

# Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress

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September 18, 2015

**Congressional Research Service**

7-5700

[www.crs.gov](http://www.crs.gov)

R42784

Report Documentation Page				Form Approved OMB No. 0704-0188	
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE <b>18 SEP 2015</b>		2. REPORT TYPE		3. DATES COVERED <b>00-00-2015 to 00-00-2015</b>	
4. TITLE AND SUBTITLE <b>Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress</b>				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) <b>Congressional Research Service, The Library of Congress, 101 Independence Ave, SE, Washington, DC, 20540</b>				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT <b>Approved for public release; distribution unlimited</b>					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT <b>Same as Report (SAR)</b>	18. NUMBER OF PAGES <b>100</b>	19a. NAME OF RESPONSIBLE PERSON
a. REPORT <b>unclassified</b>	b. ABSTRACT <b>unclassified</b>	c. THIS PAGE <b>unclassified</b>			

## Summary

China's actions for asserting and defending its maritime territorial and exclusive economic zone (EEZ) claims in the East China Sea (ECS) and South China Sea (SCS), particularly since late 2013, have heightened concerns among observers that China may be seeking to dominate or gain control of its near-seas region, meaning the ECS, the SCS, and the Yellow Sea. Chinese domination over or control of this region could substantially affect U.S. strategic, political, and economic interests in the Asia-Pacific region and elsewhere.

China is a party to multiple territorial disputes in the SCS and ECS, including, in particular, disputes over the Paracel Islands, Spratly Islands, and Scarborough Shoal in the SCS, and the Senkaku Islands in the ECS. China depicts its territorial claims in the SCS using the so-called map of the nine-dash line that appears to enclose an area covering roughly 90% of the SCS. Some observers characterize China's approach for asserting and defending its territorial claims in the ECS and SCS as a "salami-slicing" strategy that employs a series of incremental actions, none of which by itself is a *casus belli*, to gradually change the status quo in China's favor.

In addition to territorial disputes in the SCS and ECS, China is involved in a dispute, particularly with the United States, over whether China has a right under international law to regulate the activities of foreign military forces operating within China's EEZ. The dispute appears to be at the heart of incidents between Chinese and U.S. ships and aircraft in international waters and airspace in 2001, 2002, 2009, 2013, and 2014.

The U.S. position on territorial and EEZ disputes in the Western Pacific (including those involving China) includes the following elements, among others:

- The United States supports the principle that disputes between countries should be resolved peacefully, without coercion, intimidation, threats, or the use of force, and in a manner consistent with international law.
- The United States supports the principle of freedom of seas, meaning the rights, freedoms, and uses of the sea and airspace guaranteed to all nations in international law. The United States opposes claims that impinge on the rights, freedoms, and lawful uses of the sea that belong to all nations.
- The United States takes no position on competing claims to sovereignty over disputed land features in the ECS and SCS.
- Although the United States takes no position on competing claims to sovereignty over disputed land features in the ECS and SCS, the United States *does* have a position on how competing claims should be resolved: Territorial disputes should be resolved peacefully, without coercion, intimidation, threats, or the use of force, and in a manner consistent with international law.
- Claims of territorial waters and EEZs should be consistent with customary international law of the sea and must therefore, among other things, derive from land features. Claims in the SCS that are not derived from land features are fundamentally flawed.
- Parties should avoid taking provocative or unilateral actions that disrupt the status quo or jeopardize peace and security. The United States does not believe that large-scale land reclamation with the intent to militarize outposts on disputed land features is consistent with the region's desire for peace and stability.

- The United States, like most other countries, believes that coastal states under UNCLOS have the right to regulate economic activities in their EEZs, but do not have the right to regulate foreign military activities in their EEZs.
- U.S. military surveillance flights in international airspace above another country's EEZ are lawful under international law, and the United States plans to continue conducting these flights as it has in the past.
- The Senkaku Islands are under the administration of Japan and unilateral attempts to change the status quo raise tensions and do nothing under international law to strengthen territorial claims.

China's actions for asserting and defending its maritime territorial and EEZ claims in the ECS and SCS raise several potential policy and oversight issues for Congress, including whether the United States has an adequate strategy for countering China's "salami-slicing" strategy, whether the United States has taken adequate actions to reduce the risk that the United States might be drawn into a crisis or conflict over a territorial dispute involving China, and whether the United States should become a party to the United Nations Convention on the Law of the Sea (UNCLOS).

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## Introduction

This report provides background information and issues for Congress on maritime territorial and exclusive economic zone (EEZ)<sup>1</sup> disputes in the East China Sea (ECS) and South China Sea (SCS) involving China, with a focus on how these disputes may affect U.S. strategic and policy interests. Other CRS reports focus on other aspects of these disputes:

- For details on the individual maritime territorial disputes in the ECS and SCS, and on actions taken by the various claimant countries in the region, see CRS Report R42930, *Maritime Territorial Disputes in East Asia: Issues for Congress*, by Ben Dolven, Mark E. Manyin, and Shirley A. Kan.
- For an in-depth discussion of China's land reclamation and facility-construction activities at several sites in the Spratly Islands, see CRS Report R44072, *Chinese Land Reclamation in the South China Sea: Implications and Policy Options*, by Ben Dolven et al.
- For an in-depth discussion of China's air defense identification zone in the ECS, see CRS Report R43894, *China's Air Defense Identification Zone (ADIZ)*, by Ian E. Rinehart and Bart Elias.

China's actions for asserting and defending its maritime territorial and EEZ claims in the ECS and SCS raise several potential policy and oversight issues for Congress. Decisions that Congress makes on these issues could substantially affect U.S. strategic, political, and economic interests in the Asia-Pacific region and elsewhere.

This report uses the term China's *near-seas region* to mean the Yellow Sea, the ECS, and the SCS. This report uses the term *EEZ dispute* to refer to a dispute principally between China and the United States over whether coastal states have a right under international law to regulate the activities of foreign military forces operating in their EEZs. There are also other kinds of EEZ disputes, including disputes between neighboring countries regarding the extents of their adjacent EEZs.

## Background

### Why China, Other Countries in the Region, and the United States Consider These Disputes Important

Although the maritime disputes discussed in this report at first glance may appear to be disputes over a few seemingly unimportant rocks and reefs in the ocean, these disputes are considered important by China, other countries in the region, and the United States for a variety of strategic, political, and economic reasons, including those briefly outlined below.

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<sup>1</sup> A country's EEZ includes waters extending up to 200 nautical miles from its land territory. Coastal states have the right under the United Nations Convention on the Law of the Sea (UNCLOS) to regulate foreign economic activities in their own EEZs. EEZs were established as a feature of international law by UNCLOS.

## Importance to China and Other Countries in the Region

The disputes discussed in this report are considered important by China and other countries in the region for the following reasons, among others:

- **Trade routes.** Major commercial shipping routes pass through these waters. It is frequently stated, for example, that more than \$5 trillion worth of international shipping trade passes through the SCS each year.<sup>2</sup> Much of this trade travels to or from China and other countries in the region.
- **Fish stocks and hydrocarbons.** The ECS and SCS contain significant fishing grounds and potentially significant oil and gas exploration areas.<sup>3</sup>
- **Military position.** Some of the disputed land features are being used, or in the future might be used, as bases and support locations for military and law enforcement (e.g., coast guard) forces, which is something countries might do not only to improve their ability to assert and defend their maritime territorial claims and their commercial activities in surrounding waters, but for other reasons as well, such as improving their

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<sup>2</sup> A July 24, 2015, Department of Defense (DOD) news report, for example, states:

In a security forum panel discussion in Aspen, Colorado, Navy Adm. Harry B. Harris Jr. said China's assertiveness in the South China Sea is an issue the American public must know about and the United States must address....

Each year, he noted, more than \$5.3 trillion in global sea-based trade relies on unimpeded sea lanes through the South China Sea, adding that the Strait of Malacca alone sees more than 25 percent of oil shipments and 50 percent of all natural gas transits each day.

(Terri Moon Cronk, "Pacom Chief: China's Land Reclamation Has Broad Consequences," *DoD News*, July 24, 2015.)

An August 2015 DOD report to Congress states:

Maritime Asia is a vital thruway for global commerce, and it will be a critical part of the region's expected economic growth. The United States wants to ensure the Asia-Pacific region's continued economic progress. The importance of Asia-Pacific sea lanes for global trade cannot be overstated. Eight of the world's 10 busiest container ports are in the Asia-Pacific region, and almost 30 percent of the world's maritime trade transits the South China Sea annually, including approximately \$1.2 trillion in ship-borne trade bound for the United States. Approximately two-thirds of the world's oil shipments transit through the Indian Ocean to the Pacific, and in 2014, more than 15 million barrels of oil passed through the Malacca Strait per day.

(Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, p. 1. The report was submitted in response to Section 1259 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (H.R. 3979/P.L. 113-291 of December 19, 2014).

<sup>3</sup> DOD states:

There are numerous, complex maritime and territorial disputes in the Asia-Pacific region. The presence of valuable fish stocks and potential existence of large hydrocarbon resources under the East and South China Seas exacerbate these complicated claims. A United Nations report estimates that the South China Sea alone accounts for more than 10 percent of global fisheries production. Though figures vary substantially, the Energy Information Administration estimates that there are approximately 11 billion barrels and 190 trillion cubic feet of proved and probable oil and natural gas reserves in the South China Sea and anywhere from one to two trillion cubic feet of natural gas reserves, and 200 million barrels of oil in the East China Sea. Claimants regularly clash over fishing rights, and earlier attempts at joint development agreements have faltered in recent years.

(Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, p. 5.)



ability to monitor and respond to activities on or near the mainland areas of other countries in the region.

- **Nationalism.** The maritime territorial claims have become matters of often-intense nationalistic pride.

### Importance to China Specifically

In addition to the factors cited above, some observers believe that China wants to achieve a greater degree of control over its near-seas region in part for one or more of the following reasons:

- to create a buffer zone inside the so-called first island chain<sup>4</sup> for keeping U.S. military forces away from China's mainland in time of conflict;
- to create a bastion (i.e., an operating sanctuary) in the SCS for China's emerging sea-based strategic deterrent force of nuclear-powered ballistic missile submarines (SSBNs);<sup>5</sup> and
- to help achieve a broader goal of becoming a regional hegemon in its part of Eurasia.<sup>6</sup>

### Importance to the United States

The maritime disputes discussed in this report are considered important by the United States for several reasons, including those discussed below.

### *Non-use of Force or Coercion as a Means of Settling Disputes Between Countries*

The maritime disputes discussed in this report pose a potential challenge to two key elements of the U.S.-led international order that has operated since World War II. One of these key elements is the principle that force or coercion should not be used as a means of settling disputes between countries, and certainly not as a routine or first-resort method. Some observers are concerned that some of China's actions in asserting and defending its territorial claims in the ECS and SCS challenge this principle and could help reestablish the very different principle of "might makes right" as a routine or defining characteristic of international relations.<sup>7</sup>

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<sup>4</sup> The first island chain is a term that refers to a string of islands, including Japan and the Philippines, that encloses China's near-seas region. The so-called second island chain, which reaches out to Guam, includes both China's near-seas region and the Philippine Sea between Guam and the Philippines. For a map of the first and second island chains, see Department of Defense, *Annual Report to Congress [on] Military and Security Developments Involving the People's Republic of China 2015*, p. 87.

<sup>5</sup> See, for example, Mathieu Duchatel and Eugenia Kazakova, "Tensions in the South China Sea: the Nuclear Dimension," *SIPRI*, July-August 2015; "S China Land Reclamation Aimed at Distracting US from Hainan," *Want China Times*, September 12, 2015; . For more on China's emerging SSBNs force, which observers believe will be based at a facility on Hainan Island in the SCS, see CRS Report RL33153, *China Naval Modernization: Implications for U.S. Navy Capabilities—Background and Issues for Congress*, by Ronald O'Rourke.

<sup>6</sup> See, for example, Gary Roughead, "China, Time and Rebalancing," Hoover Institution, undated (but with copyright of 2014), accessed Marh 25, 2014, at <http://www.hoover.org/taskforces/military-history/strategika/11/roughead>; Jim Talent, "The Equilibrium of East Asia," *National Review Online*, December 5, 2013; Robert E. Kelly, "What Would Chinese Hegemony Look Like?" *The Diplomat*, February 10, 2014.

<sup>7</sup> A "senior State Department official," in a background briefing, stated that "there is violent or strong agreement between the U.S. and ASEAN on the principles at stake, principles of freedom of navigation, principles of peaceful resolution. And those principles are, in fact, enshrined in the six points that ASEAN countries themselves have (continued...)"

## Freedom of the Seas

A second key element of the U.S.-led international order that has operated since World War II is the treatment of the world's seas under international law as international waters (i.e., as a global commons), and freedom of operations in international waters. The principle is often referred to in shorthand as freedom of the seas. It is also sometimes referred to as freedom of navigation, although this term can be defined—particularly by parties who might not support freedom of the seas—in a narrow fashion, to include merely the freedom to navigate (i.e., pass through) sea areas, as opposed to the freedom for conducting various activities at sea. A more complete way to refer to the principle, as stated in the Department of Defense's (DOD's) annual FON report, is “the rights, freedoms, and uses of the sea and airspace guaranteed to all nations in international law.”<sup>8</sup> The principle of freedom of the seas dates back hundreds of years.<sup>9</sup> DOD states:

The United States has, throughout its history, advocated for the freedom of the seas for economic and security reasons....

Freedom of the seas, however, includes more than the mere freedom of commercial vessels to transit through international waterways. While not a defined term under international law, the Department uses “freedom of the seas” to mean all of the rights, freedoms, and lawful uses of the sea and airspace, including for military ships and aircraft, recognized under international law. Freedom of the seas is thus also essential to ensure access in the event of a crisis. Conflicts and disasters can threaten U.S. interests and those of our regional allies and partners. The Department of Defense is therefore committed to ensuring free and open maritime access to protect the stable economic order that has served all Asia-Pacific nations so well for so long, and to maintain the ability of U.S. forces to respond as needed.<sup>10</sup>

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(...continued)

promulgated as guideposts for handling of the challenges of the South China Sea.” (Department of State, Background Briefing En Route Brunei, October 9, 2013, accessed March 14, 2013, at <http://www.state.gov/r/pa/prs/ps/2013/10/215222.htm>.)

In a December 5, 2013, letter to China's Ambassador to the United States, Senators Robert Menendez, Bob Corker, Marco Rubio, and Benjamin L. Cardin stated:

We view this unilateral action [by China to establish an ECS ADIZ] as an ill-conceived attempt to alter the status quo, increasing the possibility of misunderstanding or miscalculation. Moreover, this declaration reinforces the perception that China prefers coercion over rule of law mechanisms to address territorial, sovereignty or jurisdictional issues in the Asia-Pacific. It also follows a disturbing trend of increasingly hostile Chinese maritime activities, including repeated incursions by Chinese vessels into the waters and airspace of Japan, the Philippines, Vietnam and other in the East and South China Seas. These actions threaten freedom of air and maritime navigation, which are vital national interests of the United States.”

See also Andrew S. Erickson, “China's Near-Seas Challenges,” *National Review Online*, January 13, 2014; Jack David, “The Law of the Jungle Returns,” *National Review Online*, March 6, 2014.

<sup>8</sup> U.S. Department of Defense (DOD) Freedom of Navigation (FON) Report for Fiscal Year (FY) 2013, accessed March 10, 2014, at <http://policy.defense.gov/Portals/11/Documents/gsa/cwmd/FY2013%20DOD%20Annual%20FON%20Report.pdf>. Similar reports for prior fiscal years are posted at <http://policy.defense.gov/OSDPOffices/FON.aspx>.

<sup>9</sup> The idea that most of the world's seas should be treated as international waters rather than as a space that could be appropriated as national territory dates back to Hugo Grotius (1583-1645), a founder of international law, whose 1609 book *Mare Liberum* (“The Free Sea”) helped to establish the primacy of the idea over the competing idea, put forth by the legal jurist and scholar John Seldon (1584-1654) in his book 1635 book *Mare Clausum* (“Closed Sea”), that the sea could be appropriated as national territory, like the land.

<sup>10</sup> Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, pp. 1, 2.

Some observers are concerned that China's maritime territorial claims, particularly as shown in China's so-called map of the nine-dash line (see "Map of the Nine-Dash Line" below), appear to challenge the principle that the world's seas are to be treated under international law as international waters. If such a challenge were to gain acceptance in the SCS region, it would have broad implications for the United States and other countries not only in the SCS, but around the world, because international law is universal in application, and a challenge to a principle of international law in one part of the world, if accepted, could serve as a precedent for challenging it in other parts of the world. Overturning the principle of freedom of the seas, so that significant portions of the seas could be appropriated as national territory, would overthrow hundreds of years of international legal tradition relating to the legal status of the world's oceans and significantly change the international legal regime governing sovereignty over the surface of the world.<sup>11</sup>

An August 12, 2015, press report states:

China respects freedom of navigation in the disputed South China Sea but will not allow any foreign government to invoke that right so its military ships and planes can intrude in Beijing's territory, the Chinese ambassador [to the Philippines] said.

Ambassador Zhao Jianhua said late Tuesday [August 11] that Chinese forces warned a U.S. Navy P-8A [maritime patrol aircraft] not to intrude when the warplane approached a Chinese-occupied area in the South China Sea's disputed Spratly Islands in May....

"We just gave them warnings, be careful, not to intrude," Zhao told reporters on the sidelines of a diplomatic event in Manila....

When asked why China shooed away the U.S. Navy plane when it has pledged to respect freedom of navigation in the South China Sea, Zhao outlined the limits in China's view.

"Freedom of navigation does not mean to allow other countries to intrude into the airspace or the sea which is sovereign. No country will allow that," Zhao said. "We say freedom of navigation must be observed in accordance with international law. No freedom of navigation for warships and airplanes."<sup>12</sup>

Some observers are concerned that if China's position on whether coastal states have a right under international law to regulate the activities of foreign military forces in their EEZs (see "Dispute Regarding China's Rights Within Its EEZ") were to gain greater international acceptance under international law, it could substantially affect U.S. naval operations not only in the SCS and ECS, but around the world, which in turn could substantially affect the ability of the United States to use its military forces to defend various U.S. interests overseas. Significant portions of the world's oceans are claimable as EEZs, including high-priority U.S. Navy

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<sup>11</sup> One observer states:

A very old debate has been renewed in recent years: is the sea a commons open to the free use of all seafaring states, or is it territory subject to the sovereignty of coastal states? Is it to be freedom of the seas, as Dutch jurist Hugo Grotius insisted? Or is it to be closed seas where strong coastal states make the rules, as Grotius' English archnemesis John Selden proposed?

Customary and treaty law of the sea sides with Grotius, whereas China has in effect become a partisan of Selden. Just as England claimed dominion over the approaches to the British Isles, China wants to make the rules governing the China seas. Whose view prevails will determine not just who controls waters, islands, and atolls, but also the nature of the system of maritime trade and commerce. What happens in Asia could set a precedent that ripples out across the globe. The outcome of this debate is a big deal.

(James R. Holmes, "Has China Awoken a Sleeping Giant in Japan?" *The Diplomat*, March 1, 2014.)

<sup>12</sup> Jim Gomez, "Chinese Diplomat Outlines Limits to Freedom of Navigation," *Military Times*, August 12, 2015.

operating areas in the Western Pacific, the Persian Gulf, and the Mediterranean Sea.<sup>13</sup> The legal right of U.S. naval forces to operate freely in EEZ waters—an application of the principle of freedom of the seas—is important to their ability to perform many of their missions around the world, because many of those missions are aimed at influencing events ashore, and having to conduct operations from more than 200 miles offshore would reduce the inland reach and responsiveness of ship-based sensors, aircraft, and missiles, and make it more difficult to transport Marines and their equipment from ship to shore. Restrictions on the ability of U.S. naval forces to operate in EEZ waters could potentially require changes (possibly very significant ones) in U.S. military strategy or U.S. foreign policy goals.<sup>14</sup>

### ***Risk of United States Being Drawn into a Crisis or Conflict***

Many observers are concerned that ongoing maritime territorial disputes in the ECS and SCS could lead to a crisis or conflict between China and a neighboring country such as Japan or the Philippines, and that the United States could be drawn into such a crisis or conflict as a result of obligations the United States has under bilateral security treaties with Japan and the Philippines.<sup>15</sup>

### ***Security Structure of Asia-Pacific Region***

Chinese domination over or control of its near-seas region could have significant implications for the security structure of the Asia-Pacific region. In particular, Chinese domination over or control of its near-seas area could greatly complicate the ability of the United States to intervene militarily in a crisis or conflict between China and Taiwan. It could also complicate the ability of the United States to fulfill its obligations under its defense treaties with Japan, South Korea, and the Philippines. More generally, it could complicate the ability of the United States to operate U.S. forces in the Western Pacific for various purposes, including maintaining regional stability, conducting engagement and partnership-building operations, responding to crises, and executing war plans. Developments such as these could in turn encourage countries in the region to reexamine their own defense programs and foreign policies, potentially leading to a further change in the region's security structure.

### ***U.S.-China Relations***

Developments regarding China's maritime territorial and EEZ disputes in the ECS and SCS could affect U.S.-China relations in general, which could have implications for other issues in U.S.-China relations.<sup>16</sup>

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<sup>13</sup> The National Oceanic and Atmospheric Administration (NOAA) calculates that EEZs account for about 30.4% of the world's oceans. (See the table called "Comparative Sizes of the Various Maritime Zones" at the end of "Maritime Zones and Boundaries, accessed June 6, 2014, at [http://www.gc.noaa.gov/gcil\\_maritime.html](http://www.gc.noaa.gov/gcil_maritime.html), which states that EEZs account for 101.9 million square kilometers of the world's approximately 335.0 million square kilometers of oceans.)

<sup>14</sup> See, for example, United States Senate, Committee on Foreign Relations, Committee on Foreign Relations, Hearing on Maritime Disputes and Sovereignty Issues in East Asia, July 15, 2009, Testimony of Peter Dutton, Associate Professor, China Maritime Studies Institute, U.S. Naval War College, pp. 2 and 6-7.

<sup>15</sup> For additional background information on these treaties, see **Appendix A**.

<sup>16</sup> For a survey of issues in U.S.-China relations, see CRS Report R41108, *U.S.-China Relations: An Overview of Policy Issues*, by Susan V. Lawrence.

## ***Interpreting China's Rise as a Major World Power***

As China continues to emerge as a major world power, observers are assessing what kind of international actor China will ultimately be. China's actions in asserting and defending its maritime territorial and EEZ disputes in the ECS and SCS could influence assessments that observers might make on issues such as China's approach to settling disputes between states (including whether China views force and coercion as acceptable means for settling such disputes, and consequently whether China believes that "might makes right"), China's views toward the meaning and application of international law,<sup>17</sup> and whether China views itself more as a stakeholder and defender of the current international order, or alternatively, more as a revisionist power that will seek to change elements of that order that it does not like.

## ***U.S. Strategic Goal of Preventing Emergence of Regional Hegemon in Eurasia***

As mentioned earlier, some observers believe that China is pursuing a goal of becoming a regional hegemon in its part of Eurasia, and that achieving a greater degree of control over its near-seas region is a part of this effort. From a U.S. standpoint, such an effort would be highly significant, because it has been a longstanding goal of U.S. grand strategy to prevent the emergence of a regional hegemon in one part of Eurasia or another (see "U.S. Grand Strategy" below).

## **Strategic Context from a U.S. Perspective**

This section presents brief comments from a U.S. perspective on some elements of the strategic context in which the maritime disputes discussed in this report may be considered. There is also a broader context of U.S.-China relations and U.S. foreign policy toward the Asia-Pacific that is covered in other CRS reports.<sup>18</sup>

## **Shift in International Security Environment**

World events since late 2013 have led some observers to conclude that the international security environment has undergone a shift from the familiar post-Cold War era of the last 20-25 years, also sometimes known as the unipolar moment (with the United States as the unipolar power), to a new and different strategic situation that features, among other things, renewed great power competition and challenges to elements of the U.S.-led international order that has operated since World War II.<sup>19</sup> China's actions to assert and defend its maritime territorial claims can be viewed as one reflection of that shift.

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<sup>17</sup> DOD states that "In January 2013, the Philippines requested that an arbitral tribunal set up under the Law of the Sea Convention address a number of legal issues arising with respect to the interpretation and application of the Convention.... How China responds to a potential ruling from the arbitral tribunal will reflect China's attitude toward international maritime law." (Department of Defense, Asia-Pacific Maritime Security Strategy, undated but released August 2015, p. 17.) See also Isaac B. Kardon, "The Enabling Role of UNCLOS in PRC Maritime Policy," Asia Maritime Transparency Initiative (Center for Strategic & International Studies), September 11, 2015.

<sup>18</sup> See, for example, CRS Report R41108, *U.S.-China Relations: An Overview of Policy Issues*, by Susan V. Lawrence, and CRS Report R42448, *Pivot to the Pacific? The Obama Administration's "Rebalancing" Toward Asia*, coordinated by Mark E. Manyin.

<sup>19</sup> For additional discussion, see CRS Report R43838, *A Shift in the International Security Environment: Potential Implications for Defense—Issues for Congress*, by Ronald O'Rourke.

## **U.S. Grand Strategy**

Discussion of the above-mentioned shift in the international security environment has led to a renewed emphasis in discussions of U.S. security and foreign policy on grand strategy and geopolitics. From a U.S. perspective, grand strategy can be understood as strategy considered at a global or interregional level, as opposed to strategies for specific countries, regions, or issues. Geopolitics refers to the influence on international relations and strategy of basic world geographic features such as the size and location of continents, oceans, and individual countries.

From a U.S. perspective on grand strategy and geopolitics, it can be noted that most of the world's people, resources, and economic activity are located not in the Western Hemisphere, but in the other hemisphere, particularly Eurasia. In response to this basic feature of world geography, U.S. policymakers for the last several decades have chosen to pursue, as a key element of U.S. grand strategy, a goal of preventing the emergence of a regional hegemon in one part of Eurasia or another, on the grounds that such a hegemon could represent a concentration of power strong enough to threaten core U.S. interests by, for example, denying the United States access to some of the other hemisphere's resources and economic activity. Although U.S. policymakers have not often stated this key national strategic goal explicitly in public, U.S. military (and diplomatic) operations in recent decades—both wartime operations and day-to-day operations—can be viewed as having been carried out in no small part in support of this key goal.<sup>20</sup>

## **U.S. Strategic Rebalancing to Asia-Pacific Region**

A 2012 DOD strategic guidance document<sup>21</sup> and DOD's report on the 2014 Quadrennial Defense Review (QDR)<sup>22</sup> state that U.S. military strategy will place an increased emphasis on the Asia-Pacific region. Although Administration officials state that this U.S. strategic rebalancing toward the Asia-Pacific region, as it is called, is not directed at any single country, many observers believe it is intended to a significant degree as a response to China's military modernization effort and its assertive behavior regarding its maritime territorial claims.

## **Challenge to U.S. Sea Control and U.S. Position in Western Pacific**

Observers of Chinese and U.S. military forces view China's improving naval capabilities as posing a potential challenge in the Western Pacific to the U.S. Navy's ability to achieve and maintain control of blue-water ocean areas in wartime—the first such challenge the U.S. Navy has faced since the end of the Cold War.<sup>23</sup> More broadly, these observers view China's naval capabilities as a key element of an emerging broader Chinese military challenge to the longstanding status of the United States as the leading military power in the Western Pacific.

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<sup>20</sup> For additional discussion, see CRS Report R43838, *A Shift in the International Security Environment: Potential Implications for Defense—Issues for Congress*, by Ronald O'Rourke.

<sup>21</sup> Department of Defense, Sustaining U.S. Global Leadership: Priorities for 21st Century Defense, January 2012, 8 pp. For additional discussion, see CRS Report R42146, *Assessing the January 2012 Defense Strategic Guidance (DSG): In Brief*, by Catherine Dale and Pat Towell.

<sup>22</sup> Department of Defense, Quadrennial Defense Review 2014, 64 pp. For additional discussion, see CRS Report R43403, *The 2014 Quadrennial Defense Review (QDR) and Defense Strategy: Issues for Congress*, by Catherine Dale.

<sup>23</sup> The term blue-water ocean areas is used here to mean waters that are away from shore, as opposed to near-shore (i.e., littoral) waters. Iran is viewed as posing a challenge to the U.S. Navy's ability to quickly achieve and maintain sea control in littoral waters in and near the Strait of Hormuz. For additional discussion, see CRS Report R42335, *Iran's Threat to the Strait of Hormuz*, coordinated by Kenneth Katzman.



## Regional U.S. Allies and Partners

The United States has certain security-related policies pertaining to Taiwan under the Taiwan Relations Act (H.R. 2479/P.L. 96-8 of April 10, 1979). The United States has bilateral security treaties with Japan, South Korea, and the Philippines, and an additional security treaty with Australia and New Zealand.<sup>24</sup> In addition to U.S. treaty allies, certain other countries in the Western Pacific can be viewed as current or emerging U.S. security partners.

## Overview of the Maritime Disputes

### Maritime Territorial Disputes

China is a party to multiple maritime territorial disputes in the SCS and ECS, including in particular the following (see **Figure 1** for locations of the island groups listed below):

- a dispute over the **Paracel Islands** in the SCS, which are claimed by China and Vietnam, and occupied by China;
- a dispute over the **Spratly Islands** in the SCS, which are claimed entirely by China, Taiwan, and Vietnam, and in part by the Philippines, Malaysia, and Brunei, and which are occupied in part by all these countries except Brunei;
- a dispute over **Scarborough Shoal** in the SCS, which is claimed by China, Taiwan, and the Philippines, and controlled since 2012 by China; and
- a dispute over the **Senkaku Islands** in the ECS, which are claimed by China, Taiwan, and Japan, and administered by Japan.

The island and shoal names used above are the ones commonly used in the United States; in other countries, these islands are known by various other names. China, for example, refers to the Paracel Islands as the Xisha islands, to the Spratly Islands as the Nansha islands, to Scarborough Shoal as Huangyan island, and to the Senkaku Islands as the Diaoyu islands.

These island groups are not the only land features in the SCS and ECS—the two seas feature other islands, rocks, and shoals, as well as some near-surface submerged features. The territorial status of some of these other features is also in dispute.<sup>25</sup> There are additional maritime territorial disputes in the Western Pacific that do not involve China.<sup>26</sup>

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<sup>24</sup> For a summary, see “U.S. Collective Defense Arrangements,” accessed July 24, 2015, at <http://www.state.gov/s/l/treaty/collectivedefense/>.

<sup>25</sup> For example, the Reed Bank, a submerged atoll northeast of the Spratly Islands, is the subject of a dispute between China and the Philippines, and the Macclesfield Bank, a group of submerged shoals and reefs between the Paracel Islands and Scarborough Shoal, is claimed by China, Taiwan, and the Philippines. China refers to the Macclesfield Bank as the Zhongsha islands, even though they are submerged features rather than islands.

<sup>26</sup> North Korea and South Korea, for example, have not reached final agreement on their exact maritime border; South Korea and Japan are involved in a dispute over the Liancourt Rocks—a group of islets in the Sea of Japan that Japan refers to as the Takeshima islands and South Korea as the Dokdo islands; and Japan and Russia are involved in a dispute over islands dividing the Sea of Okhotsk from the Pacific Ocean that Japan refers to as the Northern Territories and Russia refers to as the South Kuril Islands.

## Figure 1. Maritime Territorial Disputes Involving China

Island groups involved in principal disputes



**Source:** Map prepared by CRS using base maps provided by Esri.

**Note:** Disputed islands have been enlarged to make them more visible.

Maritime territorial disputes in the SCS and ECS date back many years, and have periodically led to incidents and periods of increased tension.<sup>27</sup> The disputes have again intensified in the past few

<sup>27</sup> One observer states that “notable incidents over sovereignty include the Chinese attack on the forces of the Republic of Vietnam [South Vietnam] in the Paracel Islands in 1974, China’s attack on Vietnamese forces near Fiery Cross Reef [in the Spratly Islands] in 1988, and China’s military ouster of Philippines forces from Mischief Reef [also in the (continued...)”



years, leading to numerous confrontations and incidents involving fishing vessels, oil exploration vessels and oil rigs, coast guard ships, naval ships, and military aircraft. The intensification of the disputes in recent years has substantially heightened tensions between China and other countries in the region, particularly Japan, the Philippines, and Vietnam.

