

Testimony before the House Committee on Armed Services subcommittee on Seapower and
Projection Forces
And
House Committee on Foreign Affairs subcommittee on Asia, the Pacific, Central Asia, and
Nonproliferation

“Maritime Security in the Indo-Pacific and the UN Convention on the Law of the Sea”
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Good morning, Chairmen Courtney and Bera, Ranking Members Wittman and Chabot, and members of the combined Committees. My name is Scott Swift and I am pleased to be before the committees today to testify on “Maritime Security in the Indo-Pacific and the UN Convention on the Law of the Sea.”

I retired just short of three years ago from a career as a naval officer spanning forty years from enlistment until my final tour as the Commander of the US Pacific Fleet. With the exception of a tour as the Deputy Commander of Naval Forces Central Command and three tours in the Pentagon, my entire career was either centered in the Indo-Asia-Pacific or I transited through it to the CENTCOM area of responsibility.

Since retirement I have remained active in national policy and security affairs in the Indo-Asia-Pacific through numerous forums and engagements.

I have submitted my full statement to the combined committee, which I ask to be made part of the hearing record.

The point of my testimony today is focused on three recommendations, presented with a practitioner’s view of the challenges and opportunities faced within the region.

The first recommendation: to expand the current focus of “Maritime Security” more broadly beyond the context of the Department of Defense generally, and the US Navy specifically. The challenges the United States faces in the Indo-Asia-Pacific are multifaceted and complex. They required a multifaceted and inclusive whole of government approach that brings to bear of all of our national elements of power on this problem set. Congress, the Administration, including all of its Cabinet Secretaries and their departments, State Governments, academia, industry, businesses and commercial entities all have important roles to play.

While the current trend of the State Department being in the lead on foreign policy issues, with the Department of Defense in support where appropriate, is a positive step, other Cabinet level departments need to play more proactive roles in coordination with the State Department. Further, Congress needs to be included more holistically if solutions are going to be relevant, especially in the eyes of our allies, partners and friends as well as competitors.

The need for this expanded focus is driven by the necessity for more meaningful action on the part of the United States in this critical region. A number other nations in the competitive arena of the Indo-Asia-Pacific have such whole of government approaches and commitments. Japan is one with its “Free and Open Indo-Pacific” strategy and its three pillars;

- The promotion of the rule of law, freedom of navigation, and free trade;
- The promotion of connectivity through infrastructure to achieve prosperity, and;
- The contribution to peace and security through capacity-building, humanitarian

assistance, disaster relief, and anti-piracy operations.

In 2016 the Australian government published its Defense White Paper. It was followed in late 2017 with the publishing of a Foreign Policy White Paper that set out a comprehensive framework to advance Australia’s security and prosperity in a contested and competitive world.

Combining elements of the two papers, Australia’s stated vision for the region is for;

- Disputes to be resolved peacefully in accordance with international law and without the threat or use of force or coercion;

- For open markets to facilitate flows of goods, services, capital and ideas;
- That economic integration is inclusive of, and open to, all the region's economies;
- That the rights of freedom of navigation and overflight are upheld, and;
- The rights of small states are protected.

In November of 2019 the United States State Department released its "A Free and Open Indo-Pacific, Advancing a Shared Vision" document, signed by Secretary Pompeo. It articulates the vision for;

- A free and open Indo-Pacific;
- In which all countries prosper side by side as sovereign, independent states;
- It is based on free, fair, and reciprocal trade, open investment environments, good governance, and freedom of the seas.

Implementation of the vision will occur through working with allies and partners to implement our shared vision by;

- U.S. government agencies, businesses, and institutions spurring private sector investment and gainful employment in infrastructure, energy, and the digital economy, strengthening civil society and democratic institutions, countering transnational threats, and investing in human capital.

- Increasing the tempo and scope of work with allies, partners, and regional institutions such as the Association of Southeast Asian Nations (ASEAN), the Mekong states, the Pacific Island countries, and our strategic partner India to address shared challenges and advance a shared vision.

The 2019 Department of Defense Indo-Pacific Strategy Report affirmed the enduring U.S. commitment to stability and prosperity in the region through the pursuit of preparedness, partnerships, and the promotion of a networked region.

In comparing just these three countries' approach, even at a top level, more work is needed on the part of the United States if our strategic vision is going to be considered relevant in the eyes of allies, partners and competitors.

In order to be relevant we must at least match our commitment of national, whole of government resolve and commitment with allies, partners and competitors alike. It is critical to tie tactical actions with national strategic vision. The construct of Freedom of Navigation Operations is one example for consideration. In my view, in their current application, they are necessary but insufficient.

