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Congressional Testimony

America's Security Role in the South China Sea

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Testimony before the House Foreign Affairs Subcommittee on Asia and the Pacific

July 23, 2015

Thank you for inviting me to testify today.

For the United States, the South China Sea is an important area of the Asia-Pacific region for three reasons: 1) it is part of a major transit route for maritime commercial traffic to and from East Asia and for the U.S. Navy; 2) disputes over the ownership of its many small islands, reefs, atolls, and rocks among China and several nearby Southeast Asian states (including one U.S. ally, the Philippines) are generating tensions that could result in conflict and instability; and 3) Beijing could eventually use its growing influence in the area to create a sphere of influence detrimental to U.S. interests.

These factors justify U.S. attention to events occurring in the South China Sea, and a set of policies designed to ensure access and transit, prevent or minimize tensions, and support the peaceful and legally based management of local disputes. Unfortunately, U.S. statements and actions at present are not effectively achieving such objectives, and growing tensions over the issue are threatening to severely destabilize the critical U.S.-China relationship in unnecessary ways.

Reacting to continued Chinese land reclamation efforts on several reefs in the Spratly Islands, senior U.S. officials and military officers vow to ñfight tonightò if needed to defend U.S. interests across the Indo-Pacific, while referring to Chinese claims across the South China Sea as ñpreposterousò and Chinese land activities there as designed to ñmilitarizeò the region and to build a ñgreat wall of sand.ò In response, Chinese officials and spokespersons warn the U.S. against provocative actions, insist that China will not back down and reiterate their determination to ñsafeguard our own sovereignty and territorial integrity.ò

Meanwhile, this heated rhetoric is being fueled by all manner of often misleading claims, charges, and demands for more aggressive action by outside commentators on both sides. Many in the U.S. see China as engaged in a concerted strategic effort to seize control over the entire South China Sea, land and water alike, as part of a larger attempt to push the U.S. out of Asia and replace it as the dominant force in the region. Only a more aggressive and sustained military-centered U.S. pushback designed to deter and humble China will avert this outcome, they insist.

In contrast, many in China see the U.S. as using the disputes over sovereignty in the South China Sea and elsewhere as a means of justifying more concerted efforts to contain and undermine all Chinese influence in the Asia-Pacific, and to encourage other states to provoke China and militarize the issue. Beijing must double its efforts to strengthen its position and show the U.S. and others that China cannot be intimidated, they demand.

This situation is not just another temporary downward blip in an up and down Sino-U.S. relationship. It threatens to drive U.S.-China relations in a far more adversarial, zero-sum direction and destabilize the region. To allow a dispute over a few rocks and islands in a corner of the Asia-Pacific region to derail a vital relationship critical to both regional and global peace and prosperity is the height of folly. Hyperbolic statements, veiled threats and calls for more military action serve no useful purpose and will only lead to hardened positions and redoubled efforts on both sides to counter the other. What is needed is a far sharper level of clarity by both Beijing and Washington regarding their claims, grievances and concerns, and, on that basis, a clear

indication of the consequences of unacceptable behavior, along with a commitment to provide mutual assurances over the near term to avoid specific tripwires, while working to stabilize the long term situation.

Washingtonôs message on the South China Sea issue has been badly garbled, making it seem as if it is opposed to any Chinese activities that involve an increase in presence or capability in the area, with little serious reference to the provocative actions of any other claimants, in particular Vietnam and the Philippines. To clarify its position, the U.S. needs to focus like a laser on its two only real interests in the South China Sea, and connect its statements and actions to them as much as possible.

The first interest is freedom of navigation (FON), meaning access **by the U.S. Navy** to areas outside any legally established territorial waters surrounding islands or other features, including the so-called Exclusive Economic Zone (EEZ) that extends for 200 nautical miles beyond such waters. China has no interest in obstructing commercial shipping or flights across the South China Sea and warning them against something they have never undertaken and would never do in the future, except perhaps in time of war, is unnecessarily provocative and misleading.