## Dispute Regarding China's Rights Within Its EEZ

In addition to maritime territorial disputes in the SCS and ECS, China is involved in a dispute, principally with the United States, over whether China has a right under international law to regulate the activities of foreign military forces operating within China's EEZ. The position of the United States and most countries is that while the United Nations Convention on the Law of the Sea (UNCLOS), which established EEZs as a feature of international law, gives coastal states the right to regulate economic activities (such as fishing and oil exploration) within their EEZs, it does not give coastal states the right to regulate foreign military activities in the parts of their EEZs beyond their 12-nautical-mile territorial waters.<sup>28</sup> The position of China and some other countries (i.e., a minority group among the world's nations) is that UNCLOS gives coastal states the right to regulate not only economic activities, but also foreign military activities, in their EEZs. In response to a request from CRS to identify the countries taking this latter position, the U.S. Navy states that

countries with restrictions inconsistent with the Law of the Sea Convention [i.e., UNCLOS] that would limit the exercise of high seas freedoms by foreign navies beyond 12 nautical miles from the coast are [the following 27]:

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.<sup>29</sup>

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(...continued)

Spratly Islands] in 1995." Peter Dutton, "Three Dispute and Three Objectives," *Naval War College Review*, Autumn 2011: 43. A similar recounting can be found in Department of Defense, *Annual Report to Congress, Military and Security Developments Involving the People's Republic of China*, 2011, p. 15.

<sup>28</sup> The legal term under UNCLOS for territorial waters is territorial seas. This report uses the more colloquial term territorial waters to avoid confusion with terms like South China Sea and East China Sea.

<sup>29</sup> Source: Navy Office of Legislative Affairs email to CRS, June 15, 2012. The email notes that two additional countries—Ecuador and Peru—also have restrictions inconsistent with UNCLOS that would limit the exercise of high seas freedoms by foreign navies beyond 12 nautical miles from the coast, but do so solely because they claim an extension of their territorial sea beyond 12 nautical miles.

DOD states that

Regarding excessive maritime claims, several claimants within the region have asserted maritime claims along their coastlines and around land features that are inconsistent with international law. For example, Malaysia attempts to restrict foreign military activities within its Exclusive Economic Zone (EEZ), and Vietnam attempts to require notification by foreign warships prior to exercising the right of innocent passage through its territorial sea. A number of countries have drawn coastal baselines (the lines from which the breadth of maritime entitlements are measured) that are inconsistent with international law, including Vietnam and China, and the United States also has raised concerns with respect to Taiwan's Law on the Territorial Sea and the Contiguous Zone's provisions on baselines and innocent passage in the territorial sea. Although we applaud the Philippines' and Vietnam's efforts to bring its maritime claims in line with the Law of the Sea Convention, more work remains to be done. Consistent with the long-standing U.S. Freedom of Navigation Policy, the United States encourages all claimants to conform their maritime claims to international law and challenges excessive maritime claims through U.S. diplomatic protests and operational activities.

(continued...)

Other observers provide different counts of the number of countries that take the position that UNCLOS gives coastal states the right to regulate not only economic activities but also foreign military activities in their EEZs. For example, one set of observers, in an August 2013 briefing, stated that 18 countries seek to regulate foreign military activities in their EEZs, and that three of these countries—China, North Korea, and Peru—have directly interfered with foreign military activities in their EEZs.<sup>30</sup>

The dispute over whether China has a right under UNCLOS to regulate the activities of foreign military forces operating within its EEZ appears to be at the heart of incidents between Chinese and U.S. ships and aircraft in international waters and airspace, including

- incidents in March 2001, September 2002, March 2009, and May 2009, in which Chinese ships and aircraft confronted and harassed the U.S. naval ships *Bowditch*, *Impeccable*, and *Victorious* as they were conducting survey and ocean surveillance operations in China's EEZ;
- an incident on April 1, 2001, in which a Chinese fighter collided with a U.S. Navy EP-3 electronic surveillance aircraft flying in international airspace about 65 miles southeast of China's Hainan Island in the South China Sea, forcing the EP-3 to make an emergency landing on Hainan Island;<sup>31</sup>
- an incident on December 5, 2013, in which a Chinese navy ship put itself in the path of the U.S. Navy cruiser *Cowpens* as it was operating 30 or more miles from China's aircraft carrier *Liaoning*, forcing the *Cowpens* to change course to avoid a collision; and
- an incident on August 19, 2014, in which a Chinese fighter conducted an aggressive and risky intercept of a U.S. Navy P-8 maritime patrol aircraft that was flying in international airspace about 135 miles east of Hainan

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(...continued)

(Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, pp. 7-8.)

<sup>30</sup> Source: Joe Baggett and Pete Pedrozo, briefing for Center for Naval Analysis Excessive Chinese Maritime Claims Workshop, August 7, 2013, slide entitled "What are other nations' views?" (slide 30 of 47). The slide also notes that there have been "isolated diplomatic protests from Pakistan, India, and Brazil over military surveys" conducted in their EEZs.

<sup>31</sup> For discussions of some of these incidents and their connection to the issue of military operating rights in EEZs, see Raul Pedrozo, "Close Encounters at Sea, The USNS Impeccable Incident," *Naval War College Review*, Summer 2009: 101-111; Jonathan G. Odom, "The True 'Lies' of the Impeccable Incident: What Really Happened, Who Disregarded International Law, and Why Every Nation (Outside of China) Should Be Concerned," *Michigan State Journal of International Law*, vol. 18, no. 3, 2010: 16-22, accessed September 25, 2012, at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1622943](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1622943); Oriana Skylar Mastro, "Signaling and Military Provocation in Chinese National Security Strategy: A Closer Look at the Impeccable Incident," *Journal of Strategic Studies*, April 2011: 219-244; and Peter Dutton, ed., *Military Activities in the EEZ, A U.S.-China Dialogue on Security and International Law in the Maritime Commons*, Newport (RI), Naval War College, China Maritime Studies Institute, China Maritime Study Number 7, December 2010, 124 pp. See also CRS Report RL30946, *China-U.S. Aircraft Collision Incident of April 2001: Assessments and Policy Implications*, by Shirley A. Kan et al.

Island.<sup>32</sup> DOD characterized the intercept as “very, very close, very dangerous.”<sup>33</sup>

**Figure 2** shows the locations of the 2001, 2002, and 2009 incidents listed in the first two bullets above.

**Figure 2. Locations of 2001, 2002, and 2009 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.

The incidents shown in **Figure 2** are the ones most commonly cited prior to the December 2013 involving the *Cowpens*, but some observers list additional incidents as well. For example, one set

<sup>32</sup> Source for location: Transcript of remarks by DOD Press Secretary Rear Admiral John Kirby at August 22, 2014, press briefing, accessed September 26, 2014, at <http://www.defense.gov/Transcripts/Transcript.aspx?TranscriptID=5493>. Chinese officials stated that the incident occurred 220 kilometers (about 137 statute miles or about 119 nautical miles) from Hainan Island.

<sup>33</sup> Source: Transcript of remarks by DOD Press Secretary Rear Admiral John Kirby at August 22, 2014, press briefing, accessed September 26, 2014, at <http://www.defense.gov/Transcripts/Transcript.aspx?TranscriptID=5493>.

of observers, in an August 2013 briefing, provided the following list of incidents in which China has challenged or interfered with operations by U.S. ships and aircraft and ships from India's navy:

- USNS *Bowditch* (March 2001);
- EP-3 Incident (April 2001);
- USNS *Impeccable* (March 2009);
- USNS *Victorious* (May 2009);
- USS *George Washington* (July-November 2010);
- U-2 Intercept (June 2011);
- INS [Indian Naval Ship] *Airavat* (July 2011);
- INS [Indian Naval Ship] *Shivalik* (June 2012); and
- USNS *Impeccable* (July 2013).<sup>34</sup>

DOD states that

The growing efforts of claimant States to assert their claims has led to an increase in air and maritime incidents in recent years, including an unprecedented rise in unsafe activity by China's maritime agencies in the East and South China Seas. U.S. military aircraft and vessels often have been targets of this unsafe and unprofessional behavior, which threatens the U.S. objectives of safeguarding the freedom of the seas and promoting adherence to international law and standards. China's expansive interpretation of jurisdictional authority beyond territorial seas and airspace causes friction with U.S. forces and treaty allies operating in international waters and airspace in the region and raises the risk of inadvertent crisis.

There have been a number of troubling incidents in recent years. For example, in August 2014, a Chinese J-11 fighter crossed directly under a U.S. P-8A Poseidon operating in the South China Sea approximately 117 nautical miles east of Hainan Island. The fighter also performed a barrel roll over the aircraft and passed the nose of the P-8A to show its weapons load-out, further increasing the potential for a collision. However, since August 2014, U.S.-China military diplomacy has yielded positive results, including a reduction in unsafe intercepts. We also have seen the PLAN implement agreed-upon international standards for encounters at sea, such as the Code for Unplanned Encounters at Sea (CUES),<sup>35</sup> which was signed in April 2014.<sup>36</sup>

## **Relationship of Maritime Territorial Disputes to EEZ Dispute**

The issue of whether China has the right under UNCLOS to regulate foreign military activities in its EEZ is related to, but ultimately separate from, the issue of territorial disputes in the SCS and ECS:

<sup>34</sup> Source: Joe Baggett and Pete Pedrozo, briefing for Center for Naval Analysis Excessive Chinese Maritime Claims Workshop, August 7, 2013, slide entitled "Notable EEZ Incidents with China," (slides 37 and 46 of 47). Regarding an event involving the *Impeccable* reported to have taken place in June rather than July, see William Cole, "Chinese Help Plan For Huge War Game Near Isles," Honolulu Star-Advertiser, July 25, 2013: 1. See also Bill Gertz, "Inside the Ring: New Naval Harassment in Asia," July 17, 2013. See also Department of Defense Press Briefing by Adm. Locklear in the Pentagon Briefing Room, July 11, 2013, accessed August 9, 2013, at <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=5270>. As of September 26, 2014, a video of part of the incident was posted on You Tube at <http://www.youtube.com/watch?v=TiyUWQObkg>.

<sup>35</sup> For more on the CUES agreement, see "April 2014 Code for Unplanned Encounters At Sea (CUES)" below.

<sup>36</sup> Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, pp. 14-15.



- The two issues are related because China can claim EEZs from inhabitable islands over which it has sovereignty, so accepting China's claims to sovereignty over inhabitable islands in the SCS or ECS could permit China to expand the EEZ zone within which China claims a right to regulate foreign military activities.
- The two issues are ultimately separate from one another because even if all the territorial disputes in the SCS and ECS were resolved, and none of China's claims in the SCS and ECS were accepted, China could continue to apply its concept of its EEZ rights to the EEZ that it unequivocally derives from its mainland coast—and it is in this unequivocal Chinese EEZ that most of the past U.S.-Chinese incidents at sea have occurred.

Press reports of maritime disputes in the SCS and ECS often focus on territorial disputes while devoting little or no attention to the EEZ dispute. From the U.S. perspective, however, the EEZ dispute is arguably as significant as the maritime territorial disputes because of the EEZ dispute's proven history of leading to U.S.-Chinese incidents at sea and because of its potential for affecting U.S. military operations not only in the SCS and ECS, but around the world.

## **Treaties and Agreements Related to the Disputes**

This section briefly reviews some international treaties and agreements that bear on the disputes discussed in this report.

### **United Nations Convention on the Law of the Sea (UNCLOS)**

The United Nations Convention on the Law of the Sea (UNCLOS) establishes a treaty regime to govern activities on, over, and under the world's oceans. UNCLOS was adopted by Third United Nations Conference on the Law of the Sea in December 1982, and entered into force in November 1994. The treaty established EEZs as a feature of international law, and contains multiple provisions relating to territorial waters and EEZs. As of January 7, 2015, 167 nations were party to the treaty, including China and most other countries bordering on the SCS and ECS (the exceptions being North Korea and Taiwan).<sup>37</sup>

The treaty and an associated 1994 agreement relating to implementation of Part XI of the treaty (on deep seabed mining) were transmitted to the Senate on October 6, 1994.<sup>38</sup> In the absence of Senate advice and consent to adherence, the United States is not a party to the convention and the associated 1994 agreement. A March 10, 1983, statement on U.S. ocean policy by President Ronald Reagan states that UNCLOS

contains provisions with respect to traditional uses of the oceans which generally confirm existing maritime law and practice and fairly balance the interests of all states.

Today I am announcing three decisions to promote and protect the oceans interests of the United States in a manner consistent with those fair and balanced results in the Convention and international law.

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<sup>37</sup> Source: Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements as at 3 October 2014 (updated January 7, 2015), accessed April 15, 2015, at [http://www.un.org/Depts/los/reference\\_files/chronological\\_lists\\_of\\_ratifications.htm#](http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm#). The United Nations Convention on the Law of the Sea. A similar list, in alphabetical order by country name, is posted at [http://www.un.org/Depts/los/reference\\_files/status2010.pdf](http://www.un.org/Depts/los/reference_files/status2010.pdf).

<sup>38</sup> Treaty Document 103-39.

First, the United States is prepared to accept and act in accordance with the balance of interests relating to traditional uses of the oceans—such as navigation and overflight. In this respect, the United States will recognize the rights of other states in the waters off their coasts, as reflected in the Convention, so long as the rights and freedoms of the United States and others under international law are recognized by such coastal states.

Second, the United States will exercise and assert its navigation and overflight rights and freedoms on a worldwide basis in a manner that is consistent with the balance of interests reflected in the convention. The United States will not, however, acquiesce in unilateral acts of other states designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses.

Third, I am proclaiming today an Exclusive Economic Zone in which the United States will exercise sovereign rights in living and nonliving resources within 200 nautical miles of its coast. This will provide United States jurisdiction for mineral resources out to 200 nautical miles that are not on the continental shelf.<sup>39</sup>

UNCLOS builds on four 1958 law of the sea conventions to which the United States is a party: the Convention on the Territorial Sea and the Contiguous Zone, the Convention on the High Seas, the Convention on the Continental Shelf, and the Convention on Fishing and Conservation of the Living Resources of the High Seas.

### 1972 Multilateral Convention on Preventing Collisions at Sea (COLREGs Convention)

China and the United States, as well as more than 150 other countries (including all those bordering on the South East and South China Seas other than Taiwan),<sup>40</sup> are parties to an October 1972 multilateral convention on international regulations for preventing collisions at sea, commonly known as the collision regulations (COLREGs) or the “rules of the road.”<sup>41</sup> Although commonly referred to as a set of rules or regulations, this multilateral convention is a binding treaty. The convention applies “to all vessels upon the high seas and in all waters connected therewith navigable by seagoing vessels.”<sup>42</sup>

In a February 18, 2014, letter to Senator Marco Rubio concerning the December 5, 2013, incident involving the *Cowpens*, the State Department stated:

In order to minimize the potential for an accident or incident at sea, it is important that the United States and China share a common understanding of the rules for operational air or maritime interactions. From the U.S. perspective, an existing body of international rules and guidelines—including the 1972 International Regulations for Preventing Collisions at Sea (COLREGs)—are sufficient to ensure the safety of navigation between

<sup>39</sup> United States Ocean Policy, Statement by the President, March 10, 1983, accessed April 15, 23015, at <http://www.state.gov/documents/organization/143224.pdf>. The text is also available at <http://www.reagan.utexas.edu/archives/speeches/1983/31083c.htm>.

<sup>40</sup> Source: International Maritime Organization, *Status of Multilateral Conventions and Instruments in Respect of Which the International Maritime Organization or its Secretary-General Performs Depositary or Other Functions, As at 28 February 2014*, pp. 86-89. The Philippines acceded to the convention on June 10, 2013.

<sup>41</sup> 28 UST 3459; TIAS 8587. The treaty was done at London October 20, 1972, and entered into force July 15, 1977. The United States is an original signatory to the convention and acceded the convention entered into force for the United States on July 15, 1977. China acceded to the treaty on January 7, 1980. A summary of the agreement is available at <http://www.imo.org/About/Conventions/ListOfConventions/Pages/COLREG.aspx>. The text of the convention is available at <https://treaties.un.org/doc/Publication/UNTS/Volume%201050/volume-1050-I-15824-English.pdf>.

<sup>42</sup> Rule 1(a) of the convention.

U.S. forces and the force of other countries, including China. We will continue to make clear to the Chinese that these existing rules, including the COLREGs, should form the basis for our common understanding of air and maritime behavior, and we will encourage China to incorporate these rules into its incident-management tools.

Likewise, we will continue to urge China to agree to adopt bilateral crisis management tools with Japan and to rapidly conclude negotiations with ASEAN<sup>43</sup> on a robust and meaningful Code of Conduct in the South China in order to avoid incidents and to manage them when they arise. We will continue to stress the importance of these issues in our regular interactions with Chinese officials.<sup>44</sup>

In the 2014 edition of its annual report on military and security developments involving China, the DOD states:

On December 5, 2013, a PLA Navy vessel and a U.S. Navy vessel operating in the South China Sea came into close proximity. At the time of the incident, USS COWPENS (CG 63) was operating approximately 32 nautical miles southeast of Hainan Island. In that location, the U.S. Navy vessel was conducting lawful military activities beyond the territorial sea of any coastal State, consistent with customary international law as reflected in the Law of the Sea Convention. Two PLA Navy vessels approached USS COWPENS. During this interaction, one of the PLA Navy vessels altered course and crossed directly in front of the bow of USS COWPENS. This maneuver by the PLA Navy vessel forced USS COWPENS to come to full stop to avoid collision, while the PLA Navy vessel passed less than 100 yards ahead. The PLA Navy vessel's action was inconsistent with internationally recognized rules concerning professional maritime behavior (i.e., the Convention of International Regulations for Preventing Collisions at Sea), to which China is a party.<sup>45</sup>

### **April 2014 Code for Unplanned Encounters At Sea (CUES)**

On April 22, 2014, representatives of 21 Pacific-region navies (including China, Japan, and the United States), meeting in Qingdao, China, at the 14<sup>th</sup> Western Pacific Naval Symposium (WPNS),<sup>46</sup> unanimously agreed to a Code for Unplanned Encounters at Sea (CUES). CUES, a non-binding agreement, establishes a standardized protocol of safety procedures, basic communications, and basic maneuvering instructions for naval ships and aircraft during unplanned encounters at sea, with the aim of reducing the risk of incidents arising from such encounters.<sup>47</sup> The CUES agreement in effect supplements the 1972 COLREGs Convention (see

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<sup>43</sup> ASEAN is the Association of Southeast Asian Nations. ASEAN's member states are Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam.

<sup>44</sup> Letter dated February 18, 2014, from Julia Frifield, Assistant Secretary, Legislative Affairs, Department of State, to The Honorable Marco Rubio, United States Senate. Used here with the permission of the office of Senator Rubio. The letter begins: "Thank you for your letter of January 31 regarding the December 5, 2013, incident involving a Chinese naval vessel and the USS Cowpens." The text of Senator Rubio's January 31, 2014, letter was accessed March 13, 2014, at <http://www.rubio.senate.gov/public/index.cfm/2014/1/rubio-calls-on-administration-to-address-provocative-chinese-behavior>.

<sup>45</sup> Department of Defense, *Annual Report to Congress [on] Military and Security Developments Involving the People's Republic of China 2014*, p. 4.

<sup>46</sup> For more on the WPNS, see Singapore Ministry of Defense, "Fact Sheet: Background of the Western Pacific Naval Symposium, MCMEX, DIVEX and NMS," updated March 25, 2011, accessed October 1, 2012, at [http://www.mindef.gov.sg/imindef/news\\_and\\_events/nr/2011/mar/25mar11\\_nr/25mar11\\_fs.html](http://www.mindef.gov.sg/imindef/news_and_events/nr/2011/mar/25mar11_nr/25mar11_fs.html). See also the website for the 2012 WPNS at <http://www.navy.mil.my/wpns2012/>.

<sup>47</sup> See, for example, "Navy Leaders Agree to CUES at 14<sup>th</sup> WPNS," Navy News Services, April 23, 2014; Austin Ramzy and Chris Buckley, "Pacific Rim Deal Could Reduce Chance of Unintended Conflict in Contested Seas," *New York Times*, April 23, 2014; Megha Rajagopalan, "Pacific Accord on Maritime Code Could Help Prevent Conflicts," (continued...)

previous section); it does not cancel or lessen commitments that countries have as parties to the COLREGS Convention.

Two observers stated that “The [CUES] resolution is non-binding; only regulates communication in ‘unplanned encounters,’ not behavior; fails to address incidents in territorial waters; and does not apply to fishing and maritime constabulary vessels [i.e., coast guard ships and other maritime law enforcement ships], which are responsible for the majority of Chinese harassment operations.”<sup>48</sup> An April 23, 2014, press report stated:

Beijing won't necessarily observe a new code of conduct for naval encounters when its ships meet foreign ones in disputed areas of the East and South China seas, according to a senior Chinese naval officer involved in negotiations on the subject....

U.S. naval officers have said they hoped all members of the group would observe the code in all places, including waters where China's territorial claims are contested by its neighbors.

But the code isn't legally binding, and it remains to be seen whether China will observe it in what the U.S. sees as international waters and Beijing sees as part of its territory.

Senior Capt. Ren Xiaofeng, the head of the Chinese navy's Maritime Security/Safety Policy Research Division, said that when and where the code was implemented had to be discussed bilaterally between China and other nations, including the U.S.

“It's recommended, not legally binding,” Capt. Ren told The Wall Street Journal....<sup>49</sup>

Another observer states that China

touts the fact that it recently signed a Code for Unplanned Encounters at Sea at the recent Western Pacific Naval Symposium held in Qingdao. CUES is meant to help avoid accidents at sea. However, the code is voluntary and applies only when naval ships and aircraft meet “casually or unexpectedly.” It also does not apply to a country's territorial waters, and of course countering China's expansive claims to territorial waters is one of the most pressing problems in the South and East China Seas.<sup>50</sup>

DOD states that

The Department marked a significant milestone in this effort in April 2014 when member navies at the WPNS adopted the CUES in Qingdao, China. The CUES provides standardized navigation and communication protocols for use when ships and aircraft meet at sea, including a standardized set of language-independent communication protocols to allow for communication between navies absent a common language.

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(...continued)

*Reuters.com*, April 22, 2014.

For additional background information on CUES, see 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, pp. 8-9. The text of the previous 2003 CUES Review Supplement was accessed October 1, 2012, at <http://navy.mil.my/wpns2012/images/stories/dokumen/WPNS%202012%20PRESENTATION%20FOLDER/ACTION%20ITEMS%20WPNS%20WORKSHOP%202012/CUES.PDF>.

<sup>48</sup> Jeff M. Smith and Joshua Eisenman, “China and America Clash on the High Seas: The EEZ Challenge,” *The National Interest*, May 22, 2014.

<sup>49</sup> Jeremy Page, “China Won't Necessarily Observe New Conduct Code for Navies,” *Wall Street Journal*, April 23, 2014.

<sup>50</sup> Patrick Cronin, “China's Problem With Rules: Managing A Reluctant Stakeholder,” *War on the Rocks*, June 26, 2014. See also James Goldrick, “Cue co-operation? Pacific Naval Code Aims to Improve Collaboration at Sea,” *Jane's Defence Weekly*, May 21, 2014: 24-25.



The Department continues to seek regular opportunities for practical application of these protocols. In July 2014, a U.S. Navy vessel was able to use CUES for the first time during an unplanned encounter with the PLAN. It has since been used many times. Going forward, the Department is also exploring options to expand the use of CUES to include regional law enforcement vessels and Coast Guards. Given the growing use of maritime law enforcement vessels to enforce disputed maritime claims, expansion of CUES to MLE vessels would be an important step in reducing the risk of unintentional conflict.<sup>51</sup>

U.S. Navy officials have stated that the CUES agreement is working well, and that the United States (as noted in the passage above) is interested in expanding the agreement to cover coast guard ships.<sup>52</sup>

### November 2014 U.S.-China Memorandum of Understanding (MOU) On Air and Maritime Encounters

In November 2014, the U.S. DOD and China's Ministry of National Defense signed a Memorandum of Understanding (MOU) regarding rules of behavior for safety of air and maritime encounters.<sup>53</sup> The MOU makes reference to UNCLOS, the 1972 COLREGs convention, the Convention on International Civil Aviation (commonly known as the Chicago Convention), the Agreement on Establishing a Consultation Mechanism to Strengthen Military Maritime Safety (MMCA), and CUES.<sup>54</sup>

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<sup>51</sup> Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, p. 31.

<sup>52</sup> See, for example, Michael Fabey, "Sino-U.S. Naval Drills Pay Off, Greenert Says," *Aerospace Daily & Defense Report*, August 20, 2015; David Tweed, "U.S. Seeks to Expand China Navy Code to Coast Guard, Swift Says," *Bloomberg Business*, August 25, 2015; Christopher P. Cavas, "New CNO Richardson Invited To Visit China," *Defense News*, August 25, 2015; Nina P. Calleja, "Positive Relations With China A Must—US Admiral," *Philippine Daily Inquirer*, August 26, 2015; Shannon Tiezzi, "US Admiral: China 'Very Interested' in RIMPAC 2016," *The Diplomat*, August 27, 2015.

<sup>53</sup> Memorandum of Understanding Between The Department of Defense of the United States of America and the Ministry of National Defense of the People's Republic of China Regarding the Rules of Behavior for Safety of Air and Maritime Encounters, November 12, 2014.

<sup>54</sup> DOD states that

In 2014, then-Secretary Hagel and his Chinese counterpart signed a historic Memorandum of Understanding (MOU) on Rules of Behavior for Safety of Air and Maritime Encounters. The MOU established a common understanding of operational procedures for when air and maritime vessels meet at sea, drawing from and reinforcing existing international law and standards and managing risk by reducing the possibility of misunderstanding and misperception between the militaries of the United States and China. To date, this MOU includes an annex for ship-to-ship encounters. To augment this MOU, the Department of Defense has prioritized developing an annex on air-to-air encounters by the end of 2015. Upon the conclusion of this final annex, bilateral consultations under the Rules of Behavior MOU will be facilitated under the existing MMCA forum.

(Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, p. 30.)

For additional discussion of the MOU, see Peter A. Dutton, "MOUs: The Secret Sauce to Avoiding a U.S.-China Disaster?" *The National Interest*, January 30, 2015; Mira Rapp-Hooper and Bonnie Glaser, "In Confidence: Will We Know If US-China CBMs Are Working?" *Asia Maritime Transparency Initiative (Center for Strategic and International Studies)*, February 4, 2015; Mira Rapp-Hooper, "What's in a Confidence Building Measure?" *Lawfare*, February 8, 2015; Peter Dutton and Andrew Erickson, "When Eagle Meets Dragon: Managing Risk in Maritime East Asia," *Real Clear Defense*, March 25, 2015.

## **Negotiations Between China and ASEAN on SCS Code of Conduct**

In 2002, China and the 10 member states of ASEAN signed a non-binding Declaration on the Conduct (DOC) of Parties in the South China Sea in which the parties, among other things,

... reaffirm their respect for and commitment to the freedom of navigation in and overflight above the South China Sea as provided for by the universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea....

... undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea....

... undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner....

...reaffirm that the adoption of a [follow-on] code of conduct in the South China Sea would further promote peace and stability in the region and agree to work, on the basis of consensus, towards the eventual attainment of this objective....<sup>55</sup>

In July 2011, China and ASEAN adopted a preliminary set of principles for implementing the DOC. U.S. officials since 2010 have encouraged ASEAN and China to develop the follow-on binding Code of Conduct (COC) mentioned in the final quoted paragraph above. China and ASEAN have conducted negotiations on the follow-on COC, but China has not yet agreed with the ASEAN member states on a final text. An August 5, 2013, press report states that “China is in no rush to sign a proposed agreement on maritime rules with Southeast Asia governing behavior in the disputed South China Sea, and countries should not have unrealistic expectations, the Chinese foreign minister said on Monday [August 5].”<sup>56</sup>

## **China’s Approach to the Disputes**

### **Map of the Nine-Dash Line**

China depicts its claims in the SCS using the so-called map of the nine-dash line—a Chinese map of the SCS showing nine line segments that, if connected, would enclose an area covering roughly 90% (earlier estimates said about 80%) of the SCS (**Figure 3**).

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<sup>55</sup> Text as taken from <http://www.aseansec.org/13163.htm>.

<sup>56</sup> Ben Blanchard, “China Says In No Hurry to Sign South China Sea Accord,” *Reuters.com*, August 5, 2013. See also Shannon Tiezzi, “Why China Isn’t Interested in a South China Sea Code of Conduct,” *The Diplomat*, February 26, 2014.

**Figure 3. Map of the Nine-Dash Line**

Example submitted by China to the United Nations in 2009



**Source:** Communication from China to the United Nations dated May 7, 2009, English version, accessed on August 30, 2012, at [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/submission\\_vnm\\_37\\_2009.htm](http://www.un.org/Depts/los/clcs_new/submissions_files/submission_vnm_37_2009.htm).

The area inside the nine line segments far exceeds what is claimable as territorial waters under customary international law of the sea as reflected in UNCLOS, and, as shown in **Figure 4**, includes waters that are within the claimable EEZs (and in some places are quite near the coasts) of the Philippines, Malaysia, Brunei, and Vietnam.

**Figure 4. EEZs Overlapping Zone Enclosed by Map of Nine-Dash Line**



**Source:** Source: Eurasia Review, September 10, 2012.

**Notes:** (1) The red line shows the area that would be enclosed by connecting the line segments in the map of the nine-dash line. Although the label on this map states that the waters inside the red line are “China’s claimed territorial waters,” China has maintained ambiguity over whether it is claiming full sovereignty over the entire area enclosed by the nine line segments. (2) The EEZs shown on the map do not represent the totality of maritime territorial claims by countries in the region. Vietnam, to cite one example, claims all of the Spratly Islands, even though most or all of the islands are outside the EEZ that Vietnam derives from its mainland coast.

The map of the nine-dash line, also called the U-shaped line or the cow tongue,<sup>57</sup> predates the establishment of the People’s Republic of China (PRC) in 1949. The map has been maintained by the PRC government, and maps published in Taiwan also show the nine line segments.<sup>58</sup> In a

<sup>57</sup> The map is also sometimes called the map of the nine dashed lines (as opposed to nine-dash line), perhaps because some maps (such as **Figure 3**) show each line segment as being dashed.

<sup>58</sup> See Department of Defense, *Annual Report to Congress, Military and Security Developments Involving the People’s Republic of China*, 2011, pp. 15 and 39; Peter Dutton, “Three Disputes and Three Objectives, China and the South China Sea,” *Naval War College Review*, Autumn 2011: 44-45; Hong Nong, “Interpreting the U-shape Line in the South China Sea,” accessed on September 28, 2012, at <http://chinausfocus.com/peace-security/interpreting-the-u-shape-line-in-the-south-china-sea/>.



document submitted to the United Nations on May 7, 2009, that included the map as an attachment, China stated:

China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof (see attached map [of the nine-dash line]). The above position is consistently held by the Chinese Government, and is widely known by the international community.<sup>59</sup>

The map does not always have exactly nine dashes. Early versions of the map had as many as 11 dashes, and a map of China published by the Chinese government in June 2014 includes 10 dashes.<sup>60</sup>

China has maintained some ambiguity over whether it is using the map of the nine-dash line to claim full sovereignty over the entire sea area enclosed by the nine-dash line, or something less than that.<sup>61</sup> Maintaining this ambiguity can be viewed as an approach that preserves flexibility for China in pursuing its maritime claims in the SCS while making it more difficult for other parties to define specific objections or pursue legal challenges to those claims. It does appear clear, however, that China at a minimum claims sovereignty over the island groups inside the nine line segments—China’s domestic Law on the Territorial Sea and Contiguous Zone, enacted in 1992, specifies that China claims sovereignty over all the island groups inside the nine line segments.<sup>62</sup> China’s implementation on January 1, 2014, of a series of fishing regulations covering much of the SCS suggests that China claims at least some degree of administrative control over much of the SCS.<sup>63</sup>

<sup>59</sup> Communication from China to the United Nations dated May 7, 2009, English version, accessed on August 30, 2012, at [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/submission\\_vnm\\_37\\_2009.htm](http://www.un.org/Depts/los/clcs_new/submissions_files/submission_vnm_37_2009.htm).

<sup>60</sup> For an article discussing this new map in general (but not that it includes 10 dashes), see Ben Blanchard and Sui-Lee Wee, “New Chinese Map Gives Greater Play to South China Sea Claims,” *Reuters*, June 25, 2014. See also “China Adds Another Dash to the Map,” *Maritime Executive*, July 4, 2014.

<sup>61</sup> See Andrew Browne, “China’s line in the Sea,” *Wall Street Journal*, April 1, 2014; Peter Dutton, “Three Disputes and Three Objectives, China and the South China Sea,” *Naval War College Review*, Autumn 2011: 45-48; Hong Nong, “Interpreting the U-shape Line in the South China Sea,” accessed September 28, 2012, at <http://chinausfocus.com/peace-security/interpreting-the-u-shape-line-in-the-south-china-sea/>. See also Ankit Panda, “Will China’s Nine Dashes Ever Turn Into One Line?” *The Diplomat*, July 1, 2014.

