



**Statement before the  
House Armed Services  
Subcommittee on Seapower and Projection Forces**

***“Seapower and Projection Forces in the South  
China Sea”***

A Testimony by:

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Chairman Forbes, Ranking Member Courtney, and members of the House Subcommittee on Seapower and Projection Forces, thank you for the opportunity to testify before you today.

*The South China Sea and U.S. Interests*

Growing tensions in the South China Sea are not simply a result of sovereignty disputes over rocks and reefs. They arise from differences over the future international order in Asia and the rules that undergird that order. The United States has an abiding interest in shaping those rules along with our partners in the region and beyond. At stake is peace and stability, and the preservation of a balance of power in the Asia-Pacific that benefits the United States, as well as its allies and friends.

American interests in the South China Sea are unambiguous. The United States has a national interest in freedom of navigation and open access to Asia's maritime commons, including the South China Sea. Freedom of navigation first and foremost applies to military ships, including the right of innocent passage within territorial seas. Since 1979, the U.S. Freedom of Navigation Program has asserted the navigation and overflight rights and freedoms of all nations around the world, challenging efforts by states to restrict these rights and freedoms. Maintaining open shipping routes for commerce is also a vital U.S. national interest. The South China Sea is a major strategic waterway through which more than \$5 trillion of world trade and energy is shipped annually. Unimpeded navigation is essential for the U.S. economy, as well as the economies of countries in the region.

Second, the United States has an interest in the peaceful resolution of disputes and in ensuring compliance with international law in the South China Sea. The U.S. doesn't take sides on the competing disputes over land features, but insists that these disputes be addressed peacefully, without intimidation, coercion or use of force, and in accordance with the U.N. Convention on the Law of the Sea (UNCLOS). The July 12 ruling by an arbitral tribunal constituted under UNCLOS in the case brought by the Philippines against China is a milestone that presents an opportunity to manage differences over resources even as disputes over territory persist. A particularly noteworthy finding is that there is no legal basis for China to claim historic rights to resources within its nine-dash line in the South China Sea. Despite Beijing's refusal to participate in the proceedings, the decision is binding on both China and the Philippines.

Third, the United States has a strong national interest in the security of its treaty allies in the region. Among those allies, the Philippines is the only state with territorial and maritime claims in the South China Sea. Japan, Australia, and South Korea also have direct interests in the South China Sea. Many observers in Tokyo and Canberra in particular increasingly view U.S. handling of the South China Sea as a test of the sustainability of the U.S. rebalance to Asia. In addition, the U.S. has an interest in the security of Taiwan, which is also a claimant. Three other countries with direct interests in the South China Sea—Vietnam, Indonesia, and Malaysia—while not U.S. allies are nevertheless increasingly important U.S. partners.

*China's Claims, Strategy and Objectives in the South China Sea*

In recent months, China has been more forthright in stating its interests in the South China Sea. After the UNCLOS Tribunal issued its ruling, the Chinese government issued a highly authoritative statement that provided the clearest exposition to date of China's territorial and maritime claims in the South China Sea. The statement explicitly cites claims to historic rights, territorial sea and contiguous zone, an exclusive economic zone and continental shelf, and internal waters.<sup>1</sup> A week later, Commander of the People's Liberation Army Navy Wu Shengli told Chief of Naval Operations Admiral John M. Richardson that the South China Sea is a "core interest" that involves "the foundation of the Party's governance, the country's security and stability and the Chinese nation's basic interests."<sup>2</sup>

Chinese actions in recent years are consistent with the objective of gaining effective control over the waters and airspace in the South China Sea, and possibly seizing control over land features occupied by other claimants. China has warned ships and aircraft to stay out of its undefined "military alert zones" around its artificial islands, which appear to go beyond the maritime entitlements allowed under UNCLOS. Contrary to President Xi Jinping's public statement in September 2015 that China has no intention to militarize the Spratly Islands, the building of installations for military purposes on the seven features China occupies has continued apace. Satellite imagery made public by the Center for Strategic and International Studies' Asia Maritime Transparency Initiative reveals the construction of military aircraft hangars and the likely presence of structures for radar and surface-to-air missiles on Mischief, Subi, and Fiery Cross Reefs.

Gaining control over the South China Sea may be a key step in a Chinese strategy to constrain or even block the U.S. Navy's access to and maneuverability within the waters of the first island chain, which stretches from southern Japan in the north to the Philippines, Borneo, and southern Vietnam in the south. If this is China's objective—and we do not know because Beijing has not made its goals clear—it is worrisome.

