

113TH CONGRESS
2D SESSION

S. RES. 412

Reaffirming the strong support of the United States Government for freedom of navigation and other internationally lawful uses of sea and airspace in the Asia-Pacific region, and for the peaceful diplomatic resolution of outstanding territorial and maritime claims and disputes.

IN THE SENATE OF THE UNITED STATES

APRIL 7, 2014

Mr. MENENDEZ (for himself, Mr. RUBIO, Mr. CARDIN, Mr. MCCAIN, Mr. RISCH, Mr. LEAHY, Mrs. FEINSTEIN, and Mr. CORNYN) submitted the following resolution; which was referred to the Committee on Foreign Relations

MAY 20, 2014

Reported by Mr. MENENDEZ, with amendments and an amendment to the preamble

[Omit the part struck through and insert the part printed in *italic*]

JULY 10, 2014

Considered, amended, and agreed to with an amended preamble

RESOLUTION

Reaffirming the strong support of the United States Government for freedom of navigation and other internationally lawful uses of sea and airspace in the Asia-Pacific region, and for the peaceful diplomatic resolution of outstanding territorial and maritime claims and disputes.

Whereas Asia-Pacific's maritime domains, which include both the sea and airspace above the domains, are critical to

the region's prosperity, stability, and security, including global commerce;

Whereas the United States is a longstanding Asia-Pacific power and has a national interest in maintaining freedom of operations in international waters and airspace both in the Asia-Pacific region and around the world;

Whereas for over 60 years, the United States Government, alongside United States allies and partners, has played an instrumental role in maintaining stability in the Asia-Pacific, including safeguarding the prosperity and economic growth and development of the Asia-Pacific region;

Whereas the United States, from the earliest days of the Republic, has had a deep and abiding national security interest in freedom of navigation, freedom of the seas, respect for international law, and unimpeded lawful commerce, including in the East China and South China Seas;

Whereas the United States alliance relationships in the region, including with Japan, Korea, Australia, the Philippines, and Thailand, are at the heart of United States policy and engagement in the Asia-Pacific region, and share a common approach to supporting the maintenance of peace and stability, freedom of navigation, and other internationally lawful uses of sea and airspace in the Asia-Pacific region;

Whereas territorial and maritime claims must be derived from land features and otherwise comport with international law;

Whereas the United States Government has a clear interest in encouraging and supporting the nations of the region to work collaboratively and diplomatically to resolve dis-

putes and is firmly opposed to coercion, intimidation, threats, or the use of force;

Whereas the South China Sea contains great natural resources, and their stewardship and responsible use offers immense potential benefit for generations to come;

Whereas the United States is not a claimant party in either the East China or South China Seas, but does have an interest in the peaceful diplomatic resolution of disputed claims in accordance with international law, in freedom of operations, and in the free-flow of commerce free of coercion, intimidation, or the use of force;

Whereas the United States supports the obligation of all members of the United Nations to seek to resolve disputes by peaceful means;

Whereas freedom of navigation and other lawful uses of sea and airspace in the Asia-Pacific region are embodied in international law, not granted by certain states to others;

Whereas, on November 23, 2013, the People's Republic of China unilaterally and without prior consultations with the United States, Japan, the Republic of Korea or other nations of the Asia-Pacific region, declared an Air Defense Identification Zone (ADIZ) in the East China Sea, also announcing that all aircraft entering the PRC's self-declared ADIZ, even if they do not intend to enter Chinese territorial airspace, would have to submit flight plans, maintain radio contact, and follow directions from the Chinese Ministry of National Defense or face "emergency defensive measures";

Whereas the "rules of engagement" declared by China, including the "emergency defensive measures", are in violation of the concept of "due regard for the safety of civil

aviation” under the Chicago Convention of the International Civil Aviation Organization and thereby are a departure from accepted practice;

