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Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress

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Summary

China's actions for asserting and defending its maritime territorial and exclusive economic zone (EEZ) claims in the East China (ECS) and South China Sea (SCS), particularly since late 2013, have heightened concerns among observers that China may be seeking to dominate or gain control of its near-seas region, meaning the ECS, the SCS, and the Yellow Sea. Chinese domination over or control of this region could substantially affect U.S. strategic, political, and economic interests in the Asia-Pacific region and elsewhere.

China is a party to multiple territorial disputes in the SCS and ECS, including, in particular, disputes over the Paracel Islands, Spratly Islands, and Scarborough Shoal in the SCS, and the Senkaku Islands in the ECS. China depicts its territorial claims in the SCS using the so-called map of the nine-dash line that appears to enclose an area covering roughly 90% of the SCS. Some observers characterize China's approach for asserting and defending its territorial claims in the ECS and SCS as a "salami-slicing" strategy that employs a series of incremental actions, none of which by itself is a *casus belli*, to gradually change the status quo in China's favor.

In addition to territorial disputes in the SCS and ECS, China is involved in a dispute, particularly with the United States, over whether China has a right under international law to regulate the activities of foreign military forces operating within China's EEZ. The dispute appears to be at the heart of incidents between Chinese and U.S. ships and aircraft in international waters and airspace in 2001, 2002, 2009, 2013, and 2014.

The U.S. position on territorial and EEZ disputes in the Western Pacific (including those involving China) includes the following elements, among others:

- The United States supports the principle that disputes between countries should be resolved peacefully, without coercion, intimidation, threats, or the use of force, and in a manner consistent with international law.
- The United States supports the principle of freedom of seas, meaning the rights, freedoms, and uses of the sea and airspace guaranteed to all nations in international law. The United States opposes claims that impinge on the rights, freedoms, and lawful uses of the sea that belong to all nations.
- The United States takes no position on competing claims to sovereignty over disputed land features in the ECS and SCS.
- Although the United States takes no position on competing claims to sovereignty over disputed land features in the ECS and SCS, the United States *does* have a position on how competing claims should be resolved: Territorial disputes should be resolved peacefully, without coercion, intimidation, threats, or the use of force, and in a manner consistent with international law.
- Claims of territorial waters and EEZs should be consistent with customary international law of the sea and must therefore, among other things, derive from land features. Claims in the SCS that are not derived from land features are fundamentally flawed.
- Parties should avoid taking provocative or unilateral actions that disrupt the status quo or jeopardize peace and security. The United States does not believe that large-scale land reclamation with the intent to militarize outposts on disputed land features is consistent with the region's desire for peace and stability.

- The United States, like most other countries, believes that coastal states under UNCLOS have the right to regulate economic activities in their EEZs, but do not have the right to regulate foreign military activities in their EEZs.
- U.S. military surveillance flights in international airspace above another country's EEZ are lawful under international law, and the United States plans to continue conducting these flights as it has in the past.
- The Senkaku Islands are under the administration of Japan and unilateral attempts to change the status quo raise tensions and do nothing under international law to strengthen territorial claims.

China's actions for asserting and defending its maritime territorial and EEZ claims in the ECS and SCS raise several potential policy and oversight issues for Congress, including whether the United States has an adequate strategy for countering China's "salami-slicing" strategy, whether the United States has taken adequate actions to reduce the risk that the United States might be drawn into a crisis or conflict over a territorial dispute involving China, and whether the United States should become a party to the United Nations Convention on the Law of the Sea (UNCLOS).

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Introduction

This report provides background information and issues for Congress on maritime territorial and exclusive economic zone (EEZ)¹ disputes in the East China (ECS) and South China Sea (SCS) involving China, with a focus on how these disputes may affect U.S. strategic and policy interests. Other CRS reports focus on other aspects of these disputes:

- For details on the individual maritime territorial disputes in the ECS and SCS, and on actions taken by the various claimant countries in the region, see CRS Report R42930, *Maritime Territorial Disputes in East Asia: Issues for Congress*, by Ben Dolven, Mark E. Manyin, and Shirley A. Kan.
- For an in-depth discussion of China's land reclamation and facility-construction activities at several sites in the Spratly Islands, see CRS Report R44072, *Chinese Land Reclamation in the South China Sea: Implications and Policy Options*, by Ben Dolven et al.
- For an in-depth discussion of China's air defense identification zone in the ECS, see CRS Report R43894, *China's Air Defense Identification Zone (ADIZ)*, by Ian E. Rinehart and Bart Elias.

China's actions for asserting and defending its maritime territorial and EEZ claims in the ECS and SCS raise several potential policy and oversight issues for Congress. Decisions that Congress makes on these issues could substantially affect U.S. strategic, political, and economic interests in the Asia-Pacific region and elsewhere.

This report uses the term China's *near-seas region* to mean the Yellow Sea, the ECS, and the SCS. This report uses the term *EEZ dispute* to refer to a dispute principally between China and the United States over whether coastal states have a right under international law to regulate the activities of foreign military forces operating in their EEZs. There are also other kinds of EEZ disputes, including disputes between neighboring countries regarding the extents of their adjacent EEZs.

Background

Why China, Other Countries in the Region, and the United States Consider These Disputes Important

Although the maritime disputes discussed in this report at first glance may appear to be disputes over a few seemingly unimportant rocks and reefs in the ocean, these disputes are considered important by China, other countries in the region, and the United States for a variety of strategic, political, and economic reasons, including those briefly outlined below.

Importance to China and Other Countries in the Region

The disputes discussed in this report are considered important by China and other countries in the region for the following reasons, among others:

¹ A country's EEZ includes waters extending up to 200 nautical miles from its land territory. Coastal states have the right under the United Nations Convention on the Law of the Sea (UNCLOS) to regulate foreign economic activities in their own EEZs. EEZs were established as a feature of international law by UNCLOS.

- **Trade routes.** Major commercial shipping routes pass through these waters. It is frequently stated, for example, that more than \$5 trillion worth of international shipping trade passes through the SCS each year.² Much of this trade travels to or from China and other countries in the region.
- **Fish stocks and hydrocarbons.** The ECS and SCS contain significant fishing grounds and potentially significant oil and gas exploration areas.³
- **Military position.** Some of the disputed land features are being used, or in the future might be used, as bases and support locations for military and law enforcement (e.g., coast guard) forces, which is something countries might do not only to improve their ability to assert and defend their maritime territorial claims and their commercial activities in surrounding waters, but for other reasons as well, such as attempting to control or dominate the surrounding waters and airspace.
- **Nationalism.** The maritime territorial claims have become matters of often-intense nationalistic pride.

² A July 24, 2015, Department of Defense (DOD) news report, for example, states:

In a security forum panel discussion in Aspen, Colorado, Navy Adm. Harry B. Harris Jr. said China's assertiveness in the South China Sea is an issue the American public must know about and the United States must address...

Each year, he noted, more than \$5.3 trillion in global sea-based trade relies on unimpeded sea lanes through the South China Sea, adding that the Strait of Malacca alone sees more than 25 percent of oil shipments and 50 percent of all natural gas transits each day.

(Terri Moon Cronk, "Pacom Chief: China's Land Reclamation Has Broad Consequences," *DoD News*, July 24, 2015.)