The second U.S. interest regarding this issue is the possible unprovoked use of force by China against other claimants. Such actions would inevitably generate a much greater level of tension across the region and push it toward an emphasis on military rivalry over peaceful economic growth. Both Washington and Beijing have a vital interest in preventing an escalating spiral of violence over disputed rocks and islands. Washington needs to end its vague opposition to undefined ñcoercionò by Beijing or others in the South China Sea and focus on preventing the sustained use of force.

Both of these U.S. interests involve potential violations of or disputes regarding international law and process in respect to three issues: 1) whether man-made islands can be used to justify 12nm territorial seas and EEZs that can then be used to limit naval access; 2) whether a coastal state with EEZs can demand that foreign militaries notify them before transiting or engaging in ISR or similar military activities; and 3) the threat or resort to force over disputed territories.

Regarding the first point, the U.S. must make it abundantly clear to the Chinese government that any attempt to claim sovereign waters or EEZs for man-made islands built on features that do not possess territorial waters or EEZs would be in violation of international law and completely unacceptable. Washington has in fact said this at times, but too often it also makes statements that give the impression that it is opposed to Chinese land reclamation per se. Land reclamation in itself is meaningless. Virtually every claimant has engaged in it, and to say that China is doing more of it means little. The issue is about what China **does** with its reclaimed land.

In addition, the lack of Chinese clarity regarding the specific claim to waters around man-made islands is magnified by its larger unwillingness to clearly define its claims to those waters existing *outside* of any conceivable 12 nm limit or EEZ associated with land features and yet *inside* the much larger ñnine-dashed lineò (9DL) that is intended to signify its claims across the South China Sea. Beijing has at times acted as if it has exclusive rights over such waters, but has never clearly

stated its position, thus greatly increasing the overall level of uncertainty. Washington and others have repeatedly called for Beijing to clarify its stance on the 9DL and should continue to do so.

On the second point (regarding naval activities within EEZs) Beijing and Washington clearly differ over how freely U.S. military assets can operate in areas just outside territorial waters, especially the EEZ. China, along with several other coastal nations such as India and Brazil, insists that it has the legal right, under the regulations of the UN Convention on the Law of the Sea (UNCLOS), to deny foreign navies the ability to conduct a variety of supposedly ñhostileò activities in its EEZ, including surveillance. The U.S. and many other countries reject this interpretation. Moreover, China has itself conducted such supposedly ñhostileò naval actions (i.e., surveillance) in the U.S. EEZs around Guam and Hawaii. Washington must point out the hypocrisy of the Chinese position and insist that it has a right to operate in a non-hostile manner (including normal surveillance activities) outside of legal 12 nm territorial waters. At the same time, Washington should reduce the frequency of its monitoring activities within Chinaôs EEZs. It is my understanding, based on discussions with former U.S. officials, that the U.S. military does not need to conduct such ISR activities at high levels.

The third point (an unprovoked threat or use of force) would constitute a clear violation of the UN Charter prohibiting such behavior. Any sustained attempt by China to forcibly threaten or remove other claimants from disputed territories without any clear appeal to self-defense would seriously disrupt peace and generate a strong regional and international response. Beijing must recognize that such an outcome would undermine its entire ñpeaceful developmentò policy and put at risk its relations with the West and many regional states. Although China has stated many times that it is committed to a peaceful process of negotiation over the disputed areas and signed the 2002 *Declaration on the Conduct of Parties in the South China Sea*---in which all parties agreed ñto resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force,ò---it has never clearly disavowed an unprovoked use of force. Moreover, China has employed force in the past to eject other claimants from disputed South China Sea territories, and at present it (along with many ASEAN states) seems to offer little strong support for adopting a binding Code of Conduct to avoid future incidents. The U.S. and others should thus press China and other claimants to make a clear, definitive statement that they will not resort to force to remove other claimants without a direct, prior provocation. Some might counter that China and others could not make such a pledge without damaging its sovereignty claims in the South China Sea or undermining its future negotiating leverage. However, such consequences are avoidable if Beijing makes its non-use-of force- pledge contingent on similar pledges by other claimants and defines its pledge clearly as a confidence building measure that in no way imperils its sovereignty claims.