Historically FONOPS have been tactical actions conducted by the Navy in support of State Department objectives. The State Department Office of Ocean and Polar Affairs, under their responsibility for formulating and implementing U.S. policy on international oceanic issues, has managed the global FONOP strategy. Codified during the Reagan Administration, the FON Program is designed to highlight what are exceedances to UNCLOS and provide opportunities for discourse and dialogue between the US and those with differing views on the application of the UNCLOS.

When country "X" applies the rules contained within UNCLOS in ways that are viewed as "excessive" by the Office of Ocean and Polar affairs, consideration is given through the Interagency Coordination process for a Freedom of Navigation Operation. The final step in this process is to ask the Navy to plan the specifics of the FONOP such as location, navigation track, time of day, etc.

A successful FONOP results in a specific set of facts that State Department can then use within its diplomatic channels to make the case as to why country "X's" interpretation of UNCLOS is excessive, and why the FONOP was legal within the context of UNCLOS.

This was the norm from my first deployments through the 1980's, but no longer. The United States has drifted from the strategic context and objective of FONOPS. Peer competitors have recognized this and seized the discourse and dialogue opportunity of FONOPS for their own advantage. The PRC, being the most advanced and adept at adopting this approach, ensuring they are first to announce a FONOP that challenges their interpretation of UNCLOS, seizing the opportunity to message first, effectively shutting down the opportunity for diplomatic challenges.

In this way they have become masters at hijacking US FONOPS for their own purposes characterizing each in the same manner;

- Actions of a faded regional colonial hegemony;
- Using military power to backup a failed form of government;
- Ensuring the region remains destabilized;
- Prevent the nations of the region self-determination of its future.

The message's clarity, consistency and concise presentation to the region and beyond is ensured by the PRC's understanding of the critical nature of the requirement to focus all instruments of national power through a synchronized national strategy. It is powered by being derived from a clear and consistent strategic vision, supported by an operational plan which directs whole of government tactical actions.

The mismatch of the application of national power between the approaches of United States and PRC is underscored by an accounting of who provides the national response from each FONOP. In the vast majority of cases the PRC response is from the Foreign Ministry spokesman speaking on behalf of the PRC Foreign Minister. The response from the United States it is most frequently provided by the SEVENTH Fleet Public Affairs Officer on behalf of the SEVENTH Fleet Commander. While the reality of this manifestation of strategic mis-match goes largely unnoticed in the United States, it is duly noted by allies, partners and competitors alike.

This process is exacerbated for a number of other reasons but none as compelling as the fact that the United States is on the outside looking in as one of the 14 UN member states who have signed the UNCLOS but not ratified it. I note there are an additional 15 UN member states who have neither signed or ratified the Convention, bringing the total of outsiders to 29.

There are 168 parties who have ratified the Convention, driving the bus so to speak, to include the PRC and Russia, while we self-isolate ourselves with the likes of Iran, North Korea and Venezuela.

This is a good point on which to transition to my second recommendation: fully understand the perceptions of those outside our borders who could have significant roles to play with respect to our national interests. Their perceptions need to be treated as our realities.

The concept of the "Rebalance to the Pacific" was formulated while I was the Director of Operations of PACOM. It was implemented when I was the SEVENTH Fleet Commander from 2011 to 2013. By then I had developed a number of personal relationships throughout the region. In the resultant private discussions I had with my counterparts on their perspective on the value of the "Rebalance" they were overwhelming supportive. They were also overwhelmingly skeptical of the needed long term commitment of the United States to follow through on the promise and vision of the Rebalance.

As I made the case for their confidence their response was, "We'll see." "Check back with us in two years." They lacked confidence of how relevant the Rebalance was given their skepticism of our long term commitment to the region. They were reserving the right to judge us by our actions, not our intentions.

After I finished my SEVENTH Fleet tour in August of 2013 I return to the Pentagon as the Director of the Navy Staff until May of 2015 when I returned to the Pacific as the Commander of the US Pacific Fleet. As I reunited with my friends in the region invariably the state of the Rebalance came up in our discussions. Their common response being, "We told you so."

Those relationships, generated over years of serving in the Indo-Asia-Pacific, remain relevant today. Those discussions have begun to transition from a concern for the "relevancy" of the United States with respect to foreign policy commitments, to questions of United States' "legitimacy." A key factor in this diminishment of United States' regional influence and power is the erosion of trust in our following through on our commitment to stated visions for the region.

