entertainment and sports sites. They aren't questing for political information. So whether that's a successful tactic or not, I don't know.

But the general theory is, is that if there was one country that had the technical skills and the money to maintain control over the Internet in a way that would allow it to reduce any political challenge, it would be China.

COMMISSIONER REINSCH: Given the creativity, if you will, of the cyber community, both there and everywhere else, do you think

they're going to be able to continue to prevail, the government?

DR. LEWIS: If their strategy only relied on technical access to the Internet, no, it would be easy to circumvent. But if it's part of a larger strategy that involves propaganda, that involves shaping popular attitudes, that gets people not to want to go to these sites to begin with, then, yes, I think they can continue to succeed.

COMMISSIONER REINSCH: That's helpful. I think we had testimony on that last year. Thank you for that. Let me then change the subject again, if I may, and I realize this wasn't your project--I'm talking to Dr. Lewis again--sorry--I realize this wasn't your project at CSIS.

DR. LEWIS: This is what I get for working for him.

COMMISSIONER REINSCH: You can't escape no matter what you do, no matter where you go. Dr. Lewis is a former employee of mine at the Commerce Department I guess would be the best way to put it. He had got out before I did so he was able to escape, but he seems to come back into orbit periodically.

HEARING COCHAIR ESPER: We're going to have to deduct a minute from your time.

DR. LEWIS: Hey, deduct two.

COMMISSIONER REINSCH: This is the last question although that depends on the answer. I realize this is not your project at CSIS--but would you say a few words, if you can, about the report they released I believe last week on satellite exports and satellite export controls and what conclusions that CSIS came to?

DR. LEWIS: First let me note that although this report was issued under the sponsorship of CSIS, it was actually commissioned by the Defense Science Board.

COMMISSIONER REINSCH: Even better.

DR. LEWIS: Yes, and because of a series of internal issues that I'm not entirely familiar with, the Defense Department asked CSIS to sponsor the report, but the work was done by the group set up by the Defense Science Board, and it continued to have support from DOD.

COMMISSIONER REINSCH: Can you say a few words about its conclusions?

DR. LEWIS: Sure. I tried to dodge. The conclusions were not startling in that they said pretty much what many reports have said in the past, and that is that the controls we have in place now in commercial communication satellites damage U.S. industry.

If I remember correctly, the report set a figure of I think somewhere between 600 and \$700 million a year in costs to the industry. The costs do not fall on the primes. It's more on the subcontractors and the third-tier contractors who are suffering as a result.

So they then had a series of recommendations that basically sought to make it a little easier for U.S. companies to compete in the international market.

COMMISSIONER REINSCH: Thank you.

HEARING COCHAIR ESPER: Any further questions?

COMMISSIONER REINSCH: No.

HEARING COCHAIR ESPER: Okay. Thank you. We'll now turn to Commissioner Mulloy.

COMMISSIONER MULLOY: Thank you, Mr. Chairman. I want to thank both of you. Your testimony is terrific, both your written and oral.

I have the first question for Mr. Meek. Is China a party to the Outer Space Treaty of 1967?

MR. MEEK: Yes, sir.

COMMISSIONER MULLOY: Is there a dispute settlement provision in that treaty?

MR. MEEK: No, sir. There are no provisions like that. It's basically statements of principles.

COMMISSIONER MULLOY: So if we wanted to get an opinion on who's right, we'd have to agree and refer it to somebody like the ICJ?

MR. MEEK: You could.

COMMISSIONER MULLOY: Yes. Okay. Do you--

HEARING COCHAIR FIEDLER: He says smiling.

MR. MEEK: I'd never do it.

COMMISSIONER MULLOY: What?

MR. MEEK: I'd never do it.

COMMISSIONER MULLOY: You wouldn't do it; why?

MR. MEEK: Why? I think that, as was mentioned before in a prior panel, nations, particularly the U.S. in this case, would not want to delegate basically a sovereign decision authority to a group of judges like that. We're talking about our sovereign interests, and particularly in space and particularly for the U.S. which enjoys an asymmetric advantage in space. So that would be not on my high list of priorities to refer it to any kind of a tribunal.

