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Senator Gardner, Senator Cardin, it is an honor to testify today before the Senate Committee on Foreign Relations, East Asia Subcommittee, on the recent developments in and future U.S. policy for the South China Sea. I commend your leadership on U.S. national security priorities in Asia and welcome the opportunity to discuss the way forward. Yesterday was an historic day, with the Permanent Court of Arbitration issuing an expansive and much-anticipated ruling in the *Philippines vs. China* case. The long-awaited ruling is a triumph for the rule of law as a tool of peaceful dispute management in this vital waterway. But it also lays bare the need for the United States to remain deeply engaged in the South China Sea, drawing upon all instruments of national power if the South China Sea is to remain a peaceful and prosperous part of the global commons. These disputes are not simply sovereignty standoffs over uninhabited territories; they raise fundamental questions about the nature of the rules-based international order in Asia in the 21<sup>st</sup> century. The United States and its partners must answer those questions with determination and clarity if they seek to preserve that order and U.S. leadership in Asia in the years and decades to come.

*U.S. Interests and China's Strategy*

The United States has several clear national interests in the South China Sea. The first is commerce and freedom of the seas. Five trillion dollars worth of trade passes through the South China Sea annually, with a quarter of this bound for the United States. The same shipping routes are also the economic lifelines for regional partners who are dependent on the South China Sea for trade and energy. Inextricable from this is the U.S. interest in freedom of the seas. In the early days of the republic, the U.S. Navy was created to protect American commercial interests abroad, and the principle of freedom of the seas has been a closely-held national interest ever since. Freedom of the seas comprises all those freedoms that are guaranteed by international law, including, but not limited to freedom of navigation and freedom of overflight. American economic security depends on the ability of all nations to use the global commons freely.

Second, the United States has an abiding national interest in the security of its treaty allies. The Philippines, which sits on the front lines of the South China Sea disputes and has longstanding claims there is the most directly involved. But so too are the direct interests of treaty allies, including Japan, Australia, and South Korea. As part of the Pivot to Asia, the United States has also strengthened its ties with Vietnam, Malaysia, and Indonesia, all of which have abiding interests in the South China Sea. And we remain committed to the security of Taiwan, which is also a

claimant. If the United States is to assure its allies of its security guarantees, it must be deeply engaged in the quickly evolving dynamics in the South China Sea.

Third, the United States has long maintained an interest in preserving peace and stability in East Asia. This has been a guiding principle of U.S. strategy for decades, as it is essential to securing its other interests. China's recent maritime assertiveness is of particular concern for this reason. Like many other South China Sea claimants, Beijing's sovereignty claims are not new. But as a result of its rapid rise, China has gained the ability to press those claims and has been doing so in an aggressive manner. From its land reclamation and installation of military facilities in the South China Sea, to its pressure on Japan's administration of the Senkaku Islands in the East China Sea, China appears to be quickly expanding its reach in the waters close to its shores. Particularly worrisome is the fact that China has attempted to impose so-called "military alert zones," which seek to hive off international waters and airspace around its artificial islands, despite the fact that these territories are not so entitled under international law. Many speculate that Beijing wants to be able to maneuver unimpeded inside the First Island Chain and beyond, and to limit the ability of others to do the same. If true, there is little question that these objectives are dangerous and destabilizing for the United States and all trading nations.

Now, the United States and China can and must cooperate in areas of mutual interest, such as on climate change and the Iran nuclear deal, but the developments of the last few years are concerning, and pose challenges to the United States' longstanding regional priorities. China's actions pose a unique challenge because the United States does not have sovereignty claims in the South China Sea, yet has an abiding interest in it remaining a peaceful part of the global commons. Further, China's activities raise real questions about whether or not Beijing intends to play by the rules of the global order—the very order that has helped to facilitate its rise.

#### *Current Lines of Effort in the South China Sea*

U.S. policy in the South China Sea rightly recognizes that we must work closely with regional partners if we are to succeed in our objectives of preserving the rules-based order. As part of its Pivot or Rebalance to Asia, the Obama Administration has pursued a whole-of-government approach to the South China Sea. The administration has transformed its partnerships, beginning with its relationship with ASEAN, engaging more broadly and deeply with the organization than ever before. Those efforts are bearing fruit: In their February joint statement with President Obama at Sunnylands, ASEAN leaders expressed their support for the UN Convention on the Law of the Sea and use of international law to resolve disputes. They have also raised concerns about challenges to freedom of navigation and overflight in the region. These statements will not halt China's maritime assertiveness, but they represent considerable progress for the consensus-based ASEAN, and demonstrate that China is beginning to pay some regional reputational costs for its actions. As the tribunal decision has approached, however, China has sought to scuttle ASEAN consensus in support of the ruling, which serves as a reminder that we must remain closely and constantly engaged.