In the past, privately and often publicly, they would speak in support of their relationship with the US while, less frequently, criticizing PRC actions. Now, based on the actions and

inactions on the part of the US, there is great reluctance to choose sides publicly, and only privately, in unofficial discussions, voice concerns with respect to PRC actions. In their estimation there is too much risk and downside, and not much value or upside in adopting a different approach.

The last recommendation, in tying these two points together, is to recognize how important it is to move beyond declarations of intent, words of warning, and posturing. There is a natural inclination throughout the region to embrace the international rules based order. The concept of changing the order through force and coercion is universally rejected.

But the stakes have become so high, with the PRC clearly demonstrating through force and coercion the implications of speaking out against its application of national law in internationally sovereign space, allies and friends are incentivized to remain on the sidelines as the PRC/United States competition plays out.

The United States needs to return to its roots of;

- Thinking strategically, with vision and clarity;
- Using that strategic vision to develop an operational plan to implement its strategic vision, and;
- Conduct tactical actions, guided by the operational plan, to achieve its strategic vision.

Too often what I see is an approach that pursues a process of thinking, planning and acting tactical, then wondering why we are being out performed and competed by both peer and near-peer competitors.

I already mentioned the example of FONOPS as well as the challenges of not being a party to UNCLOS. I want to expand on this point of how necessary it is to rethink the logic of the argument that the United States is empowered by remaining outside UNCLOS and disempowered if it were to become a party to the it.

I have disagreed in the past with those that suggest ratification of UNCLOS is not in the best interests in the United States for a number of reasons. But now more than ever I believe that argument has been further diminished due to the manner in which the PRC has strategically applied its national power where it has national security interests.

These are some of the arguments offered by those who advocate remaining outside the Convention with my response;

- Between like minded nations the convention provides no value added.

If we are on the outside we are not like minded with those in the inside. As a nation that cherishes its documents of democracy, the Constitution, the Declaration of Independence, the Bill of Rights, it is those documents that codify the application of democratic ideals to solving our most vexing problems. They are not perfect, just as UNCLOS isn't, but based on the challenges we face with respect to our position in the world, the ratification of UNCLOS will bring meaningful legitimacy to our views and perspectives that is currently lacking. UNCLOS is not just a document, anymore than our founding documents are. It is a statement of intent and commitment to a rules based order that is enforced through diplomacy and dialog, with the power of an international courts system to adjudicate competing views. Imperfect for sure, but better than the alternative the PRC and Russia are offering.

- The inability to force PRC compliance with UNCLOS underscores the lack of its relevance.

Because the PRC has signed the Convention combined with the fact that they continue to act outside its tenets serves to further highlight their capricious actions. PRC will continue to turn to force and coercion in furthering its national sovereignty claims in international space for two reasons: first, expediency and second, the inherent weakness of their arguments to justify positions that have no basis in UNCLOS or the International Rules Based Order.

We are without standing in criticizing the Convention for its lack of relevance without being a party to it. If the United States were a party we would be in a much better

position to leverage meaningful mechanisms for compliance. That power would come from unanimity and participation of all nations, large and small, to counter those claims through discourse and dialogue enabling the power of strength in numbers. Criticism by those few who remain outside the convention ring hollow to those on the inside, and allow those on the inside with power equal to the United States free rein to influence the Convention without a United States counter.

- The lack of need for the International Seabed Authority associated with UNCLOS.

I would not advocate to allow competitors free rein over access to the wealth of the seabed outside territorial waters and EEZ's. The International Seabed Authority is made up of over 167 members and the European Union. Here too, strength is derived from its numbers. As with those who find UNCLOS lacking, much more can be done to improve the International Seabed Authority mandate by working from within. Remaining on the outside in an observer status has done nothing to further our interests, and I suggest is an other example of doing us harm by being one of the few non-members, diminishing the relevancy of our stated positions.

- The inclusion of non-maritime states as members on the International Seabed Authority.

Including non-maritime members is important for many reasons but I'm mention just two.

First, unregulated exploitation of the international seabed has implications beyond coastal states. Where harm would come to their direct and indirect interests such as processing mined materials, to manufacturing, to transportation they should have a voice. This aligns with the United States concept of free and open democracies.

Second, increasing participation in democratic processes has been a major element of your own journey as a democracy. A matter of longstanding national policy, greater participation by more nations in inherently democratic processes are of inherent value to our own democracy.