An August 2015 DOD report to Congress states:

Maritime Asia is a vital thruway for global commerce, and it will be a critical part of the region's expected economic growth. The United States wants to ensure the Asia-Pacific region's continued economic progress. The importance of Asia-Pacific sea lanes for global trade cannot be overstated. Eight of the world's 10 busiest container ports are in the Asia-Pacific region, and almost 30 percent of the world's maritime trade transits the South China Sea annually, including approximately \$1.2 trillion in ship-borne trade bound for the United States. Approximately two-thirds of the world's oil shipments transit through the Indian Ocean to the Pacific, and in 2014, more than 15 million barrels of oil passed through the Malacca Strait per day.

(Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, p. 1. The report was submitted in response to Section 1259 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (H.R. 3979/P.L. 113-291 of December 19, 2014).

³ DOD states:

There are numerous, complex maritime and territorial disputes in the Asia-Pacific region. The presence of valuable fish stocks and potential existence of large hydrocarbon resources under the East and South China Seas exacerbate these complicated claims. A United Nations report estimates that the South China Sea alone accounts for more than 10 percent of global fisheries production. Though figures vary substantially, the Energy Information Administration estimates that there are approximately 11 billion barrels and 190 trillion cubic feet of proved and probable oil and natural gas reserves in the South China Sea and anywhere from one to two trillion cubic feet of natural gas reserves, and 200 million barrels of oil in the East China Sea. Claimants regularly clash over fishing rights, and earlier attempts at joint development agreements have faltered in recent years.

(Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, p. 5.)

See also Keith Johnson, "Fishing Disputes Could Spark a South China Sea Crisis," *Foreign Policy*, April 7, 2012.

Importance to China Specifically

In addition to the factors cited above, some observers believe that China wants to achieve a greater degree of control over its near-seas region in part for one or more of the following reasons:

- to create a buffer zone inside the so-called first island chain⁴ for keeping U.S. military forces away from China's mainland in time of conflict;
- to create a bastion (i.e., a defended operating sanctuary) in the SCS for China's emerging sea-based strategic deterrent force of nuclear-powered ballistic missile submarines (SSBNs);⁵ and
- to help achieve a broader goal of becoming a regional hegemon in its part of Eurasia.⁶

Importance to the United States

The maritime disputes discussed in this report are considered important by the United States for several reasons, including those discussed below.

Non-use of Force or Coercion as a Means of Settling Disputes Between Countries

The maritime disputes discussed in this report pose a potential challenge to two key elements of the U.S.-led international order that has operated since World War II. One of these key elements is the principle that force or coercion should not be used as a means of settling disputes between countries, and certainly not as a routine or first-resort method. Some observers are concerned that some of China's actions in asserting and defending its territorial claims in the ECS and SCS challenge this principle and could help reestablish the very different principle of "might makes right" as a routine or defining characteristic of international relations.⁷

Freedom of the Seas

A second key element of the U.S.-led international order that has operated since World War II is the treatment of the world's seas under international law as international waters (i.e., as a global commons), and freedom of operations in international waters. The principle is often referred to in

⁴ The first island chain is a term that refers to a string of islands, including Japan and the Philippines, that encloses China's near-seas region. The so-called second island chain, which reaches out to Guam, includes both China's near-seas region and the Philippine Sea between Guam and the Philippines. For a map of the first and second island chains, see Department of Defense, *Annual Report to Congress [on] Military and Security Developments Involving the People's Republic of China 2015*, p. 87. The exact position and shape of the lines demarcating the first and second island chains often differ from map to map.

⁵ See, for example, Mathieu Duchatel and Eugenia Kazakova, "Tensions in the South China Sea: the Nuclear Dimension," *SIPRI*, July-August 2015; "S China Land Reclamation Aimed at Distracting US from Hainan," *Want China Times*, September 12, 2015. For more on China's emerging SSBNs force, which observers believe will be based at a facility on Hainan Island in the SCS, see CRS Report RL33153, *China Naval Modernization: Implications for U.S. Navy Capabilities—Background and Issues for Congress*, by Ronald O'Rourke.

⁶ See, for example, Gary Roughead, "China, Time and Rebalancing," Hoover Institution, undated (but with copyright of 2014), accessed Marh 25, 2014, at <http://www.hoover.org/taskforces/military-history/strategika/11/roughead>; Jim Talent, "The Equilibrium of East Asia," *National Review Online*, December 5, 2013; Robert E. Kelly, "What Would Chinese Hegemony Look Like?" *The Diplomat*, February 10, 2014.

⁷ See, for example, Dan Lamothe, "Navy Admiral Warns of Growing Sense That 'Might Makes Right' in Southeast Asia," *Washington Post*, March 16, 2016.

shorthand as freedom of the seas. It is also sometimes referred to as freedom of navigation, although this term can be defined—particularly by parties who might not support freedom of the seas—in a narrow fashion, to include merely the freedom to navigate (i.e., pass through) sea areas, as opposed to the freedom for conducting various activities at sea. A more complete way to refer to the principle, as stated in the Department of Defense’s (DOD’s) annual FON report, is “the rights, freedoms, and uses of the sea and airspace guaranteed to all nations in international law.”⁸ The principle of freedom of the seas dates back hundreds of years.⁹ DOD states:

The United States has, throughout its history, advocated for the freedom of the seas for economic and security reasons....

Freedom of the seas, however, includes more than the mere freedom of commercial vessels to transit through international waterways. While not a defined term under international law, the Department uses “freedom of the seas” to mean all of the rights, freedoms, and lawful uses of the sea and airspace, including for military ships and aircraft, recognized under international law. Freedom of the seas is thus also essential to ensure access in the event of a crisis. Conflicts and disasters can threaten U.S. interests and those of our regional allies and partners. The Department of Defense is therefore committed to ensuring free and open maritime access to protect the stable economic order that has served all Asia-Pacific nations so well for so long, and to maintain the ability of U.S. forces to respond as needed.¹⁰

Some observers are concerned that China’s maritime territorial claims, particularly as shown in China’s so-called map of the nine-dash line (see “Map of the Nine-Dash Line” below), appear to challenge the principle that the world’s seas are to be treated under international law as international waters. If such a challenge were to gain acceptance in the SCS region, it would have broad implications for the United States and other countries not only in the SCS, but around the world, because international law is universal in application, and a challenge to a principle of international law in one part of the world, if accepted, could serve as a precedent for challenging it in other parts of the world. Overturning the principle of freedom of the seas, so that significant portions of the seas could be appropriated as national territory, would overthrow hundreds of years of international legal tradition relating to the legal status of the world’s oceans and significantly change the international legal regime governing sovereignty over the surface of the world.¹¹

⁸ U.S. Department of Defense (DoD) *Freedom of Navigation (FON) Report for Fiscal Year (FY) 2015*, accessed April 27, 2016, at http://policy.defense.gov/Portals/11/Documents/gsa/cwmd/FON_Report_FY15.pdf.

⁹ The idea that most of the world’s seas should be treated as international waters rather than as a space that could be appropriated as national territory dates back to Hugo Grotius (1583-1645), a founder of international law, whose 1609 book *Mare Liberum* (“The Free Sea”) helped to establish the primacy of the idea over the competing idea, put forth by the legal jurist and scholar John Selden (1584-1654) in his 1635 book *Mare Clausum* (“Closed Sea”), that the sea could be appropriated as national territory, like the land.

¹⁰ Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, pp. 1, 2.

