

**MARITIME SOVEREIGNTY
IN THE EAST AND SOUTH CHINA SEAS**

**Testimony before the
House of Representatives Joint Subcommittee hearing
Foreign Affairs Subcommittee on Asia and the Pacific
Armed Services Subcommittee on Seapower and Projection Forces**

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Chairmen Forbes and Chabot, Ranking members Faleomavaega and McIntyre:

Thank you for the opportunity to appear before you today. In recent months the world's attention has been focused on China's provocative behavior toward maritime territorial disputes with its neighbors, and for good reason. The tensions now festering in the Western Pacific, and the Japan-China dispute over the Senkaku/Diaoyu islands in particular, pose a tangible risk for interstate conflict in the years to come.

However, the issue of maritime sovereignty in the East and South China Seas encompasses more than simply China's territorial disputes. It also involves a volatile dispute between the U.S. and China over the type of sovereignty China is claiming over its 200-nautical-mile Exclusive Economic Zone (EEZ), and the right of the U.S. military to conduct surveillance operations there. China's position on this matter poses a direct challenge to U.S. national security interests in the region and the disagreement has already produced more than a half-dozen dangerous confrontations at sea which are documented in the appendix to this testimony.

Make no mistake, while the United States and China have a wide range of substantive disagreements -- over everything from cyber security to intellectual property, human rights, and trade practices -- our disagreement in the realm of maritime security presents arguably the greatest potential for miscalculation, escalation, and conflict.

BASIS FOR U.S.-CHINA SOVEREIGNTY DISPUTE

Before the 1990s, the oceans of the world were effectively divided into two categories: "territorial seas," the sovereign waters of a state stretching three nautical miles from its coastline, and the "high seas," open to unrestricted navigation for all. During negotiations for the UN Convention on the Law of the Sea (UNCLOS), conferees agreed to extend the territorial sea to 12 nautical miles and create several new categories, including an Exclusive Economic Zone extending 200 nautical miles from a country's coastline. There, the host state would enjoy limited rights over economic exploitation activities and marine scientific research, among other related things. (The United States has not ratified the treaty, but in practice observes these distinctions).

MARITIME BOUNDARY DEFINITIONS

Territorial Sea	Up to 12-nautical miles from a country's baseline (low-water coastline).	Sovereign territory of the state. Foreign civilian and military vessels right to innocent passage.
Contiguous Zone	Up to 24 nautical miles from the baseline.	State may exercise control necessary to prevent infringement of its customs, fiscal, immigration or sanitary laws.
Exclusive Economic Zone (EEZ)	Up to 200 nautical miles from baseline	Sovereign rights for exploring and exploiting resources; preserving marine environment; establishing artificial islands and structures
High Seas	All parts of the sea that are not included in the EEZ, the territorial sea, or in the internal waters of a state. No exclusive rights.	

The National Oceanic and Atmospheric Administration (NOAA) http://www.gc.noaa.gov/gcil_maritime.html

Yet China and the United States have developed different and fundamentally contradictory interpretations of a nation's rights in its EEZ. The U.S. and most other nations of the world treat the EEZ more like the high seas for the purpose of military surveillance activities, which do not require prior consent from the home state.

Beijing argues that the EEZ should be treated more like a country's territorial sea, where the host state enjoys vast sovereign rights, including the right to deny foreign military vessels permission to conduct surveillance activities.

It must be noted that while China is in the minority in its interpretation, it is not alone. Sixteen other countries share China's position, an additional seven claim territorial seas beyond the 12 nautical miles allowed in UNCLOS, and three assert full sovereignty in their 24 nautical mile contiguous zone. These countries include: Bangladesh, Brazil,

Burma, Cambodia, Cape Verde, China, Egypt, Haiti, India, Iran, Kenya, Malaysia, Maldives, Mauritius, North Korea, Pakistan, Portugal, Saudi Arabia, Somalia, Sri Lanka, Sudan, Syria, Thailand, United Arab Emirates, Uruguay, Venezuela, and Vietnam.

The important distinction is that while some countries have issued diplomatic protests when U.S. naval vessels have operated in their EEZ without consent, only China has “operationally challenged” U.S. warships on multiple occasions, resulting in several dangerous confrontations at sea, the most recent involving the *USS Cowpens* in December, 2013.