COMMISSIONER MULLOY: We have the strategic advantage now. You could project in the future the way things are going maybe we won't have that strategic advantage because somebody is coming on awfully fast; aren't they?

MR. MEEK: Yes, they are.

COMMISSIONER MULLOY: Yes. You talk about the EEZ claim as well in your testimony. I presume you don't favor, even though that has resulted in a conflict of some sort between us and the Chinese when they knocked down that EP-3 plane, you wouldn't favor

trying to get that settled by some kind of dispute settlement either?

MR. MEEK: Phil Meek would not for many of the same reasons. The U.S. is taking actions to protest the Chinese activity, to make formal diplomatic records as a matter of protest, which in my view is the best way to handle that right now.

We would not want to do anything--China is just one place in the world where we have many claims, and we would not want, for instance, the risk of an adverse decision there that would compromise our ability to conduct similar-- challenge operations and freedom in other EEZs around the world where maybe we don't have any problems.

COMMISSIONER MULLOY: Let me ask you this. Do you know whether we continue such activities in the Chinese EEZ?

MR. MEEK: Yes, sir, we do.

COMMISSIONER MULLOY: We do. Okay. Thank you. Now, Mr. Lewis, on page six of your testimony, you talked about these viruses and information technology. Are these the chips that you're referring to?

DR. LEWIS: That was a quotation from a Chinese newspaper, and they were referring to chips in particular.

COMMISSIONER MULLOY: Semiconductors?

DR. LEWIS: Yes.

COMMISSIONER MULLOY: Okay. You say that they felt unhappy that they were dependent upon chips manufactured in the United States because you could put viruses in them that you could activate.

My understanding is that that industry is now moving and has moved virtually out of the United States, first to Taiwan and now into China. In fact, Intel, didn't Intel put a \$1.5 billion plant in Dalian, China last year and there were about a billion dollars of Chinese subsidies to entice Intel to do that? That's my understanding.

Are we now getting into the situation that the Chinese did not want to be into, that we're now dependent upon them for these chips that they can put viruses in that could be very detrimental to our national security interests?

DR. LEWIS: That's a very good question, and the Defense Science Board has put out two reports, one, two or three years ago, on hardware; one, late last year, on software. They both came to similar conclusions. The problem is, though, for China, for the U.S., for France, for whoever you like, all of these IT products come out of a global supply chain; right.

So when you look at a computer, the CPU, the brain comes from the United States; the memory probably comes from an Asian country, Singapore or Korea, Taiwan. The software comes largely from the U.S., but maybe also from India, maybe from Europe. And then there

are parts that are assembled in China.

If you start trying to go down the path of I will make myself more secure by only buying my own stuff, no country can do that anymore. So we all share this problem, and we have to think of a way to deal with it, but, yes, we have a problem. The Chinese have a similar problem.

One of the things I think is funny about that article is the day before I read it, I was out at a defense facility talking about the issue, how does the U.S. deal with foreign input to our critical infrastructure, and then I come back the next day, and here's the Chinese worrying about exactly the same thing. It's a common problem.

COMMISSIONER MULLOY: Did the Defense Science Board raise it as a real problem?

DR. LEWIS: Oh, yes, yes, indeed.

COMMISSIONER MULLOY: And they're very concerned about it?

DR. LEWIS: They're concerned that the microelectronics base is moving outside the U.S. and that has both security and trust implications, which was what I was talking about, and also defense industrial base implications.

COMMISSIONER MULLOY: Thank you.

HEARING COCHAIR ESPER: Thank you. Commissioner Videnieks.

COMMISSIONER VIDENIEKS: Thanks. Good afternoon, gentlemen. Welcome here. A brief question, kind of request. I understand, Dr. Lewis, that you and Dr. Kulacky are preparing a report to be given to whoever the next administration is.

DR. LEWIS: Oh.

COMMISSIONER VIDENIEKS: Will it be a public document and is there some way we can get a synopsis a little bit earlier?

DR. LEWIS: Sure.

COMMISSIONER VIDENIEKS: That's just the first part of the question.

DR. LEWIS: CSIS has a commission developing recommendations on cyber security. We've just started work. I can give you, if you want, I think, a document we've done on threats. But we don't have any recommendations right now because we started work on February 8.