¹¹ One observer states (quoting from his own address to Japan’s Ministry of Foreign Affairs):

A very old debate has been renewed in recent years: is the sea a commons open to the free use of all seafaring states, or is it territory subject to the sovereignty of coastal states? Is it to be freedom of the seas, as Dutch jurist Hugo Grotius insisted? Or is it to be closed seas where strong coastal states make the rules, as Grotius’ English archnemesis John Selden proposed?

Customary and treaty law of the sea sides with Grotius, whereas China has in effect become a partisan of Selden. Just as England claimed dominion over the approaches to the British Isles, China wants to make the rules governing the China seas. Whose view prevails will determine not just who controls waters, islands, and atolls, but also the nature of the system of maritime trade and commerce. What happens in Asia could set a precedent that ripples out across the globe. The outcome of this debate is a (continued...)

Some observers are concerned that if China's position on whether coastal states have a right under international law to regulate the activities of foreign military forces in their EEZs (see "Dispute Regarding China's Rights Within Its EEZ") were to gain greater international acceptance under international law, it could substantially affect U.S. naval operations not only in the SCS and ECS, but around the world, which in turn could substantially affect the ability of the United States to use its military forces to defend various U.S. interests overseas. Significant portions of the world's oceans are claimable as EEZs, including high-priority U.S. Navy operating areas in the Western Pacific, the Persian Gulf, and the Mediterranean Sea.¹² The legal right of U.S. naval forces to operate freely in EEZ waters—an application of the principle of freedom of the seas—is important to their ability to perform many of their missions around the world, because many of those missions are aimed at influencing events ashore, and having to conduct operations from more than 200 miles offshore would reduce the inland reach and responsiveness of ship-based sensors, aircraft, and missiles, and make it more difficult to transport Marines and their equipment from ship to shore. Restrictions on the ability of U.S. naval forces to operate in EEZ waters could potentially require changes (possibly very significant ones) in U.S. military strategy or U.S. foreign policy goals.¹³

An August 12, 2015, press report states (emphasis added):

China respects freedom of navigation in the disputed South China Sea but will not allow any foreign government to invoke that right so its military ships and planes can intrude in Beijing's territory, the Chinese ambassador [to the Philippines] said.

Ambassador Zhao Jianhua said late Tuesday [August 11] that Chinese forces warned a U.S. Navy P-8A [maritime patrol aircraft] not to intrude when the warplane approached a Chinese-occupied area in the South China Sea's disputed Spratly Islands in May....

"We just gave them warnings, be careful, not to intrude," Zhao told reporters on the sidelines of a diplomatic event in Manila....

When asked why China shoed away the U.S. Navy plane when it has pledged to respect freedom of navigation in the South China Sea, Zhao outlined the limits in China's view.

"Freedom of navigation does not mean to allow other countries to intrude into the airspace or the sea which is sovereign. No country will allow that," Zhao said. "We say freedom of navigation must be observed in accordance with international law. **No freedom of navigation for warships and airplanes.**"¹⁴

(...continued)

big deal.

(James R. Holmes, "Has China Awoken a Sleeping Giant in Japan?" *The Diplomat*, March 1, 2014. See also Roncevert Ganan Almond, "Lords of Navigation: Grotius, Freitas, and the South China Sea," *The Diplomat*, May 22, 2016.)

¹² The National Oceanic and Atmospheric Administration (NOAA) calculates that EEZs account for about 30.4% of the world's oceans. (See the table called "Comparative Sizes of the Various Maritime Zones" at the end of "Maritime Zones and Boundaries, accessed June 6, 2014, at http://www.gc.noaa.gov/gcil_maritime.html, which states that EEZs account for 101.9 million square kilometers of the world's approximately 335.0 million square kilometers of oceans.)

¹³ See, for example, United States Senate, Committee on Foreign Relations, Committee on Foreign Relations, Hearing on Maritime Disputes and Sovereignty Issues in East Asia, July 15, 2009, Testimony of Peter Dutton, Associate Professor, China Maritime Studies Institute, U.S. Naval War College, pp. 2 and 6-7.

¹⁴ Jim Gomez, "Chinese Diplomat Outlines Limits to Freedom of Navigation," *Military Times*, August 12, 2015.

Risk of United States Being Drawn into a Crisis or Conflict

Many observers are concerned that ongoing maritime territorial disputes in the ECS and SCS could lead to a crisis or conflict between China and a neighboring country such as Japan or the Philippines, and that the United States could be drawn into such a crisis or conflict as a result of obligations the United States has under bilateral security treaties with Japan and the Philippines.¹⁵

Security Structure of Asia-Pacific Region

Chinese domination over or control of its near-seas region could have significant implications for the security structure of the Asia-Pacific region. In particular, Chinese domination over or control of its near-seas area could greatly complicate the ability of the United States to intervene militarily in a crisis or conflict between China and Taiwan. It could also complicate the ability of the United States to fulfill its obligations under its defense treaties with Japan, South Korea, and the Philippines. More generally, it could complicate the ability of the United States to operate U.S. forces in the Western Pacific for various purposes, including maintaining regional stability, conducting engagement and partnership-building operations, responding to crises, and executing war plans. Developments such as these could in turn encourage countries in the region to reexamine their own defense programs and foreign policies, potentially leading to a further change in the region's security structure.

U.S.-China Relations

Developments regarding China's maritime territorial and EEZ disputes in the ECS and SCS could affect U.S.-China relations in general, which could have implications for other issues in U.S.-China relations.¹⁶

Interpreting China's Rise as a Major World Power

As China continues to emerge as a major world power, observers are assessing what kind of international actor China will ultimately be. China's actions in asserting and defending its maritime territorial and EEZ disputes in the ECS and SCS could influence assessments that observers might make on issues such as China's approach to settling disputes between states (including whether China views force and coercion as acceptable means for settling such disputes, and consequently whether China believes that "might makes right"), China's views toward the meaning and application of international law,¹⁷ and whether China views itself more as a stakeholder and defender of the current international order, or alternatively, more as a revisionist power that will seek to change elements of that order that it does not like.

¹⁵ For additional background information on these treaties, see **Appendix A**.

¹⁶ For a survey of issues in U.S.-China relations, see CRS Report R41108, *U.S.-China Relations: An Overview of Policy Issues*, by Susan V. Lawrence.

¹⁷ DOD states that "In January 2013, the Philippines requested that an arbitral tribunal set up under the Law of the Sea Convention address a number of legal issues arising with respect to the interpretation and application of the Convention.... How China responds to a potential ruling from the arbitral tribunal will reflect China's attitude toward international maritime law." (Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, p. 17.) See also Isaac B. Kardon, "The Enabling Role of UNCLOS in PRC Maritime Policy," *Asia Maritime Transparency Initiative* (Center for Strategic & International Studies), September 11, 2015.

U.S. Strategic Goal of Preventing Emergence of Regional Hegemon in Eurasia

As mentioned earlier, some observers believe that China is pursuing a goal of becoming a regional hegemon in its part of Eurasia, and that achieving a greater degree of control over its near-seas region is a part of this effort. From a U.S. standpoint, such an effort would be highly significant, because it has been a long-standing goal of U.S. grand strategy to prevent the emergence of a regional hegemon in one part of Eurasia or another (see “U.S. Grand Strategy” below).

