

- Acknowledged the launch of a voluntary collaboration by individual Participants to explore a practical approach to key performance indicators, supporting processes, and evaluating their effectiveness . . . and
- Welcomed the launch of the Implementation Guidance Tools, a practical guide developed by the International Council on Mining and Metals (ICMM), the International Finance Corporation (IFC), and the global oil and gas industry association for environmental and social issues (IPIECA), with support from the International Committee of the Red Cross (ICRC).

In addition, the Plenary heard a report on progress made by Participants on the implementation of the Voluntary Principles in Iraq, as well as a presentation on the Government of Colombia's efforts to promote the Voluntary Principles.

Since their inception, the Voluntary Principles have been used by extractive companies to strengthen their capacity to address complex security and human rights issues in their operations around the world. Members of the Plenary include representatives from three pillars: governments, companies, and NGOs. There are currently seven member governments, nineteen companies, and ten NGOs participating in the initiative. Participation in the initiative is voluntary. For questions on how to participate, contact the Secretariat at VoluntaryPrinciples@foleyhoag.com.

For more information about the Voluntary Principles, visit www.voluntaryprinciples.org.⁷

INTERNATIONAL OCEANS, ENVIRONMENT, HEALTH, AND AVIATION LAW

Secretary of State Comments on South China Sea, Affirms U.S. Navigational Interests, and Expresses U.S. Desire for Peaceful Settlement of Territorial Disputes

China's broad jurisdictional claims in the South China Sea, combined with increasingly assertive actions taken to support those claims, are a growing source of concern for the United States and states of the region.¹ In July 2011, U.S. Secretary of State Hillary Clinton issued a statement indicating U.S. concern at incidents involving encounters between military and naval forces of states with conflicting claims in the area. Her statement affirms U.S. interests in freedom of navigation and peaceful settlement of jurisdictional disputes among the littoral states in accordance with international law, including the Law of the Sea Convention.

We commend this week's announcement that ASEAN and China have agreed on implementing guidelines to facilitate confidence building measures and joint projects in the South China Sea. This is an important first step toward achieving a Code of Conduct and reflects the progress that can be made through dialogue and multilateral diplomacy. We look forward to further progress.

The United States is encouraged by this recent agreement because as a Pacific nation and resident power we have a national interest in freedom of navigation, open access to Asia's maritime domain, the maintenance of peace and stability, and respect for international law in the South China Sea.

⁷ Summary of Proceedings, *supra* note 4.

¹ Brian Padden, *ASEAN Foreign Ministers Discuss South China Sea Dispute*, VOICE OF AMERICA, July 19, 2011, at <http://www.voanews.com/english/news/asia/ASEAN-Foreign-Ministers-Discuss-South-China-Sea-Dispute-125816578.html>; Andrew Higgins, *Disputed Territory*, WASH. POST, Sept. 18, 2011, at A1; John R. Crook, *Contemporary Practice of the United States*, 104 AJIL 654, 664 (2010), 105 AJIL 122, 135 (2011).

We oppose the threat or use of force by any claimant in the South China Sea to advance its claims or interfere with legitimate economic activity. We share these interests not only with ASEAN members and ASEAN Regional Forum participants, but with other maritime nations and the broader international community.

The United States supports a collaborative diplomatic process by all claimants for resolving the various disputes in the South China Sea. We also support the 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea. But we do not take a position on the competing territorial claims over land features in the South China Sea. We believe all parties should pursue their territorial claims and accompanying rights to maritime space in accordance with international law, including as reflected in the 1982 Law of the Sea Convention.

The United States is concerned that recent incidents in the South China Sea threaten the peace and stability on which the remarkable progress of the Asia-Pacific region has been built. These incidents endanger the safety of life at sea, escalate tensions, undermine freedom of navigation, and pose risks to lawful unimpeded commerce and economic development.

In keeping with the 2002 ASEAN-China Declaration, each of the parties should comply with their commitments to respect freedom of navigation and over-flight in the South China Sea in accordance with international law, to resolve their disputes through peaceful means, without resorting to the threat or use of force. They should exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from taking action to inhabit presently uninhabited islands, reefs, shoals, cays, and other features, and to handle their differences in a constructive manner.

The United States encourages all parties to accelerate efforts to reach a full Code of Conduct in the South China Sea.

We also call on all parties to clarify their claims in the South China Sea in terms consistent with customary international law, including as reflected in the Law of the Sea Convention. Consistent with international law, claims to maritime space in the South China Sea should be derived solely from legitimate claims to land features.²

In the July 2011 ministerial-level discussions in the Association of Southeast Asian Nations (ASEAN) referred to by Secretary Clinton, China and ASEAN countries agreed on draft guidelines to implement ASEAN's 2002 Declaration on the Conduct of Parties in the South China Sea.³ As recorded in the meeting's final document,

16. The Meeting reaffirmed the importance of the Declaration on the Conduct of Parties in the South China Sea (DOC), which embodies the collective commitment of the ASEAN Member States and China in promoting peace, stability and mutual trust and ensuring the peaceful resolution of disputes in the South China Sea. In this regard, the Meeting welcomed the progress of the implementation of the DOC and formally endorsed the Guidelines on the Implementation of the DOC as agreed upon and recommended by the

² U.S. Dep't of State Press Release No. 2011/1230, *The South China Sea* (July 22, 2011), at <http://www.state.gov/secretary/rm/2011/07/168989.htm>.