Whereas the Chicago Convention of the International Civil Aviation Organization distinguishes between civilian aircraft and state aircraft and provides for the specific obligations of state parties, consistent with customary law, to “refrain from resorting to the use of weapons against civil aircraft in flight and . . . in case of interception, the lives of persons on board and the safety of aircraft must not be endangered”;

Whereas international civil aviation is regulated by international agreements, including standards and regulations set by ICAO for aviation safety, security, efficiency and regularity, as well as for aviation environmental protection;

Whereas, in accordance with the norm of airborne innocent passage, the United States does not recognize the right of a coastal nation to apply its ADIZ procedures to foreign state aircraft not intending to enter national airspace nor does the United States apply its ADIZ procedures to foreign state aircraft not intending to enter United States airspace;

Whereas the United States Government expressed profound concerns with China’s unilateral, provocative, dangerous, and destabilizing declaration of such a zone, including the potential for misunderstandings and miscalculations by aircraft operating lawfully in international airspace;

Whereas the People’s Republic of China’s declaration of an ADIZ in the East China Sea will not alter how the United States Government conducts operations in the re-

gion or the unwavering United States commitment to peace, security and stability in the Asia-Pacific region;

Whereas the Government of Japan expressed deep concern about the People's Republic of China's declaration of such a zone, regarding it as an effort to unduly infringe upon the freedom of flight in international airspace and to change the status quo that could escalate tensions and potentially cause unintentional consequences in the East China Sea;

Whereas the Government of the Republic of Korea has expressed concern over China's declared ADIZ, and on December 9, 2013, announced an adjustment to its long-standing Air Defense Identification Zone, which does not encompass territory administered by another country, and did so only after undertaking a deliberate process of consultations with the United States, Japan, and China;

Whereas the Government of the Philippines has stressed that China's declared ADIZ seeks to transfer an entire air zone into Chinese domestic airspace, infringes on freedom of flight in international airspace, and compromises the safety of civil aviation and the national security of affected states, and has called on China to ensure that its actions do not jeopardize regional security and stability;

Whereas, on November 26, 2013, the Government of Australia made clear in a statement its opposition to any coercive or unilateral actions to change the status quo in the East China Sea;

Whereas, on March 10, 2014, the United States Government and the Government of Japan jointly submitted a letter to the ICAO Secretariat regarding the issue of freedom of overflight by civil aircraft in international airspace and

the effective management of civil air traffic within allocated Flight Information Regions (FIR);

Whereas Indonesia Foreign Minister Marty Natalegawa, in a hearing before the Committee on Defense and Foreign Affairs on February 18, 2014, stated, “We have firmly told China we will not accept a similar [Air Defense Identification] Zone if it is adopted in the South China Sea. And the signal we have received thus far is, China does not plan to adopt a similar Zone in the South China Sea.”;

Whereas over half the world’s merchant tonnage flows through the South China Sea, and over 15,000,000 barrels of oil per day transit the Strait of Malacca, fueling economic growth and prosperity throughout the Asia-Pacific region;

Whereas the increasing frequency and assertiveness of patrols and competing regulations over disputed territory and maritime areas and airspace in the South China Sea and the East China Sea are raising tensions and increasing the risk of confrontation;

Whereas the Association of Southeast Asian Nations (ASEAN) has promoted multilateral talks on disputed areas without settling the issue of sovereignty, and in 2002 joined with China in signing a Declaration on the Conduct of Parties in the South China Sea that committed all parties to those territorial disputes to “reaffirm their respect for and commitment to the freedom of navigation in and over flight above the South China Sea as provided for by the universally recognized principles of international law” and to “resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force”;

Whereas ASEAN and China committed in 2002 to develop an effective Code of Conduct when they adopted the Declaration on the Conduct of Parties in the South China Sea, yet negotiations are irregular and little progress has been made;

Whereas in recent years, there have been numerous dangerous and destabilizing incidents in waters near the coasts of the Philippines, China, Malaysia, and Vietnam;