Strategic Context from a U.S. Perspective

This section presents brief comments from a U.S. perspective on some elements of the strategic context in which the maritime disputes discussed in this report may be considered. There is also a broader context of U.S.-China relations and U.S. foreign policy toward the Asia-Pacific that is covered in other CRS reports.¹⁸

Shift in International Security Environment

World events have led some observers, starting in late 2013, to conclude that the international security environment has undergone a shift from the familiar post-Cold War era of the last 20 to 25 years, also sometimes known as the unipolar moment (with the United States as the unipolar power), to a new and different situation that features, among other things, renewed great power competition with China and Russia and challenges by these two countries and others to elements of the U.S.-led international order that has operated since World War II.¹⁹ China’s actions to assert and defend its maritime territorial claims can be viewed as one reflection of that shift.

U.S. Grand Strategy

Discussion of the above-mentioned shift in the international security environment has led to a renewed emphasis in discussions of U.S. security and foreign policy on grand strategy and geopolitics. From a U.S. perspective, grand strategy can be understood as strategy considered at a global or interregional level, as opposed to strategies for specific countries, regions, or issues. Geopolitics refers to the influence on international relations and strategy of basic world geographic features such as the size and location of continents, oceans, and individual countries.

From a U.S. perspective on grand strategy and geopolitics, it can be noted that most of the world’s people, resources, and economic activity are located not in the Western Hemisphere, but in the other hemisphere, particularly Eurasia. In response to this basic feature of world geography, U.S. policymakers for the last several decades have chosen to pursue, as a key element of U.S. grand strategy, a goal of preventing the emergence of a regional hegemon in one part of Eurasia or another, on the grounds that such a hegemon could represent a concentration of power strong enough to threaten core U.S. interests by, for example, denying the United States access to some of the other hemisphere’s resources and economic activity. Although U.S. policymakers have not often stated this key national strategic goal explicitly in public, U.S. military (and diplomatic)

¹⁸ See, for example, CRS Report R41108, *U.S.-China Relations: An Overview of Policy Issues*, by Susan V. Lawrence, and CRS Report R42448, *Pivot to the Pacific? The Obama Administration’s “Rebalancing” Toward Asia*, coordinated by Mark E. Manyin.

¹⁹ For additional discussion, see CRS Report R43838, *A Shift in the International Security Environment: Potential Implications for Defense—Issues for Congress*, by Ronald O’Rourke.

operations in recent decades—both wartime operations and day-to-day operations—can be viewed as having been carried out in no small part in support of this key goal.²⁰

U.S. Strategic Rebalancing to Asia-Pacific Region

A 2012 DOD strategic guidance document²¹ and DOD's report on the 2014 Quadrennial Defense Review (QDR)²² state that U.S. military strategy will place an increased emphasis on the Asia-Pacific region. Although Administration officials state that this U.S. strategic rebalancing toward the Asia-Pacific region, as it is called, is not directed at any single country, many observers believe it is intended to a significant degree as a response to China's military modernization effort and its assertive behavior regarding its maritime territorial claims.

Challenge to U.S. Sea Control and U.S. Position in Western Pacific

Observers of Chinese and U.S. military forces view China's improving naval capabilities as posing a potential challenge in the Western Pacific to the U.S. Navy's ability to achieve and maintain control of blue-water ocean areas in wartime—the first such challenge the U.S. Navy has faced since the end of the Cold War.²³ More broadly, these observers view China's naval capabilities as a key element of an emerging broader Chinese military challenge to the long-standing status of the United States as the leading military power in the Western Pacific.²⁴

Regional U.S. Allies and Partners

The United States has certain security-related policies pertaining to Taiwan under the Taiwan Relations Act (H.R. 2479/P.L. 96-8 of April 10, 1979).²⁵ The United States has bilateral security treaties with Japan, South Korea, and the Philippines, and an additional security treaty with Australia and New Zealand.²⁶ In addition to U.S. treaty allies, certain other countries in the Western Pacific can be viewed as current or emerging U.S. security partners.

²⁰ For additional discussion, see CRS Report R43838, *A Shift in the International Security Environment: Potential Implications for Defense—Issues for Congress*, by Ronald O'Rourke.

²¹ Department of Defense, *Sustaining U.S. Global Leadership: Priorities for 21st Century Defense*, January 2012, 8 pp. For additional discussion, see CRS Report R42146, *Assessing the January 2012 Defense Strategic Guidance (DSG): In Brief*, by Catherine Dale and Pat Towell.

²² Department of Defense, *Quadrennial Defense Review 2014*, 64 pp. For additional discussion, see CRS Report R43403, *The 2014 Quadrennial Defense Review (QDR) and Defense Strategy: Issues for Congress*, by Catherine Dale.

²³ The term blue-water ocean areas is used here to mean waters that are away from shore, as opposed to near-shore (i.e., littoral) waters. Iran is viewed as posing a challenge to the U.S. Navy's ability to quickly achieve and maintain sea control in littoral waters in and near the Strait of Hormuz. For additional discussion, see CRS Report R42335, *Iran's Threat to the Strait of Hormuz*, coordinated by Kenneth Katzman.

²⁴ For more on China's naval modernization effort, see CRS Report RL33153, *China Naval Modernization: Implications for U.S. Navy Capabilities—Background and Issues for Congress*, by Ronald O'Rourke. For more on China's military modernization effort in general, see CRS Report R44196, *The Chinese Military: Overview and Issues for Congress*, by Ian E. Rinehart.

²⁵ For further discussion, see CRS In Focus IF10275, *Taiwan: Select Political and Security Issues*, by Susan V. Lawrence.

²⁶ For a summary, see "U.S. Collective Defense Arrangements," accessed July 24, 2015, at <http://www.state.gov/s/l/treaty/collectivedefense/>.

Overview of the Maritime Disputes

Maritime Territorial Disputes

China is a party to multiple maritime territorial disputes in the SCS and ECS, including in particular the following (see **Figure 1** for locations of the island groups listed below):

- a dispute over the **Paracel Islands** in the SCS, which are claimed by China and Vietnam, and occupied by China;
- a dispute over the **Spratly Islands** in the SCS, which are claimed entirely by China, Taiwan, and Vietnam, and in part by the Philippines, Malaysia, and Brunei, and which are occupied in part by all these countries except Brunei;
- a dispute over **Scarborough Shoal** in the SCS, which is claimed by China, Taiwan, and the Philippines, and controlled since 2012 by China; and
- a dispute over the **Senkaku Islands** in the ECS, which are claimed by China, Taiwan, and Japan, and administered by Japan.

The island and shoal names used above are the ones commonly used in the United States; in other countries, these islands are known by various other names. China, for example, refers to the Paracel Islands as the Xisha islands, to the Spratly Islands as the Nansha islands, to Scarborough Shoal as Huangyan island, and to the Senkaku Islands as the Diaoyu islands.

