

Statement of

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Seapower and Projection Forces Subcommittee**

and

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Subcommittee on Asia and the Pacific**

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Chairman Forbes and Chairman Salmon, thank you for the opportunity to appear before this joint Subcommittee hearing today to testify with Abraham Denmark, Deputy Assistant Secretary of Defense for East Asia, on this very important and timely topic. I would also like to thank both Committees for their leadership in supporting and promoting bipartisan engagement with the Asia-Pacific and advancing U.S. interests there.

The importance of the South China Sea to global commerce and regional stability cannot be overstated, with estimates of more than half the world’s merchant fleet tonnage passing through these waters. The sea lines of communication are lifelines to the dynamic economies of Northeast Asia; the bulk of the energy supply for Japan, the Republic of Korea, and Taiwan pass through this body of water, as well as a significant amount of China’s trade volume. The South China Sea also serves as an important transit route and operational theater for the U.S. and other regional militaries, including those of our allies and partners. It allows us to shift military assets between the Pacific to the Indian Ocean regions to respond efficiently to transnational challenges ranging from natural disasters to the outbreak of armed conflict.

The United States has a vested interest in ensuring that territorial and maritime issues are managed peacefully. We view it as in our interests to see all claimants find diplomatic and other peaceful approaches to manage, and ultimately resolve these disputes.

The region abounds with examples of neighbors finding peaceful ways to resolve difference over overlapping maritime zones. 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 acceptance of the decision from an arbitral tribunal with regard to their overlapping EEZ in the Bay of Bengal are just a couple that come to mind.

In our view, these are emblematic of the acceptable ways for South China Sea claimants to handle these disputes. As is typically the case in the resolution of disputes, the method of first resort is for claimants to use negotiations and other diplomatic means to try and resolve the competing territorial and maritime claims. But when these processes become stalled or lead to irreconcilable positions, parties may consider other peaceful processes available to them. And sometimes, this may include utilizing third-party dispute settlement mechanisms.

The Philippines, for example, chose to exercise its treaty rights under the 1982 Law of the Sea Convention (the Convention) to submit for compulsory dispute settlement certain questions relating to the interpretation or application of the Convention in the South China Sea. Among other issues, the Philippines has sought a decision from an international arbitral tribunal regarding the validity of China's nine-dash line as a maritime claim under the Convention, as well as the clarification of maritime entitlements under the Convention of South China Sea islands and other geographic features.

By its terms, the Philippines case did not ask the Tribunal to rule on the question of which country had a right to exercise sovereignty over the contested land features under international law. Instead, it sought clarification regarding maritime issues – specifically, certain issues involving the Philippines' and China's rights and obligations as parties to the Law of the Sea Convention.

Having ruled in an October 29, 2015, decision that it has jurisdiction to rule on the merits of several of the Philippines' submissions, the arbitral tribunal that was convened under the Convention has announced that on July 12 it will issue a decision on the remaining jurisdictional questions and on the merits of those issues over which it has jurisdiction.

Although China chose not to participate in the case, the Law of the Sea Convention makes clear that “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 Article 296 of the Convention that a decision by the tribunal in the case will be binding on both China and the Philippines. For this reason, we, along with many members of the international community, expect both the Philippines and China to respect the ruling.

The arbitral decision could crack the door open for a *modus vivendi* among the parties that would help manage tensions in disputed spaces until all are ready to engage in negotiations over the actual claims. To date, Southeast Asian claimants have been wary about agreeing to enter into provisional arrangements for managing marine resources, in large part due to the ambiguity of China’s expansive maritime claims. The Philippines has asked the tribunal to clarify the scope of China’s and the Philippines’ maritime entitlements in the South China Sea by ruling on the validity of China’s nine-dash-line claim and on the maritime entitlements generated by various South China Sea features. Such a ruling may clarify and limit the scope of the geographic areas subject to overlapping maritime entitlements. The ruling will not delimit any maritime boundaries in these areas or resolve sovereignty disputes over islands, but it does have the potential to make clear and to narrow which maritime areas in the South China Sea are legitimately subject to dispute, based on maritime zones derived from contested land features and the undisputed mainland coasts of Southeast Asian claimants.

It is possible to envision a diplomatic process emerging among claimant states to explore different ideas for managing marine resources in areas that all relevant parties can agree are legitimately subject to competing claims. Having a geographic starting point, even a relatively small one, could also help reignite dormant Code of Conduct discussions by identifying areas where both ASEAN and China could agree to implement confidence building measures for different naval and coast guard vessels, such as the Code for Unplanned Encounters at Sea (CUES).

A path towards cooperation could be opened in the next few months if claimants have the political will, flexibility, and creativity to find reasonable and practical arrangements that could serve as starting points for addressing longstanding tensions. China’s record of resolving land boundary disputes with a number of its neighbors offers some encouragement.