There were signs last March that China was preparing to begin dredging sand at Scarborough Shoal, although if there were such a plan, it was not implemented. Commentaries in the Chinese media have advocated for construction of another military outpost on Scarborough Shoal. One such article, published in the Beijing-owned Hong Kong media outlet *Wen Wei Po* maintained that when construction work at Scarborough Shoal is completed, China will have "a compressive defense system" in the South China Sea. The article stated that "developing Scarborough Shoal

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<sup>1</sup> Full text of Chinese government statement on China's territorial sovereignty and maritime rights and interests in S. China Sea," Xinhua, July 12, 2016, [http://news.xinhuanet.com/english/2016-07/12/c\\_135507754.htm](http://news.xinhuanet.com/english/2016-07/12/c_135507754.htm).

<sup>2</sup> "PLA Navy Chief urges China-U.S. Cooperation in handling South China Sea," Xinhua, July 19, 2016, [http://english.chinamil.com.cn/news-channels/china-military-news/2016-07/19/content\\_7162158.htm](http://english.chinamil.com.cn/news-channels/china-military-news/2016-07/19/content_7162158.htm).

is a task that must be done.”<sup>3</sup> A military outpost on that feature would enable China to deploy radar, aircraft and cruise missiles within range of not only Manila, but also of several Philippine bases to which the United States recently gained access. Together with China’s military outpost at Woody Island in the Paracel Islands and the three Spratly outposts, Scarborough Shoal would provide China with a “strategic triangle” that could give it sufficient capability to enforce an Air Defense Identification Zone (ADIZ) over most of the South China Sea.

There is much speculation that China will take advantage of the final months of Obama’s presidency to start dredging on Scarborough Shoal. Alternatively, Beijing could seek to test a new American president by beginning land reclamation during the presidential transition or in the early months after the inauguration. Up until now, China has been careful to avoid a direct military confrontation with the United States in the South China Sea. It has used small, incremental actions, none of which by itself would provoke a U.S. military response. It is uncertain whether China will continue this strategy going forward. Xi Jinping could decide to proceed with construction at Scarborough Shoal to bolster his domestic political position in advance of the 19<sup>th</sup> Chinese Communist Party (CCP) National Party Congress in November 2017. This decision could be based on an assessment that the United States will not put bilateral relations at risk over rocks in the South China Sea.

#### *U.S. Policy Response*

The Obama administration’s rebalance to Asia has included a series of diplomatic, military and economic policies designed to strengthen U.S. ties with regional partners and signal U.S. commitment to the preservation of a rules-based international order. Its most significant achievement has been bolstering engagement with Southeast Asia. President Obama joined the East Asia Summit, which is hosted by the Association of Southeast Asian Nations (ASEAN), and inaugurated a U.S.-ASEAN summit. Relations have improved and cooperation expanded with virtually every Southeast Asian country. Particularly notable is the establishment of a comprehensive partnership with Vietnam and the lifting of the U.S. arms embargo. Ties with Malaysia and Indonesia have also been reinforced. The Enhanced Defense Cooperation Agreement between the U.S. and the Philippines is currently being implemented, and although the election of President Rodrigo Duterte has introduced some uncertainty, the U.S.-Philippines alliance is strong. In coordination with Japan, Australia, and South Korea, the U.S. is working to build the maritime domain awareness capacities of several Southeast Asian nations.

The military component of the rebalance has advanced considerably. The U.S. already has 60 percent of its submarines in the Indo-Asia Pacific region and expects to have 60 per cent of U.S. surface ships deployed in the region by 2019. At the same time, the Defense Department has significantly increased U.S. presence operations in the South China Sea. In 2015, the total

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<sup>3</sup> Liu Si-lu, Wen Wei Po, July 29, 2016. Such an article is not authoritative, but likely represents a strand of influential thinking in China.

number of U.S. ship days in the South China Sea exceeded 700. That number will rise this year. This past June, two U.S. aircraft carrier strike groups conducted joint drills in the South China Sea. Since resuming Freedom of Navigation Operations in the South China Sea in October 2015, the U.S. Navy has conducted three operations, two in the Spratly Islands and one in the Paracel Islands. The U.S. is flying reconnaissance missions over the South China Sea with P-8 Poseidon spy planes operating from bases in Singapore and the Philippines. All these steps have sent a strong signal of American commitment to regional security.

The economic pillar of the rebalance to Asia has made some progress, especially in Southeast Asia. In February, U.S.-ASEAN Connect was established as a framework for U.S. economic engagement with ASEAN and its member states. It brings together resources and expertise from the U.S. government and private sector to create a synergistic approach to economic engagement in the region. However, the Trans Pacific Partnership (TPP) remains the most important step in the economic component of the rebalance to Asia strategy. Ultimately, the success of the rebalance may hinge on whether it is realized.

What should the U.S. do going forward?