Most of the incidents have taken place in the East and South China Seas, and have involved U.S. Navy Special Mission Program ships (SMPs), which are designed to conduct oceanographic surveys, underwater surveillance, hydrographic surveys, missile tracking and acoustic surveys. The U.S. Navy also conducts “Freedom of Navigation operations” in and around China’s claimed EEZ, a program designed to challenge maritime claims that the U.S. finds inconsistent with international law.ⁱ These operations “involve naval units transiting disputed areas to avoid setting the precedent that the international community has accepted these unlawful claims.”ⁱⁱ

THE LEGAL DISPUTE EXAMINED

China has mustered several legal arguments in support of its position on foreign military activities in its EEZ, all of which have been challenged or refuted by U.S. military scholars and government officials. A particularly convincing case is made by Captain Raul Pedrozo (USN, Ret.), Associate Professor at the U.S. Naval War College’s International Law Department, in an article for the Chinese Journal of International Law, “Preserving Navigational Rights and Freedoms: The Right to Conduct Military Activities in China’s Exclusive Economic Zone.”ⁱⁱⁱ

Under UNCLOS, China is given exclusive *economic* rights in its EEZ, including the exclusive right to conduct marine scientific research. Beijing has claimed that U.S. surveillance activities such as sonar mapping have dual-use military and scientific purposes and therefore qualify as marine scientific research. Pedrozo counters that under UNCLOS “coastal State consent is not required for survey activities, including hydrographic and military oceanographic surveys, in the EEZ.”

Although the means of data collection may be the same or similar to that used in [Marine Scientific Research], the information obtained during military marine data collection or a hydrographic survey is intended for use by the military or to promote safety of navigation.

China has also claimed that military intelligence collection activities in its EEZ are banned under the rules of UNCLOS, however the relevant provision in UNCLOS applies only to a country's territorial waters.

Intelligence collection is addressed in only one article of UNCLOS – Article 19. Foreign ships transiting the *territorial sea* in innocent passage may not engage in “any act aimed at collecting information to the prejudice of the defense or security of the coastal state.” *A similar restriction does not appear in Part V of the Convention regarding the EEZ. Under generally accepted principles of international law, any act that is not specifically prohibited in a treaty is permitted.* [emphasis added]

Finally, China claims that the U.S. is applying a double-standard; that Washington would not accept Chinese military vessels conducting similar activities in its own Exclusive Economic Zone, and has not accepted such behavior in the past from countries like Russia. Again these claims are untrue, and ring particularly hollow considering China regularly conducts such operations in Japan's EEZ.

The U.S. does not prevent – but merely monitors – the military activities of Russia and other countries in America's EEZ... During the Cold War, for example, Soviet surveillance ships (AGI) routinely collected intelligence on US and NATO warships at sea. Such surveillance activities were lawful and acceptable to the Alliance so long as they occurred seaward of the territorial sea and the AGIs complied with the obligations of the 1972 International Regulations for Preventing Collisions at Sea.

CAUSES FOR CONCERN MOVING FORWARD

Although the U.S. and China have successfully managed this dispute without resorting to conflict, the prospect for escalation and confrontation is very real. The situation is particularly concerning because the U.S.-China military-to-military relationship remains among the poorest and least-developed arenas in bilateral relations.

To quote two former senior defense officials:

"Nearly all of the aspects of the relationship between the United States and China are moving forward in a positive direction, with the sole exception of the military-to-military relationship... the PLA is significantly less interested in this relationship than the political leadership of China." *U.S. Secretary of Defense Robert Gates June 4, 2010*

"Fairly recently I have gone from being curious about where China is headed to being concerned about it... We have virtually no relationship with the

Chinese military.” *Chairman of the Joint Chiefs of Staff Admiral Mike Mullen July 24, 2010.*

The poor state of military-to-military relations is even more troubling given what we know about the ideology and mindset of the People’s Liberation Army and their cadres of nationalist supporters. While the political and professional Chinese elite are experiencing an unprecedented level of exposure to the outside world, and the U.S. in particular, this encouraging trend has not extended to the People’s Liberation Army, which tightly restricts military-to-military contacts with the U.S., particularly for junior officers. By design the PLA ranks remain conspiracy-minded, hawkish, and insulated from the Western world and even to liberal influences within China.