<sup>62</sup> Peter Dutton, “Three Disputes and Three Objectives, China and the South China Sea,” *Naval War College Review*, Autumn 2011: 45, which states: “In 1992, further clarifying its claims of sovereignty over all the islands in the South China Sea, the People’s Republic of China enacted its Law on the Territorial Sea and Contiguous Zone, which specifies that China claims sovereignty over the features of all of the island groups that fall within the U-shaped line in the South China Sea: the Pratas Islands (Dongsha), the Paracel Islands (Xisha), Macclesfield Bank (Zhongsha), and the Spratly Islands (Nansha).” See also International Crisis Group, *Stirring Up the South China Sea ([Part] I)*, Asia Report Number 223, April 23, 2012, pp. 3-4.

<sup>63</sup> DOD states that

China has not clearly defined the scope of its maritime claims in the South China Sea. In May 2009, China communicated two Notes Verbales to the UN Secretary General stating objections to the submissions by Vietnam and Malaysia (jointly) and Vietnam (individually) to the Commission on the Limits of the Continental Shelf. The notes, among other things, included a map depicting nine line segments (dashes) encircling waters, islands and other features in the South China Sea and encompassing approximately two million square kilometers of maritime space. The 2009 Note Verbales also included China’s assertion that it has “indisputable sovereignty over the islands in the South China Sea and the adjacent waters and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof.” China’s actions and rhetoric have left unclear the precise nature of its maritime claim, including whether China claims all of the maritime area located within the line as well as all land features located therein.

(continued...)

## “Salami-Slicing” Strategy and “Cabbage” Strategy

Observers frequently characterize China’s approach for asserting and defending its territorial claims in the ECS and SCS as a “salami-slicing” strategy that employs a series of incremental actions, none of which by itself is a *casus belli*, to gradually change the status quo in China’s favor.<sup>64</sup> At least one Chinese official has used the term “cabbage strategy” to refer to a strategy of consolidating control over disputed islands by wrapping those islands, like the leaves of a cabbage, in successive layers of occupation and protection formed by fishing boats, Chinese Coast Guard ships, and then finally Chinese naval ships.<sup>65</sup> Other observers have referred to China’s approach as a strategy of creeping annexation<sup>66</sup> or creeping invasion,<sup>67</sup> or as a “talk and take” strategy, meaning a strategy in which China engages in (or draws out) negotiations while taking actions to gain control of contested areas.<sup>68</sup>

## Use of China Coast Guard Ships and Other Ships

China makes regular use of China Coast Guard (CCG) ships to assert and defend its maritime territorial claims, with Chinese Navy ships sometimes available over the horizon as backup forces.<sup>69</sup> China has, by far, the largest coast guard of any country in the region, and is currently building many new ships for its Coast Guard.<sup>70</sup> CCG ships are generally unarmed or lightly

(...continued)

(Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, p. 8.)

<sup>64</sup> See, for example, Statement before the U.S. House Armed Services [Committee,] Subcommittee on Seapower and Projection Forces and the House Foreign Affairs [Committee,] Subcommittee on the Asia Pacific [sic: Asia and the Pacific] [on] “People’s Republic of China Maritime Disputes,” A Statement by Bonnie S. Glaser, Senior Adviser, Freeman Chair in China Studies, Center for Strategic and International Studies (CSIS), January 14, 2014, pp. 3-5; Robert Haddick, “Getting Tough in the South China Sea,” *National Interest*, February 25, 2014; Robert Haddick, “America Has No Answer to China’s Salami-Slicing,” *War on the Rocks*, February 6, 2014; Bonnie S. Glaser, “Is China’s Charm Offensive Dead?” *China Brief*, July 31, 2014; Patrick M. Cronin, *The Challenge of Responding to Maritime Coercion*, Center for a New American Security, September 2014, pp. 5-6.

<sup>65</sup> See Harry Kazianis, “China’s Expanding Cabbage Strategy,” *The Diplomat*, October 29, 2013; Bonnie S. Glaser and Alison Szalwinski, “Second Thomas Shoal Likely the Next Flashpoint in the South China Sea,” *China Brief*, June 21, 2013, accessed August 9, 2013, at [http://www.jamestown.org/programs/chinabrief/single/?tx\\_ttnews%5Btt\\_news%5D=41054&tx\\_ttnews%5BbackPid%5D=25&cHash=6580ce14cee5ac00501d5439f3ee3632#.UdBFf8u9KSM](http://www.jamestown.org/programs/chinabrief/single/?tx_ttnews%5Btt_news%5D=41054&tx_ttnews%5BbackPid%5D=25&cHash=6580ce14cee5ac00501d5439f3ee3632#.UdBFf8u9KSM); Rafael M. Alunan III, “China’s Cabbage Strategy,” *Business World (Manila)*, July 8, 2013. See also Loida Nicolas Lewis, Rodel Rodis, and Walden Bello, “China’s ‘Cabbage Strategy’ in West PH Sea,” *Philippine Daily Inquirer*, July 27, 2013; Huseyin Erdogan, “China Invokes ‘Cabbage Tactics’ in South China Sea,” *Anadolu Ajansi*, March 25, 2015.

<sup>66</sup> See, for example, Alan Dupont, “China’s Maritime Power Trip,” *The Australian*, May 24, 2014.

<sup>67</sup> Jackson Diehl, “China’s ‘Creeping Invasion,’” *Washington Post*, September 14, 2014.

<sup>68</sup> See, for example, Patrick M. Cronin, et al, *Cooperation from Strength, The United States, China and the South China Sea*, Center for a New American Security, January 2012, pp. 16, 56, and 65 (note 19); David Brown, “China, Vietnam Drift in South China Sea,” *Asia Times Online*, January 21, 2012; Derek Bolton, “Pivoting Toward the South China Sea?” *Foreign Policy In Focus*, June 11, 2012; John Lee, “China’s Salami-slicing Is Dicey Diplomacy,” *Hudson Institute*, November 27, 2013; Fernando Fajardo, “Asia and the US Interest,” *Cebu Daily News*, April 16, 2014; Jacqueline Newmyer Deal, “Chinese Dominance Isn’t Certain,” *The National Interest*, April 22, 2014; David Brown, “Viets Gamble Vainly on Appeasement in South China Sea,” *Asia Sentinel*, May 7, 2014.

<sup>69</sup> See Department of Defense, *Annual Report to Congress [on] Military and Security Developments Involving the People’s Republic of China 2015*, pp. 3, 7, and 44, and Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, p. 14.

<sup>70</sup> See, for example, Office of Naval Intelligence, *The PLA Navy, New Capabilities and Missions for the 21<sup>st</sup> Century*, 2015, pp. 44-46. See also “China Builds the World’s Largest Coast Guard Cutters,” *Want China Times*, January 10, 2015.

armed, but can be effective in asserting and defending maritime territorial claims, particularly in terms of confronting or harassing foreign vessels that are similarly lightly armed or unarmed.<sup>71</sup> In addition to being available as backups for CCG ships, Chinese navy ships conduct exercises that in some cases appear intended, at least in part, at reinforcing China's maritime claims.<sup>72</sup> China also uses civilian fishing ships and mobile oil exploration platforms to assert and defend its maritime claims.<sup>73</sup>

## Preference for Treating Disputes on Bilateral Basis

China prefers to discuss maritime territorial disputes with other parties to the disputes on a bilateral rather than multilateral basis. Some observers believe China prefers bilateral talks because China is much larger than any other country in the region, giving China a potential upper hand in any bilateral meeting. China generally has resisted multilateral approaches to resolving maritime territorial disputes, stating that such approaches would internationalize the disputes, although the disputes are by definition international even when addressed on a bilateral basis. (China's participation with the ASEAN states in the 2002 DOC and in negotiations with the ASEAN states on the follow-on binding code of conduct represents a departure from this general preference.) As noted above, some observers believe China is pursuing a policy of putting off a negotiated resolution of maritime territorial disputes so as to give itself time to implement the salami-slicing strategy.<sup>74</sup> China resists and objects to U.S. involvement in the disputes.

## Comparison with U.S. Actions Toward Caribbean and Gulf of Mexico

Some observers have compared China's approach toward its near-seas region with the U.S. approach toward the Caribbean and the Gulf of Mexico in the age of the Monroe Doctrine.<sup>75</sup> It can be noted, however, that there are significant differences between China's approach to its near-seas region and the U.S. approach—both in the 19<sup>th</sup> and 20<sup>th</sup> centuries and today—to the Caribbean and the Gulf of Mexico. Unlike China in its approach to its near-seas region, the

<sup>71</sup> See, for example, Megha Rajagopalan and Greg Torode, "China's Civilian Fleet A Potent Force in Asia's Disputed Waters," *Reuters.com*, March 5, 2014.

<sup>72</sup> See, for example, Trefor Moss and Rob Taylor, "Chinese Naval Patrol Prompts Conflicting Regional Response," *Wall Street Journal*, February 20, 2014.

<sup>73</sup> See Department of Defense, *Annual Report to Congress [on] Military and Security Developments Involving the People's Republic of China 2015*, pp. 3, 7; Andrew S. Erickson and Conor Kennedy, "Directing China's 'Little Blue Men': Uncovering the Maritime Militia Command Structure," Asia maritime transparency Initiative (Center for Strategic & International Studies), September 11, 2015; "Beijing Expands Its Maritime Militia in South China Sea," *Wanted China Times*, August 3, 2015; Andrew S. Erickson and Conor M. Kennedy, "Tanmen Militia: China's 'Maritime Rights Protection' Vanguard," *The National Interest*, May 6, 2015; Andrew S. Erickson and Conor M. Kennedy, "Meet the Chinese Maritime Militia Waging a 'People's War at Sea,'" *Wall Street Journal (China Real Time)*, March 31, 2015; James R. Holmes, *A Competitive Turn: How Increased Chinese Maritime Actions Complicate U.S. Partnerships*, Washington, Center for a New American Security, December 2012, East and South China Sea Bulletin 7, p. 1, accessed March 25, 2012, at [http://www.cnas.org/files/documents/flashpoints/CNAS\\_bulletin\\_Holmes\\_ACompetitiveTurn.pdf](http://www.cnas.org/files/documents/flashpoints/CNAS_bulletin_Holmes_ACompetitiveTurn.pdf); James R. Holmes, "China's Small Stick Diplomacy," *The Diplomat*, May 21, 2012, accessed October 3, 2012, at <http://thediplomat.com/2012/05/21/chinas-small-stick-diplomacy/>; Jens Kastner, "China's Fishermen Charge Enemy Lines," *Asia Times Online*, May 16, 2012; Carlyle A. Thayer, "Paracel Island: Chinese Boats Attack Vietnamese Fishing Craft," Thayer Consultancy Background Brief, May 28, 2013, p. 1; Kurt Campbell, "Trouble at Sea Reveals The New Shape of China's Foreign Policy," *Financial Times*, July 22, 2014; John Ruwitch, "Satellites and Seafood: China Keeps Fishing Fleet Connected in Disputed Waters," *Reuters*, July 27, 2014; Wendell Minnick, "Fishing Vessels in China Serve as Proxy Enforcers," *Defense News*, August 17, 2014.

<sup>74</sup> See, for example, Donald K. Emmerson, "China Challenges Philippines in the South China Sea," *East Asia Forum*, March 18, 2014.

<sup>75</sup> See, for example, Robert D. Kaplan, "China's Budding Ocean Empire," *The National Interest*, June 5, 2014.

United States has not asserted any form of sovereignty or historical rights over the broad waters of the Caribbean or Gulf of Mexico (or other sea areas beyond the 12-mile limit of U.S. territorial waters), has not published anything akin to the nine-dash line for these waters (or other sea areas beyond the 12-mile limit), and does not contest the right of foreign naval forces to operate and engage in various activities in waters beyond the 12-mile limit.<sup>76</sup>

### Chinese Actions Since Late 2013 That Have Heightened Concerns

Following a confrontation in 2012 between Chinese and Philippine ships at Scarborough Shoal, China gained *de facto* control over access to the shoal. Subsequent Chinese actions for asserting and defending China's claims in the ECS and SCS and China's position on the issue of whether it has the right to regulate foreign military activities in its EEZ that have heightened concerns among observers, particularly since late 2013, include the following:

- frequent patrols by Chinese Coast Guard ships—some observers refer to them as harassment operations—at the Senkaku Islands;
- China's announcement on November 23, 2013, of an air defense identification zone (ADIZ) for the ECS that includes airspace over the Senkaku Islands;<sup>77</sup>
- ongoing Chinese pressure against the small Philippine military presence at Second Thomas Shoal in the Spratly Islands, where a handful of Philippine military personnel occupy a beached (and now derelict) Philippine navy amphibious ship;<sup>78</sup>
- the previously mentioned December 5, 2013, incident in which a Chinese navy ship put itself in the path of the U.S. Navy cruiser *Cowpens*, forcing the *Cowpens* to change course to avoid a collision;
- the implementation on January 1, 2014, of fishing regulations administered by China's Hainan province applicable to waters constituting more than half of the SCS, and the reported enforcement of those regulations with actions that have included the apprehension of non-Chinese fishing boats;<sup>79</sup>
- land-reclamation and facility-construction activities, begun in December 2013 and publicly reported starting in May 2014, at several locations in the SCS occupied by China (primarily the Spratly islands) that observers view as a prelude to the construction of expanded Chinese facilities and fortifications at those locations;<sup>80</sup>

<sup>76</sup> See, for example, James R. Holmes, "The Nine-Dashed Line Isn't China's Monroe Doctrine," *The Diplomat*, June 21, 2014, and James Holmes, "China's Monroe Doctrine," *The Diplomat*, June 22, 2012.

<sup>77</sup> See CRS Report R43894, *China's Air Defense Identification Zone (ADIZ)*, by Ian E. Rinehart and Bart Elias.

<sup>78</sup> For a discussion of the situation at Second Thomas Shoal, see "A Game of Shark And Minnow," *New York Times Magazine* online news graphic accessed March 10, 2014, at <http://www.nytimes.com/newsgraphics/2013/10/27/south-china-sea/>. See also Ben Blanchard, "China Says [It] Expels Philippine [Vessels] from Disputed Shoal," *Reuters.com*, March 10, 2014; Oliver Teves (Associated Press), "Philippines Protests China Stopping Troop Resupply," *Kansas City Star*, March 11, 2014; Kyodo News International, "Philippines Protests Chinese Actions in Disputed Sea," *Global Post*, March 3, 2014.

<sup>79</sup> See, for example, Natalie Thomas, Ben Blanchard, and Megha Rajagopalan, "China Apprehending Boats Weekly in Disputed South China Sea," *Reuters.com*, March 6, 2014.

<sup>80</sup> See CRS Report R44072, *Chinese Land Reclamation in the South China Sea: Implications and Policy Options*, by (continued...)



- moving a large oil rig in May 2014 into waters that are near the Paracels and inside Vietnam's claimed EEZ, and using dozens of Chinese Coast Guard and Chinese navy ships to enforce a large keep-away zone around the rig, leading to numerous confrontations and incidents between Chinese and Vietnamese civilian and military ships; and
- the previously mentioned August 19, 2014, incident in which a Chinese fighter conducted an aggressive and risky intercept of a U.S. Navy P-8 maritime patrol aircraft that was flying in international airspace about 135 miles east of Hainan Island.

## **China's Land Reclamation and Facility-Construction Activities**

China's land reclamation and facility-construction activities in the SCS have attracted particular attention and concern among observers, particularly since mid-February 2015,<sup>81</sup> due to the apparent speed and scale of the activities and their potential for quickly and significantly changing the status quo in the SCS. DOD states that

One of the most notable recent developments in the South China Sea is China's expansion of disputed features and artificial island construction in the Spratly Islands, using large-scale land reclamation. Although land reclamation – the dredging of seafloor material for use as landfill – is not a new development in the South China Sea, China's recent land reclamation campaign significantly outweighs other efforts in size, pace, and nature.

In the 1970s and 1980s, the Philippines and Malaysia conducted limited land reclamation projects on disputed features, with Vietnam and later Taiwan initiating efforts. At the time, the Philippines constructed an airfield on Thitu Island, with approximately 14 acres of land reclamation to extend the runway. Malaysia built an airfield at Swallow Reef in the 1980s, also using relatively small amounts of reclaimed land. Between 2009 and 2014, Vietnam was the most active claimant in terms of both outpost upgrades and land reclamation. It reclaimed approximately 60 acres of land at 7 of its outposts and built at least 4 new structures as part of its expansion efforts. Since August 2013, Taiwan has reclaimed approximately 8 acres of land near the airstrip on Itu Aba Island, its sole outpost.

China's recent efforts involve land reclamation on various types of features within the South China Sea. At least some of these features were not naturally formed areas of land that were above water at high tide and, thus, under international law as reflected in the Law of the Sea Convention, cannot generate any maritime zones (e.g., territorial seas or exclusive economic zones). Artificial islands built on such features could, at most,

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Ben Dolven et al. See also Edward Wong and Jonathan Ansfield, "To Bolster Its Claims, China Plants Islands in Disputed Waters," *New York Times*, June 16, 2014; Trefor Moss, "China Rejects Philippines' Call for Construction Freeze," *Wall Street Journal*, June 16, 2014; Wendell Minnick, "Beijing Continues S. China Sea Expansion," *Defense News*, June 14, 2014; Joel Guinto, "China Building Dubai-Style Fake Islands in South China Sea," *Bloomberg News*, June 11, 2014; David Dizon, "Why China Military Base in West PH Sea Is A 'Game-Changer,'" *ABS-CBN News*, June 10, 2014; Andrew Erickson and Austin Strange, "Pandora's Sandbox, China's Island-Building Strategy in the South China Sea," *Foreign Affairs*, July 13, 2014.

<sup>81</sup> Awareness of, and concern about, China's land reclamation activities in the SCS among observers appears to have increased substantially following the posting of an article showing a series of "before and after" satellite photographs of islands and reefs being changed by the work. (Mira Rapp-Hooper, "Before and After: The South China Sea Transformed," *Asia Maritime Transparency Initiative* [Center for Strategic and International Studies], February 18, 2015.)

generate 500-meter safety zones, which must be established in conformity with requirements specified in the Law of the Sea Convention. Although China's expedited land reclamation efforts in the Spratlys are occurring ahead of an anticipated ruling by the arbitral tribunal in the *Philippines v. China* arbitration under the Law of the Sea Convention, they would not be likely to bolster the maritime entitlements those features would enjoy under the Convention.

Since Chinese land reclamation efforts began in December 2013, China has reclaimed land at seven of its eight Spratly outposts and, as of June 2015, had reclaimed more than 2,900 acres of land. By comparison, Vietnam has reclaimed a total of approximately 80 acres; Malaysia, 70 acres; the Philippines, 14 acres; and Taiwan, 8 acres. China has now reclaimed 17 times more land in 20 months than the other claimants combined over the past 40 years, accounting for approximately 95 percent of all reclaimed land in the Spratly Islands.

All territorial claimants, except Brunei, maintain outposts in the South China Sea, which they use to establish presence in surrounding waters, assert their claims to sovereignty, and monitor the activities of rival claimants. All of these claimants have engaged in construction-related activities. Outpost upgrades vary widely but broadly are composed of land reclamation, building construction and extension, and defense emplacements.

At all of its reclamation sites, China either has transitioned from land reclamation operations to infrastructure development, or has staged construction support for infrastructure development. As infrastructure development is still in its early stages, it remains unclear what China ultimately will build on these expanded outposts. However, China has stated publicly that the outposts will have a military component to them, and will also be used for maritime search and rescue, disaster prevention and mitigation, marine scientific research, meteorological observation, ecological environment conservation, navigation safety, and fishery production. At the reclamation sites currently in the infrastructure phase of development, China has excavated deep channels and built new berthing areas to allow access for larger ships to the outposts. China is also completing construction of an airstrip at Fiery Cross Reef, joining the other claimants with outposts – Malaysia, Philippines, Taiwan, and Vietnam – that have an airstrip on at least one of their occupied features, and may be building additional ones.

Though other claimants have reclaimed land on disputed features in the South China Sea, China's latest efforts are substantively different from previous efforts both in scope and effect. The infrastructure China appears to be building would enable it to establish a more robust power projection presence into the South China Sea. Its latest land reclamation and construction will also allow it to berth deeper draft ships at outposts; expand its law enforcement and naval presence farther south into the South China Sea; and potentially operate aircraft – possibly as a divert airstrip for carrier-based aircraft – that could enable China to conduct sustained operations with aircraft carriers in the area. Ongoing island reclamation activity will also support MLEs' ability to sustain longer deployments in the South China Sea. Potentially higher-end military upgrades on these features would be a further destabilizing step. By undertaking these actions, China is unilaterally altering the physical status quo in the region, thereby complicating diplomatic initiatives that could lower tensions.<sup>82</sup>

For additional discussion of China's land reclamation and facility-construction activities, see CRS Report R44072, *Chinese Land Reclamation in the South China Sea: Implications and Policy Options*, by Ben Dolven et al.

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<sup>82</sup> Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, pp. 15-17.

## U.S. Position on the Disputes

### Some Key Elements

The U.S. position on territorial and EEZ disputes in the Western Pacific (including those involving China) includes the following elements, among others:

- The United States supports the principle that disputes between countries should be resolved peacefully, without coercion, intimidation, threats, or the use of force, and in a manner consistent with international law.
- The United States supports the principle of freedom of seas, meaning the rights, freedoms, and uses of the sea and airspace guaranteed to all nations in international law. The United States opposes claims that impinge on the rights, freedoms, and lawful uses of the sea that belong to all nations.
- The United States takes no position on competing claims to sovereignty over disputed land features in the ECS and SCS.
- Although the United States takes no position on competing claims to sovereignty over disputed land features in the ECS and SCS, the United States *does* have a position on how competing claims should be resolved: Territorial disputes should be resolved peacefully, without coercion, intimidation, threats, or the use of force, and in a manner consistent with international law.
- Claims of territorial waters and EEZs should be consistent with customary international law of the sea and must therefore, among other things, derive from land features. Claims in the SCS that are not derived from land features are fundamentally flawed.
- Parties should avoid taking provocative or unilateral actions that disrupt the status quo or jeopardize peace and security. The United States does not believe that large-scale land reclamation with the intent to militarize outposts on disputed land features is consistent with the region's desire for peace and stability.
- The United States, like most other countries, believes that coastal states under UNCLOS have the right to regulate economic activities in their EEZs, but do not have the right to regulate foreign military activities in their EEZs.
- U.S. military surveillance flights in international airspace above another country's EEZ are lawful under international law, and the United States plans to continue conducting these flights as it has in the past.<sup>83</sup>
- The Senkaku Islands are under the administration of Japan and unilateral attempts to change the status quo raise tensions and do nothing under international law to strengthen territorial claims.

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<sup>83</sup> At an August 26, 2014, press briefing, DOD Press Secretary Rear Admiral John Kirby, when asked about U.S. military surveillance flights close to China, replied in part: "We're going to continue to fly in international airspace the way we've been, just like we're going to continue to sail our ships in international waters the way we've been." (Source: transcript of press briefing, accessed September 26, 2014, at <http://www.defense.gov/Transcripts/Transcript.aspx?TranscriptID=5495>.) See also Bill Gertz, "Pentagon: No Plan to Reduce Spy Flights," *Washington Free Beacon*, August 26, 2014; Bill Gertz, "White House Rejects Chinese Demand to End U.S. Spy Flights," *Washington Free Beacon*, September 15, 2014.

For examples of recent statements from U.S. officials regarding the U.S. position, see **Appendix B**.

## **Operational Rights in EEZs**

Regarding a coastal state's rights within its EEZ, Scot Marciel, then-Deputy Assistant Secretary, Bureau of East Asian and Pacific Affairs, stated the following as part of his prepared statement for a July 15, 2009, hearing before the East Asian and Pacific Affairs Subcommittee of the Senate Foreign Relations Committee:

I would now like to discuss recent incidents involving China and the activities of U.S. vessels in international waters within that country's Exclusive Economic Zone (EEZ). In March 2009, the survey ship USNS Impeccable was conducting routine operations, consistent with international law, in international waters in the South China Sea. Actions taken by Chinese fishing vessels to harass the Impeccable put ships of both sides at risk, interfered with freedom of navigation, and were inconsistent with the obligation for ships at sea to show due regard for the safety of other ships. We immediately protested those actions to the Chinese government, and urged that our differences be resolved through established mechanisms for dialogue—not through ship-to-ship confrontations that put sailors and vessels at risk.

Our concern over that incident centered on China's conception of its legal authority over other countries' vessels operating in its Exclusive Economic Zone (EEZ) and the unsafe way China sought to assert what it considers its maritime rights.

China's view of its rights on this specific point is not supported by international law. We have made that point clearly in discussions with the Chinese and underscored that U.S. vessels will continue to operate lawfully in international waters as they have done in the past.<sup>84</sup>

As part of his prepared statement for the same hearing, Robert Scher, then-Deputy Assistant Secretary of Defense, Asian and Pacific Security Affairs, Office of the Secretary of Defense, stated that

we reject any nation's attempt to place limits on the exercise of high seas freedoms within an exclusive economic zones [sic] (EEZ). Customary international law, as reflected in articles 58 and 87 of the 1982 United Nations Convention on the Law of the Sea, guarantees to all nations the right to exercise within the EEZ, high seas freedoms of navigation and overflight, as well as the traditional uses of the ocean related to those freedoms. It has been the position of the United States since 1982 when the Convention was established, that the navigational rights and freedoms applicable within the EEZ are qualitatively and quantitatively the same as those rights and freedoms applicable on the high seas. We note that almost 40% of the world's oceans lie within the 200 nautical miles EEZs, and it is essential to the global economy and international peace and security that navigational rights and freedoms within the EEZ be vigorously asserted and preserved.

As previously noted, our military activity in this region is routine and in accordance with customary international law as reflected in the 1982 Law of the Sea Convention.<sup>85</sup>

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<sup>84</sup> [Statement of] Deputy Assistant Secretary Scot Marciel, Bureau of East Asian & Pacific Affairs, U.S. Department of State, before the Subcommittee on East Asian and Pacific Affairs, Committee on Foreign Relations, United States Senate, July 15, 2009, [hearing on] Maritime Issues and Sovereignty Disputes in East Asia, p. 5.

<sup>85</sup> Testimony [prepared statement] of Deputy Assistant Secretary of Defense Robert Scher, Asian and Pacific Security Affairs, Office of the Secretary of Defense, before the Subcommittee on East Asian and Pacific Affairs, Senate (continued...)

For additional information on the issue of operational rights in EEZs, see **Appendix C**.

## U.S. Freedom of Navigation (FON) Program

U.S. Navy ships carry out assertions of operational rights as part of the U.S. Freedom of Navigation (FON) program for challenging maritime claims that the United States believes to be inconsistent with international law.<sup>86</sup> The Department of Defense's (DOD's) record of "excessive maritime claims that were challenged by DoD operational assertions and activities during the period of October 1, 2013, to September 30, 2014, in order to preserve the rights, freedoms, and uses of the sea and airspace guaranteed to all nations in international law" includes a listing for

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Committee on Foreign Relations, United States Senate, July 15, 2009, [hearing on] Maritime Issues and Sovereignty Disputes in East Asia, pp. 3-4. See also Raul (Pete) Pedrozo, "Preserving Navigational Rights and Freedoms: The Right to Conduct Military Activities in China's Exclusive Economic Zone," *Chinese Journal of International Law*, 2010: 9-29.

<sup>86</sup> The State Department states that

U.S. Naval forces engage in Freedom of Navigation operations to assert the principles of International Law and free passage in regions with unlawful maritime sovereignty claims. FON operations involve naval units transiting disputed areas to avoid setting the precedent that the international community has accepted these unlawful claims. ISO coordinates DOS clearance for FON operations.

(Source: State Department website on military operational issues, accessed March 22, 2013, at <http://www.state.gov/t/pm/iso/c21539.htm>. See also the web page posted at <http://www.state.gov/e/oes/ocns/opa/maritimesecurity/index.htm>.)

A DOD list of DOD Instructions (available at <http://www.dtic.mil/whs/directives/corres/ins1.html>) includes a listing for DOD Instruction C-2005.01 of October 12, 2005, on the FON program, and states that this instruction replaced an earlier version of the document dated June 21, 1983. The document itself is controlled and not posted at the website. A website maintained by the Federation of American Scientists (FAS) listing Presidential Decision Directives (PDDs) of the Clinton Administration for the years 1993-2000 (<http://www.fas.org/irp/offdocs/pdd/index.html>) states that PDD-32 concerned the FON program. The listing suggests that PDD-32 was issued between September 21, 1994 and February 17, 1995.

DOD states that

As part of the Department's routine presence activities, the U.S. Navy, U.S. Air Force, and U.S. Coast Guard conduct Freedom of Navigation operations. These operational activities serve to protect the rights, freedoms, and lawful uses of the sea and airspace guaranteed to all nations in international law by challenging the full range of excessive maritime claims asserted by some coastal States in the region. The importance of these operations cannot be overstated. Numerous countries across the Asia-Pacific region assert excessive maritime claims that, if left unchallenged, could restrict the freedom of the seas. These excessive claims include, for example, improperly-drawn straight baselines, improper restrictions on the right of warships to conduct innocent passage through the territorial seas of other States, and the freedom to conduct military activities within the EEZs of other States. Added together, EEZs in the USPACOM region constitute 38 percent of the world's oceans. If these excessive maritime claims were left unchallenged, they could restrict the ability of the United States and other countries to conduct routine military operations or exercises in more than one-third of the world's oceans.

Over the past two years, the Department has undertaken an effort to reinvigorate our Freedom of Navigation program, in concert with the Department of State, to ensure that we regularly and consistently challenge excessive maritime claims. For example, in 2013, the Department challenged 19 excessive maritime claims around the world. In 2014, the Department challenged 35 excessive claims – an 84 percent increase. Among those 35 excessive maritime claims challenged in 2014, 19 are located in U.S. Pacific Command's geographic area of responsibility, and this robust Freedom of Navigation program will continue through 2015 and beyond.

(Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, pp. 23-24.)

multiple challenges that were conducted to challenge Chinese claims relating to “excessive straight baselines; jurisdiction over airspace above the EEZ; restriction on foreign aircraft flying through an Air Defense Identification Zone (ADIZ) without the intent to enter national airspace; [and] domestic law criminalizing survey activity by foreign entities in the EEZ.”<sup>87</sup>

## Issues for Congress

Maritime territorial and EEZ disputes in the SCS and ECS involving China raise several potential policy and oversight issues for Congress, including those discussed below.

### U.S. Strategy for Countering China’s “Salami-Slicing” Strategy

Particularly in light of the potential implications for the United States if China were to achieve domination over or control of its near-seas areas, one potential oversight issue for Congress is whether the United States has an adequate strategy for countering China’s “salami-slicing” strategy.

#### Some Reported U.S. Actions

In apparent response to China’s “salami-slicing” strategy, the United States has taken a number of actions, including the following:

- reiterating the U.S. position on maritime territorial claims in the area in various public fora;
- expressing strong concerns about China’s land reclamation and facilities-construction activities, and calling for a halt on such activities by China and other countries in the region;
- taking steps to improve the ability of the Philippines and Vietnam to maintain maritime domain awareness (MDA) and patrol their EEZs, including transferring two ex-U.S. Coast Guard Hamilton-class high-endurance cutters to the Philippine Coast Guard and announcing a commitment of \$32.5 million in new regional and bilateral assistance to advance maritime capacity building in Southeast Asia;<sup>88</sup>
- taking steps to strengthen U.S. security cooperation with Japan, the Philippines, and Vietnam, including signing an agreement with the Philippines that provides U.S. forces with increased access to Philippine bases, increasing the scale of joint military exercises involving U.S. and Philippine forces, and relaxing limits on sales of certain U.S. arms to Vietnam;<sup>89</sup>

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<sup>87</sup> U.S. Department of Defense Freedom of Navigation Report for Fiscal Year 2014, accessed April 15, 2015, at <http://policy.defense.gov/Portals/11/Documents/gsa/cwmd/20150323%202015%20DoD%20Annual%20FON%20Report.pdf>.

<sup>88</sup> Department of State Fact Sheet, “Expanded U.S. Assistance for Maritime Capacity Building,” December 16, 2013, accessed March 14, 2013, at <http://www.state.gov/r/pa/prs/ps/2013/218735.htm>, and Department of State Fact Sheet, “Southeast Asia maritime Law Enforcement Initiative,” April 10, 2015, accessed April 17, 2015, at <http://www.state.gov/r/pa/pl/240798.htm>.

<sup>89</sup> See, for example, Michael R. Gordon, “U.S. Eases Embargo on Arms to Vietnam,” *New York Times*, October 2, 2014; Associated Press, “U.S. Eases Ban on Arms Sales to Vietnam,” *Wall Street Journal*, October 3, 2014; Lesley Wroughton and Andrea Shalal, “US Eases Arms Embargo Against Vietnam for Maritime Security,” *Reuters*, October (continued...)



- expressing support for Japanese patrols in the SCS,<sup>90</sup> and
- stating that the United States would support a multinational maritime patrol of the SCS by members of ASEAN.<sup>91</sup>

## DOD “Lines of Effort”

DOD states that it

is enhancing our efforts to safeguard the freedom of the seas, deter conflict and coercion, and promote adherence to international law and standards.