Conversely, an adverse reaction by any party to the arbitral tribunal's decision could become a source of increased tension. China continues to insist it will not respect the tribunal's decision. There will be significant international focus on China's and the Philippines' response to the ruling. How they choose to respond will inevitably shape international perceptions of China's and the Philippines' strategic intentions. We view it as in our interests, as well as the interests of China and the Philippines, for both parties to be seen as upholding international treaties to which they are a party.

For our part, we seek to persuade China to opt for the path of international cooperation. We welcome the rise of a strong and prosperous China, but one that plays by the same rules that have helped facilitate its economic growth and military power over the last several decades. China was very much involved in negotiating the Law of the Sea Convention and consented to the dispute settlement procedures set forth in the Convention when it became a party to this treaty. And, as we have seen, China has not been shy in invoking its maritime rights and freedoms under the law of the sea in areas of the world where it is not a littoral state, but where it aspires for a greater role, such as the Arctic or in the Indian Ocean. This type of double standard is not sustainable. As China's economic and strategic interests expand, so too will its interest in ensuring the universal application of international principles such as freedom of navigation and overflight.

Nations cannot simply pick and choose where in the world's oceans and seas international maritime law applies and where it does not; it cannot demand the rights and freedoms under the law of the sea in some parts of the globe while denying them to other countries closer to home. And the United States cannot accept having rights and freedoms apply differently in the South China Sea than they do everywhere else in the world.

For our part, the United States will continue to play an active and constructive role in maintaining stability and promoting a rules-based maritime order in the South China Sea. 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 will continue to keep the South China Sea and maritime cooperation at the top of the agenda in the region's multilateral forums where we participate, while also working bilaterally with relevant countries to encourage progress toward peaceful resolution of disputes. We have played an important role in shining a spotlight on

problematic behavior, including massive land reclamation and construction of dual-use facilities in the Spratly Islands, and we will continue to do our part to help ensure that problematic behavior is exposed and censured. We are also engaging closely with all of the claimants at all levels of government, through both major multilateral meetings like the East Asia Summit and ASEAN Regional Forum and bilaterally, as President Obama did in his recent trip to Vietnam. The South China Sea was a primary focus of Secretary Kerry and Deputy Secretary Blinken during the Strategic and Economic and Strategic and Security Dialogues in Beijing last month. In each of these meetings, we have encouraged restraint and pushed back against destabilizing behavior; we will continue to emphasize respect for the rules and for countries to take advantage of the opening the arbitral tribunal's decision could offer.

We have developed 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 and improve their ability to work together. 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 they are aware of events taking place in the South China Sea, thus helping reduce the potential for miscalculations at sea.

Such maritime capacity building and information sharing efforts will also help claimants' ability to develop a more effective and continuous presence in their respective maritime zones, particularly given China's problematic usage of civilian fishing and other vessels to assert its presence in areas of the South China Sea. Enhancing maritime domain awareness and maintaining a steady and consistent presence are important means for countries to demonstrate that, though they may seek to avoid confrontation, they have no intention of being bullied into relinquishing their own legitimate maritime rights and freedoms, along with those of the international community as a whole.

All of these efforts rest on top of our of robust and durable U.S. military presence, in particular the steady presence of the Seventh and Third Fleets and our recent force posture movements. These include recent steps to implement the Enhanced Defense Cooperation Agreement with the Philippines and other efforts to strengthen our security partnerships with other allies and partners in the region. Though tensions have risen in recent years, I believe that our consistent but

increasingly visible presence has played an important role in preventing open conflict between claimants.

In sum, we are pursuing a three-pronged strategy comprised of diplomacy, a steady military presence, and partner capacity-building and maritime domain awareness. The objective of this strategy is to lower the risk of unintended escalation, to fortify the determination of the region to resolve disputes peacefully and without use of coercion, and ultimately, to create more favorable conditions for claimants themselves to identify a mutually acceptable path to peacefully resolve disputes. The simple truth is that the current state of tensions in the South China Sea benefits no one, and if not properly managed, could lead to unwelcome escalation that would erase the historic gains that this region has achieved over the past 70 years. We do not want to see that happen, and we do not believe that any other country in the region does either.

My colleague, Deputy Assistant Secretary of Defense Denmark will elaborate further on U.S. military posture and operations in the region. But let me 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.

At their core, these disputes are about rules, not rocks. We have no territorial claims or ulterior motives in the South China Sea. We will continue to champion respect for international law, freedom of navigation and overflight and other internationally lawful uses of the sea related to those freedoms, unimpeded lawful commerce, and the peaceful resolution of disputes. We have an interest in seeing the Asia-Pacific, including Southeast Asia, remain a rules-based region, where countries are free to exercise their rights and freedoms under international law without fear of coercion. Militarized reclaimed outposts will not keep us from transiting and operating in the South China Sea. To the contrary, it is creating a greater demand in the region for a strong and sustained U.S. presence. As the President and others in the Administration have made clear, we are resolved to ensure that we have made the necessary military, diplomatic, and economic investments to continue protecting our rights, and the rights of all nations to fly, sail, and operate wherever international law allows.

I thank you for this opportunity to appear before you today to discuss this important issue. I look forward to answering any questions you may have.