COMMISSIONER VIDENIEKS: Okay.

DR. LEWIS: So, sure.

COMMISSIONER VIDENIEKS: We would like at some point when it becomes meaningful, we would like to get an advanced copy of it.

The second thing is--and maybe you're not in a position to give

specific comments at this point--I also understand that informally that there is some concern about the quality of sources used by the government when they talk about China, originality, that kind of thing--if you had a chance to look at the '06 report.

I would appreciate specific statements to the sources that may be, especially in the space area, that might not be up to the best standards.

DR. LEWIS: Do you want to touch that one or do you want to skip it?

MR. MEEK: As I mentioned, we could probably do that at a certain level, but there are an awful lot of writings out there. As I mentioned, first, what we have to rely on is simply the identity of the individuals and what levels they're at.

For instance, when I read an article by a captain, you know, I'm wondering, and it's really a very aggressive type article, I'm wondering if that isn't fishing bait thrown out to see how people are going to react. I'm sure the Chinese government has cleared it before they went out, but if this is an individual low in the pecking order, what's the purpose for putting it out?

Is he high in the pecking order? So a lot of it is subjective. We could probably get you something on that, but there are so many authors. In fact, Dr. Wortzel has had many articles. I just look at all the names and the footnotes and there are hundreds of names. The name doesn't mean anything to me, but I know what the translation of the text is. So that could be very difficult, but we might be able to do it.

COMMISSIONER VIDENIEKS: I think, in some cases I understand that the government is using graduate students who don't use original sources and that kind of stuff. I would, in the space area, okay, I for one would like to have some comments.

DR. LEWIS: In our government or their government?

COMMISSIONER VIDENIEKS: Our.

DR. LEWIS: Oh.

COMMISSIONER VIDENIEKS: The other question is recently there was a Wall Street Journal article saying there are no weapons in space. It's a myth, that all the weapons are land-based with the capability of shooting down satellites. Please, maybe both of you could comment on that.

DR. LEWIS: We don't know of any weapons in space. There were some test programs that the Soviet Union carried out in the 1970s and '80s, and since then I don't believe anyone has deployed a weapon.

The problem is, is that the things you can do don't require--there are so many ways to attack a satellite that having a weapon in space is just one of them, and so it doesn't really--not having weapons in space

doesn't really make you any better off.

COMMISSIONER VIDENIEKS: Thank you.

HEARING COCHAIR ESPER: Thank you. Commissioner Bartholomew.

VICE CHAIRMAN BARTHOLOMEW: Gentlemen, thank you both very much for really interesting testimony. Mr. Meek, if I can ask you to submit for the record the eight countries of the Bogota Declaration--

MR. MEEK: Yes, ma'am. It is in the statement, but I will be glad to give them to you as soon as I find it here.

CHAIRMAN WORTZEL: It's in the middle. It's deep in the middle.

MR. MEEK: Brazil, Colombia, Congo, Ecuador, Indonesia, Kenya, Uganda and Zaire.

VICE CHAIRMAN BARTHOLOMEW: It always interesting because as China conducts its own diplomacy around the world, and it looks for things that it might be trying to do to support certain nations, I will add it to my mental list of they all of a sudden got some agreement going with Uganda where they've decided to support the Bogota Declaration.

MR. MEEK: Actually I would look broader than these countries right here. I would look to all the other countries on the equator and start looking at where Chinese either foreign investment or aid is going, maybe as an indication of soliciting a favor and dependence on China.

VICE CHAIRMAN BARTHOLOMEW: Or if any of those countries recognize Taiwan, we might see things change, too. Thank you. It's intriguing, though not the main source of my question.

Mr. Dutton has briefly left the room, but I wanted to go back to this concept of legal warfare or law fare, as you're talking about it. Mr. Dutton quoted Renmin Haijun saying that "legal warriors have to be farsighted, engage in legal contests to vie for the legal initiative in order to safeguard national sovereignty and territorial integrity." And he's just back as I'm quoting.