These island groups are not the only land features in the SCS and ECS—the two seas feature other islands, rocks, and shoals, as well as some near-surface submerged features. The territorial status of some of these other features is also in dispute.²⁷ There are additional maritime territorial disputes in the Western Pacific that do not involve China.²⁸

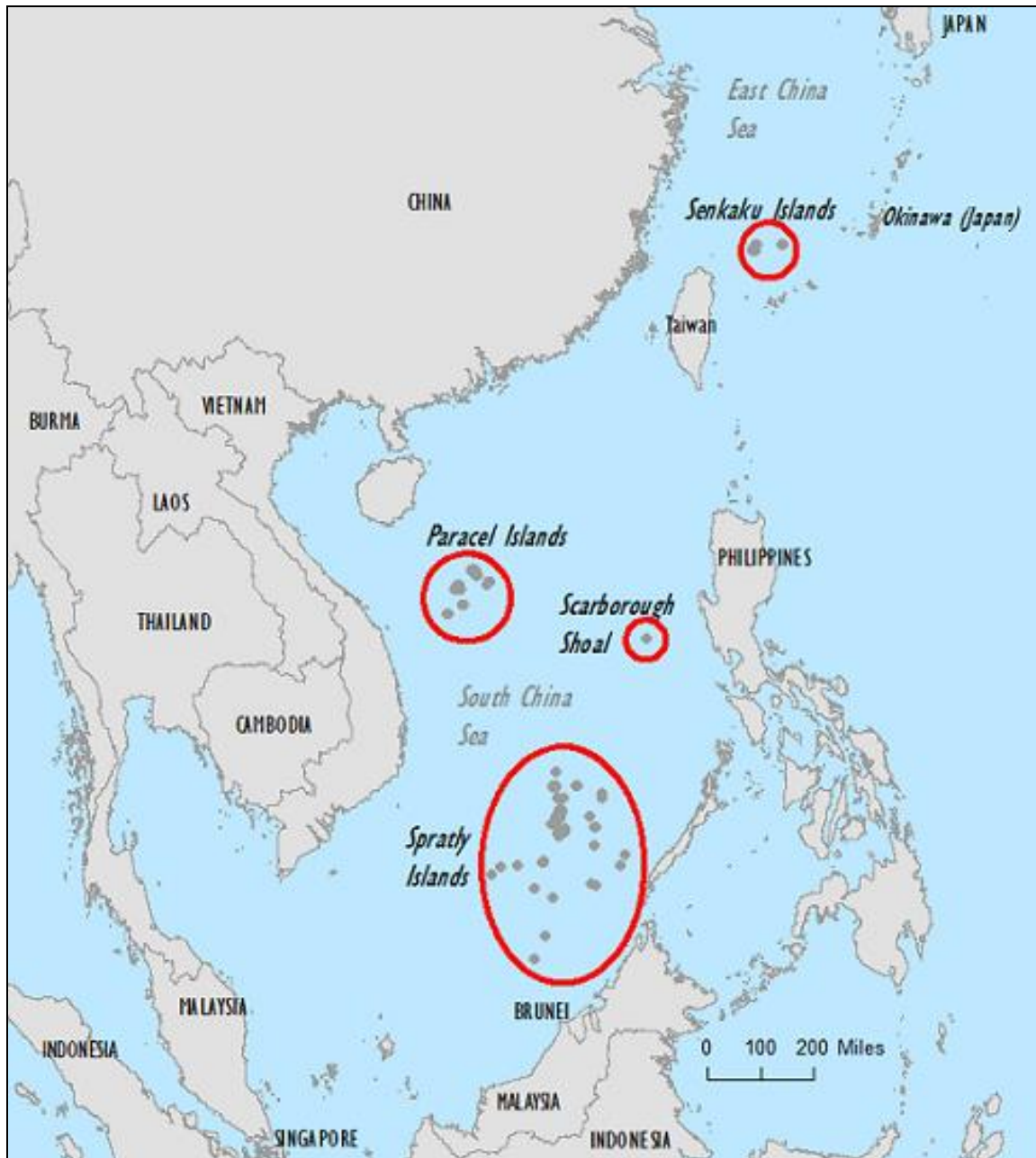
Maritime territorial disputes in the SCS and ECS date back many years, and have periodically led to incidents and periods of increased tension.²⁹ The disputes have again intensified in the past few years, leading to numerous confrontations and incidents involving fishing vessels, oil exploration vessels and oil rigs, coast guard ships, naval ships, and military aircraft. The intensification of the disputes in recent years has substantially heightened tensions between China and other countries in the region, particularly Japan, the Philippines, and Vietnam.

²⁷ For example, the Reed Bank, a submerged atoll northeast of the Spratly Islands, is the subject of a dispute between China and the Philippines, and the Macclesfield Bank, a group of submerged shoals and reefs between the Paracel Islands and Scarborough Shoal, is claimed by China, Taiwan, and the Philippines. China refers to the Macclesfield Bank as the Zhongsha islands, even though they are submerged features rather than islands.

²⁸ North Korea and South Korea, for example, have not reached final agreement on their exact maritime border; South Korea and Japan are involved in a dispute over the Liancourt Rocks—a group of islets in the Sea of Japan that Japan refers to as the Takeshima islands and South Korea as the Dokdo islands; and Japan and Russia are involved in a dispute over islands dividing the Sea of Okhotsk from the Pacific Ocean that Japan refers to as the Northern Territories and Russia refers to as the South Kuril Islands.

²⁹ One observer states that “notable incidents over sovereignty include the Chinese attack on the forces of the Republic of Vietnam [South Vietnam] in the Paracel Islands in 1974, China’s attack on Vietnamese forces near Fiery Cross Reef [in the Spratly Islands] in 1988, and China’s military ouster of Philippines forces from Mischief Reef [also in the Spratly Islands] in 1995.” Peter Dutton, “Three Dispute and Three Objectives,” *Naval War College Review*, Autumn 2011: 43. A similar recounting can be found in Department of Defense, *Annual Report to Congress, Military and Security Developments Involving the People’s Republic of China*, 2011, p. 15.

Figure 1. Maritime Territorial Disputes Involving China
Island groups involved in principal disputes



Source: Map prepared by CRS using base maps provided by Esri.

Note: Disputed islands have been enlarged to make them more visible.

Dispute Regarding China's Rights Within Its EEZ

In addition to maritime territorial disputes in the SCS and ECS, China is involved in a dispute, principally with the United States, over whether China has a right under international law to regulate the activities of foreign military forces operating within China's EEZ. The position of the United States and most countries is that while the United Nations Convention on the Law of the

Sea (UNCLOS), which established EEZs as a feature of international law, gives coastal states the right to regulate economic activities (such as fishing and oil exploration) within their EEZs, it does not give coastal states the right to regulate foreign military activities in the parts of their EEZs beyond their 12-nautical-mile territorial waters.³⁰ The position of China and some other countries (i.e., a minority group among the world's nations) is that UNCLOS gives coastal states the right to regulate not only economic activities, but also foreign military activities, in their EEZs. In response to a request from CRS to identify the countries taking this latter position, the U.S. Navy states that

countries with restrictions inconsistent with the Law of the Sea Convention [i.e., UNCLOS] that would limit the exercise of high seas freedoms by foreign navies beyond 12 nautical miles from the coast are [the following 27]:

Bangladesh, Brazil, Burma, Cambodia, Cape Verde, China, Egypt, Haiti, India, Iran, Kenya, Malaysia, Maldives, Mauritius, North Korea, Pakistan, Portugal, Saudi Arabia, Somalia, Sri Lanka, Sudan, Syria, Thailand, United Arab Emirates, Uruguay, Venezuela, and Vietnam.³¹

Other observers provide different counts of the number of countries that take the position that UNCLOS gives coastal states the right to regulate not only economic activities but also foreign military activities in their EEZs. For example, one set of observers, in an August 2013 briefing, stated that 18 countries seek to regulate foreign military activities in their EEZs, and that three of these countries—China, North Korea, and Peru—have directly interfered with foreign military activities in their EEZs.³²

³⁰ The legal term under UNCLOS for territorial waters is territorial seas. This report uses the more colloquial term territorial waters to avoid confusion with terms like South China Sea and East China Sea.