- The ability to use licensing revenue from seabed mining operations outside national territorial or EEZs,

While no mining operations have started anywhere in the world, so no revenues have been generated or collected yet, it is important to note the International Seabed Authority budget for both 2017 and 2018 combined was on the order of \$17M. Compared to the needed profitability to make deep seabed mining viable, the licensing fees are minor in comparison. Further the revenues collected are applied by the International Seabed Authority to understand and develop the techniques, science and best practices associated with deep sea mining. In this sense these fees would reduce risk and increase profitability of those engaged in such commercial operations. Additionally, reducing the burden on the member nations to fund its work through a modest licensing fee charged to those profiting from such commercial operations is more than reasonable.

- Based on our military strength, ratifying UNCLOS is not necessary.

To suggest the United States does not need to ratify UNCLOS because we have a powerful Navy seems to be taking a page from the PRC playbook, drafted by the Chinese Communist Party, signed by President Xi Jinping of "might make right." We should continue to stress how much more valuable our democratic form of government is compared to the PRC. We should be highlighting those differences, not taking their examples of coercive international leadership as our own.

We are serving our own interests by ratifying UNCLOS as an example of how powerful nations use discourse and dialog as a first resort, rejecting and leaving withdrawal and retrenchment as strategies for weaker, less secure nations.

I recognize ratifying UNCLOS alone will not stop the erosion of United States influence and relevance outside our borders. But when made part of a larger commitment to action, ratification would send a strong, unequivocal signal that the United States in returning to a position of leadership strength in those areas of foreign policy where it has national strategic

interests. I have confidence such a shift would be welcome by our allies and partners, causing concern among our competitors.

If you consider nothing else and set my arguments aside, in my professional opinion we need to take initial steps to first stop the hemorrhaging of our credibility and relevance. To this point signing UNCLOS would be significant in comparison to the downsides opponents raise.

In closing, the United States is no longer being judged on what we say. We are being judged on what we do. To be relevant on today's global stage you need to have a body of action against which your declarations can be judged.

While action is needed, this does not mean they need to be big, bold, headline grabbing events. They need to be consistent and firm. Many smaller actions are more impactful than a few big ones. Those actions should highlight our democratic ideals of inclusion, respect for discourse and dialog, rejection of pursuing a strategy of might makes right. They should embrace multilateralism as a rule, bilateralism only as a fall back while using unilateral action sparingly when our national security interests are so compelling that taking this approach is necessary and other measures have proven ineffective.

On a positive note, we are not alone. The recently published EU strategy is excellent. I have participated in a number of Canadian dialogs that impressed me with how informed and committed they are to ensuring the erosion of the International Rules Base Order is not only halted but reversed, this despite the continued incarceration to two Canadian diplomats by the PRC for more than two years now. Briton, France and Germany, among others, have developed meaningful strategies to counter the PRC's frequent departure from the maritime mechanisms of UNCLOS that have sustained the International Rules Based Order.

Indications of other nations' commitment to their stated strategic vision for a free and open maritime domain is their use of military resources to underscore their resolve. France has the largest EEZ holdings in the Pacific and has been proactive in sustaining a naval presence there. Germany has deployed ships to the region when they can and are planning on doing so in the future. The Royal Navy will deploy HMS QUEEN ELIZABETH and her Strike Group in the not too distant future. From time to time it will include ships from other Navy's to include the Pacific Fleet. Embarked will be US Marine Corps F-35B's.

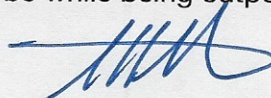
But these countries have established an important example for others in that the application of the military presence and maneuver is the tactical manifestation of an operational plan, informed by a strategic vision. These deployments represent the low hanging fruit of national commitment, they do not representative the most impactful and enduring actions but are meant to backup diplomatic commitment and resolve.

I remain confident that these commitments our allies and partners of their strategy will continue to be reflected in a whole of government approach to sustaining the International Rules Based System. The system that has been the guarantor in the Indo-Asia-Pacific of security applied to ensure stability which in turn has resulted in the prosperity that has benefited not only the region but the world.

We need to take a lesson from our allies and partners of inclusion, not our competitors example of exclusion. We need to exercise the courage to take the first step of changing course and demonstrating our commitment of leadership by ratifying UNCLOS.

To act in similar meaningful ways as our allies and partners we need to develop a relevant strategic vision that is clearly and concisely aligned with our democratic ideals, develop an operational plan that delivers that vision through whole of government tactical actions that advance the vision. Think strategically - plan operationally - act tactically.

At the very least, what we need to stop doing is thinking, planning and acting tactically, then wonder why we are not as competitive as we should be while being outperformed.



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