The Department of Defense, in concert with our interagency partners, therefore is employing a comprehensive maritime security strategy [for the Asia-Pacific region] focused on four lines of effort: strengthening U.S. military capabilities in the maritime domain; building the maritime capacity of our allies and partners; leveraging military diplomacy to reduce risk and build transparency; and, strengthening the development of an open and effective regional security architecture.

### *DoD LINES OF EFFORT*

*First, we are strengthening our military capacity to ensure the United States can successfully deter conflict and coercion and respond decisively when needed.* The Department is investing in new cutting-edge capabilities, deploying our finest maritime capabilities forward, and distributing these capabilities more widely across the region. The effort also involves enhancing our force posture and persistent presence in the region, which will allow us to maintain a higher pace of training, transits, and operations. The United States will continue to fly, sail, and operate in accordance with international law, as U.S. forces do all around the world.

*Second, we are working together with our allies and partners from Northeast Asia to the Indian Ocean to build their maritime capacity.* We are building greater interoperability, updating our combined exercises, developing more integrated operations, and cooperatively developing partner maritime domain awareness and maritime security capabilities, which will ensure a strong collective capacity to employ our maritime capabilities most effectively.

*Third, we are leveraging military diplomacy to build greater transparency, reduce the risk of miscalculation or conflict, and promote shared maritime rules of the road.* This includes our bilateral efforts with China as well as multilateral initiatives to develop stronger regional crisis management mechanisms. Beyond our engagements with regional counterparts, we also continue to encourage countries to develop confidence-building measures with each other and to pursue diplomatic efforts to resolve disputed claims.

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2, 2014; Aaron Mehta, “US State Department Opens Door to maritime Defense Weapon Sales To Vietnam,” *Defense News*, October 2, 2014; Aaron Mehta, “New Vietnam Ruling Could Open Door To Further Exports,” *Defense News*, October 4, 2014.

<sup>90</sup> Tim Kelly and Nobuhiro Kubo, “U.S. Would Welcome Japan Air Patrols in South China Sea,” *Reuters*, January 29, 2015; Sam LaGrone, “U.S. 7<sup>th</sup> Fleet CO: Japanese Patrols of South China Sea ‘Makes Sense,’” *USNI News*, January 29, 2015.

<sup>91</sup> Sam LaGrone, “U.S. 7<sup>th</sup> Fleet Would Support ASEAN South China Sea patrols,” *USNI News*, March 20, 2015. See also “US Navy Head Calls For Regional Force to Patrol S China Sea,” *Today*, March 18 (updated March 19), 2015; Andrea Chen and Agencies, “Asean Nations React Coolly to US Navy Commander’s Call for Joint Patrols in South China Sea,” *South China Morning Post*, March 19, 2015; Sharon Chen, “U.S. Navy Urges Southeast Asian Patrols of South China Sea,” *Bloomberg News*, March 17, 2015.

*Finally, we are working to strengthen regional security institutions and encourage the development of an open and effective regional security architecture.* Many of the most prevalent maritime challenges we face require a coordinated multilateral response. As such, the Department is enhancing our engagement in ASEAN-based institutions such as the ASEAN Defense Ministers Meeting Plus (ADMM-Plus), ASEAN Regional Forum (ARF), and the Expanded ASEAN Maritime Forum (EAMF), as well as through wider forums like the Western Pacific Naval Symposium (WPNS) and Indian Ocean Naval Symposium (IONS), which provide platforms for candid and transparent discussion of maritime concerns.<sup>92</sup>

## **Joint Exercises with Other Countries**

Regarding joint exercises with other countries in the region, DOD states that

U.S. Pacific Command maintains a robust shaping presence in and around the South China Sea, with activities ranging from training and exercises with allies and partners to port calls to Freedom of Navigation Operations and other routine operations. They are central to our efforts to dissuade conflict or coercion, preserve the freedom of the seas and our access to the region, encourage peaceful resolution of maritime disputes and adherence to the rule of law, and to strengthen our relationships with partners and allies....

The Department is also pursuing a robust slate of training exercises and engagements with our allies and partners that will allow us to explore new areas of practical bilateral and multilateral maritime security cooperation, build the necessary interoperability to execute multilateral operations, and promote regional trust and transparency. We are increasing the size, frequency, and sophistication of our regional exercise program, with a particular focus on developing new exercises with Southeast Asian partners and expanding our multilateral exercise program. We have also begun incorporating a maritime focus into many of these engagements in order to tailor our training to address regional partners' evolving requirements.<sup>93</sup>

## **Efforts to Build Allied and Partner Capacity**

Regarding efforts to build allied and partner capacity, DOD states:

Given the growing array of challenges the United States and our allies face in the maritime domain, one of the Department's top priorities is to enhance the maritime security capacity of our allies and partners, both to respond to threats within their own territories as well as to provide maritime security more broadly across the region. The Department is not only focused on providing enhanced capabilities, but also on helping our partners develop the necessary infrastructure and logistical support, strengthen institutions, and enhance practical skills to develop sustainable and capable maritime forces. The Department is particularly focused on helping our partners enhance their maritime domain awareness and establish a common maritime operating picture that would facilitate more timely and effective regional responses to maritime challenges.

In Northeast Asia, the Department of Defense is working closely with Japan to augment its already extremely capable maritime forces. The United States and Japan recently announced new Guidelines for Japan-U.S. Defense Cooperation, which will enable the

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<sup>92</sup> Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, pp. 19-20. Italics as in original.

<sup>93</sup> Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, pp. 23, 24. For details on some of these joint exercises, see pp. 24-25.



U.S. Armed Forces and the Self-Defense Forces to work more closely together to support peace and security, including in the maritime domain. Our expanded bilateral cooperation will now encompass a wide range of activities from peacetime cooperation on shared maritime domain awareness up to cooperation in a contingency.

We are also working together with Japan to improve the maritime-related capabilities of the JSDF, which is especially salient given the new Guidelines for U.S.-Japan Defense Cooperation. The United States is augmenting Japan's amphibious capabilities for island defense, including through sales of AAVs and V-22 Ospreys. Through the sale of E-2D Hawkeyes and Global Hawk Unmanned Aerial Vehicles, Japan is improving its ability to monitor the maritime domain and airspace around the country, an issue of particular importance given the large increase in Chinese and Russian air and naval activity in the area, including continuing Chinese incursions in the vicinity of the Senkaku Islands.

In Southeast Asia, the Department's first priority is working together with our allies and partners to develop the most effective mix of capabilities to provide credible maritime defenses and patrol capabilities. At the Shangri-La Dialogue on May 30, 2015, Secretary Carter announced the Southeast Asia Maritime Security Initiative, a new effort to work together with our allies and partners in Southeast Asia to build greater regional capacity to address a range of maritime challenges.<sup>94</sup> As part of this initiative, DoD, in coordination with the Department of State, will consult with our allies and partners to ascertain their needs and requirements more effectively and to explore new opportunities for maritime collaboration. In particular, we are focused on several lines of effort: working with partners to expand regional maritime domain awareness capabilities, with an effort to work towards a regional common operating picture; providing the necessary infrastructure, logistics support, and operational procedures to enable more effective maritime response operations; further strengthening partner nation operational capabilities and resilience by deepening and expanding bilateral and regional maritime exercises and engagements; helping partners strengthen their maritime institutions, governance, and personnel training; and identifying modernization or new system requirements for critical maritime security capabilities. To support this initiative, the Department is working to maximize and rebalance Title 10 security cooperation resources to prioritize the Southeast Asia region more effectively.

Even before this initiative, and in conjunction with the Department of State and the U.S. Coast Guard, we have dramatically expanded our maritime security assistance in recent years. In the Philippines, the Department is providing coastal radar systems and assisting the Department of State with naval maintenance capacity building as well as providing interdiction vessels, naval fleet upgrades, communications equipment, and aircraft procurement. We are helping Vietnam bolster its maritime ISR and command and control within their maritime agencies, and we are working with Malaysia to build maritime law enforcement training capacity and interagency coordination to help improve their maritime domain awareness. The Department also is working with Indonesia to increase

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<sup>94</sup> On May 30, 2015, in a speech at an international conference on security, Secretary of Defense Ashton Carter stated: "Today, I am pleased to announce that DoD will be launching a new Southeast Asia Maritime Security Initiative. And thanks to the leadership of the Senators here today... [ellipse as in original] and others, Congress has taken steps to authorize up to \$425 million dollars for these maritime capacity-building efforts." (Secretary of Defense Speech, IISS Shangri-La Dialogue: "A Regional Security Architecture Where Everyone Rises," As Delivered by Secretary of Defense Ash Carter, Singapore, Saturday, May 30, 2015, accessed August 7, 2015, at <http://www.defense.gov/Speeches/Speech.aspx?SpeechID=1945>. See also Prashanth Parameswaran, "US Launches New Maritime Security Initiative at Shangri-La Dialogue 2015," *The Diplomat*, June 2, 2015; Aaron Mehta, "Carter Announces \$425M In Pacific Partnership Funding," *Defense News*, May 30, 2015.)

Carter's reference to the authorization of up to \$425 million appears to be a reference to the South China Sea Initiative, an effort that would be created by Section 1261 of the Senate-passed version of H.R. 1735, the FY2016 National Defense Authorization Act (see "Legislative Activity in 2015").

its patrol capacity, ISR integration, and maintenance capability. In 2015, we established new bilateral working groups with both Indonesia and Vietnam to help clarify their maritime defense requirements.

An additional priority for the Department is helping our partners develop the institutional structures and procedures necessary to manage their growing maritime forces effectively. This includes establishing unified maritime agencies, such as the Malaysian Maritime Enforcement Agency (MMEA), as well as developing standard training protocols and procedures for maritime personnel. For example, the Defense Threat Reduction Agency (DTRA) is helping to construct a Philippine National Coast Watch Center in Manila that will assist the Philippine Coast Guard (PCG) in assuming increased responsibility for enhancing information sharing and interagency coordination in maritime security operations. Brunei, Indonesia, Malaysia, and Vietnam are similarly improving their maritime capabilities.

One of the Department's top priorities is to promote greater maritime domain awareness, which is an essential capability for all coastal States. Given the size of the Asian maritime domain, no coastal State can provide effective maritime domain awareness on its own. This is why DoD is working closely with partners in the Asia-Pacific region to encourage greater information sharing and the establishment of a regional maritime domain awareness network that could provide a common operating picture and real-time dissemination of data. Singapore has been a leading partner in this effort. Together, we have established the Singapore Maritime Information-Sharing Working Group, an ideal platform to share best practices and lessons learned from recent regional maritime activities and explore options for increased information sharing across partnerships in the Asia-Pacific region. The near-term iterations of the working group will be bilateral and then expand to include other regional partners to participate in this community of interest. The United States and Singapore also are working together to support Singapore's development of the Information Fusion Center (IFC) into an interagency information-sharing hub for the region.

A key element of DoD's approach to maritime security in Southeast Asia is to work alongside capable regional partners. There is broad regional agreement on the importance of maritime security and maritime domain awareness, and we're working closely with our friends in Australia, Japan, South Korea, and elsewhere to coordinate and amplify our efforts toward promoting peace, stability, and prosperity in Asia. In part, we are partnering trilaterally to achieve these goals. In November 2014, President Obama, Prime Minister Abe, and Prime Minister Abbott hosted their first trilateral meeting and agreed to expand maritime cooperation, trilateral exercises, and defense development. The Department is working with these two allies in a coordinated fashion to maximize the efficiency and effectiveness of our maritime security capacity building efforts in Southeast Asia, beginning with the Philippines.<sup>95</sup>

**Figure 5** shows a table that DOD presented in connection with the passage quoted above.

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<sup>95</sup> Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, pp. 25-28.

**Figure 5. Table from August 2015 DOD Report**

Select DoD Maritime Capacity Building Efforts in Southeast Asia			
	Initiative	Authority	Timeframe
Indonesia	Ministry of Defense Technical Expert.	Section 1081 Ministry of Defense Advisor Program (MoDA)	Arrived March 2015
	Integrated Maritime Surveillance System (IMSS): 18 coastal surveillance stations, 11 ship-based radars, 2 regional and 2 fleet command centers (\$51M) Note: FMP provided sustainment and integration in following years.	Section 1206 of the National Defense Authorization Act (NDAA) for FY 2006, as amended (Section 1206)	Funded FY2006-2008 Delivered 2011
	Reform of defense planning, defense strategy, and budget development and execution system and processes.	Defense Institution Reform Initiative (DIRI)	2013 to present
	Upgrade TNI Bell helicopters and Navy Special Forces Equipment, including 12 RHIBs (\$27M).	Section 1206	2010 funding, RHIBs delivered 2012
Malaysia	Integrated Maritime Surveillance System: 8 coastal surveillance radar stations, 28 small boats and associated maritime interdiction training, Joint Regional Command Center (\$42M).	Section 1206	Funded FY2007, 2008, 2011 Delivered 2010-2011
Philippines	National Coast Watch Center (\$19M).	Cooperative Threat Reduction Program	2013-2017
	Coast Watch Radar System.	Section 1206	
	Reform of defense planning system.	DIRI	2005-2012
Vietnam	Provision of WMD detection equipment; improved communications; construct coast guard training center; maritime security workshops (\$21M).	Cooperative Threat Reduction Program	FY2014-2015
	Law enforcement, advisory, and boat maintenance training (\$405K).	Counter narcotics and Global Threats Authority	FY2014-2015

**Source:** Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, p. 27.

### May 2015 Press Report

In addition to the actions discussed above, a May 12, 2015, press report states that

The U.S. military is considering using aircraft and Navy ships to directly contest Chinese territorial claims to a chain of rapidly expanding artificial islands, U.S. officials said, in a move that would raise the stakes in a regional showdown over who controls disputed waters in the South China Sea.

Defense Secretary Ash Carter has asked his staff to look at options that include flying Navy surveillance aircraft over the islands and sending U.S. naval ships to within 12 nautical miles of reefs that have been built up and claimed by the Chinese in an area known as the Spratly Islands.

Such moves, if approved by the White House, would be designed to send a message to Beijing that the U.S. won't accede to Chinese territorial claims to the man-made islands in what the U.S. considers to be international waters and airspace.

The Pentagon's calculation may be that the military planning, and any possible deployments, would increase pressure on the Chinese to make concessions over the artificial islands. But Beijing also could double down, expanding construction in defiance of the U.S. and potentially taking steps to further Chinese claims in the area....

Officials said there was now growing momentum within the Pentagon and the White House for taking concrete steps in order to send Beijing a signal that the recent buildup in the Spratlys went too far and needed to stop....

U.S. military aircraft have repeatedly approached the 12-nautical-mile zone declared by China around the built up reefs. But to avoid an escalation, the planes haven't penetrated the zone. A senior military official said the flights "have kept a distance from the islands and remained near the 12-mile mark."...

The USS Fort Worth, a combat ship, has been operating in recent days in waters near the Spratlys. "We're just not going within the 12 miles—yet," a senior U.S. official said....

The military proposals haven't been formally presented to the White House, which would have to sign off on any change in the U.S. posture. The White House declined to comment on the deliberations.

Officials said the issue is a complicated one because at least some of the areas where the Chinese have been doing construction are, in eyes of the U.S. government, legitimate islands, which would be entitled to a 12-nautical-mile zone.

The proposal under consideration would be to send Navy ships and aircraft to within 12 nautical miles of only those built-up sites that the U.S. doesn't legally consider to be islands, officials say.<sup>96</sup>

## Potential Further U.S. Actions Suggested by Observers

Some observers, viewing China's ongoing activities in its near-seas region, argue that the current U.S. strategy for countering China's salami-slicing strategy as outlined above is inadequate, and have proposed taking stronger actions. **Appendix D** presents a bibliography of some recent writings by these observers. In general, actions proposed by these observers include (but are not limited to) the following:

- making even stronger U.S. statements to China about the consequences for China of continuing assertive or coercive actions in the ECS and SCS, and more generally, changing the U.S. tone of conversation with China;
- further increasing and/or accelerating actions to strengthen the capacity of allied and partner countries in the region to maintain maritime domain awareness (MDA), coast guard patrols, and a fishing fleet operations in the area;

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<sup>96</sup> Adam Entous, Gordon Lubold, and Julian E. Barnes, "U.S. Military Proposes Challenge to China Sea Claims," *Wall Street Journal*, May 12, 2015. See also Phil Stewart, David Alexander, and David Brunnstrom, "Pentagon Mulls Sending Planes, Ship Near Disputed South China Sea Islands," May 12, 2015; Agence France-Presse, "US Weighs Moves To Counter China's 'Wall of Sand,'" *Defense News*, May 13, 2015; David S. Cloud, "U.S. Looking at Strategy for Countering China's Moves in South China Sea," *Los Angeles Times*, May 15, 2015.



- further increasing U.S. Navy operations in the region, including sending U.S. Navy ships to waters inside 12-nautical-mile perimeters of Chinese-occupied sites in the SCS;
- further strengthening U.S. security cooperation with allied and partner countries in the region, and with India, to the point of creating a coalition for balancing China's assertiveness;<sup>97</sup> and
- taking additional actions to impose costs on China for its actions in its near-seas region, such as disinviting China to the 2016 RIMPAC (Rim of the Pacific) exercise, a U.S.-led multilateral naval exercise that takes place every two years, and/or inviting Taiwan to participate in the exercise.

### Whether to Send U.S. Navy Ships Inside 12-Mile Lines of Chinese-Occupied SCS Sites

Regarding the above-listed item about sending U.S. Navy ships inside 12-nautical-mile perimeters of Chinese-occupied sites in the SCS, one U.S. specialist on international law of the sea states (emphasis added):

- Regarding features in the water whose sovereignty is in dispute, "Every feature occupied by China is challenged by another claimant state, often with clearer line of title from Spanish, British or French colonial rule. The nation, not the land, is sovereign, which is why there is no territorial sea around Antarctica – it is not under the sovereignty of any state, despite being a continent. **As the United States has not recognized Chinese title to the features, it is not obligated to observe requirements of a theoretical territorial sea.** Since the territorial sea is function of state sovereignty of each rock or island, and not a function of simple geography, **if the United States does not recognize any state having title to the feature, then it is not obligated to observe a theoretical territorial sea** and may treat the feature as *terra nullius*. Not only do U.S. warships have a right to transit within 12 nm of Chinese features, they are free to do so as an exercise of high seas freedom under article 87 of the Law of the Sea Convention, rather than the more limited regime of innocent passage. Furthermore, whereas innocent passage does not permit overflight, high seas freedoms do, and U.S. naval aircraft lawfully may overfly such features.... More importantly, **even assuming that one or another state may have lawful title to a feature, other states are not obligated to confer upon that nation the right to unilaterally adopt and enforce measures that interfere with navigation, until lawful title is resolved.** Indeed, observing any nation's rules pertaining to features under dispute legitimizes that country's claim and takes sides."

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<sup>97</sup> An August 2015 press report states that "The Philippines defense chief said he asked the visiting U.S. Pacific commander on Wednesday [August 26] to help protect the transport of fresh Filipino troops and supplies to Philippine-occupied reefs in the disputed South China Sea by deploying American patrol planes to discourage Chinese moves to block the resupply missions." (Jim Gomez, "Philippines Seeks U.S. Help to Protect Troops in Disputed Sea," *Military Times*, August 26, 2015. See also Agence France-Presse, "Spokesman: US, Philippines Hold Talks On Boosting Military Capacity," *Defense News*, August 26, 2015; Manuel Mogato, "Philippines Seeks 'Real-Time' U.S. Help in Disputed South China Sea," *Reuters*, August 27, 2015.



- Regarding features in the water whose sovereignty has been resolved, “It is unclear whether features like Fiery Cross Reef are rocks or merely low-tide elevations that are submerged at high tide, and after China has so radically transformed them, it may now be impossible to determine their natural state. Under the terms of the law of the sea, states with ownership over naturally formed rocks are entitled to claim a 12 nm territorial sea. On the other hand, **low-tide elevations in the mid-ocean do not qualify for any maritime zone whatsoever. Likewise, artificial islands and installations also generate no maritime zones of sovereignty or sovereign rights in international law, although the owner of features may maintain a 500-meter vessel traffic management zone** to ensure navigational safety.”
- Regarding features in the water whose sovereignty has been resolved and which do qualify for a 12-nautical-mile territorial sea, “**Warships and commercial vessels of all nations are entitled to conduct transit in innocent passage in the territorial sea** of a rock or island of a coastal state, although aircraft do not enjoy such a right.”<sup>98</sup>

Supporters of *not* sending U.S. Navy ships inside 12-nautical-mile perimeters of Chinese-occupied sites in the SCS might argue that doing so could provoke China, and that there are other ways for the United States to assert and defend freedom of the seas under international law, including making periodic verbal assertions of navigational rights (and encouraging allied and partner states to do the same), conducting U.S. military sea and air operations elsewhere in the SCS, and working through multilateral fora. A September 18, 2015, press report states:

China said on Friday [September 18] it was "extremely concerned" about a suggestion from a top U.S. commander that U.S. ships and aircraft should challenge China's claims in the South China Sea by patrolling close to artificial islands it has built....

Chinese Foreign Ministry spokesman Hong Lei said China was "extremely concerned" about the comments and China opposed "any country challenging China's sovereignty and security in the name of protecting freedom of navigation".

"We demand that the relevant country speak and act cautiously, earnestly respect China's sovereignty and security interests, and not take any risky or provocative acts," Hong said at a daily news briefing.<sup>99</sup>

Supporters of sending U.S. Navy ships inside 12-nautical-mile perimeters of Chinese-occupied sites in the SCS might argue that *not* doing so undercuts each of the three legal points listed above, thus weakening freedom of the seas under international law; that it is inconsistent with the underlying premise of the U.S. Freedom of Navigation (FON) program that navigational rights which are not regularly exercised are at risk of atrophy; that it is inconsistent with the U.S. position of taking no position on competing claims to sovereignty over disputed land features in the SCS (because it tacitly accepts Chinese sovereignty over those features); and that it effectively rewards (rather than imposes costs on) China for its assertive actions in the SCS, potentially encouraging further such actions.

<sup>98</sup> James Kraska, “The Legal Rationale for Going Inside 12,” Asia Maritime Transparency Initiative (Center for Strategic & International Studies), September 11, 2015. See also James Kraska, “The Nine Ironies of the South China Sea Mess,” *The Diplomat*, September 17, 2016.

<sup>99</sup> Ben Blanchard and Megha Rajagopalan, “China ‘Extremely Concerned’ By Proposed U.S. Challenge to Claims,” *Reuters*, September 18, 2015. See also “Foreign Ministry Spokesperson Hong Lei’s Regular Press Conference on September 18, 2015,” accessed September 18, 2015, at: [http://www.fmprc.gov.cn/mfa\\_eng/xwfw\\_665399/s2510\\_665401/2511\\_665403/t1298026.shtml](http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2511_665403/t1298026.shtml).

The question of whether to send U.S. Navy ships inside 12-nautical-mile perimeters of Chinese-occupied sites in the SCS was a focus of discussion during a September 17, 2015, hearing before the Senate Armed Services Committee on DOD's Asia-Pacific maritime security strategy. During the hearing, the following exchange occurred:

SENATOR JOHN MCCAIN, CHAIRMAN:

You operate in that area but you haven't operated within 12 miles of these reclaimed features have you?

ASSISTANT SECRETARY OF DEFENSE DAVID SHEAR:

We have conducted freedom of navigations operations...

MCCAIN:

And have you gone within the 12 miles of the reclaimed area?

SHEAR:

We have gone -- we have gone within 12...

MCCAIN:

The answer is -- the answer is -- the answer I believe is no.

SHEAR:

We have not recently gone within 12 miles of a reclaimed area, however...

MCCAIN:

When was the last time we did?

SHEAR:

I believe the last time we conducted a freedom of navigation operation in the South China Sea was April of this year.

MCCAIN:

Within the 12-mile limit. Come on Mr. Secretary I'm -- I'm very interested in the 12-mile limit, because if you respect the 12-mile limit then that's de facto sovereignty agreed to tacitly by the -- to the Chinese. Now have we or have we not cooperated within the 12-mile limit in recent years?

SHEAR:

I believe the last time we conducted a -- a -- a freedom of navigation operation within 12 nautical miles of one of those features was 2012.

MCCAIN:

2012. 2012. Three years ago.

SHEAR:

Freedom of navigation operations are one tool in a larger tool box that we're going to need to use in -- in fixing this issue. And we're in the process of putting together that tool box. And as we move forward we're -- we're going to consider Freedom of Navigation Operation, along with a variety other option, to ensure that both the Chinese and the region understands that we can operate and we do operate anywhere we can.

MCCAIN:

We ought to -- and it seems to me we ought to do it. Because you see those -- area that has now been filled in. Since the last time we operated within the 12-mile limit, that --

that number of acres has been dramatically increased and we have watched it and really -- well, the -- the best sign of respecting freedom of the seas is not to de facto recognize a 12-mile limit, and the best way you can make sure that that is not recognized is to sail your ships in international waters, which it clearly is -- these are artificial islands -- and pass right on by.

And that then puts the lie to the admiral who said the South China Sea, as the name indicated, is a -- it belongs to China. It does not belong to China; it belongs to the international waterways that people are allowed to fill in islands, and so therefore then they're subject to a 12-mile limit.

The best way to prove that they're not is to go ahead and go in it, and we haven't done that since 2012. I don't find that acceptable, Mr. Secretary.

With all of the other tools you have in the toolbox, the most visible assertion of freedom of the seas is to peacefully sail inside the 12-mile limit of artificial islands, which (inaudible) of international law is not allowed to be sovereign territory of any nation.

SHEAR:

Well, I agree with you, Mr. Chairman, that the South China Sea doesn't belong to China.

We have in recent years conducted freedom-of-navigation operations in the vicinity of those features, and doing so again is one of the options, one of the array of options we're considering...

(CROSSTALK)

MCCAIN:

Well, it's an option that hasn't been exercised in three years.

Admiral Harris, what do you feel about it?

ADMMIRAL HARRY HARRIS JR., COMMANDER, U.S. PACIFIC COMMAND:

Sir, I agree that the South China Sea is no more China's than the Gulf of Mexico is Mexico's.

I think that we must exercise our freedom of navigation throughout the region, and part of my responsibilities as the Pacific Command commander is to give options to the president and to the secretary, and those options are being considered, and we'll execute as -- as directed by the president and the secretary.<sup>100</sup>

Later in the hearing, the following exchange occurred:

SENATOR JACK, REED, RANKING MEMBER (continuing):

And just to -- to clarify the type of operations, have we conducted fly-overs of these artificial facilities recently? When's the most recent fly-over?

SHEAR:

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<sup>100</sup> Transcript of hearing as posted on CQ.com. See also Austin Wright, "Navy Steering Clear of China's Reclaimed Islands," *Politico*, September 17, 2015; David Brunnstrom and David Alexander, "U.S. Commander Backs Challenging China Over Disputed Islands," *Reuters*, September 17, 2015; Deb Riechmann and Lolita C. Baldor, "McCain: US Should Ignore China's Claims in South China Sea," *ABC News (Associated Press)*, September 17, 2015; Sydney J. Freedberg, Jr., "US Hasn't Challenged Chinese 'Islands' Since 2012," *Breaking Defense*, September 17, 2015; Brendan McGarry, "US Navy Hasn't Sailed or Flown Near China's Manmade Islands Since 2012," *Military.com*, September 17, 2015; Bill Gertz, "Obama Blocks Navy from Sailing Near Disputed Chinese Islands," *Washington Free Beacon*, September 17, 2015; Philip Ewing, "U.S. Debates Challenging Chinese Sovereignty Claims," *Politico*, September 16, 2015.

I defer to the admiral on that question, sir.

HARRIS:

Senator Reed, we have not conducted a fly-over of any -- a direct fly-over -- overflight of any of the reclaimed lands and territories that China has reclaimed recently.

REED:

So that is another option that you have, but you have not exercised that option?

HARRIS:

You're correct, sir. We have -- we have a lot of options that are on the table.<sup>101</sup>

Later in the hearing, the following exchange occurred:

SENATOR DANIEL SULLIVAN (continuing):

In your professional opinion, Admiral Harris, what -- should we sail or fly inside the 12-mile area with regard to the islands as Secretary Carter stated we should?

HARRIS:

Senator, I believe that there's only one policymaking, Senator, and not -- not three, and that runs through the secretary of defense...

SULLIVAN:

No, but I'm asking your professional opinion as a military...

HARRIS:

And -- and I believe that we should exercise the -- allow to exercise freedom of navigation and flight -- maritime and flight in the South China Sea against those islands that are not islands.

SULLIVAN:

Inside the 12-mile limit?

HARRIS:

Depending on the feature. You know, if...

SULLIVAN:

What about that one?

HARRIS:

That one, yes. We should -- we should be able to fly.

SULLIVAN:

Have you -- have you or Secretary Carter asked the White House for permission to do that?

HARRIS:

Senator, I have given policy options, military options to the secretary, and -- and I -- I would leave it to the -- to the secretary or the ambassador to address whether...

SULLIVAN:

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<sup>101</sup> Transcript of hearing as posted on CQ.com.

What -- what has the White House said when you've asked permission to go within the 12 -- within the 12-mile zone of a feature like that?

HARRIS:

Senator, PACOM, along with the Department of Defense, are options-generating institutions, and the secretary's particularly interested in options with regard to the South China Sea in general...

SULLIVAN:

But I mean, I just asked a simple question. What did the White House say if you asked for permission to go within -- inside the 12-mile limit. What did the White House say?

HARRIS:

Conducting that kind of freedom about operation -- freedom-of-navigation operation is one of the operations we're considering.

SULLIVAN:

You're not answering my question. Did you ask the White House for permission to do this, and what did they tell you?

HARRIS:

Sir, I'm not -- I'm not able to discuss current policy deliberations, but I can assure you that that's one of the...

(CROSSTALK)

SULLIVAN:

You're not being forthright here.

HARRIS:

... that the -- the administration is considering.

SULLIVAN:

OK, I appreciate you just answering the question.

HARRIS:

It's -- again, I -- I'm just not able to go into the details of policy deliberations.

SULLIVAN:

But I think when the secretary of defense makes a definitive statement like that a very important meeting of defense ministers in Asia and then we don't follow up on it, it undermines our credibility, and that's something that we can't afford anymore. Our credibility is undermined everywhere in the world, and we -- we do it here.

It would be good if you give me an answer to that question. You're obviously dodging right now.

HARRIS:

Sir, I'd be delighted to give you the best possible answer, and -- and I think that is that I'm just not able to...<sup>102</sup>

Later in the hearing, the following exchange occurred:

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<sup>102</sup> Transcript of hearing as posted on CQ.com.



SENATOR KELLY AYOTTE (continuing):

I wanted to ask and follow up on some of the questions that you have been asked Admiral. Just so, I think I understand from the testimony that you've given. But I want to make sure that we're clear because I know that you've been asked about the Asia Pacific Maritime Security Strategy that you know, that China's artificial islands could at most generate a 500 meter safety zone.

And that of course the Department of Defense had released a statement saying that, "these features under international law don't generate any maritime zones," because you believe that they're not legitimate. What this means in practice is that the Navy actually can as you know, set sail it's ships within 500 meters of these new land masses without violating the law because they're not legitimately there under international law.

So I wanted to understand, is the Navy sailing within 500 meters of China's artificial islands at this point?

HARRIS:

No ma'am.

AYOTTE:

OK.

Has the Pacific Command at least sent Navy surface ships within 12 miles of China's artificial islands?

HARRIS:

No, we have not.

AYOTTE:

OK.

So I guess the big question many of us are trying get at, at this point and I don't know Admiral Harris whether you or Ambassador Shear are the appropriate person to answer the question. But why not?

Saying we are going to sail and fly where international law permits, and then not doing it, I'm concerned leaves China with the impression that, we're, again, going to say something but not follow through on our actions. And we are going to invite more aggression by the Chinese with the activities they've been taking that are in violation of international law in building this artificial islands.

So, I wanted to get your answer to that.

SHEAR:

Let me elaborate a little on what the admiral said.

In recent years, we have challenged every category of Chinese claim in the South China Sea, as recently as this year.

And we -- we will continue to conduct Freedom of Navigation operations in the South China Sea. But let me be clear on this point; Freedom of Navigation operations are important for demonstrating our rights under international law, but Freedom of Navigation of Operation alone won't stop Chinese activities on these features.

Preventing the Chinese from further militarizing those features is going to take a range of options, including Freedom of Navigation operations, and we're in the process of considering those operations now.

AYOTTE:

Admiral, did you want add to that?

HARRIS:

I'll just that PACOM presents options, military options to the secretary. And those options come with a full range of opportunities in the South China Sea, and we're ready to execute those options when directed.

AYOTTE:

So you're waiting for, obviously, the administration to make the call on that?