A leaked film released by the Chinese military in 2013 entitled “Silent Contest” provides “a remarkably straightforward glimpse into the Cold War mind-set of the Chinese military leadership, as well as the deep suspicions of the United States festering inside one of the most influential institutions in the Chinese political system.”^{iv} Lamenting the fall of the Soviet Union, the film suggests that military-to-military exchanges with the U.S. are designed to corrupt Chinese officers. Washington is accused of supporting ethnic separatists inside China and the film warns of “America’s cultural invasion” being promoted by the “soft tentacles” of Western NGOs.

Many Chinese nationalists inside and outside the PLA see the U.S. as engaged in a containment strategy designed to prevent China’s rise and undermine Chinese security. America, in their eyes, is intentionally aggravating China’s maritime territorial disputes with its neighbors and encouraging provocative behavior from Japan, the Philippines and Vietnam. And they increasingly see some kind of confrontation with the U.S. as likely, if not inevitable.

Consider how two well-known PLA academics have responded to the ongoing game of cat-and-mouse between U.S. and Chinese naval forces in China’s EEZ:

In 2009, the Chinese press quoted Senior Colonel Dai Xu as warning that if the U.S. continues carrying out surveillance activities in Chinese waters the following concrete military actions would be taken: first warning, second expulsion. And if that does not work, the invading vessels can be directly surrounded and sunk.^v

In 2012, Major General Zhang Zhaozhong stated: “Dealing with the [USS *Zumwalt*] requires a different approach. You can’t use conventional thinking [against it]. In dealing with a ship like the *Zumwalt* you need to think outside the box. I reckon I could gather dozens of fishing boats swinging [across the water] and it is done. My little fishing boats could be armed with explosives on top.”^{vi}

This type of rhetoric is particularly problematic because China's leaders are increasingly pandering to these nationalists, escalating their own rhetoric about China's "indisputable sovereignty" over the South China Sea and in the process restricting their freedom to maneuver in the future.

Ely Ratner of the Center for a New American Security worries that this firebrand rhetoric has "fed a system that has backed the Chinese leadership into a corner where if there is a crisis or incident they will almost have no choice but to respond because their decision-making will be driven by their concerns about domestic political effects and not by the external strategic logic of their behavior."^{vii}

This danger was seemingly acknowledged by Lt. Gen Wang Hongguang, the Vice President of the PLA's Academy of Military Science, in April 2013. Offering a rare rebuke to the PLA commentariat, he argued that "military affairs experts" have been appearing in the media saying "off-key" and "irresponsible" things that mislead the public. This commentary was "inciting public sentiment and *causing some interference with our high-level policy decision-making and deployments* [emphasis added]."^{viii}

POLICY IMPLICATIONS AND RECOMMENDATIONS

Testing boundaries and establishing new status quos favorable to China has been a defining feature of China's regional policy in recent years.

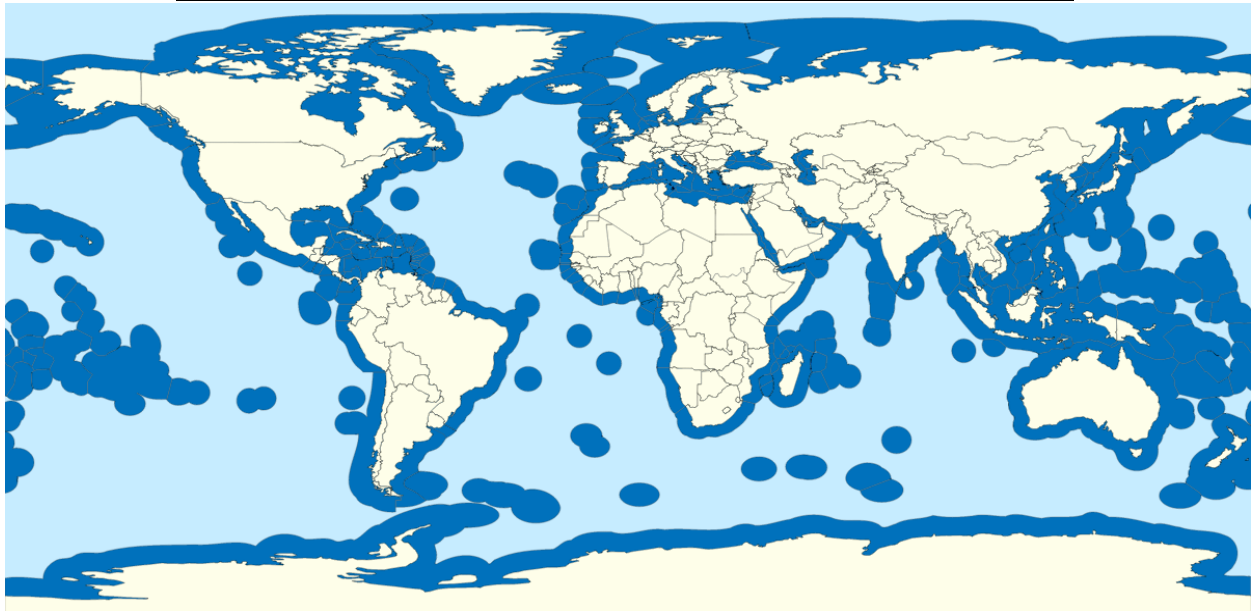
When the U.S. and other countries have faltered in the face of this policy, as was the case with the Philippines in the Scarborough Shoal, China has advanced its goals and established a new status quo. However, where the U.S. has held firm in its position and demonstrated resolve, Beijing has backed down.