³¹ Source: Navy Office of Legislative Affairs email to CRS, June 15, 2012. The email notes that two additional countries—Ecuador and Peru—also have restrictions inconsistent with UNCLOS that would limit the exercise of high seas freedoms by foreign navies beyond 12 nautical miles from the coast, but do so solely because they claim an extension of their territorial sea beyond 12 nautical miles.

DOD states that

Regarding excessive maritime claims, several claimants within the region have asserted maritime claims along their coastlines and around land features that are inconsistent with international law. For example, Malaysia attempts to restrict foreign military activities within its Exclusive Economic Zone (EEZ), and Vietnam attempts to require notification by foreign warships prior to exercising the right of innocent passage through its territorial sea. A number of countries have drawn coastal baselines (the lines from which the breadth of maritime entitlements are measured) that are inconsistent with international law, including Vietnam and China, and the United States also has raised concerns with respect to Taiwan's Law on the Territorial Sea and the Contiguous Zone's provisions on baselines and innocent passage in the territorial sea. Although we applaud the Philippines' and Vietnam's efforts to bring its maritime claims in line with the Law of the Sea Convention, more work remains to be done. Consistent with the long-standing U.S. Freedom of Navigation Policy, the United States encourages all claimants to conform their maritime claims to international law and challenges excessive maritime claims through U.S. diplomatic protests and operational activities.

(Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, pp. 7-8.)

³² Source: Joe Baggett and Pete Pedrozo, briefing for Center for Naval Analysis Excessive Chinese Maritime Claims Workshop, August 7, 2013, slide entitled "What are other nations' views?" (slide 30 of 47). The slide also notes that there have been "isolated diplomatic protests from Pakistan, India, and Brazil over military surveys" conducted in their EEZs.

The dispute over whether China has a right under UNCLOS to regulate the activities of foreign military forces operating within its EEZ appears to be at the heart of incidents between Chinese and U.S. ships and aircraft in international waters and airspace, including

- incidents in March 2001, September 2002, March 2009, and May 2009, in which Chinese ships and aircraft confronted and harassed the U.S. naval ships *Bowditch*, *Impeccable*, and *Victorious* as they were conducting survey and ocean surveillance operations in China's EEZ;
- an incident on April 1, 2001, in which a Chinese fighter collided with a U.S. Navy EP-3 electronic surveillance aircraft flying in international airspace about 65 miles southeast of China's Hainan Island in the South China Sea, forcing the EP-3 to make an emergency landing on Hainan Island;³³
- an incident on December 5, 2013, in which a Chinese navy ship put itself in the path of the U.S. Navy cruiser *Cowpens* as it was operating 30 or more miles from China's aircraft carrier *Liaoning*, forcing the *Cowpens* to change course to avoid a collision;
- an incident on August 19, 2014, in which a Chinese fighter conducted an aggressive and risky intercept of a U.S. Navy P-8 maritime patrol aircraft that was flying in international airspace about 135 miles east of Hainan Island³⁴—DOD characterized the intercept as “very, very close, very dangerous”;³⁵ and
- an incident on May 17, 2016, in which Chinese fighters flew within 50 feet of a Navy EP-3 electronic surveillance aircraft in international airspace in the South China Sea—a maneuver that DOD characterized as “unsafe.”³⁶

Figure 2 shows the locations of the 2001, 2002, and 2009 incidents listed in the first two bullets above. The incidents shown in **Figure 2** are the ones most commonly cited prior to the December 2013 involving the *Cowpens*, but some observers list additional incidents as well. For example, one set of observers, in an August 2013 briefing, provided the following list of incidents in which

³³ For discussions of some of these incidents and their connection to the issue of military operating rights in EEZs, see Raul Pedrozo, “Close Encounters at Sea, The USNS *Impeccable* Incident,” *Naval War College Review*, Summer 2009: 101-111; Jonathan G. Odom, “The True ‘Lies’ of the *Impeccable* Incident: What Really Happened, Who Disregarded International Law, and Why Every Nation (Outside of China) Should Be Concerned,” *Michigan State Journal of International Law*, vol. 18, no. 3, 2010: 16-22, accessed September 25, 2012, at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1622943; Oriana Skylar Mastro, “Signaling and Military Provocation in Chinese National Security Strategy: A Closer Look at the *Impeccable* Incident,” *Journal of Strategic Studies*, April 2011: 219-244; and Peter Dutton, ed., *Military Activities in the EEZ, A U.S.-China Dialogue on Security and International Law in the Maritime Commons*, Newport (RI), Naval War College, China Maritime Studies Institute, China Maritime Study Number 7, December 2010, 124 pp. See also CRS Report RL30946, *China-U.S. Aircraft Collision Incident of April 2001: Assessments and Policy Implications*, by Shirley A. Kan et al..

³⁴ Source for location: Transcript of remarks by DOD Press Secretary Rear Admiral John Kirby at August 22, 2014, press briefing, accessed September 26, 2014, at <http://www.defense.gov/Transcripts/Transcript.aspx?TranscriptID=5493>. Chinese officials stated that the incident occurred 220 kilometers (about 137 statute miles or about 119 nautical miles) from Hainan Island.

³⁵ Source: Transcript of remarks by DOD Press Secretary Rear Admiral John Kirby at August 22, 2014, press briefing, accessed September 26, 2014, at <http://www.defense.gov/Transcripts/Transcript.aspx?TranscriptID=5493>.

³⁶ See, for example, Michael S. Schmidt, “Chinese Aircraft Fly Within 50 Feet of U.S. Plane Over South China Sea, Pentagon Says,” *New York Times*, May 18, 2016; Thomas Gibbons-Neff, “Chinese Jets Intercept U.S. Recon Plane, Almost Colliding Over South China Sea,” *Washington Post*, May 18, 2016; Idrees Ali and Megha Rajagopalan, “Chinese Jets Intercept U.S. Military Plane over South China Sea: Pentagon,” *Reuters*, May 19, 2016; Jamie Crawford, “Pentagon: ‘Unsafe’ Intercept over South China Sea,” *CNN*, May 19, 2016.

China has challenged or interfered with operations by U.S. ships and aircraft and ships from India's navy:

Figure 2. Locations of 2001, 2002, and 2009 U.S.-Chinese Incidents at Sea and In Air



Source: Mark E. Redden and Phillip C. Saunders, *Managing Sino-U.S. Air and Naval Interactions: Cold War Lessons and New Avenues of Approach*, Washington, Center for the Study of Chinese Military Affairs, Institute for National Strategic Studies, National Defense University, September 2012. Detail of map shown on p. 6.

- USNS *Bowditch* (March 2001);
- EP-3 Incident (April 2001);
- USNS *Impeccable* (March 2009);
- USNS *Victorious* (May 2009);
- USS *George Washington* (July-November 2010);
- U-2 Intercept (June 2011);
- INS [Indian Naval Ship] *Airavat* (July 2011);
- INS [Indian Naval Ship] *Shivalik* (June 2012); and

- USNS *Impeccable* (July 2013).³⁷

DOD states that

The growing efforts of claimant States to assert their claims has led to an increase in air and maritime incidents in recent years, including an unprecedented rise in unsafe activity by China's maritime agencies in the East and South China Seas. U.S. military aircraft and vessels often have been targets of this unsafe and unprofessional behavior, which threatens the U.S. objectives of safeguarding the freedom of the seas and promoting adherence to international law and standards. China's expansive interpretation of jurisdictional authority beyond territorial seas and airspace causes friction with U.S. forces and treaty allies operating in international waters and airspace in the region and raises the risk of inadvertent crisis.