**Persist in Calling for Compliance with the Ruling.** The U.S. should continue to publicly and privately call on Beijing to comply with the Tribunal's ruling. U.S. allies and like-minded countries with a stake in the perpetuation of a rules-based order in the Asia-Pacific should be encouraged to do the same. China's vigorous diplomacy both before and after the ruling that was designed to persuade countries to side with its position that the Tribunal was illegitimately constituted attests to the fact that the Chinese care deeply about their international reputation and do not want to be seen as an outlaw. Even if Beijing does not openly reverse its position on the ruling, with sufficient and sustained pressure from a considerable portion of the international community, China may eventually come into compliance with at least a portion of the decision.

**Continue FONOPS.** Freedom of Navigation Operations (FONOPS) in the South China Sea should continue, but such missions should be carried out quietly and without fanfare. If the details of a U.S. FONOP are leaked to the media, the Pentagon should simply state that the operation was a routine enforcement of freedom of navigation and overflight, and was not intended to challenge the sovereignty claims of any state. With the determination of the Tribunal that Mischief Reef is a Low Tide Elevation inside the Philippines' EEZ, the U.S. Navy should conduct a FONOP inside the 12nm around that feature, which includes a military activity such as turning on radar or flying a helicopter, rather than conduct innocent passage as it did around Subi Reef (which lies within 12nm of a feature classified as a rock and thus arguably entitled to its own 12nm territorial sea under UNCLOS). If China issues statements or engages in behavior that is inconsistent with the ruling, Washington should use FONOPS to contest its spurious claims without delay. If Chinese rhetoric and actions over time indicate that Beijing is not making "excessive claims" to maritime jurisdiction that are inconsistent with high seas freedoms under UNCLOS, such FONOPS may no longer be necessary.

**Warn China against Taking Actions Contrary to the Ruling.** U.S. officials must continue to warn Beijing that declaration of an ADIZ, land reclamation at Scarborough Shoal or another land feature, or other destabilizing behavior will be viewed with grave concern and result in a strong U.S. response. If the U.S. learns that China plans to undertake a destabilizing action, it should move swiftly to deter its implementation. In doing so, the U.S. may have to accept some risk in order for its threat to be seen as credible.

**Ratify UNCLOS.** The next U.S. administration should make it a priority to seek Senate ratification of UNCLOS. Centering U.S. policy toward the South China Sea on a rules-based order has proved correct. The contradiction, if not hypocrisy, of the U.S. insistence that China abide by the Convention while the U.S. refuses to accede to it is evident, and undermines U.S. moral authority. The fact that the U.S. adheres to UNCLOS as customary law is not sufficient. If the principles and practices embodied in UNCLOS are critical to American interests, then the U.S. should ratify the Treaty.

**Encourage ASEAN to press China to Apply CUES to Coast Guards.** In April 2014, the Code of Unplanned Encounters at Sea (CUES) was signed by 21 Pacific navies. Earlier this month, ASEAN and China signed a joint statement reaffirming their shared commitment to comply with CUES in the South China Sea in order to enhance operational safety of naval ships and naval aircraft in the air and at sea. While this agreement is a welcome step, the vast majority of incidents that take place in the waters of the South China Sea involve coast guards and other maritime law enforcement vessels. Our research at the Center for Strategic and International Studies has found that Chinese maritime law enforcement ships were involved in over 70 percent of the major incidents in the South China Sea since 2010, including aggressive harassment and ramming of foreign coast guard ships and fishing boats.<sup>4</sup> The U.S. should therefore urge ASEAN to press Beijing to agree to expand CUES to cover non-military ships. Agreement on rules of engagement for unexpected encounters at sea between all vessels will likely reduce the incidents in which “white hulled” ships are used for intimidation and coercion. It will also be a useful interim tool to help manage rising tensions while negotiations for a binding China-ASEAN Code of Conduct continue.

**Urge Other Claimants and Interested Parties to Seek Arbitration.** The impact of the Tribunal ruling will be amplified if it is followed by other cases. Washington should discuss the legal implications of the decision with claimants Vietnam and Malaysia, as well as with non-claimant Indonesia, and encourage them to weigh the pros and cons of filing arbitration cases to secure their own maritime claims. The State Department should be charged with writing another paper in its Limits on the Seas series that examines the implications of the Tribunal’s ruling and explores how future arbitration cases might proceed.

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<sup>4</sup> “Are Maritime Law Enforcement Vessels Destabilizing Asia?” <http://chinapower.csis.org/maritime-forces-destabilizing-asia/>.

**Task the Administration to Issue an Interagency Report on U.S. Responses to Developments in the South China Sea.** To ensure that the U.S. is pursuing a coherent, whole of government approach, Congress should task the executive branch with providing an annual reporting requirement on how it is using diplomatic, military and economic power to protect and advance U.S. interests in the South China Sea. In addition, Congress should require the next administration to issue a report on its maritime security strategy, which should update and detail U.S. strategy in the South China Sea, East China Sea and Indian Ocean. Such reports would enable better Congressional oversight over the implementation of U.S. policy on these critically important issues.