The United States has also invested in its bilateral relationships with South China Sea states, forming new partnerships with Malaysia, Indonesia, and Vietnam,

and most recently announcing an end to the Vietnam arms embargo. It has also overhauled its longstanding alliance with the Philippines and is finally able to press ahead with the implementation of the Enhanced Defense Cooperation Agreement, which will give the United States rotational base access to several military sites that abut the South China Sea. The administration has encouraged U.S. partners to build ties among themselves in hopes of realizing a more networked regional security architecture. Japan is working more closely with the Philippines and Vietnam; Vietnam and the Philippines are forging ties among themselves; Australia and South Korea have both been engaged in partner capacity building efforts in Southeast Asia. This serves as a reminder that America's partnerships are among its greatest assets, and that these relationships should continue to serve as force multipliers in this critical waterway.

Recognizing the value of these partnerships, the Pentagon has begun to implement the Maritime Security Initiative, with the important support of this committee. This partner capacity building program seeks to help states improve their maritime domain awareness capabilities so that they can monitor their waters more effectively and share information with other actors. This program is laudable because it not only gives much-needed maritime aid, but because it encourages recipients to network those capabilities. In so doing it seeks to enable and empower regional partners to contribute to regional stability.

As China has increased its island building activities, however, the administration has also rightly recognized the role of the U.S. military instrument in sending signals of deterrence and in upholding international law. In October 2015 it resumed Freedom of Navigation Operations in the South China Sea to contest China's spurious claims—as well as those of other claimants. It has been conducting regular aerial patrols, including from new locations in the Philippines. Importantly, the Pentagon has also been conducting significant presence operations in the South China Sea, including with the John C. Stennis carrier strike group. These operations are all necessary and valuable as the United States reinforces its interests and the global order in Asia, and this whole-of-government approach will remain vital in the months and years ahead.

### *The Arbitration and Beyond*

Yesterday's arbitration decision represents an important step forward in the United States' multifaceted approach to the South China Sea. Despite the fact that it is no match for China's economic or military might, the Philippines was able to obtain a resounding, unanimous judgment under the UN Convention on the Law of the Sea that should be viewed as legitimate by the region and the world. The tribunal's decision has injected important clarity into the disputes between the Philippines and China, substantially bounding their scope. The world now has a stronger sense of what constitutes legal activities and legal claims in the South China Sea, and this ruling may serve as important precedent for other claimants. This decision is binding on both parties, despite China's nonparticipation, and is now part of the body of international law. But the tribunal's decision also leaves important questions unresolved.

We welcome this decision despite the fact that China has given notice that it will not comply with it. From its refusal to participate in the case in 2013, to its recent efforts to marshal global opinion against the judgment, to its reactions in the aftermath of the judgment, China has put the world on notice that it will not embrace this ruling. In all likelihood, it will not decamp from its artificial islands or cease its efforts to claim zones around them. A critical question for the United States and its partners, then, is how to legitimize this ruling and ensure that it has some power, given China's noncompliance? How do we help to ensure that after the Philippines has spent three long years in court, might does not ultimately make right in the South China Sea?

Analysts have long worried that China will use the decision as an opportunity to declare an Air Defense Identification Zone in the South China Sea, as it did in the East China Sea in 2013. And in the last several months, there have been reports that China may intend to move into Scarborough Shoal, conduct land reclamation, and install military facilities at this location as it has on other land features. It could also take more incremental steps in an effort to establish some administrative authority in the Spratly Islands area, despite the court's ruling. These could include the declaration of baselines around the Spratly Islands, as it has announced in the Paracels, or some new form of domestic law or regulation that it seeks to apply to the area to try to justify some jurisdiction. If Beijing takes these actions, they will be aimed at its domestic audience as well as an international one, and will seek to send signals to China's people that it will not relent on its sovereignty claims despite an adverse decision.

China may not embrace the Permanent Court of Arbitration ruling, but it is still subject to the court of international opinion and sensitive to its judgments. This administration and the next will need to take concrete steps to ensure that the decision has lasting power and that South China Sea tensions do not escalate. These include the following:

**1) Conduct Robust Public Diplomacy in Support of the Decision.** U.S. officials have already begun to express their strong support for this legal process, despite the fact that the United States is not a claimant. Officials from the executive and legislative branches should be conducting rigorous outreach to their counterparts in the region, reinforcing the significance of this process and decision and making plain what is at stake if it is not upheld. Washington should also support Track 1.5 efforts so that think tank and university scholars can amplify the official U.S. message in the region and beyond.

**2) Warn China Against Taking Destabilizing Actions.** U.S. policymakers at all levels must continue to impress upon Chinese counterparts in public and in private that an ADIZ declaration or land reclamation at new locations will be taken as dangerous and destabilizing, and would require a serious U.S. response. U.S. officials should also work with Chinese counterparts to discuss how they can make the most out of the PCA's extremely expansive ruling.