³ Kathy Quiano, *China, ASEAN Agree on Plans to Solve South China Sea Dispute*, CNN WORLD, July 21, 2011, at http://articles.cnn.com/2011-07-21/world/china.sea.conflict_1_chinese-patrol-south-china-sea-vietnamese-vessels?_s=PM:WORLD. The declaration is available online at <http://globalnation.inquirer.net/5572/declaration-on-the-conduct-of-parties-in-the-south-china-sea>.

ASEAN-China Senior Officials' Meeting on the DOC on 20 July 2011 in Bali, Indonesia. The Meeting shared the view that this was a significant outcome and a step forward in the implementation of the DOC, further contributing to the promotion of peace, stability and prosperity in the region, especially on the occasion of the 20th anniversary of the ASEAN-China Dialogue.⁴

President Obama, Premier Wen Jiabao Discuss South China Sea. President Barack Obama and China's Premier Wen Jiabao reportedly discussed issues related to the South China Sea, as well as economic issues, in discussions on the fringes of the November 2011 East Asia Summit in Bali. (At the summit, Premier Wen opposed the involvement of "outside forces" in jurisdictional disputes, insisting that rival claims should be settled bilaterally.⁵) Following the Obama-Wen meeting, National Security Adviser Thomas Donilon told reporters that the United States took no position on the contending claims in the area but had "an interest in the freedom of navigation, the free flow of commerce, the peaceful resolution of disputes."⁶

Continuing U.S. Efforts to Combat Piracy; Piracy Now Spreading to Gulf of Guinea

U.S. efforts aimed at combating piracy continue on several fronts.¹

Criminal Proceedings in U.S. Courts. As of October 2011, at least twenty-six Somali men have been charged with piracy in U.S. courts. Most piracy-related proceedings have been in the U.S. district court in Norfolk, Virginia.²

—In March 2011, a judge in Norfolk sentenced five Somalis to life in prison for piracy and related crimes in connection with their role in the failed attack on a U.S. Navy frigate, the USS *Nicholas*. The U.S. attorney described their piracy convictions as the first in a U.S. court in over 190 years.³

—In April 2011, Ali Mohamed Ali, a Somali accused of negotiating a ransom payment in connection with the 2008 hijacking of the M/V *CEC Future*, a Danish ship carrying cargo for McDermott International, Inc., a U.S. company, was indicted and arrested at Dulles Airport in Virginia. A second pirate, Jama Idle Ibrahim, was sentenced in the District of Columbia to twenty-five years for his role in the same attack. Ibrahim's sentence will run

⁴ ASEAN Chairman's Statement on the ASEAN Post Ministerial Conference (PMC) + 1 Sessions, Bali, Indonesia, July 21–22, 2011, at <http://www.asean.org/documents/44thAMM-PMC-18thARF/PMC-CS.pdf>.

⁵ Ben Blanchard & Olivia Rondonuwu, *U.S. and China Disagree over Handling of Maritime Claims*, WASH. POST, Nov. 19, 2011, at A7.

⁶ Keith B. Richburg, *President, Wen Talk Economics and Sea Dispute*, WASH. POST, Nov. 20, 2011, at A18; see also David Nakamura & William Wan, *In Asia Visit, Obama's Eyes Are on China*, WASH. POST, Nov. 12, 2011, at A8.

¹ John R. Crook, *Contemporary Practice of the United States*, 100 AJIL 455, 487 (2006), 100 AJIL, 690, 700 (2006), 102 AJIL 155, 169 (2008), 103 AJIL 132, 146 (2009) 103 AJIL 741, 750 (2009), 104 AJIL 489, 500 (2010), 105 AJIL 122, 131 (2011).

² Del Quentin Wilber, *Alleged Ransom Negotiator Is Indicted*, WASH. POST, Aug. 19, 2011, at A10.

³ U.S. Atty's Office (E.D. Va.) Press Release, *Five Somalis Sentenced to Life Plus 80 Years in Prison for Piracy Against USS Nicholas* (Mar. 14, 2011), at <http://www.justice.gov/usao/vae/news/2011/03/20110314hasannr.html>; *Virginia: 5 Somali Pirates Sentenced to Life in Prison*, N.Y. TIMES, Mar. 15, 2011, at A23; Dana Hedgpeth, *Life Terms for Men Who Attacked Ship*, WASH. POST, Mar 15, 2011, at A3.