HARRIS:

Well, I mean the Freedom of Navigation operation in itself, as Ambassador Shear said, is not a military-only device. You know, it has a military component, obviously, because the military executes it.

But it has other elements to it, which are derived by the secretary and the White House.

So, we're waiting for direction. And I'm comfortable and am confident that the options that we presented are being considered equitably.

AYOTTE:

Well, as I look at the situation, though, I appreciate, obviously, Admiral, that PACOM, as the commander, you'd be waiting for direction from the White House.

But as I look at it, the Chinese have to be looking at this situation, saying, the United States has declared that under international law, this is not legitimate, and that we have the right to obviously put our vessels in these areas, and -- but the Navy has not sailed within, you know, 12 nautical miles of the Chinese artificial islands at this point.

And so, I think they get it both ways. So, they're -- we're saying one thing, but we're certainly not willing to address where we have a free right to navigate.

So, I hope that we follow up with our actions and our words on this. Otherwise, I fear that the Chinese will continue their actions. Because otherwise, they think, hey, why not?

And my time is up, but I'm going to submit for the record, Admiral Harris...<sup>103</sup>

## **Risk of United States Being Drawn into a Crisis or Conflict**

Another potential issue for Congress is whether the United States has taken adequate actions to reduce the risk that the United States might be drawn into a crisis or conflict over a territorial dispute involving China. Potential oversight questions for Congress include the following:

- Have U.S. officials taken appropriate and sufficient steps to help reduce the risk of maritime territorial disputes in the SCS and ECS escalating into conflicts?
- Do the United States and Japan have a common understanding of potential U.S. actions under Article IV of the U.S.-Japan Treaty on Mutual Cooperation and Security (see **Appendix A**) in the event of a crisis or conflict over the Senkaku Islands? What steps has the United States taken to ensure that the two countries share a common understanding?

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<sup>103</sup> Transcript of hearing as posted on CQ.com.

- Do the United States and the Philippines have a common understanding of how the 1951 U.S.-Philippines mutual defense treaty applies to maritime territories in the SCS that are claimed by both China and the Philippines, and of potential U.S. actions under Article IV of the treaty (see **Appendix A**) in the event of a crisis or conflict over the territories? What steps has the United States taken to ensure that the two countries share a common understanding?
- Aside from public statements, what has the United States communicated to China regarding potential U.S. actions under the two treaties in connection with maritime territorial disputes in the SCS and ECS?
- Has the United States correctly balanced ambiguity and explicitness in its communications to various parties regarding potential U.S. actions under the two defense treaties?
- How do the two treaties affect the behavior of Japan, the Philippines, and China in managing their territorial disputes? To what extent, for example, would they help Japan or the Philippines resist potential Chinese attempts to resolve the disputes through intimidation, or, alternatively, encourage risk-taking or brinksmanship behavior by Japan or the Philippines in their dealings with China on the disputes? To what extent do they deter or limit Chinese assertiveness or aggressiveness in their dealings with Japan the Philippines on the disputes?
- Has the DOD adequately incorporated into its planning crisis and conflict scenarios arising from maritime territorial disputes in the SCS and ECS that fall under the terms of the two treaties?

## **Whether United States Should Ratify United Nations Convention on the Law of the Sea (UNCLOS)**

Another issue for Congress—particularly the Senate—is the impact of maritime territorial and EEZ disputes involving China on the question of whether the United States should become a party to UNCLOS. As mentioned earlier, the treaty and an associated 1994 agreement relating to implementation of Part XI of the treaty (on deep seabed mining) were transmitted to the Senate on October 6, 1994.<sup>104</sup> In the absence of Senate advice and consent to adherence, the United States is not a party to the convention and the associated 1994 agreement. During the 112<sup>th</sup> Congress, the Senate Foreign Relations Committee held four hearings on the question of whether the United States should become a party to the treaty on May 23, June 14 (two hearings), and June 28, 2012.

Supporters of the United States becoming a party to UNCLOS argue or might argue one or more of the following:

- The treaty's provisions relating to navigational rights, including those in EEZs, reflect the U.S. position on the issue; becoming a party to the treaty would help lock the U.S. perspective into permanent international law.

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<sup>104</sup> Treaty Document 103-39.

- Becoming a party to the treaty would give the United States greater standing for participating in discussions relating to the treaty—a “seat at the table”—and thereby improve the U.S. ability to call on China to act in accordance with the treaty’s provisions, including those relating to navigational rights, and to defend U.S. interpretations of the treaty’s provisions, including those relating to whether coastal states have a right under UNCLOS to regulate foreign military activities in their EEZs.<sup>105</sup>
- At least some of the ASEAN member states want the United States to become a member of UNCLOS, because they view it as the principal framework for resolving maritime territorial disputes.
- Relying on customary international law to defend U.S. interests in these issues is not sufficient, because it is not universally accepted and is subject to change over time based on state practice.

Opponents of the United States becoming a party to UNCLOS argue or might argue one or more of the following:

- China’s ability to cite international law (including UNCLOS) in defending its position on whether coastal states have a right to regulate foreign military activities in their EEZs<sup>106</sup> shows that UNCLOS does not adequately protect U.S. interests relating to navigational rights in EEZs; the United States should not help lock this inadequate description of navigational rights into permanent international law by becoming a party to the treaty.
- The United States becoming a party to the treaty would do little to help resolve maritime territorial disputes in the SCS and ECS, in part because China’s maritime territorial claims, such as those depicted in the map of the nine-dash line, predate and go well beyond what is allowed under the treaty and appear rooted in arguments that are outside the treaty.
- The United States can adequately support the ASEAN countries and Japan in matters relating to maritime territorial disputes in the SCS and ECS in other ways, without becoming a party to the treaty.
- The United States can continue to defend its positions on navigational rights on the high seas by citing customary international law, by demonstrating those rights with U.S. naval deployments (including those conducted under the FON program), and by having allies and partners defend the U.S. position on the EEZ issue at meetings of UNCLOS parties.

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<sup>105</sup> See, for example, Andrew Browne, “A Hole in the U.S. Approach to Beijing,” *Wall Street Journal*, May 20, 2014.

<sup>106</sup> For a discussion of China’s legal justifications for its position on the EEZ issue, see, for example, Peter Dutton, “Three Disputes and Three Objectives,” *Naval War College Review*, Autumn 2011: 54-55. See also Isaac B. Kardon, “The Enabling Role of UNCLOS in PRC Maritime Policy,” Asia Maritime Transparency Initiative (Center for Strategic & International Studies), September 11, 2015.

## Legislative Activity in 2015

### Concurrent Resolution on the Budget for FY2016 (S.Con.Res. 11)

#### Senate

On March 27, 2015, as part of its consideration of S.Con.Res. 11, the Senate agreed by unanimous consent to S.Amdt. 705, which added a new section. The new section (**Section 399uu**) states:

SEC. 399uu. Deficit-neutral reserve fund relating to Indo-Pacific partner capacity building and strategy.

The Chairman of the Committee on the Budget of the Senate may revise the allocations of a committee or committees, aggregates, and other appropriate levels in this resolution for one or more bills, joint resolutions, amendments, amendments between the Houses, motions, or conference reports relating to supporting a comprehensive multi-year partner capacity building and security cooperation plan in the Indo-Pacific region, including for a regional maritime domain awareness architecture and for bilateral and multilateral exercises, port calls, and training activities of the United States Armed Forces and Coast Guard to further a comprehensive strategy to strengthen United States alliances and partnerships, freedom of navigation, and the unimpeded access to the maritime commons of the Asia-Pacific by the amounts provided in such legislation for those purposes, provided that such legislation would not increase the deficit over either the period of the total of fiscal years 2016 through 2020 or the period of the total of fiscal years 2016 through 2025.

### FY2016 National Defense Authorization Act (H.R. 1735/S. 1376)

#### House

**Section 1254** of H.R. 1735 as reported by the House Armed Services Committee (H.Rept. 114-102 of May 5, 2015) states:

SEC. 1254. Sense of Congress on the United States alliance with Japan.

It is the sense of Congress that—

- (1) the United States highly values its alliance with the Government of Japan as a cornerstone of peace and security in the region, based on shared values of democracy, the rule of law, free and open markets, and respect for human rights in order to promote peace, security, stability, and economic prosperity in the Asia-Pacific region;
- (2) the United States welcomes Japan's decision to contribute more proactively to regional and global peace and security;
- (3) the United States supports recent changes in Japanese defense policy, including the adoption of collective self-defense and the new bilateral Guidelines for U.S.-Japan Defense Cooperation which were approved on April 27, 2015, and will promote a more balanced and effective alliance to meet the emerging security challenges of this century;
- (4) the United States and Japan should continue to improve joint interoperability and collaborate on developing future capabilities with which to maintain regional stability in an increasingly uncertain security environment;



(5) the United States and Japan should continue efforts to strengthen regional multilateral institutions that promote economic and security cooperation based on internationally accepted rules and norms;

(6) the United States acknowledges that the Senkaku Islands are under the administration of Japan and opposes any unilateral actions that would seek to undermine such administration and remains committed under the Treaty of Mutual Cooperation and Security to respond to any armed attack in the territories under the administration of Japan; and

(7) the United States reaffirms its commitment to the Government of Japan under Article V of the Treaty of Mutual Cooperation and Security that “[e]ach Party recognizes that an armed attack against either Party in the territories under the administration of Japan would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional provisions and processes”.

H.Rept. 114-102 also states:

#### U.S.-Philippines Defense Cooperation

The committee notes that in April 2014, the Governments of the United States and the Republic of the Philippines announced a bilateral Enhanced Defense Cooperation Agreement. This 10-year agreement, building upon the 1951 Mutual Defense Treaty, would facilitate the enhanced rotational presence of U.S. forces, expand opportunities for joint military training and exercises, and support the long-term modernization of the Philippine military. It would also provide for greater U.S. presence in the region to reassure allies and partners and to monitor U.S. interests, particularly freedom of navigation in the South China Sea.

The committee welcomes the enhancement of defense cooperation with the Philippines and the expansion of bilateral military training opportunities. The committee also recognizes the willingness of the Philippines to host U.S. forces on a rotational basis as a strong signal of its commitment to the bilateral strategic partnership. It further supports efforts to modernize the Armed Forces of the Philippines and to strengthen their maritime security, maritime domain awareness, and humanitarian assistance and disaster relief capabilities, so that they can enhance their defensive capabilities and provide a greater contribution to regional security and stability. (Page 260)

## Senate

**Section 1261** of S. 1376 as reported by the Senate Armed Services Committee (S.Rept. 114-49 of May 19, 2015) states:

SEC. 1261. South China Sea Initiative.

(a) Assistance authorized.—

(1) IN GENERAL.—The Secretary of Defense, with the concurrence of the Secretary of State, is authorized, for the purpose of increasing maritime security and maritime domain awareness of foreign countries along the South China Sea—

(A) to provide assistance to national military or other security forces of such countries that have among their functional responsibilities maritime security missions; and

(B) to provide training to ministry, agency, and headquarters level organizations for such forces.

(2) DESIGNATION OF ASSISTANCE AND TRAINING.—The provision of assistance and training under this section may be referred to as the “South China Sea Initiative”.

(b) Recipient countries.—The foreign countries that may be provided assistance and training under subsection (a) are the following:

- (1) Indonesia.
- (2) Malaysia,
- (3) The Philippines.
- (4) Thailand.
- (5) Vietnam.

(c) Types of assistance and training.—

(1) AUTHORIZED ELEMENTS OF ASSISTANCE.—Assistance provided under subsection (a)(1)(A) may include the provision of equipment, supplies, training, and small-scale military construction.

(2) REQUIRED ELEMENTS OF ASSISTANCE AND TRAINING.—Assistance and training provided under subsection (a) shall include elements that promote the following:

- (A) Observance of and respect for human rights and fundamental freedoms.
- (B) Respect for legitimate civilian authority within the country to which the assistance is provided.

(d) Priorities for assistance and training.—In developing programs for assistance or training to be provided under subsection (a), the Secretary of Defense shall accord a priority to assistance, training, or both that will enhance the maritime capabilities of the recipient foreign country, or a regional organization of which the recipient country is a member, to respond to emerging threats to maritime security.

(e) Incremental expenses of personnel of certain other countries for training.—

(1) AUTHORITY FOR PAYMENT.—If the Secretary of Defense determines that the payment of incremental expenses in connection with training described in subsection (a)(1)(B) will facilitate the participation in such training of organization personnel of foreign countries specified in paragraph (2), the Secretary may use amounts available under subsection (f) for assistance and training under subsection (a) for the payment of such incremental expenses.

(2) COVERED COUNTRIES.—The foreign countries specified in this paragraph are the following:

- (A) Brunei.
- (B) Singapore.
- (C) Taiwan.

(f) Funding.—Funds may be used to provide assistance and training under subsection (a) as follows:

- (1) In fiscal year 2016, \$50,000,000 from amounts authorized to be appropriated for the Department of Defense for that fiscal year for operation and maintenance, Defense-wide.
- (2) In fiscal year 2017, \$75,000,000 from amounts authorized to be appropriated for the Department of Defense for that fiscal year for operation and maintenance, Defense-wide.
- (3) In each of fiscal years 2018 through 2020, \$100,000,000 from amounts authorized to be appropriated for the Department of Defense for such fiscal year for operation and maintenance, Defense-wide.

(g) Notice to Congress on assistance and training.—Not later than 15 days before exercising the authority under subsection (a) or (e) with respect to a recipient foreign

country, the Secretary of Defense shall submit to the congressional defense committees a notification containing the following:

- (1) The recipient foreign country.
  - (2) A detailed justification of the program for the provision of the assistance or training concerned, and its relationship to United States security interests.
  - (3) The budget for the program, including a timetable of planned expenditures of funds to implement the program, an implementation timeline for the program with milestones (including anticipated delivery schedules for any assistance under the program), the military department or component responsible for management of the program, and the anticipated completion date for the program.
  - (4) A description of the arrangements, if any, to support host nation sustainment of any capability developed pursuant to the program, and the source of funds to support sustainment efforts and performance outcomes to be achieved under the program beyond its completion date, if applicable.
  - (5) A description of the program objectives and an assessment framework to be used to develop capability and performance metrics associated with operational outcomes for the recipient force.
  - (6) Such other matters as the Secretary considers appropriate.
- (h) Expiration.—The authority provided under this section may not be exercised after September 30, 2020.

Regarding Section 1261, S.Rept. 114-49 states:

**South China Sea Initiative (Sec. 1261)**

The committee recommends a provision that would authorize the Secretary of Defense, with the concurrence of the Secretary of State, to provide equipment, supplies, and training to national military or other security forces of foreign countries to respond to threats to maritime security. The provision would authorize \$50.0 million with increase in future years, in Operation and Maintenance, Defense-wide (OMDW) for the Global Train and Equip Program to provide assistance to the recipient countries, which include Indonesia, Malaysia, the Philippines, Thailand, and Vietnam. The provision would require that the Secretary of Defense provide prior notification to the congressional defense committees not later than 15 days before exercising this authority. (Page 234)

On June 17, 2015, the Senate, in considering the House-passed version of H.R. 1735, agreed to S.Amdt. 1463, an amendment in the nature of a substitute. On June 18, 2015, the Senate agreed by unanimous consent to a group of amendments to S.Amdt. 1463. On June 18, 2015, the Senate passed, 71-25, H.R. 1735 as amended.

## Appendix A. U.S. Security Treaties with Japan and Philippines

This appendix presents brief background information on the U.S. security treaties with Japan and the Philippines.

### U.S.-Japan Treaty on Mutual Cooperation and Security

The 1960 U.S.-Japan treaty on mutual cooperation and security<sup>107</sup> states in Article V that

Each Party recognizes that an armed attack against either Party in the territories under the administration of Japan would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional provisions and processes.

The United States has reaffirmed on a number of occasions over the years that since the Senkaku Islands are under the administration of Japan, they are included in the territories referred to in Article V of the treaty, and that the United States “will honor all of our treaty commitments to our treaty partners.”<sup>108</sup> (At the same time, the United States, noting the difference between administration and sovereignty, has noted that such affirmations do not prejudice the U.S. approach of taking no position regarding the outcome of the dispute between China, Taiwan, and Japan regarding who has sovereignty over the islands.) Some observers, while acknowledging the U.S. affirmations, have raised questions regarding the potential scope of actions that the United States might take under Article V.<sup>109</sup>

In April 2015, it was reported that

Japan and the United States will likely include an explicit reference to defence of far-flung Japanese islands in an update of security cooperation guidelines amid concerns about China’s increasing military assertiveness, a Japanese newspaper reported.

The daily Yomiuri Shimbun said on Tuesday [April 14] that Japan had requested the revision include a clear commitment by U.S. forces in the event of an attack on Japanese

<sup>107</sup> Treaty of mutual cooperation and security, signed January 19, 1960, entered into force June 23, 1960, 11 UST 1632; TIAS 4509; 373 UNTS.

<sup>108</sup> The quoted words are from Secretary of Defense Chuck Hagel, in “Media Availability with Secretary Hagel En Route to Japan,” April 5, 2014, accessed April 9, 2014, at <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=5405>. See also Associated Press, “US: Will Stand by Allies in Disputes with China,” *Military.com*, April 3, 2014.

<sup>109</sup> See, for example, Yoichiro Sato, “The Senkaku Dispute and the US-Japan Security Treaty,” PacNet #57 (Pacific Forum CSIS, Honolulu, Hawaii), September 10, 2012, accessed October 2, 2012, at <http://csis.org/files/publication/Pac1257.pdf>; James R. Holmes, “Thucydides, Japan and America,” *The Diplomat*, November 27, 2012; Shigemi Sato, “Japan, U.S. To Discuss Revising Defense Guidelines,” *DefenseNews.com* (*Agence France-Presse*), November 11, 2012; Martin Fackler, “Japan Seeks Tighter Pact With U.S. To Confront China,” *NYTimes.com*, November 9, 2012; “Japan, U.S. To Review Defense Guidelines,” *Japan Times*, November 11, 2012; “Defense Official To Visit U.S. To Discuss Alliance,” *Kyodo News*, November 8, 2012; Yuka Hayashi, “U.S. Commander Chides China Over ‘Provocative Act,’” *Wall Street Journal*, February 16, 2013: 7; Julian E. Barnes, “U.S., Japan Update Plans To Defend Islands,” *New York Times*, March 20, 2013. See also Kiyoshi Takenaka, “China ‘Extremely Concerned’ About U.S.-Japan Island Talk,” *Reuters*, March 21, 2013; Wendell Minnick, “Senkakus Could Be Undoing of Asia Pivot,” *Defense News*, April 15, 2013: 16; Item entitled “U.S. Warns China” in Bill Gertz, “Inside the Ring: NSA Contractor Threat,” *Washington Times*, June 19, 2013; Anthony Fensom, “Yamaguchi: China Military Build-Up Risks Accident,” *The Diplomat*, June 21, 2013.

islands. Tokyo is locked in a long-running dispute with Beijing over islets in the East China Sea known as the Senkaku in Japan and the Diaoyu in China.

The allies are expected to announce agreement over the revised guidelines later this month. U.S. President Barack Obama is due to meet Japan's Prime Minister Shinzo Abe in Washington on April 28 for a summit.<sup>110</sup>

## **U.S.-Philippines Mutual Defense Treaty<sup>111</sup>**

The 1951 U.S.-Philippines mutual defense treaty<sup>112</sup> states in Article IV that

Each Party recognizes that an armed attack in the Pacific Area on either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common dangers in accordance with its constitutional processes.

Article V states that

For the purpose of Article IV, an armed attack on either of the Parties is deemed to include an armed attack on the metropolitan territory of either of the Parties, or on the island territories under its jurisdiction in the Pacific or on its armed forces, public vessels or aircraft in the Pacific.

The United States has reaffirmed on a number of occasions over the years its obligations under the U.S.-Philippines mutual defense treaty.<sup>113</sup> On May 9, 2012, Filipino Foreign Affairs Secretary Albert F. del Rosario issued a statement providing the Philippine perspective regarding the treaty's application to territorial disputes in the SCS.<sup>114</sup> U.S. officials have made their own statements regarding the treaty's application to territorial disputes in the SCS.<sup>115</sup>

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<sup>110</sup> Kiyoshi Takenaka, "U.S.-Japan Defense Guidelines To Specify Islands' Defense: Newspaper," *Reuters*, April 14, 2015.

<sup>111</sup> For additional discussion of U.S. obligations under the U.S.-Philippines mutual defense treaty, see CRS Report R43498, *The Republic of the Philippines and U.S. Interests—2014*, by Thomas Lum and Ben Dolven.

<sup>112</sup> Mutual defense treaty, signed August 30, 1951, entered into force August 27, 1952, 3 UST 3947, TIAS 2529, 177 UNTS 133.

<sup>113</sup> See, for example, the Joint Statement of the United States-Philippines Ministerial Dialogue of April 30, 2012, available at <http://www.state.gov/r/pa/prs/ps/2012/04/188977.htm>, which states in part that "the United States and the Republic of the Philippines reaffirm our shared obligations under the Mutual Defense Treaty, which remains the foundation of the U.S.-Philippines security relationship." See also Associated Press, "US: Will Stand by Allies in Disputes with China," *Military.com*, April 3, 2014.

<sup>114</sup> Statement of Secretary del Rosario regarding the Philippines-U.S. Mutual Defense Treaty, May 9, 2012, accessed September 20, 2012, at <http://www.gov.ph/2012/05/09/statement-of-secretary-del-rosario-regarding-the-philippines-u-s-mutual-defense-treaty-may-9-2012/>.

<sup>115</sup> See, for example, Agence France-Presse, "Navy Chief: US Would 'Help' Philippines In South China Sea," *DefenseNews.com*, February 13, 2014; Manuel Mogato, "U.S. Admiral Assures Philippines of Help in Disputed Sea," *Reuters.com*, February 13, 2014.



## **Appendix B. Statements from U.S. Officials Regarding U.S. Position**

This appendix presents excerpts from recent statements by U.S. officials regarding the U.S. position on maritime territorial and EEZ disputes involving China, organized by date, beginning with the most-recent item.

### **September 17, 2015, Defense Department Testimony**

At a September 17, 2015, hearing before the Senate Armed Services Committee on DOD's Asia-Pacific maritime security strategy, David Shear, the Assistant Secretary of Defense for Asian and Pacific Security Affairs, stated:

I am pleased to be here to discuss maritime issues in the Asia-Pacific and the Department of Defense's new Asia-Pacific Maritime Security Strategy, which we released last month. This strategy reflects the enduring interests the United States has in the region and the premium we place on maritime peace and security in this critical part of the world. Throughout its history, the United States has relied upon and advocated for freedom of the seas, and this freedom is essential to our economic and security interests, nowhere more so than in the Asia-Pacific.

It is important to note that while this strategy reflects the Defense Department's maritime objectives and activities in the Asia-Pacific, DoD's efforts are simply one aspect of a much broader U.S. strategy to protect America's principled interests in upholding international law, freedom of navigation, unimpeded lawful commerce, and peaceful resolution of disputes. The United States has a comprehensive strategy to uphold maritime security in the region—one that leverages diplomacy, multilateral institutions, commitment to international law, maritime capacity building, trade, and continued engagement across the region.

The Department of Defense plays an important part in supporting these goals. For seventy years, our robust maritime capabilities, and the presence of U.S. sailors, soldiers, Marines, and airmen, have helped protect the freedom of navigation and commerce upon which the United States and all Asia-Pacific nations rely. As we note in the Asia-Pacific Maritime Security Strategy report, "freedom of the seas" reflects far more than simply freedom of navigation for commercial vessels. It also implies all of the rights, freedoms, and lawful uses of the sea and airspace, including for military ships and aircraft, recognized under international law.

Unfortunately, in recent years, we have seen a number of changes take place in the maritime security environment that have the potential to undermine the freedoms and the peace and security the region has enjoyed for decades. So before I discuss the details of our strategy, allow me to offer some thoughts on the strategic context for this report.

#### **Strategic Context**

Over the past several decades, the Asia-Pacific has experienced one of the most tremendous economic transformations in modern history, thanks in no small part to the growth of free and open trade across the region's sea lanes. As Secretary Carter noted, this growth has been the result of a peaceful security environment. While regional trade and prosperity continue to grow, recent developments in the maritime domain, if left unaddressed, could challenge the stable security environment that has enabled this historic progress. These include rapid military modernization, growing competition for resources, and intensifying territorial and maritime disputes.

In recent years, Asia-Pacific nations have significantly increased their surface, subsurface, and air capabilities, leading to a dramatic increase in the number of military planes and vessels operating in close proximity in the maritime domain. At the same time, this military modernization has been accompanied by a corresponding increase in regional law enforcement capabilities, which have become increasingly relevant as some countries, particularly China, are using their civilian assets to assert claims over disputed maritime areas.

While military modernization efforts are a natural and expected element of economic growth, they also increase the potential for dangerous miscalculations or conflict. This places a premium on the need for Asia-Pacific nations to adhere to shared maritime rules of the road, such as the Code for Unplanned Encounters at Sea (CUES), and to pursue increased transparency and risk reduction mechanisms to ensure safe behavior in the maritime domain.

The potential for instability is also exacerbated by the existence of long-standing territorial and maritime disputes across the region, most notably in the South China Sea. While we do not take a position on conflicting territorial claims in the South China Sea, we do emphasize that all maritime claims must be derived from land features in accordance with international law as reflected in the Law of the Sea Convention, and any disputes should be settled peacefully and in accordance with international law. We have called for all claimants to reciprocally and permanently halt land reclamation, the construction of new facilities, and the further militarization of outposts on disputed features. We have also encouraged all claimants to conclude a Code of Conduct by the time of the East Asia Summit in November, one that would create clear rules of the road in the South China Sea.

China's large-scale land reclamation on disputed features over the past two years has brought concerns about regional stability into sharper focus. While land reclamation is not a new development, and China is not the only claimant to have conducted reclamation, China's recent activities significantly exceed other efforts in size, pace, and effect. China has now reclaimed more than 2,900 acres, amounting to 17 times more land in 20 months than the other claimants combined over the past 40 years, and accounting for approximately 95 percent of all reclaimed land in the Spratly Islands. China has clearly stated that the outposts will have a military component to them, and by undertaking these actions, China is not only unilaterally altering the status quo in the region, they are also complicating the lowering of tensions and the resolution of South China Sea disputes. We continue to encourage all claimants to commit to reciprocally and permanently halt further land reclamation, construction, and militarization of outposts in the South China Sea, in order to create space for diplomatic solutions to emerge.

### **DoD's Maritime Strategy**

The Department has devised a comprehensive and systematic maritime strategy to meet these challenges. Our strategy is focused on three fundamental goals: safeguarding the freedom of the seas; deterring conflict and coercion; and promoting adherence to international law and standards.

In pursuit of these goals, the Department is: strengthening U.S. military capacity; building the maritime capabilities of allies and partners in maritime Asia; reducing the risk of potential conflicts by leveraging military diplomacy; and strengthening regional security institutions.

### ***Strengthening U.S. Military Capacity***

As part of the rebalance to the Asia-Pacific, we are strengthening our military capacity to ensure the United States can successfully deter conflict and coercion and respond decisively when needed. To achieve this objective, the Department is investing in new

cutting-edge capabilities, deploying our finest maritime capabilities forward, and distributing these capabilities more widely across the region.

We also are enhancing our regional force posture – particularly air and maritime assets – to ensure our ability to execute key missions. We are deploying some of our most advanced surface ships to the Asia-Pacific, including replacing the aircraft carrier USS George Washington in 2015 with the newer USS Ronald Reagan; sending our newest air operations-oriented amphibious assault ship, the USS America, to the region by 2020; deploying two additional Aegis-capable destroyers to Japan; and home-porting all three of our newest class of stealth destroyers, the DDG-1000, with the Pacific fleet. Through these and other efforts, the U.S. Navy will increase the size of Pacific Fleet’s overseas assigned forces by approximately 30 percent over the next five years.

This enhanced military capacity will allow the Department to maintain a higher tempo of routine and persistent maritime presence activities across the Asia-Pacific. In short, you will see more of the U.S. Navy in the region in the coming years. U.S. Pacific Command maintains a robust shaping presence in and around the South China Sea, with activities ranging from training and exercises with allies and partners to port calls to Freedom of Navigation Operations and other routine operations. These activities are central to our efforts to dissuade conflict, preserve our access to the region, encourage peaceful resolution of maritime disputes and adherence to the rule of law, and to strengthen our relationships with partners and allies.

A key component of DoD operations falls under the Freedom of Navigation (FON) program, conducted in conjunction with our interagency partners. The Department is placing new emphasis on these operations, which challenge excessive maritime claims around the world and directly support adherence to international maritime law. Between 2013 and 2014, we increased global FON operations by 84 percent, the majority of which were conducted in the Asia-Pacific. As Secretary Carter has stated, the United States will continue to fly, sail, and operate wherever international law allows, as U.S. forces do all around the world, and our FON Operations are a critical example of this.

The Department is also enhancing its forward presence by using existing assets in new ways, across the entire region, with an emphasis on operational flexibility and maximizing the value of U.S. assets despite the tyranny of distance. This is why the Department is working to develop a more distributed, resilient, and sustainable posture. As part of this effort, the United States will maintain its presence in Northeast Asia, while enhancing defense posture across the Western Pacific, Southeast Asia, and the Indian Ocean. The cornerstone of our forward presence will continue to be our presence in Japan, and in an effort to ensure that this presence is sustainable, we have worked within the alliance to develop a new laydown for the U.S. Marine Corps in the Pacific. Through the bilateral Force Posture Agreement (FPA) with Australia and the Enhanced Defense Cooperation Agreement (EDCA) with the Philippines, the Department will be able to increase our routine and persistent rotational presence in Southeast Asia for expanded training with regional partners.

Through these efforts, there should be no doubt that the United States will maintain the necessary military presence and capabilities to protect our interests and those of our allies and partners against potential threats in the maritime domain.

#### ***Building Ally and Partner Capacity***

However, our strategy involves far more than U.S. capacity and presence. The bedrock of our approach in the region is our strong network of allies and partners, and the combined capabilities these relationships can bring to bear. Through regular and close consultations with our allies and partners from Northeast Asia to the Indian Ocean, the Department of Defense is working to bolster the maritime capacity and capabilities of countries in the region.

First, we are building greater interoperability and developing more integrated operations with our allies and partners. For example, with our close ally Japan, we are working to improve the maritime-related capabilities of the Japan Self-Defense Forces. As Japan acquires advanced capabilities such as V-22 Ospreys, E-2D Hawkeyes, and Global Hawk Unmanned Aerial Vehicles, we are building a stronger and more interoperable alliance. Our expanded bilateral cooperation will now encompass a range of activities, from peacetime cooperation on shared maritime domain awareness, up to cooperation across a range of contingencies. In Southeast Asia, the Department is assisting the Philippines to more effectively establish a minimum credible defense, and we have established new bilateral working groups with Vietnam, Indonesia, and Singapore to support their maritime defense requirements. And in South Asia, we are working with the Indian Navy on aircraft carrier technology sharing and design; the U.S.-India Joint Aircraft Carrier Working Group (JACWG) had its first formal meeting in August, led by Vice ADM Cheema, the Commander in Chief of India's Western Fleet.

We also are increasing the size, frequency, and sophistication of our regional exercise program, with a particular focus on developing new exercises with Southeast Asian partners and expanding our multilateral exercise program. A large contingent of U.S., Philippine, and Australian military personnel participated in this year's exercise Balikatan in the Philippines, including observers from Japan. DoD is continuing to expand its maritime engagements elsewhere in Southeast Asia, with important partners like Indonesia, Malaysia, and Vietnam. In Indonesia, the April 2015 iteration of the Sea Surveillance Exercises included a flight portion over the South China Sea for the first time, and the U.S. Marine Corps participated in an amphibious exercise with the Malaysian Armed Forces. In Vietnam, we are rapidly growing our maritime training, and in just six years, our naval cooperation has grown from a simple port visit to multi-day engagements that allow our sailors to better understand each other's operations and procedures.

But our maritime capacity building efforts in Southeast Asia do not stop there. As Secretary Carter announced at the Shangri-La Dialogue, the Department is implementing a new Southeast Asia Maritime Security Initiative (MSI) that will increase training and exercises, personnel support, and maritime domain awareness capabilities for our partners in Southeast Asia. As part of MSI, DoD, in coordination with the Department of State, will consult with our allies and partners to define the requirements needed to accomplish the goals of MSI and explore other enduring opportunities for maritime collaboration. In the near term, we are focused on several lines of effort: working with partners to expand regional maritime domain awareness capabilities and develop a regional common operating picture; providing the necessary infrastructure, logistics support, and operational procedures to enable more effective maritime response operations; strengthening partner nation operational capabilities through expanded maritime exercises and engagements; helping partners strengthen their maritime institutions, governance, and personnel training; and identifying modernization and new system requirements for critical maritime security capabilities. I not only thank you for remaining focused on this important effort, but also urge your continued support as we move forward to implement this strategy.