I'm going back to the issue of legal warfare, but is there anywhere in the U.S. government that is responsible for taking a bigger picture look? Because it feels a little stove-piped to me--he's talking about maritime law; you're talking about space law. Consequences of a decision by China to push up, for example, with nobody responding, set a legal precedent that could be used in something completely unrelated to that?

MR. MEEK: Yes, ma'am.

VICE CHAIRMAN BARTHOLOMEW: Who is it? Where in the U.S. government does the responsibility lie to look at the bigger

picture of what is happening in terms of China's legal warfare?

MR. MEEK: My personal view is I don't think there is any one place. And that is a weak link in the sense that you have to rely on the intelligence or the skills of various people at levels of government to respond to that.

For instance, when I see things on an international front that give me cause for concern in the space arena--let's just take for instance, I will go to our space policy people and I'd say I'm really bothered by this. I see this as a legal problem down the road.

Okay. And let's say if it's something that requires a diplomatic initiative, then we'll talk to the lawyers at the State Department or the policy people at State Department. But when you're talking about state-to-state relations, it's going to be basically State Department's call as to how and when to engage. Sometimes they may agree and sometimes they don't.

So maybe when you get a certain number of people raising the issues, certain offices, maybe they start coalescing at some high level, National Security Council, for instance.

VICE CHAIRMAN BARTHOLOMEW: Right.

MR. MEEK: But I'm not aware of any one office that would be responsible for that. I think it's basically individuals that identify something, some area of concern, and float it up their channels, and, you know, when the general officers or the high level SES or political appointees start getting energized on it, that's when it gets addressed at the high levels.

VICE CHAIRMAN BARTHOLOMEW: And can I step out of our usual routine and ask Mr. Dutton if he knows of--I mean similarly. I understand that you're in an academic position, but if there's something of concern, is there a chain which you can go to a place where somebody is looking at the bigger picture of all of this?

MR. DUTTON: I would just agree with the testimony that you've already heard with one exception, that the DOD Office of General Counsel often will act as referee if necessary, at least among the Department of Defense, but between agencies, I would agree with the testimony.

HEARING COCHAIR ESPER: If I could add, my experience has been the State Department would claim that it has primacy within the U.S. government for international law issues that affect policy. The other question that comes to mind, this may be different, but what this foreign discourse brought to my attention is whether anybody in the federal government is looking at international law issues from an intelligence perspective, and I'm not aware of anybody doing that.

But our understanding is that the State Department would be doing that. In fact, Commissioner Fiedler and I requested a State

Department lawyer who is engaged in international law and sovereignty issues to be here today, but we were unable to obtain somebody from the State Department.

CHAIRMAN WORTZEL: Actually we're not giving due credit to some things that have been done. The Center for Naval Analysis and FFRDC under contract from the Department of Defense has done classified and for-official-use-only studies of the evolution of this concept of legal warfare, but we're just not seeing it.

VICE CHAIRMAN BARTHOLOMEW: Okay.

CHAIRMAN WORTZEL: And the Open Source Center, which is CIA's organization, and the former FBIS has two major studies out which are official-use-only that assess all Chinese military publications and their authors and their validity, their level of authority, and how they influence Chinese policy. So this is being done. It is out there. It's not always in open source channels.

VICE CHAIRMAN BARTHOLOMEW: Okay. And I appreciate that. This is just ignorance on my part, but is it also then comprehensive? If somebody at the Commerce Department is dealing with a legal issue and we know that there is precedence setting, not in that realm of law, but in that strategy, taking place in this space forum, is there someplace where somebody's got their eye on the bigger picture of what's going on?

CHAIRMAN WORTZEL: Not on space or cyber.

VICE CHAIRMAN BARTHOLOMEW: No, no, but I'm not saying just space or cyber. I'm saying the bigger picture about a legal strategy related to sovereignty that is setting precedent?

DR. LEWIS: I used to work at the State Department and so I dealt with some issues like this. You're right that the process is mainly reactive. So if a foreign government came in and gave us a note that said, by the way, we own all the space that extends over our country all the way out to infinity, we would respond. We would respond by making fun of them.

The other thing, and this is something you learn from your childhood at State, is that only the State Department speaks for the U.S. government on these things, and so if another agency or department, like Commerce, were to make a slip, not unusual, then it's not binding. You have to get it through the State Department from either the White House or the State Department.