Whereas the United States Government is deeply concerned about unilateral actions by any claimant seeking to change the status quo through the use of coercion, intimidation, or military force, including the continued restrictions on access to Scarborough Reef and pressure on long-standing Philippine presence at the Second Thomas Shoal by the People's Republic of China; actions by any state to prevent any other state from exercising its sovereign rights to the resources of the exclusive economic zone (EEZ) and continental shelf by making claims to those areas that have no support in international law; declarations of administrative and military districts in contested areas in the South China Sea; and the imposition of new fishing regulations covering disputed areas, which have raised tensions in the region;

Whereas international law is important to safeguard the rights and freedoms of all states in the Asia-Pacific region, and the lack of clarity in accordance with international law by claimants with regard to their South China Sea claims can create uncertainty, insecurity, and instability;

Whereas the United States Government opposes the use of intimidation, coercion, or force to assert a territorial claim in the South China Sea;

Whereas claims in the South China Sea must accord with international law, and those that are not derived from land features are fundamentally flawed;

Whereas ASEAN issued Six-Point Principles on the South China Sea on July 20, 2012, whereby ASEAN’s Foreign Ministers reiterated and reaffirmed “the commitment of ASEAN Member States to: . . . 1. the full implementation of the Declaration on the Conduct of Parties in the South China Sea (2002); . . . 2. the Guidelines for the Implementation of the Declaration on the Conduct of Parties in the South China Sea (2011); . . . 3. the early conclusion of a Regional Code of Conduct in the South China Sea; . . . 4. the full respect of the universally recognized principles of International Law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS); . . . 5. the continued exercise of self-restraint and non-use of force by all parties; and . . . 6. the peaceful resolution of disputes, in accordance with universally recognized principles of International Law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS).”;

Whereas, in 2013, the Republic of the Philippines properly exercised its rights to peaceful settlement mechanisms with the filing of arbitration case under Article 287 and Annex VII of the Convention on the Law of the Sea in order to achieve a peaceful and durable solution to the dispute, and the United States hopes that all parties in any dispute ultimately abide by the rulings of internationally recognized dispute-settlement bodies;

Whereas China and Japan are the world’s second and third largest economies, and have a shared interest in pre-

serving stable maritime domains to continue to support economic growth;

Whereas there has been an unprecedented increase in dangerous activities by Chinese maritime agencies in areas near the Senkaku islands, including between 6 and 25 ships of the Government of China intruding into the Japanese territorial sea each month since September 2012, between 26 and 124 ships entering the “contiguous zone” in the same time period, and 9 ships intruding into the territorial sea and 33 ships entering in the contiguous zone in February 2014;

Whereas although the United States Government does not take a position on the ultimate sovereignty of the Senkaku Islands, the United States Government acknowledges that they are under the administration of Japan and opposes any unilateral actions that would seek to undermine such administration;

Whereas the United States Senate has previously affirmed that the unilateral actions of a third party will not affect the United States acknowledgment of the administration of Japan over the Senkaku Islands;

Whereas the United States remains committed under the Treaty of Mutual Cooperation and Security to respond to any armed attack in the territories under the administration of Japan, has urged all parties to take steps to prevent incidents and manage disagreements through peaceful means, and commends the Government of Japan for its restrained approach in this regard;

Whereas both the United States and the People’s Republic of China are parties to and are obligated to observe the rules of the Convention on the International Regulations

for Preventing Collisions at Sea, done at London October 12, 1972 (COLREGs);

Whereas, on December 5, 2013, the USS Cowpens was lawfully operating in international waters in the South China Sea when a People's Liberation Army Navy vessel reportedly crossed its bow at a distance of less than 500 yards and stopped in the water, forcing the USS Cowpens to take evasive action to avoid a collision;

Whereas the reported actions taken by the People's Liberation Army Navy vessel in the USS Cowpens' incident, as publicly reported, appear contrary to the international legal obligations of the People's Republic of China under COLREGs;