There have been a number of troubling incidents in recent years. For example, in August 2014, a Chinese J-11 fighter crossed directly under a U.S. P-8A Poseidon operating in the South China Sea approximately 117 nautical miles east of Hainan Island. The fighter also performed a barrel roll over the aircraft and passed the nose of the P-8A to show its weapons load-out, further increasing the potential for a collision. However, since August 2014, U.S.-China military diplomacy has yielded positive results, including a reduction in unsafe intercepts. We also have seen the PLAN implement agreed-upon international standards for encounters at sea, such as the Code for Unplanned Encounters at Sea (CUES),³⁸ which was signed in April 2014.³⁹

Relationship of Maritime Territorial Disputes to EEZ Dispute

The issue of whether China has the right under UNCLOS to regulate foreign military activities in its EEZ is related to, but ultimately separate from, the issue of territorial disputes in the SCS and ECS:

- The two issues are related because China can claim EEZs from inhabitable islands over which it has sovereignty, so accepting China's claims to sovereignty over inhabitable islands in the SCS or ECS could permit China to expand the EEZ zone within which China claims a right to regulate foreign military activities.
- The two issues are ultimately separate from one another because even if all the territorial disputes in the SCS and ECS were resolved, and none of China's claims in the SCS and ECS were accepted, China could continue to apply its concept of its EEZ rights to the EEZ that it unequivocally derives from its mainland coast—and it is in this unequivocal Chinese EEZ that most of the past U.S.-Chinese incidents at sea have occurred.

³⁷ Source: Joe Baggett and Pete Pedrozo, briefing for Center for Naval Analysis Excessive Chinese Maritime Claims Workshop, August 7, 2013, slide entitled "Notable EEZ Incidents with China," (slides 37 and 46 of 47). Regarding an event involving the *Impeccable* reported to have taken place in June rather than July, see William Cole, "Chinese Help Plan For Huge War Game Near Isles," Honolulu Star-Advertiser, July 25, 2013: 1. See also Bill Gertz, "Inside the Ring: New Naval Harassment in Asia," July 17, 2013. See also Department of Defense Press Briefing by Adm. Locklear in the Pentagon Briefing Room, July 11, 2013, accessed August 9, 2013, at <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=5270>. As of September 26, 2014, a video of part of the incident was posted on YouTube at <http://www.youtube.com/watch?v=TiyeUWQObkg>.

³⁸ For more on the CUES agreement, see "April 2014 Code for Unplanned Encounters At Sea (CUES)" below.

³⁹ Department of Defense, *Asia-Pacific Maritime Security Strategy, undated but released August 2015*, pp. 14-15.

Press reports of maritime disputes in the SCS and ECS often focus on territorial disputes while devoting little or no attention to the EEZ dispute. From the U.S. perspective, however, the EEZ dispute is arguably as significant as the maritime territorial disputes because of the EEZ dispute's proven history of leading to U.S.-Chinese incidents at sea and because of its potential for affecting U.S. military operations not only in the SCS and ECS, but around the world.

Treaties and Agreements Related to the Disputes

This section briefly reviews some international treaties and agreements that bear on the disputes discussed in this report.

United Nations Convention on the Law of the Sea (UNCLOS)

The United Nations Convention on the Law of the Sea (UNCLOS) establishes a treaty regime to govern activities on, over, and under the world's oceans. UNCLOS was adopted by Third United Nations Conference on the Law of the Sea in December 1982, and entered into force in November 1994. The treaty established EEZs as a feature of international law, and contains multiple provisions relating to territorial waters and EEZs. As of March 15, 2016, 167 nations were party to the treaty, including China and most other countries bordering on the SCS and ECS (the exceptions being North Korea and Taiwan).⁴⁰

The treaty and an associated 1994 agreement relating to implementation of Part XI of the treaty (on deep seabed mining) were transmitted to the Senate on October 6, 1994.⁴¹ In the absence of Senate advice and consent to adherence, the United States is not a party to the convention and the associated 1994 agreement. A March 10, 1983, statement on U.S. ocean policy by President Ronald Reagan states that UNCLOS

contains provisions with respect to traditional uses of the oceans which generally confirm existing maritime law and practice and fairly balance the interests of all states.

Today I am announcing three decisions to promote and protect the oceans interests of the United States in a manner consistent with those fair and balanced results in the Convention and international law.

First, the United States is prepared to accept and act in accordance with the balance of interests relating to traditional uses of the oceans—such as navigation and overflight. In this respect, the United States will recognize the rights of other states in the waters off their coasts, as reflected in the Convention, so long as the rights and freedoms of the United States and others under international law are recognized by such coastal states.

Second, the United States will exercise and assert its navigation and overflight rights and freedoms on a worldwide basis in a manner that is consistent with the balance of interests reflected in the convention. The United States will not, however, acquiesce in unilateral acts of other states designed to restrict the rights and freedoms of the international community in navigation and overflight and other related high seas uses.

Third, I am proclaiming today an Exclusive Economic Zone in which the United States will exercise sovereign rights in living and nonliving resources within 200 nautical miles

⁴⁰ Source: Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements as at January 2, 2015 (updated March 15, 2016), accessed April 1, 2016, at http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm#. The United Nations Convention on the Law of the Sea. A similar list, in alphabetical order by country name, is posted at http://www.un.org/Depts/los/reference_files/status2010.pdf.

⁴¹ Treaty Document 103-39.

of its coast. This will provide United States jurisdiction for mineral resources out to 200 nautical miles that are not on the continental shelf.⁴²

UNCLOS builds on four 1958 law of the sea conventions to which the United States is a party: the Convention on the Territorial Sea and the Contiguous Zone, the Convention on the High Seas, the Convention on the Continental Shelf, and the Convention on Fishing and Conservation of the Living Resources of the High Seas.

1972 Multilateral Convention on Preventing Collisions at Sea (COLREGs Convention)

China and the United States, as well as more than 150 other countries (including all those bordering on the South East and South China Seas other than Taiwan),⁴³ are parties to an October 1972 multilateral convention on international regulations for preventing collisions at sea, commonly known as the collision regulations (COLREGs) or the “rules of the road.”⁴⁴ Although commonly referred to as a set of rules or regulations, this multilateral convention is a binding treaty. The convention applies “to all vessels upon the high seas and in all waters connected therewith navigable by seagoing vessels.”⁴⁵

In a February 18, 2014, letter to Senator Marco Rubio concerning the December 5, 2013, incident involving the *Cowpens*, the State Department stated:

In order to minimize the potential for an accident or incident at sea, it is important that the United States and China share a common understanding of the rules for operational air or maritime interactions. From the U.S. perspective, an existing body of international rules and guidelines—including the 1972 International Regulations for Preventing Collisions at Sea (COLREGs)—are sufficient to ensure the safety of navigation between U.S. forces and the force of other countries, including China. We will continue to make clear to the Chinese that these existing rules, including the COLREGs, should form the basis for our common understanding of air and maritime behavior, and we will encourage China to incorporate these rules into its incident-management tools.