So in some ways, if China said hey, look, we've got this document signed by the Commerce Department and it proves that we're right, we would just throw you out. We would laugh at you.

VICE CHAIRMAN BARTHOLOMEW: I think what I'm still really concerned about here and would ask both of the chairman and the cochairmen of this hearing, that we need further consideration of

what is taking place in the U.S. government to track this. Going back to this quote, which I think is one of the most important things we've heard today, is that "legal warriors must be farsighted to discern any problems before they actually arise." I would really like to know where those legal warriors are in our own government as we head into this.

Thank you, gentlemen.

HEARING COCHAIR ESPER: Thank you. Commissioner Shea.

COMMISSIONER SHEA: Thank you very much. I'm going to continue on with the legal question, and I think most of my questions are for Mr. Meek. You said in your oral testimony or perhaps in response to a question that the U.S. typically when responding to cyber penetration, cyber attacks, notifies the government where the perpetrator, alleged perpetrator, I suppose, resides, and requests that they be criminally prosecuted under that country's own laws.

Could you tell me whether when you make those requests, are they normally fulfilled?

MR. MEEK: They are in many cases. We had one case in Germany several years ago where that occurred. I believe we've had a case in the UK. I can't name all of them, but I do know that we have gone back to several governments.

The problem many times is that there are not many cyber criminal laws in many of the governments. So although they may be supportive of us and they understand that somebody has done something bad to our systems, they don't have a way to prosecute. The U.S. does have cyber crimes that we do prosecute in the United States.

But on more than a few occasions when we go to Country X, they just don't have the laws like we do. It's not issue--

COMMISSIONER SHEA: So one of the things the United States could be doing is promoting a model code to enforce cyber laws? Or model cyber law code?

MR. MEEK: Right. There are some cyber crime treaties that a few countries belong to like in Europe, and we do many times when we identify a problem with a country, talk to that country about starting their own legislative process to address it.

But quite frankly, many times it's hard to get a lot of enthusiasm in the countries to press forward with that. Just because of their domestic priorities.

COMMISSIONER SHEA: As a follow-up, you mentioned the U.S. cyber crime law, could you assess whether that law is effective? Is it sufficiently clear? Can it be clarified? Can it be improved in anyway?

MR. MEEK: I would say that most any law can be improved. It

is being used in the U.S. There are prosecutions under it, and so from that extent I think that it is successful. The U.S. attorneys have the ability to prosecute. Some states have statutes as well.

Could it be better? Sure. I'm sure it could be. But once again it depends on the legislative processes and what is on people's priority lists.

COMMISSIONER SHEA: Do you have something to add, Mr. Lewis?

DR. LEWIS: Sure. You want to look at the Council of Europe Cybercrime Convention, which is the thing that the U.S. is finally, after long delays, a signatory to. That's international standard. And getting other countries to adhere to that Convention would be very useful.

The U.S. didn't have any trouble signing the Convention because our laws are very robust and they cover everything that people do. Now, there is always room for improvement, but the issue on the U.S. side is when you find someone outside of our territory and our jurisdiction, and then how do you pursue them, how do you get them extradited, how do you get the other country to intervene?

The classic example is the "Love Bug," which was one of the viruses that went around the world; it was very disruptive. It was written by a Philippine student who wanted to show his girlfriend, I guess, that he liked her or something. When he was finally tracked down and caught, the Philippines didn't have a cybercrime law, and I think he got basically something like community service.

They did not have laws on the book. So one of the things the U.S. is doing is encouraging countries to try and sign up to this Convention which is very complete and criminalizes these sorts of intrusions.

COMMISSIONER SHEA: Thank you. Can I ask a question or two? Mr. Meek, I totally agree with you when you said if we're going to respond to a cyber attack or cyber penetration, we better get it right; we better get the source right. What are we doing to improve our ability to get it right? And have the steps to get it right been sufficient so far?

MR. MEEK: Part of it, I'd say yes, we have undertaken many of those steps. We have increased, for instance, intelligence training budgets, people like that that have to do a lot of the work, the computer technicians, the technology software development, et cetera, and so those efforts have been undertaken and are improved. But we still have the same problem in the end of quickly getting to the source.