- In 2009 Chinese diplomats began referring to the South China Sea as a "core interest" of China's through private channels. When the pushback against that characterization grew to a furor, Beijing backed down and Chinese officials no longer describe the South China Sea as a "core interest."
- In 2010, after the sinking of the South Korean corvette *Cheonan* by a North Korean midget submarine, Beijing warned the U.S. that the *USS George Washington* was not welcome to conduct exercises with South Korea in the Yellow Sea. Those exercises were eventually held over Beijing's objection, and the *George Washington* has now exercised there multiple times with little to no protest from Beijing.
- When Beijing unilaterally declared an Air Defense Identification Zone in late 2013, the U.S. immediately flew B-2 bombers within the new ADIZ without notifying Beijing. The flights went unchallenged and an important precedent was established.

The same resolve must be committed to surveillance activities in China's EEZ. America's position on this issue is not only within the U.S. national interest, it is fully supported by domestic and international law.

Were the U.S. to accept China's interpretation of UNCLOS, U.S. military vessels could be barred from operating in large swathes of the world's oceans (as seen in the map below), an outcome that is clearly unacceptable to Washington and one never envisioned by the drafters of UNCLOS.

EXCLUSIVE ECONOMIC ZONES OF THE WORLD



Source: Wikipedia

The U.S. should do everything at its disposal to ensure future incidents do not escalate, but it must reaffirm that U.S. policy is not subject to fear, intimidation, coercion, or reckless behavior from Chinese naval forces.

Furthermore, Washington must do a better job drawing clear red lines around the type of behavior that is and isn't acceptable in the maritime arena, and enforce those red lines when they are crossed. The U.S. should continue an active schedule of surveillance activities, patrolling, and freedom of navigation operations, and should continue to challenge unlawful or provocative acts by China.

America carries a special burden on this issue. Whereas Beijing tends to view its neighbors as subservient regional powers, the Chinese leadership acknowledges and respects America's superior "comprehensive national power," even as many Chinese increasingly resent that power. As perhaps the only country capable of drawing and enforcing red lines with China, America's allies in the region are depending on the U.S. to be a firewall against Chinese aggression in the Western Pacific.

APPENDIX I

US-CHINA INCIDENTS AT SEA 21st CENTURY

March 24, 2001: In the Yellow Sea near South Korea, a PLA Navy Jianghu III-class frigate passes as close as 100 yards from a U.S. surveillance ship, the *USNS Bowditch*, and a PLA reconnaissance plane shadows the ship. The Chinese frigate carries out “aggressive and provocative actions,” aims its fire control radar at the *Bowditch*, and warns it against carrying out activities within China’s EEZ. Following the encounter, the U.S. dispatches an armed naval escort alongside the *Bowditch*.

April 2, 2001: A U.S. Navy EP-3 reconnaissance plane makes a forced landing on Hainan Island after colliding with a PLA Navy F-8 fighter. The U.S. Navy deploys three destroyers to the island’s vicinity. The PLA detains 24 U.S. Navy personnel for 11 days.