### ***Reducing Risk***

In addition to our efforts to improve regional capabilities, the Department is also leveraging defense diplomacy to build greater transparency, reduce the risk of miscalculation or conflict, and promote shared maritime rules of the road. The Department is pursuing a two-pronged approach to achieve this objective, one focusing on our bilateral relationship with China, and the other focused on region-wide risk reduction measures.

In recent years, we have reinvigorated efforts to expand bilateral risk reduction mechanisms with China, including the Military Maritime Consultative Agreement (MMCA) and the establishment of an historic Memorandum of Understanding (MOU) on Rules of Behavior for Safety of Air and Maritime Encounters in 2014. This MOU established a common understanding of operational procedures for air and maritime encounters to reduce the possibility of misunderstanding between the U.S. and Chinese militaries. The MOU currently includes an annex on ship-to-ship encounters and we are working to expand it further by the end of 2015. Already, U.S.-China defense diplomacy has yielded positive results; there have been no unsafe intercepts since August 2014. In further efforts to reduce risk, U.S. Navy and PLA Navy vessels have successfully employed CUES during recent interactions, lowering the likelihood of miscalculations that could lead to dangerous escalation.

Of course, reaching agreement on bilateral risk reduction measures with China is necessary, but not sufficient. The Department is also working to help the Association of Southeast Asian Nations (ASEAN) and other regional partners establish regional risk reduction mechanisms, such as operational-level hotlines to establish more reliable and routine crisis communication mechanisms. As I mentioned, MSI will help develop a regional common operating picture to reduce risk, but we also encourage the efforts of countries that seek to reduce tensions through their own initiatives – such as Indonesia and Malaysia – who recently announced their intention to exchange maritime envoys in an effort to increase mutual transparency. We also have supported the efforts between China and Japan to do the same in the East China Sea.

### ***Building Regional Architecture***

Finally, we are working to strengthen regional security institutions and encourage the development of a transparent, integrated, and diversified effective regional security architecture. ASEAN is an increasingly important DoD partner, and the Department is continuing to enhance its engagement in ASEAN-based institutions such as the ASEAN Defense Ministers Meeting Plus (ADMM-Plus). To this end, Secretary Carter will travel to Kuala Lumpur in November for the next ADMM-Plus meeting. This will follow a host of new initiatives and engagements with various ASEAN-related institutions. For example, at the May 2015 Shangri-La Dialogue in Singapore, the Secretary of Defense announced DoD's commitment to deploy a technical advisor to augment the U.S. Mission to ASEAN in support of ASEAN's maritime security efforts, and we are making progress toward that goal. We are also leveraging informal opportunities to strengthen regional cooperation, such as the first U.S.-ASEAN Defense Forum then-Secretary of Defense Chuck Hagel hosted in Hawaii in April 2014. Through these venues, we aim to promote candid conversations about ongoing challenges in the maritime domain, and encourage greater information sharing and cooperative solutions.

At its core, any discussion about the future of the Asia-Pacific naturally involves a discussion about maritime security, given the defining characteristic of the maritime domain in the region. Our strategy enables countries in the region to have confidence in our conviction to uphold our principled maritime interests. Our strategy also is designed to strengthen the rules-based order, where laws and standards, not size and strength, determine outcomes to disputes. We are not alone in seeking to advance this vision for the region, which aligns our interests with our values; indeed, it is widely shared by countries across the region that eagerly support our efforts. Even as we address immediate challenges to our interests and those of our allies and partners, we remain committed to this longer term goal.

### **Conclusion**

The Asia-Pacific and its maritime waterways remain critical to U.S. security. The Department is actively working to stay ahead of the evolving maritime security environment in the Asia-Pacific by implementing a comprehensive strategy that will

protect peace and stability in the maritime domain. Together with our interagency colleagues and regional allies and partners, the Department will help ensure that maritime Asia remains open, free, and secure in the decades ahead.<sup>116</sup>

## **September 17, 2015, U.S. Pacific Command Testimony**

At the same September 17, 2015, hearing before the Senate Armed Services Committee hearing on DOD's Asia-Pacific maritime security strategy, Admiral Harry B. Harris, Jr., Commander, U.S. Pacific Command (PACOM), stated:

The United States is a maritime nation and the importance of Asia-Pacific region to our Nation's security and prosperity cannot be overstated. Almost 30 percent of the world's maritime trade – \$5.3 trillion – transits the South China Sea annually. This includes \$1.2 trillion in ship-borne trade bound for the United States. The Asia-Pacific region is critical for our nation's economic future.

For decades, this region has remained free from major conflicts, allowing the United States and other Pacific nations, including China, to enjoy the benefits of its vast maritime spaces. However, the security environment is changing, potentially placing this stability at risk. Rapid economic and military modernization and a growing demand for resources have increased the potential for conflict. Peacetime freedom of navigation is under pressure.

If not handled properly, territorial and maritime disputes in the East and South China Seas could disrupt stability throughout the region. Claimants to disputed areas routinely use maritime law enforcement and coast guard vessels to enforce their claims while nominally keeping these issues out of the military sphere. While no country appears to desire military conflict, tactical miscalculations can lead to strategic consequences.

The United States does not take sides on issues of sovereignty with respect to these territorial disputes, but we do insist that all maritime claims be derived from naturally-formed land features in accordance with customary international law, as reflected in the Law of the Sea Convention. The United States also emphasizes the importance of peacefully resolving maritime and territorial disagreements in accordance with international law, and we oppose the use of intimidation, coercion, or aggression. The U.S. believes every nation, large or small, should have the opportunity to develop and prosper, in line with international laws and standards. If one country selectively ignores these rules for its own benefit, others will undoubtedly follow, eroding the international legal system and destabilizing regional security and the prosperity of all Pacific states. Part of PACOM's role in the Asia-Pacific Maritime Strategy will be ensuring all nations have continued access to the maritime spaces vital to the global economy.

International recognition and protection of freedom of navigation is vital to the world's economy and our way of life. To safeguard the freedom of the seas, USPACOM routinely exercises with allies and partners, executes Freedom of Navigation operations, and maintains a robust presence throughout the region. These activities help build partner capacity to contribute to the region's security, enhance relationships, improve understanding of shared challenges, and message the U.S.'s resolve.

The Asia-Pacific Maritime Security Strategy outlines our plan to safeguard freedom of the seas, deter conflict, and promote adherence to international law and standards. It reaffirms our commitment to the principles found in UNCLOS. In accordance with this strategy and in pursuit of these goals, Pacific Command's forces will fly, sail, and operate

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<sup>116</sup> ASD [Assistant Secretary of Defense] [David] Shear, Statement for the Record, SASC [Senate Armed Services Committee] Hearing on DoD Asia-Pacific Maritime Security Strategy, [September 17, 2015].



wherever international law allows, while continuing to strengthen the relationships and rule of law that enabled the peaceful rise of every nation in the region.

A fundamental factor in the feasibility of this new strategy has been the Rebalance to the Pacific. The Rebalance, initiated almost four years ago by President Obama, set the conditions for the implementation of this strategy. The Rebalance strengthened treaty alliances and partnerships, increased partner capacity and cooperation, improved interoperability, and increased security capabilities in the region. DoD's new maritime strategy capitalizes on the momentum of the Rebalance and continues with its initiatives. In executing the new maritime strategy, PACOM will continue to:

- Employ the most advanced and capable platforms as they are deployed or assigned to the Pacific.
- Use the forward presence of military forces to engage allies and partners and deter aggression.
- Reinforce internationally accepted rules and norms including the concepts of freedom of navigation and innocent passage.
- Train and exercise with allies and partners to increase interoperability and build trust.
- Implement risk reduction mechanisms such as the Code for Unplanned Encounters at Sea and the U.S.-China Confidence Building Measures to help prevent accidents and tactical miscalculations.
- Continue deepening alliances and partnerships through strategic efforts in places like Japan, Korea, Australia, Thailand and the Philippines, while building new and deeper military relationships in places like Singapore, India, Vietnam, and with other likeminded friends and partners.<sup>117</sup>

## **September 16, 2015, Secretary of Defense Remarks**

In a September 16, 2015, speech at an aerospace convention, Secretary of Defense Ashton Carter stated:

As our military adjusts its focus on counterinsurgency and re-doubles its full-spectrum capabilities, the Air Force will play a critical role. Just take the Asia-Pacific, a region that encompasses close to half of humanity, counts for more than half the world's economic power and where we are positioning the majority of the Air Force's high end assets. This is part of a present strategic re-balance, where we're working to align our security, economic and diplomatic investments in the region to match our vital and growing interest there.

Our re-balance has always been about sustaining peace and prosperity across the Asia-Pacific and helping the region continue to fulfill its promise. We will preserve America's support for a regional security architecture in the Asia-Pacific that is inclusive enough, capable enough and resilient enough to ensure that all nations -- all nations have the opportunity to continue to rise.

Here, the Air Force is playing a vital role of the stronger posture in the region, including tactical aircraft like the F-22, space and cyber forces, and ISR [intelligence, surveillance and reconnaissance] assets like MQ-9 and the Global Hawk. We will continue to strengthen and modernize our infrastructure in places like Guam and across the Pacific

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<sup>117</sup> Statement of Admiral Harry B. Harris, Jr., U.S. navy, Commander, U.S. Pacific Command, Before the Senate Armed Services Committee on Maritime Security Strategy in the Asia-Pacific Region, September 17, 2015.

and we will continue to deepen our security cooperation with long-standing allies, like Japan, South Korea, Australia and the Philippines, and new partners, like India and Vietnam.

We'll strengthen our partnerships, our presence and posture so that the Asia-Pacific is a region where everyone rises together, and so that its security architecture grows stronger, not weaker.

With China, we see our relationship is defined by elements of both cooperation and competition. Our military engagement with China seeks to build sustained and substantive dialogue to advance concrete practical cooperation in areas of mutual interest and to enhance risk-reduction measures, to diminish the potential for miscalculation.

At the same time, given our concern about China's growing military capabilities and coercive approach to disputes, we're taking prudent steps to prepare for heightened competition. Along with many of our Pacific partners and nations across the world, the United States is deeply concerned about the pace and scope of land reclamation in the South China Sea, the prospect of further militarization, as well as the potential for these activities to increase the risk of miscalculation or conflict, among claimant states.

As a Pacific nation, a trading nation and ally and partner to many -- most actually, of the nations of the region, from Japan to Australia to India, the United States will persist in its decades-long strategic approach. First, we will continue to seek a peaceful resolution of all disputes. To that end, there should be an immediate and permanent halt to land reclamation by all claimants.

We also oppose any further militarization of disputed features. We all know there's no military solution to the South China Sea disputes. Right now at this critical juncture, is the time for renewed diplomacy focused on finding a lasting solution that protects the rights and interests of all. As it is central to the regions -- regional security architecture, ASEAN must be part of that effort.

Meanwhile, the United States will continue to protect freedom of navigation and overflight, principles that have insured security and prosperity in this region for decades. There should be no mistake. The United States will fly, sail and operate wherever international law allows, as U.S. forces do all over the world.

America, alongside its allies and partners in the regional architecture, will not be deterred from exercising these rights. After all, turning an underwater rock into an airfield simply does not afford the rights of sovereignty or permit restrictions on international air or maritime transit.

Finally, with its actions in the South China Sea, China is out of step with both the international rules and norms that underscore the Asia-Pacific security architecture and the regional consensus that favors diplomacy and opposes coercion. These actions are spurring nations to respond together in new ways, including bilateral and multilateral exercises with us, joint operations with us and the new U.S. maritime security initiative.

The United States will always stand with its allies and partners. It's important for the region to understand that America is going to remain engaged, continue to stand up for international law and universal principles, and help provide security and stability in the Asia-Pacific for decades to come, as it has for many decades.<sup>118</sup>

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<sup>118</sup> Remarks by Secretary Carter at the Air Force Association's Air & Space Conference 2015, at the Gaylord National Resort and Convention Center, National Harbor, Maryland, Secretary of Defense Ash Carter, September 16, 2015, accessed September 18, 2015, at: <http://www.defense.gov/News/News-Transcripts/Transcript-View/Article/617480/remarks-by-secretary-carter-at-the-air-force-associations-air-space-conference> .

## August 2015 DOD Report to Congress

A DOD report to Congress on the U.S. maritime security strategy for the Asia-Pacific region that was released in late August 2015 states:

Although the United States takes no position on competing sovereignty claims to land features in the region, all such claims must be based upon land (which in the case of islands means naturally formed areas of land that are above water at high tide), and all maritime claims must derive from such land in accordance with international law, as reflected in the Law of the Sea Convention. The United States has a strong interest in ensuring all claimants seek to address and resolve their issues peacefully, without conflict or coercion. We also encourage and support the efforts of claimant States to pursue diplomatic and other peaceful efforts to resolve the issues of sovereignty.

In the East China Sea, we continue to acknowledge Japan's administration of the Senkaku Islands and oppose any unilateral action that seeks to undermine it. In the South China Sea, we urge all parties to pursue peaceful means of resolving their disputes, which includes diplomacy as well as third party dispute settlement, such as the Philippines' submission of its claims for arbitration in accordance with the dispute resolution procedures in the Law of the Sea Convention. We also urge all parties to take action to implement the Declaration on the Conduct of Parties in the South China Sea (DoC) and take steps towards early conclusion of a meaningful Code of Conduct (CoC), which would provide agreed upon rules of the road to reduce tension among claimant States.<sup>119</sup>

The report also states:

As President Obama noted in Tokyo last year and reiterated earlier this year during Prime Minister Abe's visit, "our treaty commitment to Japan's security is absolute, and Article 5 covers all territories under Japan's administration, including the Senkaku Islands" – a point that Secretaries Carter and Kerry also reaffirmed with their Japanese counterparts on Monday, April 27, 2015, during the "2+2" meeting in New York. We will continue to oppose any unilateral action that seeks to undermine Japan's administration.<sup>120</sup>

The report also states:

In our bilateral discussions, we continue to express to China our concerns about its behavior in the East and South China Seas, including restricting access to fishing grounds in disputed waters, engaging in provocative energy exploration in other nations' claimed exclusive economic zones, undertaking dramatic land reclamation activities on disputed features, and unilaterally announcing an ADIZ in the East China Sea. China's actions are having the effect of increasing uncertainty about its intentions, and this is shrinking space for diplomatic solutions to emerge. We therefore continue to urge China to take active steps to build trust with its neighbors, including clarifying the scope and nature of its maritime claims in accordance with the international law of the sea and committing reciprocally to halt land reclamation, construction of new facilities, and further militarization of outposts it occupies if other claimants similarly commit themselves to do so.<sup>121</sup>

## August 7, 2015, Secretary of State Remarks

On August 7, 2015, in remarks on U.S.-Vietnam relations, Secretary of State John Kerry stated:

<sup>119</sup> Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, p. 6.

<sup>120</sup> Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, p. 8.

<sup>121</sup> Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, p. 30.

Our two governments also share an interest in freedom of navigation and peaceful resolution of disputes in the South China Sea. The United States has made it clear that we do not favor one set of claims over another – but we do support a process through which disputes can be resolved peacefully and in accordance with international law. International law treats all countries equally; it does not recognize spheres of influence or the right of large nations to impose their will on smaller neighbors simply because they can; it tells us that the resolution of disputes should depend on who has the better argument, who has the law on their side – not who has the bigger army. That is a core tenet of America’s foreign policy in this region as it has been in other regions over the years. Whether big or small, all countries should refrain from provocative acts that add to tensions or might further militarize the sea.<sup>122</sup>

## **August 6, 2015, Secretary of State Remarks**

On August 6, 2015, in remarks at the East Asia Summit, Secretary Kerry stated:

Now, let me turn to an urgent regional priority the tensions caused by territorial and maritime disputes. With great respect to my friend and colleague Foreign Minister Wang, the United States and others have expressed concern to China over the pace and scope of its land reclamation efforts. And the construction of facilities for military purposes only raises tensions and the destabilizing risk of militarization by other claimant states.

Freedom of navigation and overflight are among the essential pillars of international maritime law. Despite assurances that these freedoms will be respected, we have seen warnings issued and restrictions attempted in recent months. Let me be clear: The United States will not accept restrictions on freedom of navigation and overflight, or other lawful uses of the sea. These are intrinsic rights that we all share. It doesn’t matter whether a vessel is a large warship or a tiny fishing boat. The principle is clear: The rights of all nations must be respected.

To that end, I have urged all claimants to make a joint commitment to halt further land reclamation and construction of new facilities or militarization on disputed features. Such steps would lower tensions and create diplomatic space for a meaningful Code of Conduct to emerge by the time our leaders meet here in November.<sup>123</sup>

## **August 6, 2015, Secretary of State Remarks**

On August 6, 2015, in remarks at a press availability, Secretary Kerry stated:

At the ASEAN regional forum, ministers endorsed a statement committing everyone to tackle illegal, unregulated, and unreported fishing. And I was proud to announce a new multiyear Oceans and Fisheries Partnership with the Southeast Asian Fisheries Development Center in order to develop a system for documenting and tracing illegal fishing with an initial commitment by the United States of 4.3 million for the first year as it gets going.

On the security side, I expressed our serious concerns over the developments in the South China Sea, including a massive land reclamation and the potential militarization of land features. I reiterated America’s strong support of freedom of navigation, overflight, and other lawful uses of the sea. These rights, I would remind everybody, are universal rights

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<sup>122</sup> Remarks on U.S.-Vietnam: Looking to the Future, John Kerry, Secretary of State, Daewoo Hotel, Hanoi, Vietnam, August 7, 2015, accessed August 7, 2015, at <http://www.state.gov/secretary/remarks/2015/08/245789.htm>.

<sup>123</sup> Intervention at the East Asia Summit, John Kerry, Secretary of State, Kuala Lumpur, Malaysia, August 6, 2015, accessed August 7, 2015, at <http://www.state.gov/secretary/remarks/2015/08/245758.htm>.

and they must be respected by every nation, large and small. To that end, I made clear our belief that the claimants to some of these reefs, islands, to some of these areas, should – all of them, every one of them – take concrete steps in order to try to lower the tensions by refraining from further land reclamation, militarization, and construction projects. A number of the claimants today made clear their willingness to refrain from those very actions.

So this is an important step forward, but obviously there's work left to be done since no claimant is going to be expected to stop if others are disregarding this call and continuing to proceed with their work. So a policy of restraint will create the diplomatic space that is required for a meaningful code of conduct to emerge. And we will work very hard with all of our partners in order to try to help that code of conduct come into being. It is vital that claimants refrain from provocative unilateral actions, that they pursue their claims according to international law, and that they settle their differences peacefully through rule of law.

I also reaffirm that the United States has very strong interests itself in the South China Sea and we have a strong interest in the way that disputes are addressed. The United States will continue to take steps to support peace and stability in this region, to uphold international law, and protect our interests throughout this arena as we have, in fact, for decades.

In response to a question, Secretary Kerry added:

Now, with respect to the South China Sea, first of all, let me remind everybody that the United States doesn't take a position on the competing claims. We're not choosing between claimants, and that's for the legal process or the diplomatic process to do. What we do urge is all the claimants to refrain from unilateral actions that create tension or the potential of conflict, or frankly, the potential of a mistake that could then become an international incident. And it's our sense that the Chinese have indicated that they have stopped. I hope it's true. I don't know yet. What's really needed, though, is an agreement to stop not just the reclamation but the large-scale construction and militarization. So it's not just an issue of reclamation. And our hope is we put forward a proposal that people stop all three and that they step back and work the process of the code of conduct and whatever other legal process to try to resolve these issues.

I did find, and I will say this openly, that in my meeting with Foreign Minister Wang Yi, he indicated a – I think a different readiness of China to try to resolve some of this, though I think it still was not as fulsome as many of us would like to see, but it's a beginning. And it may open up some opportunity for conversation on this in the months ahead; we'll have to wait and see. But the easiest thing of all would be for everybody to adopt a position of we're not going to do anything except routine maintenance – no new buildings, no new facilities, no militarization, no more reclamation – while the legal process is resolved in order to give certainty to everybody, which is what is required here.<sup>124</sup>

## **August 5, 2015, Secretary of State Remarks**

On August 5, 2015, in remarks at a U.S.-ASEAN Ministerial Meeting, Secretary Kerry stated:

Let me say to all of our friends assembled around the table that ASEAN is really at the very center at the Asia Pacific's multilateral architecture. And that is where the United States of America wants it to remain. ASEAN is essential to upholding the rules-based

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<sup>124</sup> Press Availability in Kuala Lumpur, Malaysia, John Kerry, Secretary of State, JW Marriott, Kuala Lumpur, Malaysia, August 6, 2015, accessed August 7, 2015, at <http://www.state.gov/secretary/remarks/2015/08/245768.htm>.

system in Asia and to ensuring that all countries, big and small, have a say in how we address shared challenges, including economic development, climate change, human trafficking, and marine conservation.

The United States remains deeply committed to ASEAN and to our shared vision of a stable, peaceful, and prosperous region that respects the rule of law and safeguards universal human rights....

And finally, the United States shares the frequently expressed desire of ASEAN members to preserve the peace and stability of the South China Sea. We want to ensure the security of critical sea lanes and fishing grounds, and we want to see that disputes in the area are managed peacefully and on the basis of international law.<sup>125</sup>

## **July 21, 2015, State Department Remarks**

On July 21, 2015, in remarks at a conference on the South China Sea, Daniel Russel, Assistant Secretary of State, Bureau of East Asian and Pacific Affairs, stated:

There are many types of investment the world, and Asia, needs in order to grow—investment in people, first and foremost; investment in business; in physical infrastructure, and just as important; investment in “cooperative capital” – the international law and order infrastructure that facilitates the interactions between countries, that advances regional economic integration, and helps states peacefully manage and settle disputes.

The U.S. makes balanced investments in all of these areas.

The last one, the international rules-based system, has been the ‘essential but underappreciated underpinning’ of global growth over the last 70 years. That’s especially true in Asia, where many countries have grown – and continue to grow – their economies through international trade, especially trade with the U.S.

Asia’s nations have achieved so much in recent decades—reducing poverty, raising living standards, and creating opportunities for their people. They’ve done it through hard work, cooperation with each other, partnership with the U.S., and by jointly developing and operating within a rules-based system....

We’re taking the security architecture that underpins this brighter future to a new level by investing in regional institutions like the East Asia Summit and the Association of Southeast Asian Nations (ASEAN), in addition to our longstanding work with global ones like the U.N.

These institutions uphold norms and tackle tough challenges; they can help bring parties together to hash out disagreements, or when bilateral diplomacy doesn’t succeed, help to have those disputes resolved peacefully in a fair, impartial manner....

As we pursue this broad, forward-looking vision for the region, we’ve worked constructively with China—a lot....

And in the last couple years, all of this work has paid off—we’ve made measurable progress in a range of cooperative efforts....

But unfortunately, the situation in the South China Sea does not fit this cooperative pattern.

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<sup>125</sup> Remarks at the U.S.-ASEAN Ministerial Meeting, John Kerry, Secretary of State, Putra World Trade Center, Kuala Lumpur, Malaysia, August 5, 2015, accessed August 7, 2015, at <http://www.state.gov/secretary/remarks/2015/08/245706.htm>.



Now, the U.S. is not a claimant. As I've said here at CSIS, these maritime and territorial disputes are not intrinsically a US-China issue. The issue is between China and its neighbors and—ultimately—it's an issue of what kind of power China will become. But for a variety of reasons, the competing claims and problematic behavior in the South China Sea have emerged as a serious area of friction in the U.S.-China relationship.

Let's take a step back and recall, as I'm sure you discussed this morning, that there is a history of competing assertions of sovereignty and jurisdiction in the South China Sea, and even violent conflicts in 1974 and 1988.

There are no angels here. The occupation of land features in this contested space over the years looked a lot like "squatters' rights." But that is something that in 2002 the claimants agreed to stop doing.

In that year, all the claimants (and the ASEAN states) signed a Declaration of Conduct. In it, and on other occasions, they have committed "to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from ... inhabiting the presently uninhabited ... features and to handle their differences in a constructive manner".

In the Declaration of Conduct, they also committed to negotiate a Code of Conduct that would lay out and lock in responsible behavior. But in the ensuing 13 years, work on the Code has stalled, and the Declaration has not been sufficient to prevent confrontations or to help claimants resolve these disputes peacefully.

Recently, the level of concern in the region has escalated as the scale and speed of China's reclamation work has become public. The Chairman's statement at the ASEAN leaders' summit in April was unusually blunt, speaking of "serious concerns" about "land reclamation being undertaken in the South China Sea, which has eroded trust and confidence and may undermine peace, security and stability...." [ellipse as in original]

While China's statement on June 16 that it would stop reclamation work "soon" was presumably intended to reassure, its effect was in fact alarming since the statement went on to warn that China would construct military facilities on these reclaimed outposts.

So we are pushing the parties to revive the spirit of cooperation embodied in the 2002 Declaration of Conduct.

We see a broad consensus within ASEAN on a path forward to reduce tensions and promote peaceful handling of these disputes. And we support ASEAN's efforts to expeditiously conclude an effective, rigorous Code of Conduct that builds on the Declaration by translating its cooperative spirit into specific "do's and don'ts."

But to make this happen, the parties need to create room for diplomacy.

In the famous words of Rich Armitage's Dictum Number 1, "when you find yourself in a hole – stop digging." That is the advice we are giving to all the claimants: lower the temperature and create breathing room by: stopping land reclamation on South China Sea features; stopping construction of new facilities; and stopping militarization of existing facilities.

These are steps the parties could commit to immediately; steps that would cost them nothing; steps that would significantly reduce risks; steps that would open the door to eventual resolution of the disputes.

Secretary Kerry has made this point to Chinese leaders and to the other claimants, and will be meeting with his counterparts early next month in Malaysia at the ASEAN Regional Forum, or ARF, to push for progress on this important priority.

Now, steps to exercise restraint through a moratorium and a Code of Conduct will create diplomatic space and help keep the peace, but they won't address the question of maritime boundaries or sovereignty over land features.

So what's the way forward?

When it comes to competing claims, two of the main peaceful paths available to claimants are negotiations and arbitration.

Countries across the region in fact have resolved maritime and territorial disputes peacefully and cooperatively, whether through direct negotiations or through third-party dispute settlement mechanisms.

Just a few examples: Indonesia and the Philippines recently agreed on their maritime boundary;

Malaysia and Singapore used international court and tribunal proceedings to resolve disputes concerning the Singapore Strait; and the International Tribunal for the Law of the Sea delimited the maritime boundary between Bangladesh and Burma.

A common thread runs through the maritime boundary disputes that have been resolved peacefully: the parties asserted maritime claims based on land features, and were prepared to resolve those disputes in accordance with international law.

This is why we've consistently called on all claimants to clarify the scope of their claims in the South China Sea, in accordance with international law as reflected in the 1982 Law of the Sea Convention. Doing so would narrow the differences and offer the basis for negotiations and cooperative solutions.

Regrettably, I don't know anyone in the region who believes that a negotiated settlement between China and other claimants is attainable in the current atmosphere.

And the multiple competing claims in some parts of the South China Sea make negotiations that much more difficult.

And then there is the absolutist political position taken by some claimants who insist that their own claims are "indisputable" and represent territory – however distant from their shores – that was "entrusted to them by ancestors" and who vow never to relinquish "one inch."

What about arbitration? As this audience knows, there currently is an arbitration case pending under the Law of the Sea Convention between the Philippines and China.

At the heart of the case is the question of the so-called "Nine Dash Line" and whether that has a legal basis under the international law of the sea. It also asks what maritime entitlements, if any, are generated by features that China occupies? In other words, regardless of whose jurisdiction it may fall under, would Mischief Reef, for example, be entitled to a 12 nautical mile territorial sea? A 200nm exclusive economic zone? A continental shelf?

Now, it's important to note that the Tribunal is not being asked – and is not authorized to rule – on the question of sovereignty over disputed land features. Everyone recognizes that the sovereignty issue is beyond the Tribunal's jurisdiction. Claimants would need to agree to bring that sort of sovereignty dispute before a court or tribunal, typically the ICJ.

But under the Law of the Sea Convention, the Tribunal is authorized to first determine whether it has jurisdiction under the Convention over any of the Philippines' claims in the case and, if it does, whether the Philippines' arguments have merit.

The United States, of course, is not a party to this arbitration and does not take a position on the merits of the case. But when they became parties to the Convention, both the Philippines and China agreed to its compulsory dispute settlement regime.

Under this regime, the decision of the arbitral tribunal is legally binding on the parties to the dispute. It's a treaty. In keeping with the rule of law, both the Philippines and China are obligated to abide by whatever decision may be rendered in the case, whether they like it or not.

Now China has argued that the tribunal lacks jurisdiction, and the tribunal has specifically considered this issue in recent hearings in The Hague, looking very carefully at a position paper published by China. But if the Tribunal concludes that it in fact has jurisdiction in this case, it will proceed to the merits, including potentially the question of the legality of China's "Nine-Dash Line."

Should it then rule that the "Nine-Dash Line" is not consistent with the Law of the Sea Convention, and particularly if the Tribunal ruled that the features cited in the case do not generate EEZ or continental shelf entitlements, the scope of the overlapping maritime claims – and hopefully the points of friction – would be significantly reduced.

But it's also important to recognize that even in this outcome, important sovereignty and boundary issues would remain unresolved.

This is as good a time as any to acknowledge (as China has often pointed out) that the United States has not acceded to the Law of the Sea Convention, although accession has been supported by every Republican and Democratic administration since the Convention was signed and sent to the Senate in 1994. It is supported by the U.S. military, by industry, environmental groups, and other stakeholders.

For the United States to secure the benefits of accession, the Senate has to provide its advice and consent, as I hope it ultimately will.

But even as we encourage the parties to work for long term solutions, we are obligated to protect U.S. interests. Let me take a moment to examine what some of those interests are:

- Protecting unimpeded freedom of navigation and overflight and other lawful uses of the sea by all, not just the U.S. Navy;
- Honoring our alliance and security commitments, and retaining the full confidence of our partners and the region in the United States;
- Aiding the development of effective regional institutions, including a unified ASEAN;
- Promoting responsible marine environmental practices;
- Fostering China's peaceful rise in a manner that promotes economic growth and regional stability, including through consistency with international law and standards.
- And more generally, an international order based on compliance with international law and the peaceful of disputes without the threat or use of force.

As a practical matter, in addition to our support for principles such as the rule of law, we are taking steps to help all countries in the region cooperate on maritime issues. For example, we're investing in the maritime domain awareness capabilities of coastal states in the region.

This allows countries to protect safety at sea and respond to threats such as piracy, marine pollution and illegal trafficking. Maritime awareness also advances transparency, in line with our call to all claimants to be more open and transparent about their capabilities, actions, and intentions at sea.

The U.S. military's freedom of navigation operations are another element of a global policy to promote compliance with the international law of the sea.

Our goal is to ensure that not only can the U.S. Navy or Air Force exercise their navigational rights and freedoms, but ships and planes from even the smallest countries

are also able to enjoy those rights without risk. The principles underlying unimpeded lawful commerce apply to vessels from countries around the globe.

And under international law, all countries—not just the United States—enjoy the rights, freedoms, and lawful uses of the sea that our diplomacy and the U.S. military’s freedom of navigation operations help protect.

For us, it’s not about the rocks and shoals in the South China Sea or the resources in and under it, it’s about rules and it’s about the kind of neighborhood we all want to live in. So we will continue to defend the rules, and encourage others to do so as well. We will also encourage all countries to apply principles of good neighborliness to avoid dangerous confrontations.

Let me close by mentioning that we have a host of cooperative initiatives we’re working on for the upcoming ASEAN Regional Forum meeting, the Asia-Pacific Economic Cooperation forum, and the East Asia Summit—all of which will advance much more quickly and effectively when tensions in the South China Sea are lower.

President Obama and Secretary Kerry have shown that they are not afraid to tackle the biggest challenges facing US foreign policy and the world. And we’re energized, here in the fourth quarter of this administration to do much more in partnership with our Allies, with ASEAN and with China.

For us, for the region, and for China—finding a peaceful, lawful and responsible way forward on the South China Sea is a prerequisite to achieving our longer term goals.<sup>126</sup>

## **May 30, 2015, Secretary of Defense Remarks**

On May 30, in a speech at an international conference on security, Secretary of Defense Ashton Carter stated:

[T]he United States wants a shared regional architecture that is strong enough, capable enough, and connected enough to ensure that all Asia-Pacific peoples and nations have the opportunity to rise—and continue to rise—in the future.... And the United States wants to protect the rights of all countries, whether large or small, to win...[ellipse as in original] to rise, to prosper and to determine their own destiny.

To realize that future, the Asia-Pacific’s security architecture must be inclusive, it must be open, and it must be transparent. It must respect rights, and not just might. It cannot shy away from the hard issues...[ellipse as in original] it must provide a forum to openly discuss the challenges we face, so that we can tackle them collectively. It must be action-oriented to help us manage today’s challenges and prevent tomorrow’s crises. And it must reward cooperation, not coercion....