One of the problems is some governments may not cooperate. When you get to a server say in a particular country, you have to go in and they require you to comply with their legal requirements. Then

you're talking about many times getting warrants from their countries, and part of our discussions with them is trying to have prenegotiated processes in place to where we could do this quickly if we see a source of activity.

We do have that type of activity, but the bottom line is it still can be a lengthy process unless somebody is really clumsy, but most of the people in this area are awfully smart.

COMMISSIONER SHEA: Do you have anything to add, Mr. Lewis?

DR. LEWIS: Department of Justice has an office called the Computer Crimes and Intellectual Property Section and they've negotiated something called the G-8 Rapid Response Agreement, which now I think has gone beyond the G-8, and it's about 60 countries, that promises 24/7 points of contact so that when you detect a crime, you can call your counterpart in another justice ministry and say can I get an immediate response?

And so if you're interested, they would be the people you'd want to talk to, but the problem is that half the world is doing the right thing. Half the world has good laws; half the world is in the Rapid Response section. It's the other folks. And, of course, as you say, the cyber criminals are very skillful. They move to what have become sanctuaries essentially, and we need to figure out ways to squeeze down those sanctuaries and force them out.

COMMISSIONER SHEA: Thank you.

HEARING COCHAIR ESPER: Thank you. Moving on to a quick second round before time runs out, I do have one question for each of you. What are the two or three things each of you would recommend to the next president to either (a) prevent China from redefining its sovereignty in a way that may be deleterious to our interests; (b) protect our own interests; or (c) prevent any type of friction or conflict when there are differences of opinion between our governments? Your law-fare example, Mr. Meek, is a good one, for example.

MR. MEEK: I think China--with most countries, I think you can sit down and discuss at a very detailed level how to resolve those particular problems. The thing I see with China is they don't want to engage in that discussion. They are very firm on their views of sovereignty and from what I've seen are very reticent to back off of that position and they aggressively hold it.

So it takes two to tango, and if the other party does not want to discuss or negotiate or compromise, it makes it very difficult to continue the dialogue. As an example, Admiral Keating was in China for ten days trying to engage on the issue of the purpose behind their ASAT test, et cetera, and he got stonewalled.

Ten days of effort, and these discussions have been going on for a whole year. So it's very clear it's a policy of the government; they don't want to engage on that transparency.

Second thing is, particularly concerning China, I think that there has to be, and I would recommend that when China undertakes these actions that are in violation of international law, and it's in our interest that that international law continue, that they do need to be engaged at high levels. I think what happens many times is it's, quote, "not a big deal;" everybody stands back; they're not worried about it; an incident hasn't happened. So then they start building track records.

For instance, like these claims, if it is a Chinese position, and I can't say that it is because there is no definitive statement, if they are literally adhering to this view of their projections of sovereignty, I would say the State Department needs to get engaged.

The problem is with no official statement from China, there is nothing to officially demarche. Unless they just want to engage in discussions, it's very hard to sit down at the table.

HEARING COCHAIR ESPER: Related to that, do you think our Freedom of Navigation Program is robust enough?

MR. MEEK: Do I think it is? I think within the resources that we have, it is. Remember, that also can be considered, although we do it, it can be considered by those nations unlike China to be provocative itself. So, yes, I fully support the FON program.

Other countries have similar security claims. North Korea has a 50 mile zone that we routinely run a ship or an aircraft through. And Indonesia. Many countries do. That's the way that you stay officially on record of voicing your objection, and they cannot come back to you later and say you acquiesced.

HEARING COCHAIR ESPER: Dr. Lewis.

DR. LEWIS: A few years ago Libya asserted that the Gulf of Tripoli was its domestic waters, and it was nice that they asserted it, you know, but the U.S. sailed ships through it routinely and basically said to the Libyans what are you going to do about it? And that's what we need to do in this case.

Indonesia is another good example. I think it's the Banda Straits. They always announce, hey, look, it's between two of our islands; therefore, it's ours. And we sail a ship through every once in awhile.