Whereas, on May 1, 2014, the People's Republic of China's state-owned energy company, CNOOC, placed its deep-water semi-submersible drilling rig Hai Yang Shi You 981 (HD-981), accompanied by over 25 Chinese ships, in Block 143, 120 nautical miles off Vietnam's coastline;

Whereas from May 1 to May 9, 2014, the number of Chinese vessels escorting Hai Yang Shi You 981 (HD-981) increased to more than 80, including seven military ships, which aggressively patrolled and intimidated Vietnamese Coast Guard ships in violation of COLREGS, reportedly intentionally rammed multiple Vietnamese vessels, and used helicopters and water cannons to obstruct others;

Whereas, on May 5, 2014, vessels from the Maritime Safety Administration of China (MSAC) established an exclusion zone with a radius of three nautical miles around Hai Yang Shi You 981 (HD-981), which undermines maritime safety in the area and is in violation of universally recognized principles of international law;

Whereas China's territorial claims and associated maritime actions in support of the drilling activity that Hai Yang Shi You 981 (HD-981) commenced on May 1, 2014, have not been clarified under international law, constitute a unilateral attempt to change the status quo by force, and appear to be in violation of the 2002 Declaration on the Conduct of Parties in the South China Sea;

Whereas, on January 19, 1998, the United States and People's Republic of China signed the Military Maritime Consultative Agreement, creating a mechanism for consultation and coordination on operational safety issues in the maritime domain between the United States and the People's Republic of China;

Whereas the Western Pacific Naval Symposium, inaugurated in 1988 and comprising the navies of Australia, Brunei, Cambodia, Canada, Chile, France, Indonesia, Japan, Malaysia, New Zealand, Papua New Guinea, the People's Republic of China, the Philippines, the Republic of Korea, the Russian Federation, Singapore, Thailand, Tonga, the United States, and Vietnam, whose countries all border the Pacific Ocean region, provides a forum where leaders of regional navies can meet to discuss cooperative initiatives, discuss regional and global maritime issues, and undertake exercises to strengthen norms and practices that contribute to operational safety, including protocols for unexpected encounters at sea, common ways of communication, common ways of operating, and common ways of engagement;

Whereas Japan and the People's Republic of China sought to negotiate a Maritime Communications Mechanism between the defense authorities and a Maritime Search and Rescue Agreement and agreed in principle to these agree-

ments to address operational safety on the maritime domains but failed to sign them;

Whereas the Changi Command and Control Center in Singapore provides a platform for all the countries of the Western Pacific to share information on what kind of contact at sea and to provide a common operational picture for the region;

Whereas 2014 commemorates the 35th anniversary of normalization of diplomatic relations between the United States and the People's Republic of China, and the United States welcomes the development of a peaceful and prosperous China that becomes a responsible international stakeholder, the government of which respects international norms, international laws, international institutions, and international rules; enhances security and peace; and seeks to advance relations between the United States and China; and

Whereas ASEAN plays an important role, in partnership with others in the regional and international community, in addressing maritime security issues in the Asia-Pacific region and the Indian Ocean, including open access to the maritime domain of Asia: Now, therefore, be it

1 *Resolved,*

2 **SECTION 1. SENSE OF THE SENATE.**

3 The Senate—

4 (1) condemns coercive and threatening actions
5 or the use of force to impede freedom of operations
6 in international airspace by military or civilian aircraft,
7 to alter the status quo or to destabilize the
8 Asia-Pacific region;

1 (2) urges the Government of the People's Re-
2 public of China to refrain from implementing the de-
3 clared East China Sea Air Defense Identification
4 Zone (ADIZ), which is contrary to freedom of over-
5 flight in international airspace, and to refrain from
6 taking similar provocative actions elsewhere in the
7 Asia-Pacific region;