**3) Seek Greater Internationalization of the South China Sea Disputes.** This administration has made meaningful progress in engaging like-minded, non-claimant countries on South China Sea issues. India is a prime example. The more countries speak out against artificial island building and militarization and in favor of freedom of navigation and overflight in the global commons, the more China will pay reputational costs for its noncompliance. Europe is mired in its own Brexit-induced crisis, but represents a natural partner in legitimizing the rule of law in the South China Sea. Indeed, in late May, France suggested that the E.U. might conduct occasional patrols of its own in the South China Sea. This should be welcomed and encouraged. In the coming months, the United States must engage with European partners and encourage them to play a constructive and vocal role in reinforcing the rules-based order in the South China Sea.

**4) Encourage Other Claimants to Seek Arbitration.** The PCA decision will have the farthest-reaching effects if it serves as precedent for other South China Sea claimants. The United States can help partners, including Vietnam and Malaysia, contemplate the value of arbitration with respect to their own maritime claims. The State Department should issue a paper that explores the potential implications of the tribunal's landmark decision for other claimants as part of its Limits in the Seas series. It should also engage closely with regional counterparts in other claimant countries to build a common understanding of how this decision may affect other claims.

**5) Set Concrete Goals for the Maritime Security Initiative.** The Department of Defense and the U.S. Senate should both be commended for their commitment to partner capacity building in the Asia-Pacific region. If the program is to succeed in meaningfully improving maritime domain awareness, it will need to set specific goals and benchmarks. The Pentagon and Congress should work together to determine what they hope to see from MSI five years from now, to identify intermediate objectives, and the steps the United States and its partners will need to take to achieve them. Additionally, the United States will need to ensure that newer partners, like Vietnam and Malaysia, as well as longstanding ones, like the Philippines, know how to take advantage of this aid and can put it to good use. Just as important, the United States will need to sustain a parallel diplomatic initiative to ensure that recipients of MSI aid commit to building the trust necessary amongst themselves to share the critical information they obtain through MDA platforms. This effort is not just about sharing technology, but building the political will to support it.

**6) Issue an Interagency Report on the Rebalance and the South China Sea.** Like the Rebalance itself, the United States approach to the South China Sea employs multiple instruments of national power and is an interagency effort. A new administration will be better able to explain its progress to Congress, the American people, and to regional partners if it issues an annual Rebalance report, detailing its progress and laying out objectives for the following year. That report should include

a special section on the South China Sea and would improve accountability and oversight for the many stakeholders in the next administration's Asia policy.

**7) Reinforce the Decision with Freedom of Navigation Operations--Quietly.** The tribunal decision has provided some important clarity on the status of land features in the South China Sea. Going forward, the United States should reinforce the decision through its conduct of FONOPS, making manifest that it does not recognize territorial seas or airspace around those features that have been ruled to be low-tide elevations. This is one of the clearest ways that we can communicate to China that the rule of law will rule in the South China Sea, even if China does not embrace the ruling. Washington need not publicize these operations or conduct them with much fanfare, however, given the expansiveness of yesterday's ruling and China's need to save some face in its aftermath. The United States must nonetheless make good on its pledge to fly, sail, and operate wherever international law allows, and to encourage partners to do the same.

**8) Ratify UNCLOS.** This administration and many before it have recognized a clear U.S. national interest in ratifying the UN Convention on the Law of the Sea. Our top military leaders, including those who are on the front lines of Asia's maritime disputes, including Admirals Harry Harris and John Richardson, have given this treaty their full-throated endorsement. We are approaching a watershed moment and it is no longer enough to profess our respect for UNCLOS as customary international law. If the United States truly seeks to reinforce the existing rules-based order in maritime Asia, it cannot remain outside of this critical part of the global architecture. It must lead from within.

**9) Stay the Course in Asia.** Amidst many competing claims for international attention and concern over the underlying domestic consensus in the United States for continuing robust engagement in Asia, it is of manifest importance that the United States remain principally engaged in the region going forward. Purposeful involvement from Japan to Korea, China to Southeast Asia, Australia to India will send a reassuring message to a region in doubt about the future. The lion's share of the history of the 21<sup>st</sup> Century will be written in Asia, and the United States must contribute responsibly and constructively to this developing narrative.

I harbor no illusions that meaningful progress on these disputes will be easy, and I know my distinguished colleagues in this chamber share this concern. But yesterday's decision is a reminder that there are rules-based responses to these immense geopolitical challenges, and the United States is far better positioned to confront them than it was seven years ago. With a whole-of-government approach and alongside our indispensable regional partners, we can safeguard U.S. interests in the South China Sea and reinforce the international order in Asia.