The U.S. needs to assert its rights consistent with international law and practice. And that can be in response to a Chinese activity, but the fact that another country announces that it's doing something isn't binding; right. And at the end of the day, they either need to be able to make a case in court, some court, you know, and there is no court that would support China on this, or they need to enforce their

assertions, and I don't believe the Chinese can do that. So this reassertion of U.S. rights.

The second thing is we need to change the cost for potential attackers and this goes beyond China. Right now it's been sort of easy to attack the U.S. in some areas, particularly in cyber space. We need to make it more difficult to do that.

One way, of course, is to improve our defenses. The other way is to think about potential responses, not necessarily military, that would make it more damaging or less beneficial for an attacker. So I'd want to continue to assert our rights, change the calculus of this kind of new kind of warfare, new kind of attacks, to make it a little less attractive.

HEARING COCHAIR ESPER: Thank you. That's very helpful. The last two questioners are Dr. Wortzel and then Commissioner Fiedler.

CHAIRMAN WORTZEL: Mr. Lewis, there's one point in your written testimony I want to challenge you on. Actually you said it, too.

DR. LEWIS: I thought I cut all that stuff out.

CHAIRMAN WORTZEL: Yes, you got through. On page three you say we ought to take comfort that China is not fundamentally expansionist and it does not plan to increase its territory nor does it seek to force other nations to adopt its model of government. I agree with the last part of that. It does not try to force other nations to adopt its model of government.

My question for you is, are you ceding to the People's Republic of China its maritime claims over the entire South China Sea and the islands? That is an expansion of territory.

DR. LEWIS: I don't see them as a binding claim; right. So you can claim, the Chinese can claim the moon, and you can go, there's a place where you can go now and you can buy plots on the moon. Go ahead; enforce it, you know. And the Chinese can announce they own the North Pole, and the Russians recently announced that, oh, by the way, they owned the North Pole. That's nice, but what I would always say is how are you going to enforce it?

So I don't regard it as, when you see these claims, they're not binding, and they're touching and perhaps they play well domestically, but they're not.

CHAIRMAN WORTZEL: Unless they somehow develop the military capacity to enforce it.

DR. LEWIS: Right. That's what it would come down to--you can make the claim are you willing to enforce that, and my bet would be right now the Chinese are not. If it came to that point, it would be a very much more dangerous situation, and I don't think we would be

alone in opposing the Chinese in that.

CHAIRMAN WORTZEL: I appreciate it.

HEARING COCHAIR FIEDLER: Just a quick question, Dr. Lewis. You made a comment about Chinese decision-making being weak and disjointed, and I think you referred to the ASAT test and the foreign ministry being left out. We pursued this both in testimony last year and in meetings in China when we visited.

Is there new information about that decision-making process?

DR. LEWIS: No, I still think--

HEARING COCHAIR FIEDLER: We had all kinds--Lawless. We had Cartwright.

DR. LEWIS: Center for Naval Analysis has done quite a lot of good work on this, and I have heard it now from many sources including from Chinese military officials who have visited the U.S. that they will admit that, gosh, they weren't on the call list or something.

HEARING COCHAIR FIEDLER: We've heard repeated testimony that they have a consensus decision-making process with an apparently differing consensus depending upon the issue.

DR. LEWIS: Right.

HEARING COCHAIR FIEDLER: Or a limited consensus.

DR. LEWIS: The U.S. has spent a lot of time thinking about how you make these decisions, and we've developed over decades the National Security Council system. The Chinese really don't have an equivalent. They have some committees, party committees, they have military oversight committees, but they don't have as inclusive a process.

As some people have said to the Chinese, there's a benefit to being transparent and having open debate because you're less likely to make this kind of miscalculation, and the U.S. for whatever reason is much more transparent and that gives us a stronger decision-making process. They need to move in that direction.

HEARING COCHAIR FIEDLER: Thank you.

HEARING COCHAIR ESPER: I don't see that any of the commissioners have any further questions. So gentlemen, I want to thank you very much for your testimony today, and your answers. It was very insightful and you provided us a lot of good information. With that, I'd like to conclude the panel and adjourn today's hearing.

Thank you.

[Whereupon, at 4:33 p.m., the hearing was adjourned.]