8 (3) commends the Governments of Japan and
9 of the Republic of Korea for their restraint, and
10 commends the Government of the Republic of Korea
11 for engaging in a deliberate process of consultations
12 with the United States, Japan and China prior to
13 announcing its adjustment of its Air Defense Identi-
14 fication Zone on December 9, 2013, and for its com-
15 mitment to implement this adjusted Air Defense
16 Identification Zone (ADIZ) in a manner consistent
17 with international practice and respect for the free-
18 dom of overflight and other internationally lawful
19 uses of international airspace; and

20 (4) calls on the Government of the People's Re-
21 public of China to withdraw its Hai Yang Shi You
22 981 (HD-981) drilling rig and associated maritime
23 forces from their current positions, to refrain from
24 maritime maneuvers contrary to COLREGS, and to

1 return immediately to the status quo as it existed
2 before May 1, 2014.

3 **SEC. 2. STATEMENT OF POLICY.**

4 It is the policy of the United States to—

5 (1) reaffirm its unwavering commitment and
6 support for allies and partners in the Asia-Pacific
7 region, including longstanding United States policy
8 regarding Article V of the United States-Philippines
9 Mutual Defense Treaty and that Article V of the
10 United States-Japan Mutual Defense Treaty applies
11 to the Japanese-administered Senkaku Islands;

12 (2) oppose claims that impinge on the rights,
13 freedoms, and lawful use of the sea that belong to
14 all nations;

15 (3) urge all parties to refrain from engaging in
16 destabilizing activities, including illegal occupation
17 or efforts to unlawfully assert administration over
18 disputed claims;

19 (4) ensure that disputes are managed without
20 intimidation, coercion, or force;

21 (5) call on all claimants to clarify or adjust
22 claims in accordance with international law;

23 (6) support efforts by ASEAN and the People's
24 Republic of China to develop an effective Code of
25 Conduct, including the “early harvest” of agreed-

1 upon elements in the Code of Conduct that can be
2 implemented immediately;

3 (7) reaffirm that an existing body of inter-
4 national rules and guidelines, including the Inter-
5 national Regulations for Preventing Collisions at
6 Sea, done at London October 12, 1972 (COLREGs),
7 is sufficient to ensure the safety of navigation be-
8 tween the United States Armed Forces and the
9 forces of other countries, including the People's Re-
10 public of China;

11 (8) support the development of regional institu-
12 tions and bodies, including the ASEAN Regional
13 Forum, the ASEAN Defense Minister's Meeting
14 Plus, the East Asia Summit, and the expanded
15 ASEAN Maritime Forum, to build practical coopera-
16 tion in the region and reinforce the role of inter-
17 national law;

18 (9) encourage the adoption of mechanisms such
19 as hotlines or emergency procedures for preventing
20 incidents in sensitive areas, managing them if they
21 occur, and preventing disputes from escalating;

22 (10) fully support the rights of claimants to ex-
23 ercise rights they may have to avail themselves of
24 peaceful dispute settlement mechanisms;

1 (11) encourage claimants not to undertake new
2 unilateral attempts to change the status quo since
3 the signing of the 2002 Declaration of Conduct, in-
4 cluding not asserting administrative measures or
5 controls in disputed areas in the South China Sea;

6 (12) encourage the deepening of partnerships
7 with other countries in the region for maritime do-
8 main awareness and capacity building, as well as ef-
9 forts by the United States Government to explore
10 the development of appropriate multilateral mecha-
11 nisms for a “common operating picture” in the
12 South China Sea that would serve to help countries
13 avoid destabilizing behavior and deter risky and dan-
14 gerous activities; and

15 (13) assure the continuity of operations by the
16 United States in the Asia-Pacific region, including,
17 when appropriate, in cooperation with partners and
18 allies, to reaffirm the principle of freedom of oper-
19 ations in international waters and airspace in ac-
20 cordance with established principles and practices of
21 international law.

22 **SEC. 3. RULE OF CONSTRUCTION.**

23 Nothing in this resolution shall be construed as a dec-
24 laration of war or authorization to use force.

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