Today and in the years ahead, security must be the shared responsibility of all us, of all our nations. With the strengthening of the East Asia Summit, we have the foundation for a stronger architecture. It’s incumbent upon all of us to make it better...[ellipse as in original] by reaffirming our long-standing rules and norms, strengthening our institutions, modernizing alliances, enhancing capabilities, and improving connectivity. As President Obama said in Brisbane last year, an effective security order for Asia must be based—not on spheres of influence, or coercion, or intimidation where big nations bully the small—but on alliances of mutual security, international law and international norms, and the peaceful resolution of disputes.

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<sup>126</sup> Remarks at the Fifth Annual South China Sea Conference, Daniel R. Russel, Assistant Secretary, Bureau of East Asian and Pacific Affairs, The Center for Strategic and International Studies, Washington, DC, July 21, 2015, accessed August 7, 2015, at <http://www.state.gov/p/eap/rls/rm/2015/07/245142.htm>.

First, we must all reaffirm the guiding principles and the rules that have served this region so well. Disputes should be resolved peacefully...[ellipse as in original] through diplomacy, not aggression or intimidation. All countries should have the right to freedom of navigation and overflight so global commerce can continue unimpeded. And all nations should be able to make their own security and economic choices free from coercion.

These are the rights of all nations. They are not abstractions, and nor are they subject to the whims of any one country. They are not privileges to be granted or withdrawn by any country. These rules make sense: they've worked, and they can continue to help all our nations to rise—as long as we reinforce them instead of putting them at risk...

... in addition to strengthening relationships, we must enhance the capacities of the regional security architecture, particularly on maritime security.

American men and women in uniform are working together with countries in the region to build that capacity—especially on maritime security.

For example, the U.S.S. Fort Worth, one of the Navy's nimble littoral combat ships [LCSs], just returned from a regional tour, where it was welcomed everywhere from South Korea to Southeast Asia. And Singapore's willingness to host LCS ships like Fort Worth helps all of us respond more quickly and effectively to regional crises. For example, when Air Asia Flight 8501 disappeared this past winter, the Fort Worth was able to be on the scene within 24 hours to help with search and recovery.

We're doing even more together. In Vietnam, where I will travel next, the United States is providing equipment and infrastructure support to the Vietnamese coast guard. Just this month in Malaysia, the U.S.S. Carl Vinson carrier strike group participated in air combat training with Malaysian air and surface units. In the Philippines, the United States is helping to build a National Coast Watch System to improve Manila's maritime domain awareness. And in Indonesia, America recently began conducting sea surveillance exercises together, which included, for the first time flight portions over the South China Sea.

And that's just a start. Today, I am pleased to announce that DoD will be launching a new Southeast Asia Maritime Security Initiative. And thanks to the leadership of the Senators here today... [ellipse as in original] and others, Congress has taken steps to authorize up to \$425 million dollars for these maritime capacity-building efforts.

And fifth, to ensure that our institutions, alliances, partnerships, and capability...cap...[ellipses as in original] excuse me, capacity building efforts meet their potential, we must be better connected. We can accomplish this by working together, communicating better, and developing habits of cooperation.

Every year the United States helps plan and host hundreds of exercises and engagements in the region. From Foal Eagle to Balikatan, from Malabar to Garuda Shield, RIMPAC, Talisman Sabre to Cobra Gold, with every engagement we get smarter and more effective together, while decreasing the risk of misinterpretation and miscalculation.

We can also limit that risk by improving communication further. For example, the United States and China have agreed to two historic confidence-building agreements this past fall, and the United States hopes to do more. We're working to complete another measure this year that aims to prevent dangerous air-to-air encounters. Building better habits of U.S.-China military-to-military cooperation not only benefits both countries but benefits the whole region as well....

To realize that future a future where everyone continues to rise and everyone continues to win], we must tackle urgent issues like the security and stability of the South China Sea.

Yesterday, I took an aerial transit of the Strait of Malacca. And when viewed from the air, it is even clearer how critical this region's waterways are to international trade and energy resources. We've all benefitted from free and open access to the South China Sea and the Strait of Malacca. We all have a fundamental stake in the security of the South China Sea. And that's why we all have deep concerns about any party that attempts to undermine the states [sic: status] quo and generate instability there, whether by force, coercion, or simply by creating irreversible facts on the ground, in the air, or in the water.

Now, it's true that almost all the nations that claim parts of the South China Sea have developed outposts over the years...of differing scope and degree. In the Spratly Islands, Vietnam has 48 outposts; the Philippines, eight; Malaysia, five; and Taiwan, one.

Yet, one country has gone much further and much faster than any other. And that's China.

China has reclaimed over 2,000 acres, more than all other claimants combined...[ellipse as in original] and more than in the entire history of the region. And China did so in only the last 18 months. It is unclear how much farther China will go. That is why this stretch of water has become the source of tension in the region and front-page news around the world.

The United States is deeply concerned about the pace and scope of land reclamation in the South China Sea, the prospect of further militarization, as well as the potential for these activities...[ellipse as in original] to increase the risk of miscalculation or conflict among claimant states. As a Pacific nation, a trading nation, and a member of the international community, the United States has every right to be involved and concerned. But these are not just American concerns. Nations across the region and the world, many of you here in the room today, have also voiced the same concerns and raised questions about China's intentions in constructing these massive outposts.

So let me make clear the position of the United States:

First, we want a peaceful resolution of all disputes. To that end, there should be an immediate and lasting halt to land reclamation by all claimants. We also oppose any further militarization of disputed features. We all know there is no military solution to the South China Sea disputes. Right now, at this critical juncture, is the time for renewed diplomacy, focused on a finding a lasting solution that protects the rights and the interests of all. As it is central to the regional security architecture, ASEAN must be a part of this effort: the United States encourages ASEAN and China to conclude a Code of Conduct this year. And America will support the right of claimants to pursue international legal arbitration and other peaceful means to resolve these disputes, just as we will oppose coercive tactics.

Second, the United States will continue to protect freedom of navigation and overflight—principles that have ensured security and prosperity in this region for decades. There should be no mistake: the United States will fly, sail, and operate wherever international law allows, as U.S. forces do all over the world. America, alongside its allies and partners in the regional architecture, will not be deterred from exercising these rights—the rights of all nations. After all, turning an underwater rock into an airfield simply does not afford the rights of sovereignty or permit restrictions on international air or maritime transit.

Finally, with its actions in the South China Sea, China is out of step with both the international rules and norms that underscore the Asia-Pacific's security architecture, and the regional consensus that favors diplomacy and opposes coercion. These actions are spurring nations to respond together in new ways: in settings as varied as the East Asia Summit to the G-7, countries are speaking up for the importance of stability in the South China Sea. Indonesia and the Philippines are putting aside maritime disputes and resolving their claims peacefully. And in venues like ADMM-Plus and East Asia



Maritime Forum [sic: Expanded ASEAN Maritime Forum], nations are seeking new protocols and procedures to build maritime cooperation.<sup>127</sup>

## **May 13, 2015, State Department Testimony**

At a May 13, 2015, hearing before the Senate Foreign Relations Committee on safeguarding American interests in the ECS and SCS, Daniel Russel, Assistant Secretary of State, Bureau of East Asian and Pacific Affairs, stated:

For nearly 70 years, the United States, along with our allies and partners, has helped to sustain in Asia a maritime regime, based on international law, which has underpinned the region's stability and remarkable economic growth. International law makes clear the legal basis on which states can legitimately assert their rights in the maritime domain or exploit marine resources. By promoting order in the seas, international law has been instrumental in safeguarding the rights and freedoms of all countries regardless of size or military strength. We have an abiding interest in freedom of navigation and overflight and other internationally lawful uses of the sea related to those freedoms in the East and South China Seas and around the world.

The East and South China Seas are important to global commerce and regional stability. Their economic and strategic significance means that the handling of territorial and maritime issues in these waters by various parties could have economic and security consequences for U.S. national interests. While disputes have existed for decades, tensions have increased considerably in the last several years. One of our concerns has been the possibility that a miscalculation or incident could touch off an escalatory cycle that would be difficult to defuse. The effects of a crisis would be felt around the world.

This gives the United States a vested interest in ensuring that territorial and maritime issues are managed peacefully. Our strategy aims to preserve space for diplomatic solutions, including by pressing all claimants to exercise restraint, maintain open channels of dialogue, lower rhetoric, behave responsibly at sea and in the air and acknowledge that the same rules and standards apply to all claimants, without regard for size or strength. We strongly oppose the threat of force or use of force or coercion by any claimant.

### **East China Sea**

Let me begin with the situation in the East China Sea. Notwithstanding any competing sovereignty claims, Japan has administered the Senkaku Islands since the 1972 reversion of Okinawa to Japan. As such, they fall under Article V of the U.S.-Japan Security Treaty. With ships and aircraft operating in close proximity to the Senkakus, extreme caution is needed to reduce the risk of an accident or incident. We strongly discourage any actions in the East China Sea that could increase tensions and encourage the use of peaceful means and diplomacy. In this regard, we welcome the resumed high level dialogue between China and Japan and the restart of talks on crisis management mechanisms. We hope that this will translate into a more peaceful and stable environment in the East China Sea.

### **South China Sea**

Disputes regarding sovereignty over land features and resource rights in the Asia-Pacific region, including the South China Sea, have been around for a long time. Some of these disputes have led to open conflict such as those over the Paracel Islands in 1974 and

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<sup>127</sup> Secretary of Defense Speech, IISS Shangri-La Dialogue: "A Regional Security Architecture Where Everyone Rises," As Delivered by Secretary of Defense Ash Carter, Singapore, Saturday, May 30, 2015, accessed August 7, 2015, at <http://www.defense.gov/Speeches/Speech.aspx?SpeechID=1945>.

Johnson South Reef in 1988. While we have not witnessed another conflict like those in recent years, the increasing frequency of incidents in the South China Sea highlights the need for all countries to move quickly in finding peaceful, diplomatic approaches to address these disputes.

We know that this is possible. There are instances throughout the region where neighbors have peacefully resolved differences over overlapping maritime zones. Recent examples include Indonesia's and the Philippines' successful conclusion of negotiations to delimit the boundary between their respective exclusive economic zones (EEZs) and India's and Bangladesh's decision to accept the decision of an arbitral tribunal with regard to their overlapping EEZ in the Bay of Bengal. There have also been instances where claimants have agreed to shelve the disputes and find peaceful ways to manage resources in contested areas. In its approach to the East China Sea, Taiwan forged a landmark fishing agreement with Japan through cooperative dispute resolution. These examples should be emulated.

All disputes over claims in the South China Sea should be pursued, addressed, and resolved peacefully. In our view, there are several acceptable ways for claimants to handle these disputes. In the first instance, claimants should use negotiations to try and resolve the competing sovereignty claims over land features and competing claims to maritime resources. However, the fact remains that if every claimant continues to hold a position that their respective territorial and maritime claims are "indisputable," that leaves parties with very little room for compromise. In addition, mutually agreeable solutions to jointly manage or exploit marine resources are more difficult to find if not all claimants are basing their claims on the Law of the Sea.

Another reasonable option would be for claimants to submit their maritime claims to arbitration by a neutral third party to assess the validity of their claims. The Philippines, for example, is seeking clarification from an international tribunal on the validity of China's nine-dash line as a maritime claim under the United Nations Law of the Sea Convention, as well as greater clarity over what types of maritime entitlements certain geographic features in the South China Sea are actually allowed. This approach is not intended to resolve the underlying sovereignty dispute, but rather could help provide greater clarity to existing claims and open the path to other peaceful solutions.

With respect to resolving the claimants' underlying sovereignty disputes, a wide array of mutually-agreed third party dispute settlement mechanisms, including recourse to the International Court of Justice, would be available to them.

Short of actually resolving the disputes, there is another option which past Chinese leaders have called for – namely, a *modus vivendi* between the parties for an indefinite period or until a more favorable climate for negotiations could be established. In the case of the South China Sea, this could be achieved by any number of mechanisms, including, as a first step, a detailed and binding meaningful ASEAN-China Code of Conduct.

But for any claimant to advance its claims through the threat or use of force or by other forms of coercion is patently unacceptable.

In my testimony before the House Foreign Affairs Subcommittee on Asia and the Pacific in February 2014, I noted U.S. concern over an apparent pattern of behavior by China to assert its nine-dash line claim in the South China Sea, despite the objections of its neighbors and the lack of clarity of the claim itself. More than a year later, China continues to take actions that are raising tensions and concerns throughout the region about its strategic intentions.

In particular, in the past year and a half China's massive land reclamation on and around formerly tiny features, some of which were under water, has created a number of artificial above-water features. Three of China's land fill areas are larger than the largest naturally formed island in the Spratly Islands. China is constructing facilities on these expanded

outposts, including at least one air strip on Fiery Cross reef that looks to be the longest air strip in the Spratlys and capable of accommodating military aircraft. China is also undertaking land reclamation efforts in the Paracel Islands, which it currently occupies.

Under international law it is clear that no amount of dredging or construction will alter or enhance the legal strength of a nation's territorial claims. No matter how much sand you pile on a reef in the South China Sea, you can't manufacture sovereignty.

So my question is this: What does China intend to do with these outposts?

Beijing has offered multiple and sometimes contradictory explanations as to the purpose of expanding these outposts and constructing facilities, including enhancing its ability to provide disaster relief, environmental protection, search and rescue activities, meteorological and other scientific research, as well as other types of assistance to international users of the seas.

It is certainly true that other claimants have added reclaimed land, placed personnel, and conducted analogous civilian and even military activities from contested features. We have consistently called for a freeze on all such activity. But the scale of China's reclamation vastly outstrips that of any other claimant. In little more than a year, China has dredged and now occupies nearly four times the total area of the other five claimants combined.

Far from protecting the environment, reclamation has harmed ecosystems and coral reefs through intensive dredging of the sea bed. Given its military might, China also has the capability to project power from its outposts in a way that other claimants do not. And perhaps most importantly, these activities appear inconsistent with commitments under the 2002 ASEAN China Declaration on the Conduct of Parties in the South China Sea, which calls on all parties to forgo actions that "would complicate or escalate disputes."

More recently, Beijing indicated that it might utilize the islands for military purposes. The Chinese Foreign Ministry stated that the outposts would allow China to "better safeguard national territorial sovereignty and maritime rights and interests" and meet requirements for "military defense." These statements have created unease among neighbors, in light of China's overwhelming military advantage over other claimants and past incidents with other claimants. As the statement last week from the ASEAN Leaders Summit in Malaysia made clear, land reclamation in the South China Sea is eroding trust in the region and threatens to undermine peace, security, and stability in the South China Sea.

Apart from reclamation, the ambiguity and potential breadth of China's nine-dash line maritime claim also fuels anxiety in Southeast Asia. It is important that all claimants clarify their maritime claims on the basis of international law, as reflected in the United Nations Convention on the Law of the Sea. On April 29, Taiwan added its voice to the regional chorus by calling on "countries in the region to respect the principles and spirit of all relevant international law, including the Charter of the United Nations, and the United Nations Convention on the Law of the Sea." The ASEAN claimant states have indicated that their South China Sea maritime claims derive from land features. Beijing, however, has yet to provide the international community with such a clarification of how its claims comport with international law. Removing ambiguity goes a long way to reducing tensions and risks.

Simple common sense dictates that tensions and risks would also be reduced if all claimants commit to halt reclamation activities and negotiate the acceptable uses of reclaimed features as part of a regional Code of Conduct. Talks on a regional Code of Conduct over several years have been inconclusive, but we share the growing view in the region that a binding Code should be completed in time for the 2015 East Asia Summit in Malaysia.

Mr. Chairman, let me now turn the question of what the United States is doing to ensure peace and stability in the South China Sea.

The United States can and does play an active role in the South China Sea to defend our national interests and international legal principles. And while it falls to the claimants to resolve their disputes, we will continue to play an active and constructive role. U.S. engagement in regional fora has been crucial in placing the South China Sea and maritime cooperation at the top of the agenda in the region's multilateral forums, and these issues are a major part of bilateral discussions with the relevant countries. By shining a spotlight on problematic behavior, including massive land reclamation, the United States has helped ensure that problematic behavior is exposed and censured, if not stopped.

We also play an important role building regional consensus around rules and acceptable practices with regard to maritime and territorial issues. We defend the use of legal dispute settlement mechanisms that may be available to countries – including arbitration under the Law of the Sea Convention – when diplomatic negotiations have not yielded results.

I would like to make two points regarding the Law of the Sea Convention. First, with respect to arbitration, although China has chosen not to participate in the case brought by the Philippines, the Law of the Sea Convention makes clear that “the absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings.” It is equally clear under the Convention that a decision by the tribunal in the case will be legally binding on both China and the Philippines. The international community expects both the Philippines and China to respect the ruling, regardless of outcome.

Secondly, I respectfully urge the Senate to take up U.S. accession of the Law of the Sea Convention. Accession has been supported by every Republican and Democratic administration since it was transmitted to the Senate in 1994. It is supported by the U.S. military, by industry, environmental groups, and other stakeholders. I speak in the interests of U.S. foreign policy in the South China Sea in requesting Senate action to provide advice and consent to accede to the Convention. Doing so will help safeguard U.S. national security interests and provide additional credibility to U.S. efforts to hold other countries' accountable to their obligations under this vitally important treaty.

Another line of effort is our work to forge strong partnerships with Southeast Asian coastal states to improve their maritime domain awareness so they have a clearer picture of what is developing in waters off their mainland coasts. We are also working with allies such as Japan and Australia to coordinate and maximize the impact of our assistance and to ensure that we are not duplicating efforts. By developing a common operating picture, claimants can work together to avoid unintended escalations and identify potential areas of cooperation.

We have also encouraged the sharing of information and enhanced coordination amongst the claimants and others in the region to ensure that all countries with an interest in the peaceful resolution of disputes in the South China Sea are aware of events there, and understand what everyone else is doing.

My colleague Assistant Secretary for Defense, Dave Shear, will speak next about the military implications of recent developments as well as the Department of Defense's efforts to ensure regional peace and stability. It is my belief that the consistent presence of the Seventh Fleet and our recent force posture movements have been significant factors in deterring conflict between claimants in recent years. Disputes in the South China Sea have simmered, but not boiled over.

But against the backdrop of a strong and sustained U.S. military presence, which is welcomed by the overwhelming majority of countries in the region, diplomacy will continue to be our instrument of first resort. We are vigorously engaging with all of the claimants. We do so at major multilateral meetings like the East Asia Summit and

ASEAN Regional Forum and we do so bilaterally, as President Obama did in Beijing late last year. Next week, I will host my ten ASEAN counterparts here in Washington and then will accompany Secretary Kerry to China in advance of the Strategic and Economic Dialogue he will host this summer. In each of these meetings, we will push forward on restraint and push back against destabilizing behavior; we will push for respect for the rules and push back on unilateral actions to change the status quo.

Mr. Chairman, the net effect of what we are seeing in the South China Sea is a heightened interest from the region in ensuring that the existing rules-based order remains intact as well as a strengthened demand for the United States to continue playing a leading role in regional security affairs.

Despite our differences over the South China Sea, the United States and China have worked hard to expand cooperation and develop effective channels of communication to manage differences. This administration has been clear and consistent in welcoming China's peaceful rise, and in encouraging China to take on a greater leadership role in addressing regional and global challenges. This was demonstrated clearly by our two countries' joint announcement of climate targets and military CBMs last November in Beijing. We are working with China constructively on a wide range of security and other challenges – including with respect to North Korea, Iran, climate change, and global healthy security. Moreover, we actively encourage all countries to pursue constructive relations with China, just as we urge China to take actions that reassure the region of its current and future strategic intentions. As President Obama pointed out recently, there is much to admire about China's rise and reason for optimism with regard to cooperation. But as he also noted, we cannot ignore attempts by any country to use its "sheer size and muscle to force countries into subordinate positions," including in the South China Sea. For the President and Secretary of State on down, maritime issues remain at the top of this administration's agenda with Beijing. We consistently raise our concerns directly with China's leadership and urge China to manage and resolve differences with its neighbors peacefully and in accordance with international law. We also underscore that the United States will not hesitate to defend our national security interests and to honor our commitments to allies and partners in the Asia-Pacific.

Fundamentally, these maritime security issues are about rules, not rocks. The question is whether countries work to uphold international legal rules and standards, or whether they flout them. It's about whether countries work together with others to uphold peace and stability, or use coercion and intimidation to secure their interests.

The peaceful management and resolution of disputes in the South China Sea is an issue of immense importance to the United States, the Asia-Pacific region, and the world. This is a key strategic challenge in the region. And I want to reaffirm here today that we will continue to champion respect for international law, freedom of navigation and overflight and other internationally lawful uses of the seas related to those freedoms, unimpeded lawful commerce, and the peaceful resolution of disputes.<sup>128</sup>

## **May 13, 2015, Defense Department Testimony**

At the same May 13, 2015, hearing before the Senate Foreign Relations Committee, David Shear, Assistant Secretary of Defense for Asian & Pacific Security Affairs, stated:

East China Sea

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<sup>128</sup> Testimony of Daniel Russel, Assistant Secretary of State, Bureau of East Asian and Pacific Affairs, U.S. Department of State, Before the Senate Foreign Relations Committee, May 13, 2015, [on] Maritime Issues in East Asia.

In the East China Sea, through a persistent military and paramilitary presence as well as the announcement in November 2013 of a new Air Defense Identification Zone, China continues to engage in actions that appear designed to challenge Japan's administration of the Senkaku Islands. As President Obama noted in Tokyo last year and reiterated again last week during Prime Minister Abe's visit, "our treaty commitment to Japan's security is absolute, and Article 5 covers all territories under Japan's administration, including the Senkaku Islands" -- a point that Secretaries Carter and Kerry also reaffirmed with their Japanese counterparts on Monday, April 27, 2015, during the "2+2" meeting in New York. We have been clear, and remain so, that while we do not take a position on the question of sovereignty, the islands are under the administration of Japan. We will continue to oppose any unilateral action that seeks to undermine Japan's administration.

#### South China Sea

The challenges we face in the SCS, while troubling, are not new. In fact, the territorial and maritime disputes are decades old. These disputes are centered around three primary areas: the Paracel Islands, claimed by China, Taiwan, and Vietnam; Scarborough Reef, claimed by China, Taiwan, and the Philippines; and the Spratly Islands (which include over 200 features, most of which are underwater) claimed all or in part by Vietnam, the Philippines, China, Malaysia, , and Taiwan. Indonesia's maritime claims also project into the South China Sea.

Over the past two decades, all of the territorial claimants, other than Brunei, have developed outposts in the South China Sea, which they use to project civilian or maritime presence into surrounding waters, assert their sovereignty claims to land features, and monitor the activities of other claimants. In the Spratly islands, Vietnam has 48 outposts; the Philippines, 8; China, 8; Malaysia, 5, and Taiwan, 1. All of these same claimants have also engaged in construction activity of differing scope and degree. The types of outpost upgrades vary across claimants but broadly are comprised of land reclamation, building construction and extension, and defense emplacements. Between 2009 and 2014, Vietnam was the most active claimant in terms of both outpost upgrades and land reclamation, reclaiming approximately 60 acres. All territorial claimants, with the exception of China and Brunei, have also already built airstrips of varying sizes and functionality on disputed features in the Spratlys. These efforts by claimants have resulted in a tit-for-tat dynamic which continues to date.

#### China's activities

While other claimants have upgraded their South China Sea outposts over the years, China's land reclamation activity vastly exceeds these other claimants' activities. Since 2014, China has reclaimed 2,000 acres -- more land than all other claimants combined over the history of their claims. When combined with a range of activities, including: assertion of its expansive Nine-Dash Line claim, relocation of oil rigs in disputed maritime zones, efforts to restrict access to disputed fishing zones, and efforts to interfere with resupply of the Philippine outpost at Second Thomas Shoal, we see a pattern of behavior that raises concerns that China is trying to assert de facto control over disputed territories, and strengthen its military presence in the South China Sea.

We are concerned that the scope and nature of China's actions have the potential to disrupt regional security. China's actions and increased presence could prompt other regional governments to respond by strengthening their military capabilities at their outposts, which would certainly increase the risk of accidents or miscalculations that could escalate. In contrast to China, the other claimants have been relatively restrained in their construction activities since the signing of the China-ASEAN Declaration of Conduct (DOC) in 2002. This restraint may not hold in the face of China's unprecedented altering of the post-DOC status quo.



Furthermore, China's ultimate intentions regarding what to do with this reclaimed land remain unclear. A Chinese spokesperson said on April 9 that it was carrying out reclamation work to "better perform China's international responsibility and obligation in maritime search and rescue, disaster prevention and mitigation, marine science and research." However, the Spokesperson also said China will use this construction to better safeguard "territorial sovereignty and maritime rights and interests... (and for)...necessary military defense." This is not reassuring.

Militarily speaking, China's land reclamation could enable it, if it chose, to improve its defensive and offensive capabilities, including: through the deployment of long-range radars and ISR aircraft to reclaimed features; ability to berth deeper draft ships at its outposts and thus to expand its law enforcement and naval presence further south into the South China Sea; and, airstrips will provide China with a divert airfield for carrier-based aircraft, enabling China to conduct more sustained air operations. Higher end military upgrades, such as permanent basing of combat aviation regiments or placement of surface-to-air, anti-ship, and ballistic missile systems on reclaimed features, would rapidly militarize these disputed features in the South China Sea.

To be clear, the United States welcomes China's peaceful rise. We want to see a reduction – not an escalation – of tensions in the South China Sea, we want to see a diplomatic solution to these disputes, and we want constructive relations between China and other claimants. But as the President pointed out on April 9, "(w)here we get concerned with China is where it is not necessarily abiding by international norms and rules, and is using its size and muscle to force countries into subordinate positions." These concerns are amplified when put into the broader context of China's rapidly increasing, and opaque defense budget – a budget that has more than doubled since 2008. As well as China's comprehensive military modernization effort that includes investments in capabilities such as ballistic missiles, anti-ship cruise missiles, and counter-space weapons. Though increased military capabilities are a natural outcome of growing power, the way China is choosing to advance its territorial and maritime claims is fueling concern in the region about how it would use its military capabilities in the future. Having these capabilities per se is not the issue – the issue is how it will choose to use them.

China's actions are not viewed solely in the context of territorial and maritime disputes; they are viewed as indicators of China's long-term strategic intentions. China's unwillingness to exercise restraint in its actions or transparency in its intentions is deepening divisions between China and its neighbors, as ASEAN leaders expressed collectively at the last ASEAN Summit in April. As a result, our allies and partners are seeking to deepen their defense, security and economic relationships with us and with each other. China could reduce strategic uncertainty by taking concrete steps to: clarify or adjust its Nine Dash Line claim in order to bring it into accordance with international law as reflected in the Law of the Sea Convention; to renounce any intent to claim a territorial sea or national airspace around any artificial features formed by China's reclamation activities; halt reclamation activity and enter into discussions with other claimants about establishing limits to military upgrades in the South China Sea (either unilaterally and voluntarily as a confidence-building measure or in coordination with other claimants); and rapidly conclude a binding South China Sea Code of Conduct with ASEAN member states.

#### Current DoD Activities

DoD is taking action to protect U.S. national interests in the South China Sea: peaceful resolution of disputes, freedom of navigation and overflight and other internationally lawful uses of the sea related to these freedoms, unimpeded lawful commerce, respect for international law, and the maintenance of peace and stability. These objectives are directly linked to the continued prosperity and security of the United States and the Asia-

Pacific region. We therefore have a strong interest in how all claimants, including China, address their disputes and whether maritime claims accord with international law.

First, we are committed to deterring coercion and aggression and thereby reinforcing the stability of the Asia-Pacific region, and we are taking proactive steps to do so. Our primary effort in this regard is to work to refresh and modernize our long-standing alliances. With Japan, we concluded last week an historic update to our bilateral Guidelines for U.S.-Japan Defense Cooperation, with an eye to enhancing the ability of the U.S.-Japan Alliance to support peace and security across the region and the globe. With the ROK, we are developing a comprehensive set of Alliance capabilities to counter the growing range of threats on the peninsula, while expanding our ability to tackle global challenges together. And in Australia and the Philippines, we signed groundbreaking agreements in 2014 that will provide enhanced access for U.S. forces while greatly expanding the combined training opportunities for our alliances.

To expand the reach of these alliances, we are embarking on unprecedented “trilateral” cooperation – in other words we are networking our relationships. In some cases this cooperation directly benefits our work on maritime security. For example, we’re cooperating trilaterally with Japan and Australia to strengthen maritime security in Southeast Asia and explore defense technology cooperation.

Second, we are adapting our overall defense posture in the region to be more geographically distributed, operationally resilient, and politically sustainable. For example, we’re shifting our Marines from a concentrated presence in Okinawa to Australia, Hawaii, Guam, and mainland Japan. We are already leveraging changes in our force posture to make existing engagements more robust. Our rotational deployments of Littoral Combat Ships to Singapore has provided the U.S. Navy with its first sustained forward presence in Southeast Asia since the closing of Subic Bay in the early 1990s and has opened the door for greater training and engagement opportunities with our allies and partners in Southeast Asia.

We are also leveraging the assets we have in theater to maintain and enhance our visible presence in the Asia-Pacific, and the South China Sea. This presence not only reinforces our regional diplomacy, it also deters provocative conduct and reduces the risk of miscalculation in the area. The Department maintains a robust regional presence in and around the South China Sea. In an average month, U.S. military forces are conducting multiple port calls in and around the South China Sea, flying regular regional ISR missions, conducting presence operations, and exercising with allies and partners like the Philippines and Malaysia, all while maintaining a persistent surface ship presence with routine transits throughout the area. For example, our new Littoral Combat Ship, the USS Fort Worth, recently concluded a successful naval engagement with the Vietnamese Navy that included a full day of at-sea activities. And before her deployment is done, the LCS will have completed bilateral Cooperation Afloat Readiness and Training (CARAT) with seven different Asia-Pacific partners.

Third, we are working with governments in the region to improve their maritime security capacity and maritime domain awareness in order to increase regional transparency and deter further conflict. In the Philippines, for example, we recently concluded the Enhanced Defense Cooperation Agreement and have transferred vessels to help our ally police its own waters and are helping to build a National Coast Watch System that will improve Manila’s awareness of its maritime domain. The Philippines has also been the largest recipient of U.S. Foreign Military Financing (FMF) funds in the region. These funds have been used to assist the Philippines with communications interoperability, maritime interdiction boats, shipyards capacity and patrol vessel upgrades. We are also providing equipment and infrastructure support to the Vietnamese Coast Guard and are helping to support effective maritime security institutions there. Last October, the U.S. government took steps to allow for the future transfer of maritime security related

defense articles to Vietnam. We have three annual dialogues with Vietnam on defense cooperation – the Defense Policy Dialogue; Bilateral Defense Dialogue; and Political, Security, and Defense Dialogue

To support efforts to improve the maritime domain awareness of our allies and partners, we are encouraging greater information sharing in the region. PACOM will be hosting a workshop with our ASEAN partners next month to discuss lessons-learned and best practices in maritime domain awareness, to include information sharing. We also support initiatives from within the region like the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) Information Sharing Center and Changi Information Fusion Center in Singapore to encourage greater collaboration among our allies and partners to establish a timely and accurate common operating picture of maritime activities in the region.

Furthermore, DoD has a robust slate of training exercises and activities with many allies and partners in Asia, and we have begun incorporating a maritime focus into many of these engagements. Exercise Balikatan, our premier joint exercise with our Philippine allies, ended last week and is a great example of a longstanding exercise with a key ally that has evolved to meet new security challenges. This year's Balikatan focused on a territorial defense scenario off the Sulu Sea. This is the largest of more than 400 planned events we have with the Philippines to assist this important ally with a credible defense of its borders and territorial waters. We also conduct regular bilateral naval exercises with the Indonesians, including Cooperation and Readiness Afloat (CARAT) and Sea Surveillance Exercises (SEASURVEX) that focus on improved interoperability through maritime patrols, surveillance, vessel boarding, fixed and rotary wing naval aviation. The most recent SEASURVEX took place 6-10 April out of Batam, Indonesia, which included a flight portion over the South China Sea.

We're also creating new defense engagements where needed. The Marines, for example, participated in their first amphibious exercise with the Malaysian Armed Forces last year. For the first time, last August, the US trained with the Malaysia Armed Forces in Eastern Sabah for MALUS AMPHEX 2014. MALUS AMPHEX 2015 is scheduled for later this summer. We are also conducting routine CARAT exercises with Malaysia with the next scheduled for the summer where, as with Indonesia, we will focus on, among other things, navigation and communications, interoperability and maritime air surveillance.

While the United States is doing a lot to help build partner capacity and regional cooperation on maritime security challenges, we aren't doing it alone. There is broad agreement on the importance of maritime security and maritime domain awareness, and we're working closely with our friends in Australia, Japan, South Korea, and elsewhere to coordinate and amplify our efforts toward promoting stability and prosperity in Asia.