In addition to the above near-term actions in support of its two interests in the South China Sea, Washington should also undertake several specific actions to prevent the further deterioration of the situation over the long term. First. Washington should stop emphasizing military deterrence methods to prevent changes in the status quo (thus freezing the situation into one of constant potential conflict) and start focusing instead on the resolution of territorial disputes through negotiations between the claimants designed to clarify the nature of claims. This should be followed by the application of UNCLOS principles to sort out the territorial and EEZ implications of the claims, perhaps using South China Sea Council modeled on the Arctic Council.

Second, Washington needs to make it clear privately to Beijing that its continued failure to enter into binding Code of Conduct talks, to clarify the nature of its claims to waters within the 9DL, and to disavow the unprovoked use of force, combined with its growing presence and capabilities in the area, will increasingly cause the U.S. and other states to hedge against worst case outcomes and act accordingly. Specifically, the U.S. will need to maintain its own capacity, and the capacity of others, to counter possible future attempts by Beijing to declare a *de facto* exclusionary zone or zones in the area and to employ force, possibly against an ally (the Philippines).

Third, Washington should make it clear to Beijing that such hedging would require a significant improvement in U.S. defense relations and presence with, and the provision of armaments to Manila, as well as Hanoi and Malaysia. However, this augmented level of U.S. activity should *be made contingent on* China clarifying its claims and entering into negotiated codes of conduct with other claimants. Beijing must also clearly affirm, through its words and actions, that there is no military solution to these disputes and that it will never seek to dislodge rivals forcefully from occupied areas in an unprovoked manner. It should also refrain from deploying significant power projection capabilities on its occupied islands in the Spratly Islands, such as advanced fighters. Washington should make it clear that, if China undertakes such actions and pledges, the U.S. *would suspend* the above hedging activities, but would restart them if China violates its commitment.

Fourth, regarding negotiations over the disputed claims, Washington should stop opposing bilateral talks between claimants, including China-Vietnam, China-Philippines and China-Malaysia, and try to broker bilateral settlements between Vietnam and the Philippines and Vietnam and Malaysia so as to reduce differences between claimants to the bilateral level with China. The current U.S. stance of pushing ñcollaborativeò efforts is a non-starter in the absence of any unity among the non-China claimants.

Fifth, in order to reduce tensions and improve the environment for negotiations, Washington should work behind the scenes (perhaps with Indonesia) to organize an effort to promote the joint exploration of seabed resources without prejudice to sovereignty, as has already been done by Malaysia and Thailand (1979), Malaysia and Vietnam (1992), and Malaysia and Brunei (2009), and as China has long urged. Washington should call Beijingôs apparent bluff on this issue.

Sixth while Japanôs effort to improve the capacity of coast guard units of our allies and friends in Southeast Asia is welcome, Washington should <u>not</u> encourage the Japan Self-Defense Force to join the U.S. in patrolling the South China Sea. Having the JSDF in the South China Sea where Japan has no territorial claims (unlike China) and its security and freedom of navigation are not threatened would intensify the emerging security dilemma between the US-Japan alliance and China and promote instability. Moreover, it is highly likely that Japan is legally prohibited from engaging in such joint patrols.

Finally, this issue, and the need for greater clarity regarding concerns and consequences, is sufficiently urgent and important to justify discussion at the highest levels of government. It should be on the agenda of President Xi Jinpingôs meeting with President Obama during the formerôs upcoming state visit to Washington in September. Rather than yet again exchanging

each sideôs formal position, the two presidents and their aides should seek to achieve a clearer and more finely grained understanding of concerns, intentions, and consequences and commit themselves to undertaking mutual assurances designed to avoid an escalating spiral. Military and civilian authorities at lower levels could then develop such assurances.

The U.S. and China must get beyond the heated rhetoric and signals of resolve and build the basis for demilitarizing and defusing the escalating tensions in the South China Sea. If this is not done, the current course of action threatens to produce a far more dangerous situation that will prove extremely difficult to reverse.

Thank you.