

**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**

Wednesday, May 13, 2015

Maritime Issues in East Asia

Mr. Chairman, Members of the Committee: Thank you for the opportunity to appear before you today to testify with David Shear, Assistant Secretary of Defense for the Asia-Pacific, on this very important and timely topic. I would also like to thank the Committee for its leadership in supporting and promoting bipartisan engagement with the Asia-Pacific and advancing U.S. interests there. You have demonstrated that this Committee understands the importance of the Asia-Pacific region to U.S. national security.

Over the last six years, the Obama administration has established a “new normal” of U.S. relations with the Asia-Pacific region, consisting of extensive collaboration with Asian allies and partners on important economic, security, and other global issues as well as a high tempo of sustained engagement by the President, Secretary Kerry, me and my team, and other Cabinet and senior officials. Over the course of this calendar year, we will have held 41 bilateral, 5 trilateral, and 54 multilateral dialogues and high level meetings on a range of policy issues. We welcomed Prime Minister Abe last month, and President Obama will host several leaders from the region later this year, including from the Republic of Korea, China and Indonesia.

At the same time we are meeting ongoing crises and challenges elsewhere in the world, we are systematically implementing a comprehensive diplomatic, economic, and security strategy in Asia. At the heart of our rebalance is a determination to ensure that the Asia-Pacific remains an open, inclusive, and prosperous region guided by widely accepted rules and standards and adherence to international law. This is clearly in the interest of our own national security, as developments in twenty-first century Asia will reverberate throughout the world and here at home.

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 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.

Mr. Chairman, 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.