Fourth, we are seeking to reduce the risk of miscalculation and unintentional conflict with China in the South China Sea or elsewhere in Asia. To do so, we continue to speak out against China's disruptive behavior publically and privately. We also continue to call on China to clarify its Nine Dash Line claim under international law. And we will continue to urge all claimants to exercise self-restraint and pursue peaceful and diplomatic approaches to their disputes.

At the same time, we are also working to build transparency and improve understanding with China through mil-to-mil ties. Over the past year, through initiatives like the confidence-building measures our two Presidents agreed to last fall, we have made significant and prudent progress in our bilateral defense relationship. This year, we will be working to complete another measure that aims to prevent dangerous air-to-air encounters. In addition, we have institutionalized several key defense policy dialogues to include the Under Secretary-led Defense Consultative Talks and the Assistant Secretary-led Asia-Pacific Security Dialogue where we discuss a range of regional security issues, including our concerns about the South China Sea. We also hold discussions on

operational safety in the maritime domain at the Military Maritime Consultative Agreement Talks.

#### Conclusion

In conclusion, we share the committees' concerns about China's land reclamation and appreciate this opportunity to give you a sense of our thinking. We are deeply engaged with the State Department, the NSC, and other interagency partners in adapting our integrated, whole of government response to meet evolving challenges. We are actively assessing the military implications of land reclamation and are committed to taking effective and appropriate action. In addition to building our own capabilities, we are also building closer, more effective partnerships with our allies and partners in the region to further peace and stability.

The United States is a resident power in the Asia-Pacific. In addition to our significant economic and security interests in the region, we have more than 7,000 miles of Pacific coastline and more than 16 million citizens who trace their ancestry to the Asia-Pacific. Given the importance of the Asia-Pacific to our interests, we owe it to the American people to think, not just about the challenges of today, but also the potential problems of tomorrow. And in this respect, our regional friends and partners should rest assured -- we will continue to protect security and promote prosperity of the Asia-Pacific and above all, we will honor our commitments.<sup>129</sup>

### **April 15, 2015, Defense Department Testimony**

At an April 15, 2015, hearing before the House Armed Services Committee on the risk of losing military technology superiority and its implications for U.S. policy, strategy, and posture in the Asia-Pacific, Christine Wormuth, Under Secretary of Defense, stated:

As Asia-Pacific nations rise and become more prosperous, it creates enormous opportunities for the United States. At the same time, Asia's dynamism has also created a much more complex security environment, with challenges ranging from rapidly advancing military technologies to widespread humanitarian disasters.

In particular, China's rapid military modernization, its opaque defense budget, its actions in space and cyber space, and its behavior in places like the East China Sea and South China Sea raise a number of serious questions. Though China's expanding interests are a natural part of its growing power, China continues to pursue activities and investments that lead many in the region, including the United States, to question its long-term intentions. Of note, China is engaging in a comprehensive military modernization program that includes investments in capabilities such as ballistic missiles, anti-ship cruise missiles, and counter-space weapons that seem designed to counter U.S. power projection capabilities.

China's behavior in the maritime domain has also created significant friction with its neighbors. The Chinese government's efforts to incrementally advance its East and South China Sea claims and to block access to disputed fishing zones suggest a willingness to assert control over contested areas through coercion or the use of force. Moreover, its extensive land reclamation activities, especially the prospect to militarize these outposts, are deeply concerning to us. We would therefore urge China to show restraint and refrain from further activities that undermine regional trust. We also continue to urge China to clarify the meaning of its ambiguous Nine Dash line claim as a starting point to reducing tensions and creating greater transparency.

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<sup>129</sup> Statement of David Shear, Assistant Secretary of Defense for Asian & Pacific Security Affairs, Before the Senate Committee on Foreign Relations, May 13, 2015, pp.

The U.S. and China are not allies, but we don't have to be adversaries. A strong, constructive U.S.-China relationship is essential for global security and prosperity. Our efforts to reduce the risk of miscalculation and unintentional conflict in the South China Sea and the region more broadly are a critical element of our regional engagement. We are therefore not only raising our concerns with China, we are also taking steps to build transparency and improve understanding through our military-to-military ties. Over the past year, through initiatives like the two Confidence-Building Measures we signed last fall, we have made significant strides in our bilateral defense relationship, while still adhering to the strict limitations guiding our defense contacts with China.<sup>130</sup>

At the same hearing, Admiral Samuel Locklear, Commander, U.S. Pacific Command, testified that

Territorial and maritime issues in the East and South China Seas, if not handled properly, may negatively impact stability in the regional and the security environment. The claimants' use of maritime law enforcement vessels to enforce their claims has largely kept these issues out of the military sphere, despite a steady increase in military air and sea patrols. While no country appears to desire military conflict, an escalation due to a tactical miscalculation cannot be ruled out.

In the East China Sea, Japan and China both claim sovereignty over the Senkaku Islands. While the United States does not take a position on ultimate sovereignty over the islands, it has long recognized Japanese administration of them. China's behavior in the area has resulted in close encounters at sea, aggressive Chinese air intercepts of Japanese reconnaissance flights, inflammatory strategic messaging, and the no-notice declaration of a Chinese Air Defense Identification Zone in the East China Sea.

The South China Sea issues are complex. Six claimants (China, Vietnam, Malaysia, Brunei, Taiwan, and the Philippines) have overlapping claims in the South China Sea. As the South China Sea claimants' populations and economies continue to grow, access to the oil, gas, minerals, and fisheries within the South China Sea becomes more important. Claimants appear to be asserting their claims through increased maritime patrols, outpost and facility construction, and land reclamation.

China has the broadest claim with its self-proclaimed "Nine-Dash line" that covers almost the entire South China Sea. China's lack of clarity with regard to its South China Sea claims, and China's attempts to unilaterally enforce its ambiguous claims, has created uncertainty in the region. Any use of the nine-dash line by China to claim maritime rights not based on claimed land features would not align with international law. The international community would welcome China to clarify or adjust its nine-dash line claim and bring it into accordance with the international law of the sea, as reflected in the Law of the Sea Convention.

To achieve its long-term goals in the region, China is executing a strategy that includes expanding outposts in contested areas through land reclamation on South China Sea features, taking actions to prevent other nations from establishing / maintaining outposts, exploring for natural resources in disputed waters, and increasing its naval and air forces' presence through exercises and patrols. China's aggressive land reclamation and construction projects at eight South China Sea military outposts include new buildings, more capable berthing space for ships, and presumably an airfield on the Fiery Cross Reef (China's largest reclamation project). Although land reclamation cannot, for example, change a submerged feature into a natural island that generates any legal

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<sup>130</sup> Testimony of Under Secretary of Defense Christine Wormuth, U.S. Department of Defense, [to the] House Armed Services Committee [on] "The Risk of Losing Military Technology Superiority and its Implications for U.S. Policy, Strategy, and Posture in the Asia-Pacific," April 15, 2015, pp. 1-2.



entitlements to maritime zones, the completion of these projects will give China the ability for greater presence, increase dwell time for military and coast guard assets, and expand the areas covered by surveillance and area-denial systems. Examples of activities supporting China's long-term strategy include attempts to block resupply missions to the small Philippine garrison at Second Thomas Shoal and exclude Philippine and other fishermen from the disputed Scarborough Reef. Last year, China also moved a China National Offshore Oil Corporation drilling platform into Vietnam's claimed Exclusive Economic Zone resulting in a tense standoff between Vietnamese and Chinese maritime assets substantially increasing the possibility of miscalculation between the two countries.

The U.S. does not take a position on issues of sovereignty with respect to territorial claims in the East and South China Sea, but we do insist that all maritime claims must be derived from land features in accordance with international law as reflected in the Law of the Sea Convention. The U.S. also continues to emphasize the importance that maritime and territorial disagreements be resolved peacefully in accordance with international law and opposes the use of intimidation, coercion, or force to assert claims. An example of such an attempt at peaceful resolution is the Philippines' arbitration against China under the Law of the Sea Convention that is being heard by a tribunal in The Hague. Of note, China has refused to participate in this arbitration to date.<sup>131</sup>

## **April 9, 2015, Remarks by President Obama**

On April 9, 2015, in remarks at the University of the West Indies in Kingston, Jamaica, President Obama stated:

Well, first of all, let me say that it is U.S. official policy and it is my strong belief that we should welcome China's peaceful rise. What China has done in the last 20, 30 years is remarkable. More people have been lifted out of poverty in a shorter period of time than perhaps any time in human history. (Applause.) And that's good for the world. I mean, we should be more fearful of a poorer, collapsing China than a China that is participating in the world marketplace and trading and is getting along with its neighbors and part of the international order, because there are a really large number of Chinese people and we want them to be doing well.

So our policy is not to fear China's peaceful rise. Where we get concerned with China is where it is not necessarily abiding by international norms and rules, and is using its size and muscle to force countries into subordinate positions. And that's the concern we have around maritime issues. We think this can be solved diplomatically, but just because the Philippines or Vietnam are not as large as China doesn't mean that they can just be elbowed aside.

And, by the way, we don't have a particular view on the territorial disputes, the maritime disputes. Our attitude is simply, let's use the mechanisms that we have in place internationally to resolve them.<sup>132</sup>

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<sup>131</sup> Statement of Admiral Samuel J. Locklear, U.S. Navy, Commander, U.S. Pacific Command, Before the House Armed Services Committee on U.S. Pacific Command Posture, April 15, 2015, pp. 3-5.

<sup>132</sup> Remarks by President Obama in Town Hall with Young Leaders of the Americas, University of the West Indies, Kingston, Jamaica, April 9, 2015, accessed April 21, 2015, at <https://www.whitehouse.gov/the-press-office/2015/04/09/remarks-president-obama-town-hall-young-leaders-americas>. See also David Tweed, "Obama Says Concerned China Using Muscle in South China Sea," *Bloomberg News*, April 9, 2015; Matt Spetalnick and Ben Blanchard, "Obama Says Concerned China Bullying Others in South China Sea," *Reuters*, April 10, 2015; "Obama: China 'Using Muscle' To Dominate in South China Sea," *BBC News*, April 10, 2015.



## **March 31, 2015, Defense Department Remarks**

In a March 31, 2015, speech, Admiral Harry Harris, Jr., the Commander, U.S. Pacific Fleet, stated that in addition to other security issues in the region,

We also see the misuse of maritime claims by some coastal states. The excessive nature of some of these claims is creating uncertainty and instability. These disruptions should compel us to increase cooperative efforts in this region, like those announced earlier this month, right here in Canberra, between Australia and Vietnam. Prime Minister Abbott said both nations, and I quote, “support freedom of navigation by air and by sea in the South China Sea. We both deplore any unilateral change to the status quo. We both think that disputes should be resolved peacefully and in accordance with international law.” Unquote.

Competing claims by several nations in the South China Sea increase the potential for miscalculation. But what’s really drawing a lot of concern in the here and now is the unprecedented land reclamation currently being conducted by China.

China is building artificial land by pumping sand on to live coral reefs—some of them submerged—and paving over them with concrete. China has now created over four square kilometers of artificial landmass, roughly the size of Canberra’s Black Mountain Nature Reserve.

The Indo-Asia-Pacific region is known for its mosaic of stunningly beautiful natural islands, from the Maldives to the Andamans, from Indonesia and Malaysia to the Great Barrier Reef and Tahiti. And I get to live in the beautiful Hawaiian Islands, in one of nature’s great creations, a magnificent geography formed by millions of years of volcanic activity.

In sharp contrast, China is creating a great wall of sand, with dredges and bulldozers, over the course of months. When one looks at China’s pattern of provocative actions towards smaller claimant states—the lack of clarity on its sweeping nine-dash line claim that is inconsistent with international law and the deep asymmetry between China’s capabilities and those of its smaller neighbors—well it’s no surprise that the scope and pace of building man-made islands raise serious questions about Chinese intentions.

The United States and other countries continue to urge all claimants to conform to the 2002 China-ASEAN “Declaration of Conduct,” where the parties committed to “exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability.” How China proceeds will be a key indicator of whether the region is heading towards confrontation or cooperation.<sup>133</sup>

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<sup>133</sup> Commander, U.S. Pacific Fleet, [remarks to] Australian Strategic Policy Institute, Canberra, Australia, [by] Admiral Harry B. Harris Jr., March 31, 2015, as delivered.

## Appendix C. Operational Rights in EEZs

This appendix presents additional background information on the issue of operational rights in EEZs.

As mentioned earlier, if China's position on whether coastal states have a right under UNCLOS to regulate the activities of foreign military forces in their EEZs were to gain greater international acceptance under international law, it could substantially affect U.S. naval operations not only in the SCS and ECS (see **Figure C-1** for EEZs in the SCS and ECS), but around the world, which in turn could substantially affect the ability of the United States to use its military forces to defend various U.S. interests overseas. As shown in **Figure C-2**, significant portions of the world's oceans are claimable as EEZs, including high-priority U.S. Navy operating areas in the Western Pacific, the Persian Gulf, and the Mediterranean Sea.<sup>134</sup>

Some observers, in commenting on China's resistance to U.S. military survey and surveillance operations in China's EEZ, have argued that the United States would similarly dislike it if China or some other country were to conduct military survey or surveillance operations within the U.S. EEZ. Skeptics of this view argue that U.S. policy accepts the right of other countries to operate their military forces freely in waters outside the 12-mile U.S. territorial waters limit, and that the United States during the Cold War acted in accordance with this position by not interfering with either Soviet ships (including intelligence-gathering vessels known as AGIs)<sup>135</sup> that operated close to the United States or with Soviet bombers and surveillance aircraft that periodically flew close to U.S. airspace. The U.S. Navy states that

When the commonly recognized outer limit of the territorial sea under international law was three nautical miles, the United States recognized the right of other states, including the Soviet Union, to exercise high seas freedoms, including surveillance and other military operations, beyond that limit. The 1982 Law of the Sea Convention moved the outer limit of the territorial sea to twelve nautical miles. In 1983, President Reagan declared that the United States would accept the balance of the interests relating to the traditional uses of the oceans reflected in the 1982 Convention and would act in accordance with those provisions in exercising its navigational and overflight rights as long as other states did likewise. He further proclaimed that all nations will continue to enjoy the high seas rights and freedoms that are not resource related, including the

<sup>134</sup> The National Oceanic and Atmospheric Administration (NOAA) calculates that EEZs account for about 30.4% of the world's oceans. (See the table called "Comparative Sizes of the Various Maritime Zones" at the end of "Maritime Zones and Boundaries, accessed June 6, 2014, at [http://www.gc.noaa.gov/gcil\\_maritime.html](http://www.gc.noaa.gov/gcil_maritime.html), which states that EEZs account for 101.9 million square kilometers of the world's approximately 335.0 million square kilometers of oceans.)

<sup>135</sup> AGI was a U.S. Navy classification for the Soviet vessels in question in which the A meant auxiliary ship, the G meant miscellaneous purpose, and the I meant that the miscellaneous purpose was intelligence gathering. One observer states:

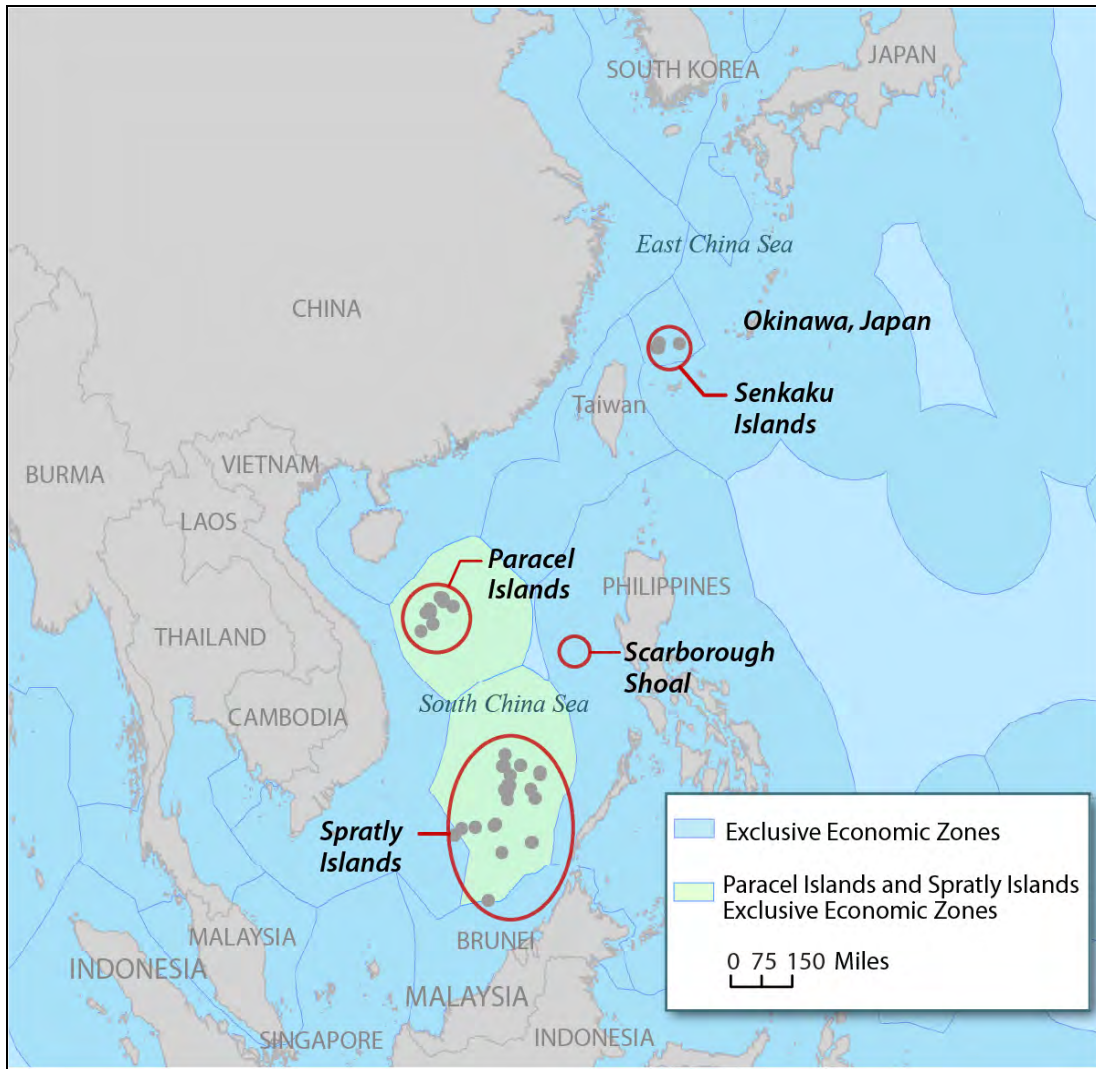
During the Cold War it was hard for an American task force of any consequence to leave port without a Soviet "AGI" in trail. These souped-up fishing trawlers would shadow U.S. task forces, joining up just outside U.S. territorial waters. So ubiquitous were they that naval officers joked about assigning the AGI a station in the formation, letting it follow along—as it would anyway—without obstructing fleet operations.

AGIs were configured not just to cast nets, but to track ship movements, gather electronic intelligence, and observe the tactics, techniques, and procedures by which American fleets transact business in great waters.

(James R. Holmes, "China's Small Stick Diplomacy," *The Diplomat*, May 21, 2012, accessed October 3, 2012, at <http://thediplomat.com/2012/05/21/chinas-small-stick-diplomacy/>)

freedoms of navigation and overflight, in the Exclusive Economic Zone he established for the United States consistent with the 1982 Convention.<sup>136</sup>

**Figure C-1. EEZs in South China Sea and East China Sea**

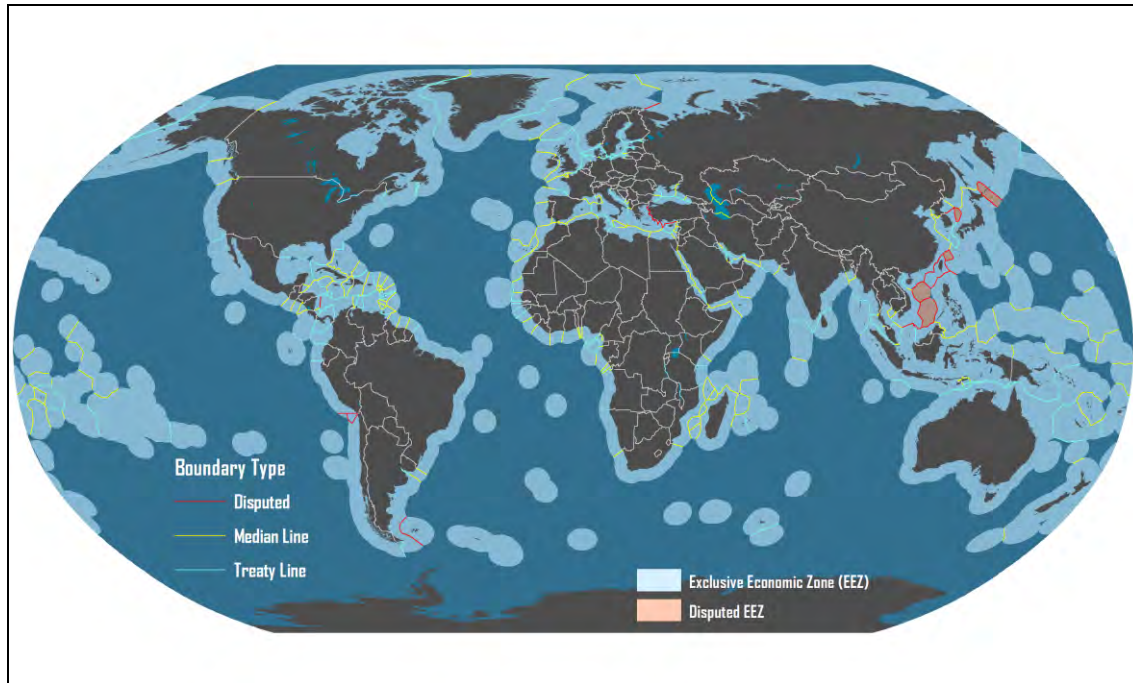


**Source:** Map prepared by CRS using basemaps provided by Esri. EEZs are from the Flanders Marine Institute (VLIZ) (2011). Maritime Boundaries Geodatabase, version 6. Available at <http://www.vliz.be/vmcddata/marbound>.

**Note:** Disputed islands have been enlarged to make them more visible.

<sup>136</sup> Navy Office of Legislative Affairs email to CRS dated September 4, 2012.

**Figure C-2. Claimable World EEZs**



**Source:** Map designed by Dr. Jean-Paul Rodrigue, Department of Global Studies & Geography, Hofstra University, using boundaries plotted from Maritime Boundaries Geodatabase available at <http://www.vliz.be/vmcddata/marbound>. The map is copyrighted and used here with permission. A version of the map is available at <http://people.hofstra.edu/geotrans/eng/ch5en/conc5en/EEZ.html>.

DOD states that

the PLA Navy has begun to conduct military activities within the Exclusive Economic Zones (EEZs) of other nations, without the permission of those coastal states. Of note, the United States has observed over the past year several instances of Chinese naval activities in the EEZ around Guam and Hawaii. One of those instances was during the execution of the annual Rim of the Pacific (RIMPAC) exercise in July/August 2012. While the United States considers the PLA Navy activities in its EEZ to be lawful, the activity undercuts China's decades-old position that similar foreign military activities in China's EEZ are unlawful.<sup>137</sup>

In July 2014, China participated, for the first time, in the biennial U.S.-led Rim of the Pacific (RIMPAC) naval exercise, the world's largest multilateral naval exercise. In addition to the four ships that China sent to participate in RIMPAC, China sent an uninvited intelligence-gathering ship to observe the exercise without participating in it.<sup>138</sup> The ship conducted operations inside U.S. EEZ off Hawaii, where the exercise was located. A July 29, 2014, press report stated that

<sup>137</sup> Department of Defense, *Annual Report to Congress [on] Military and Security Developments Involving the People's Republic of China 2013*, p. 39.

<sup>138</sup> See, for example, Sam LaGrone, "China Sends Uninvited Spy Ship to RIMPAC," *USNI News*, July 18, 2014; William Cole, "Chinese Spy Ship Off Hawaii Keeps Track of RIMPAC," *Star Advertiser*, July 18, 2014; Jeremy Page, "Chinese Ship Spies on U.S.-Led Drills," *Wall Street Journal*, July 19, 2014; Andrew S. Erickson and Emily de La Bruyere, "Crashing Its Own Party: China's Unusual Decision to Spy On Joint Naval Exercises," *Wall Street Journal*, *China Real Time*, July 19, 2014; Phil Stewart, "Update 1—China Sends Spy Ship Off Hawaii During U.S.-Led Drills," *Reuters*, July 21, 2014.



The high profile story of a Chinese surveillance ship off the coast of Hawaii could have a positive aspect for U.S. operations in the Pacific, the head of U.S. Pacific Command (PACOM) said in a Tuesday [July 29] afternoon briefing with reporters at the Pentagon.

“The good news about this is that it’s a recognition, I think, or acceptance by the Chinese for what we’ve been saying to them for sometime,” PACOM commander Adm. Samuel Locklear told reporters.

“Military operations and survey operations in another country’s [Exclusive Economic Zone]—where you have your own national security interest—are within international law and are acceptable. This is a fundamental right nations have.”<sup>139</sup>

One observer stated:

The unprecedented decision [by China] to send a surveillance vessel while also participating in the RIMPAC exercises calls China’s proclaimed stance on international navigation rights [in EEZ waters] into question...

During the Cold War, the U.S. and Soviets were known for spying on each other’s exercises. More recently, Beijing sent what U.S. Pacific Fleet spokesman Captain Darryn James called “a similar AGI ship” to Hawaii to monitor RIMPAC 2012—though that year, China was not an official participant in the exercises....

... the spy ship’s presence appears inconsistent with China’s stance on military activities in Exclusive Economic Zones (EEZs).... That Beijing’s AGI [intelligence-gathering ship] is currently stationed off the coast of Hawaii suggests either a double standard that could complicate military relations between the United States and China, or that some such surveillance activities are indeed legitimate—and that China should clarify its position on them to avoid perceptions that it is trying to have things both ways....

In its response to the Chinese vessel’s presence, the USN has shown characteristic restraint. Official American policy permits surveillance operations within a nation’s EEZ, provided they remain outside of that nation’s 12-nautical mile territorial sea (an EEZ extends from 12 to 200 nautical miles unless this would overlap with another nation’s EEZ). U.S. military statements reflect that position unambiguously....

That consistent policy stance and accompanying restraint have characterized the U.S. attitude toward foreign surveillance activity since the Cold War. Then, the Soviets were known for sending converted fishing ships equipped with surveillance equipment to the U.S. coast, as well as foreign bases, maritime choke points, and testing sites. The U.S. was similarly restrained in 2012, when China first sent an AGI to observe RIMPAC....

China has, then, sent a surveillance ship to observe RIMPAC in what appears to be a decidedly intentional, coordinated move—and in a gesture that appears to contradict previous Chinese policy regarding surveillance and research operations (SROs). The U.S. supports universal freedom of navigation and the right to conduct SROs in international waters, including EEZs, hence its restraint when responding to the current presence of the Chinese AGI. But the PRC opposes such activities, particularly on the part of the U.S., in its own EEZ....

How then to reconcile the RIMPAC AGI with China’s stand on surveillance activities? China maintains that its current actions are fully legal, and that there is a distinct difference between its operations off Hawaii and those of foreign powers in its EEZ. The PLAN’s designated point of contact declined to provide information and directed

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<sup>139</sup> Sam LaGrone, “U.S. Pacific Commander: Chinese Spy SHip Off Hawaii Has An Upside,” *USNI News*, July 29, 2014. Material in brackets as in original. See also Paul McLeary, “PACOM Chief: US Not Worried About Chinese Intel Ship off Hawaiian Coast,” *Defense News*, July 29, 2014.

inquiries to China's Defense Ministry. In a faxed statement to Reuters, the Defense Ministry stated that Chinese vessels had the right to operate "in waters outside of other country's territorial waters," and that "China respects the rights granted under international law to relevant littoral states, and hopes that relevant countries can respect the legal rights Chinese ships have." It did not elaborate.

As a recent *Global Times* article hinted—China's position on military activities in EEZs is based on a legal reading that stresses the importance of domestic laws. According to China maritime legal specialist Isaac Kardon, China interprets the EEZ articles in the United Nations Convention on the Law of the Sea (UNCLOS) as granting a coastal state jurisdiction to enforce its domestic laws prohibiting certain military activities—e.g., those that it interprets to threaten national security, economic rights, or environmental protection—in its EEZ. China's domestic laws include such provisions, while those of the United States do not. Those rules would allow China to justify its seemingly contradictory approach to AGI operations—or, as Kardon put it, "to have their cake and eat it too." Therefore, under the Chinese interpretation of UNCLOS, its actions are neither hypocritical nor illegal—yet do not justify similar surveillance against China.

Here, noted legal scholar Jerome Cohen emphasizes, the U.S. position remains the globally dominant view—"since most nations believe the coastal state has no right to forbid surveillance in its EEZ, they do not have domestic laws that do so." This renders China's attempted constraints legally problematic, since "international law is based on reciprocity." To explain his interpretation of Beijing's likely approach, Cohen invokes the observation that a French commentator made several decades ago in the context of discussing China's international law policy regarding domestic legal issues: "I demand freedom from you in the name of your principles. I deny it to you in the name of mine."

Based on his personal experience interacting with Chinese officials and legal experts, Kardon adds, "China is increasingly confident that its interpretation of some key rules and—most critically—its practices reinforcing that interpretation can over time shape the Law of the Sea regime to suit its preferences."

But China is not putting all its eggs in that basket. There are increasing indications that it is attempting to promote its EEZ approach vis-à-vis the U.S. not legally but politically. "Beijing is shifting from rules- to relations-based objections," Naval War College China Maritime Studies Institute Director Peter Dutton observes. "In this context, its surveillance operations in undisputed U.S. EEZs portend an important shift, but that does not mean that China will be more flexible in the East or South China Seas." The quasi-authoritative Chinese commentary that has emerged thus far supports this interpretation....

[A recent statement from a Chinese official] suggests that Beijing will increasingly oppose U.S. SROs on the grounds that they are incompatible with the stable, cooperative Sino-American relationship that Beijing and Washington have committed to cultivating. The Obama Administration must ensure that the "new-type Navy-to-Navy relations" that Chinese Chief of Naval Operations Admiral Wu Shengli has advocated to his U.S. counterpart does not contain expectations that U.S. SROs will be reduced in nature, scope, or frequency....

China's conducting military activities in a foreign EEZ implies that, under its interpretation, some such operations are indeed legal. It therefore falls to China now to clarify its stance—to explain why its operations are consistent with international law, and what sets them apart from apparently similar American activities.

If China does not explain away the apparent contradiction in a convincing fashion, it risks stirring up increased international resentment—and undermining its relationship with the U.S. Beijing is currently engaging in activities very much like those it has vociferously opposed. That suggests the promotion of a double standard untenable in the international



system, and very much at odds with the relationships based on reciprocity, respect, and cooperation that China purports to promote....

If, however, China chooses to remain silent, it will likely have to accept—at least tacitly, without harassing—U.S. surveillance missions in its claimed EEZ. So, as we watch for clarification on Beijing’s legal interpretation, it will also be important to watch for indications regarding the next SROs in China’s EEZ.<sup>140</sup>

In September 2014, a Chinese surveillance ship operated in U.S. EEZ waters near Guam as it observed a joint-service U.S. military exercise called Valiant Shield. A U.S. spokesperson for the exercise stated: “We’d like to reinforce that military operations in international commons and outside of territorial waters and airspace is a fundamental right that all nations have.... The Chinese were following international norms, which is completely acceptable.”<sup>141</sup>

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<sup>140</sup> Andrew S. Erickson and Emily de La Bruyere, “China’s RIMPAC Maritime-Surveillance Gambit,” *The National Interest*, July 29, 2014. See also Andrew S. Erickson, “PRC National Defense Ministry Spokesman Sr. Col. Geng Yansheng Offers China’s Most-Detailed Position to Date on Dongdiao-class Ship’s Intelligence Collection in U.S. EEZ during RIMPAC Exercise,” *Andrew S. Erickson*, August 1, 2014. See also Michael Auslin, “Wishful Thinking on China’s Navy,” *AEIdeas*, July 30, 2014.

<sup>141</sup> Erik Slavin, “Chinese Ship Spies on Valiant Shield, And That’s OK With US,” *Stars and Stripes*, September 22, 2014.

## Appendix D. Options Suggested by Observers for Strengthening U.S. Actions to Counter China's "Salami-Slicing" Strategy

This appendix presents a bibliography of recent writings by observers who have suggested options for strengthening U.S. actions for countering China's "salami-slicing" strategy, organized by date, beginning with the most-recent item.

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