September 28, 2002: Continued Chinese harassment of the *USNS Bowditch* in the Yellow Sea causes the ship to leave China’s EEZ a second time. On a number of occasions, Chinese coastal patrol aircraft buzz the ship while Chinese patrol craft pass within a few hundred yards of the *Bowditch*, repeating the message that the ship’s mission is illegal and that it should leave the China’s EEZ.^{ix}

May 2003: In a continuation of attempts to deter the *USNS Bowditch* from conducting oceanographic research within its EEZ, China alters its tactics by instructing fishing vessels to deliberately bump the research vessel. According to reports, the *Bowditch* suffers damage from one of these episodes.^x

October 26, 2006: On October 28, 2006, a Chinese Song-class diesel attack submarine unexpectedly surfaces in the midst of a U.S. naval exercise off the coast of Okinawa. According to reports, the submarine was spotted by routine aerial surveillance within torpedo range of the *USS Kitty Hawk*.^{xi}

November 2007: Beijing “disapproves” of a port call by U.S. minesweepers in distress seeking to refuel in the face of an approaching storm. Beijing also disapproves of port call for *USS Kitty Hawk* in Hong Kong.

March 4-8, 2009: The *USNS Victorious* and *USNS Impeccable* are harassed by a Chinese Y-12 maritime surveillance craft, a PLAN frigate, and Chinese intelligence ships and trawlers 75 miles south of Hainan Island. On March 5, the *Impeccable* is approached by a PLAN frigate which crosses the ship’s bow and shadows the vessel for several days. Chinese flagged fishing trawlers come within 25 feet of the *Impeccable*, obstructing its path and forcing the ship to turn its water cannons on their crews. As the *Impeccable* tries to leave, a Chinese trawler seeks to snag its sonar array with a grappling hook. On March 10 China dispatches its largest “fishery patrol” ship to the area, and the U.S.

deploys USS Chung-Hoon to provide escort its surveillance ships. Director of National Intelligence Adm. Dennis Blair states it's the most serious crisis since EP-3 of 2001.

Figure 2. Locations of U.S.-Chinese Incidents at Sea and In Air



Source: Mark E. Redden and Phillip C. Saunders, *Managing Sino-U.S. Air and Naval Interactions: Cold War Lessons and New Avenues of Approach*, Washington, Center for the Study of Chinese Military Affairs, Institute for National Strategic Studies, National Defense University, September 2012. Detail of map shown on page 6.

May 5, 2009: Two Chinese fishing vessels come “dangerously close” to the *USNS Victorious* as it conducts underwater listening exercise in the Yellow Sea. According to the crew, the Chinese vessels approached the ship in heavy fog and at times came within 30 yards.

June 11, 2009: Chinese submarines damage the underwater sonar array of the *USS John McCain*, which was tracking the PLA submarine off the coast of the Philippines.

2010:

March 26: A North Korean midget submarine sinks a Republic of Korea (ROK) corvette, the *Cheonan*, killing 46.

June 1: An ROK spokesman announces the U.S. and ROK will conduct joint drills in the Yellow Sea and the *USS George Washington* aircraft carrier will participate. Chinese media outlets repeatedly voice "resolute opposition" to any carrier-led exercises in Yellow Sea. The Singapore Straits Times quotes Chinese Major General Luo Yuan as saying China would "welcome the opportunity to try out its anti-aircraft carrier skills, short of firing at the carrier."

June-July: Chinese officials tell the U.S. that the South China Sea is now one of China's "core Interests." China conducts air and sea live-ammunition drills in the Yellow Sea as well its first-ever "wartime emergency drills" there.

July 25: The first U.S.-ROK exercises are held in the Sea of Japan off Korea's eastern coast instead of the Yellow Sea. ROK sources say the exercise had to be relocated from the Yellow Sea because of protests from China.

August: A Pentagon spokesman says the *USS George Washington* will drill in the Yellow Sea in the "coming months." Another Pentagon spokesman later clarifies that the *George Washington* will "operate in the waters off the Korean peninsula in future exercises."

November 23: North Korea attacks South Korea, firing an artillery barrage onto Yeonpyeong island, killing four and wounding 18.

November 24: U.S. officials announce the *USS George Washington* will participate in drills in the Yellow Sea with South Korean forces from November 28 – December 1. China lodges an official protest. James Steinberg, deputy secretary of state, explains: "China is suffering the indignity of exercises close to its shores, and though they are not directed at China, the exercises are a direct result of China's support for North Korea and unwillingness to denounce their aggression."

June 29, 2011: China scrambles two Su-27 fighter aircraft to intercept a U.S. U-2 reconnaissance aircraft over the Strait of Taiwan. The intercept represents the first time that Chinese aircraft crossed the median line dividing the Taiwan Strait since 1999.^{xii}

June 2013: At the annual Shangri La Dialogue in Singapore, Chinese Senior Col. Zhou Bo announces that Chinese ships have been conducting reconnaissance operations in America's Exclusive Economic Zone. The 2013 Department of Defense report on

Chinese Military Power admits that Chinese ships have begun conducting "naval activities" around Guam and Hawaii. Adm. Samuel Locklear, the head of U.S. Pacific Command states: "They are [conducting exercises in our EEZ], and we encourage their ability to do that."

December 5, 2013: The *USS Cowpens*, a guided-missile cruiser, is confronted by a Chinese amphibious dock ship as it monitors China's new aircraft carrier, the *Liaoning* in the South China Sea. The Chinese ship orders the *Cowpens* to stop and then blocks its way, forcing the U.S. vessel to a stop, according to U.S. reports. The *Cowpens* "required maneuvering to avoid collision," according to U.S. officials.

ⁱ O'Rourke, Ronald. "Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress." Congressional Research Service. 7-5700. R42784. August 9, 2013. Web. <<http://www.fas.org/sgp/crs/row/R42784.pdf>>.

ⁱⁱ "Maritime Security and Navigation." U.S. Department of State. U.S. Department of State, n.d. Web. March 22, 2013. <<http://www.state.gov/e/oes/ocns/opa/maritimeseurity/index.htm>>.

ⁱⁱⁱ Pedrozo, Raul. "Preserving Navigational Rights and Freedoms: The Right to Conduct Military Activities in China's Exclusive Economic Zone." Chinese Journal of International Law. Oxford Journals, n.d. Web. January 13, 2014. <<http://chinesejil.oxfordjournals.org/content/9/1/9.full>>.

^{iv} Perlez, Jane. "Strident Video by Chinese Military Casts U.S. as Menace." Web log post. Sinosphere: Dispatches from China. New York Times, n.d. Web. January 13, 2014. <http://sinosphere.blogs.nytimes.com/2013/10/31/strident-video-by-chinese-military-casts-u-s-as-menace/?smid=tw-share&_r=0>.

^v Jin, Wei, "America Refuses to Stop Offshore Reconnaissance Activities in China." The New Legalist. September 9, 2009. <<http://www.xinfajia.net/6717.html>>.

^{vi} "Zhang Zhaozhong: China Could Use Fishing Boats to Besiege the New American DDH-1000 Destroyer." Fenhuang Net. April 30, 2012. Pp. 7. http://news.ifeng.com/mil/4/detail_2012_04/30/14246690_6.shtml

^{vii} Ratner, Ely. "The Challenges of a Rising China." Interview by Paul Haenle. Audio blog post. *Carnegie-Tsinghua Center for Global Policy*. N.p., January 8, 2014. Web. <<http://carnegietsinghua.org/2014/01/08/challenges-of-rising-china/gxv5>>.

^{viii} "Chubb, Andrew. "Lieutenant-General Wang Hongguang Blasts PLA Pundits' 'Interference' in Decisions and Deployments." South Sea Conversations, April 29, 2013. <<http://southseaconversations.wordpress.com/>>.

^{ix} Eckholm, Eric. "China: US Ship Entered Waters; Navy Contends Research Vessel Allowed by Law", *New York Times*, September 27, 2002.

^x Global Security, "2001-2009- South China Sea Developments." Last modified 2012. Accessed April 3, 2013.

^{xi} Hickley, Matthew. "The uninvited guest: Chinese sub pops up in middle of US Navy exercise, leaving military chiefs red-faced". *The Daily Mail*. November 10, 2007.

^{xii} Gertz, Bill. "Chinese jets chase US surveillance jet over Taiwan Strait". *Washington Times*. July 25, 2011