Likewise, we will continue to urge China to agree to adopt bilateral crisis management tools with Japan and to rapidly conclude negotiations with ASEAN⁴⁶ on a robust and meaningful Code of Conduct in the South China in order to avoid incidents and to manage them when they arise. We will continue to stress the importance of these issues in our regular interactions with Chinese officials.⁴⁷

⁴² United States Ocean Policy, Statement by the President, March 10, 1983, accessed April 15, 23015, at <http://www.state.gov/documents/organization/143224.pdf>. The text is also available at <http://www.reagan.utexas.edu/archives/speeches/1983/31083c.htm>.

⁴³ Source: International Maritime Organization, *Status of Multilateral Conventions and Instruments in Respect of Which the International Maritime Organization or its Secretary-General Performs Depositary or Other Functions*, As at 28 February 2014, pp. 86-89. The Philippines acceded to the convention on June 10, 2013.

⁴⁴ 28 UST 3459; TIAS 8587. The treaty was done at London October 20, 1972, and entered into force July 15, 1977. The United States is an original signatory to the convention and acceded to the convention entered into force for the United States on July 15, 1977. China acceded to the treaty on January 7, 1980. A summary of the agreement is available at <http://www.imo.org/About/Conventions/ListOfConventions/Pages/COLREG.aspx>. The text of the convention is available at <https://treaties.un.org/doc/Publication/UNTS/Volume%201050/volume-1050-I-15824-English.pdf>.

⁴⁵ Rule 1(a) of the convention.

⁴⁶ ASEAN is the Association of Southeast Asian Nations. ASEAN’s member states are Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam.

⁴⁷ Letter dated February 18, 2014, from Julia Frifield, Assistant Secretary, Legislative Affairs, Department of State, to (continued...)

In the 2014 edition of its annual report on military and security developments involving China, the DOD states:

On December 5, 2013, a PLA Navy vessel and a U.S. Navy vessel operating in the South China Sea came into close proximity. At the time of the incident, USS COWPENS (CG 63) was operating approximately 32 nautical miles southeast of Hainan Island. In that location, the U.S. Navy vessel was conducting lawful military activities beyond the territorial sea of any coastal State, consistent with customary international law as reflected in the Law of the Sea Convention. Two PLA Navy vessels approached USS COWPENS. During this interaction, one of the PLA Navy vessels altered course and crossed directly in front of the bow of USS COWPENS. This maneuver by the PLA Navy vessel forced USS COWPENS to come to full stop to avoid collision, while the PLA Navy vessel passed less than 100 yards ahead. The PLA Navy vessel's action was inconsistent with internationally recognized rules concerning professional maritime behavior (i.e., the Convention of International Regulations for Preventing Collisions at Sea), to which China is a party.⁴⁸

April 2014 Code for Unplanned Encounters At Sea (CUES)

On April 22, 2014, representatives of 21 Pacific-region navies (including China, Japan, and the United States), meeting in Qingdao, China, at the 14th Western Pacific Naval Symposium (WPNS),⁴⁹ unanimously agreed to a Code for Unplanned Encounters at Sea (CUES). CUES, a non-binding agreement, establishes a standardized protocol of safety procedures, basic communications, and basic maneuvering instructions for naval ships and aircraft during unplanned encounters at sea, with the aim of reducing the risk of incidents arising from such encounters.⁵⁰ The CUES agreement in effect supplements the 1972 COLREGs Convention (see previous section); it does not cancel or lessen commitments that countries have as parties to the COLREGS Convention.

Two observers stated that “The [CUES] resolution is non-binding; only regulates communication in ‘unplanned encounters,’ not behavior; fails to address incidents in territorial waters; and does

(...continued)

The Honorable Marco Rubio, United States Senate. Used here with the permission of the office of Senator Rubio. The letter begins: “Thank you for your letter of January 31 regarding the December 5, 2013, incident involving a Chinese naval vessel and the USS Cowpens.” The text of Senator Rubio’s January 31, 2014, letter was accessed March 13, 2014, at <http://www.rubio.senate.gov/public/index.cfm/2014/1/rubio-calls-on-administration-to-address-provocative-chinese-behavior>.

⁴⁸ Department of Defense, *Annual Report to Congress [on] Military and Security Developments Involving the People’s Republic of China 2014*, p. 4.

⁴⁹ For more on the WPNS, see Singapore Ministry of Defense, “Fact Sheet: Background of the Western Pacific Naval Symposium, MCMEX, DIVEX and NMS,” updated March 25, 2011, accessed October 1, 2012, at http://www.mindef.gov.sg/imindef/news_and_events/nr/2011/mar/25mar11_nr/25mar11_fs.html. See also the website for the 2012 WPNS at <http://www.navy.mil.my/wpns2012/>.

⁵⁰ See, for example, “Navy Leaders Agree to CUES at 14th WPNS,” Navy News Services, April 23, 2014; Austin Ramzy and Chris Buckley, “Pacific Rim Deal Could Reduce Chance of Unintended Conflict in Contested Seas,” *New York Times*, April 23, 2014; Megha Rajagopalan, “Pacific Accord on Maritime Code Could Help Prevent Conflicts,” *Reuters.com*, April 22, 2014.

For additional background information on CUES, see Mark E. Redden and Phillip C. Saunders, *Managing Sino-U.S. Air and Naval Interactions: Cold War Lessons and New Avenues of Approach*, Washington, Center for the Study of Chinese Military Affairs, Institute for National Strategic Studies, National Defense University, September 2012, pp. 8-9. The text of the previous 2003 CUES Review Supplement was accessed October 1, 2012, at <http://navy.mil.my/wpns2012/images/stories/dokumen/WPNS%202012%20PRESENTATION%20FOLDER/ACTION%20ITEMS%20WPNS%20WORKSHOP%202012/CUES.PDF>.

not apply to fishing and maritime constabulary vessels [i.e., coast guard ships and other maritime law enforcement ships], which are responsible for the majority of Chinese harassment operations.”⁵¹ An April 23, 2014, press report stated:

Beijing won't necessarily observe a new code of conduct for naval encounters when its ships meet foreign ones in disputed areas of the East and South China seas, according to a senior Chinese naval officer involved in negotiations on the subject....

U.S. naval officers have said they hoped all members of the group would observe the code in all places, including waters where China's territorial claims are contested by its neighbors.

But the code isn't legally binding, and it remains to be seen whether China will observe it in what the U.S. sees as international waters and Beijing sees as part of its territory.

Senior Capt. Ren Xiaofeng, the head of the Chinese navy's Maritime Security/Safety Policy Research Division, said that when and where the code was implemented had to be discussed bilaterally between China and other nations, including the U.S.

“It's recommended, not legally binding,” Capt. Ren told *The Wall Street Journal*....⁵²

Another observer states that China

touts the fact that it recently signed a Code for Unplanned Encounters at Sea at the recent Western Pacific Naval Symposium held in Qingdao. CUES is meant to help avoid accidents at sea. However, the code is voluntary and applies only when naval ships and aircraft meet “casually or unexpectedly.” It also does not apply to a country's territorial waters, and of course countering China's expansive claims to territorial waters is one of the most pressing problems in the South and East China Seas.⁵³

DOD states that

The Department marked a significant milestone in this effort in April 2014 when member navies at the WPNS adopted the CUES in Qingdao, China. The CUES provides standardized navigation and communication protocols for use when ships and aircraft meet at sea, including a standardized set of language-independent communication protocols to allow for communication between navies absent a common language.

The Department continues to seek regular opportunities for practical application of these protocols. In July 2014, a U.S. Navy vessel was able to use CUES for the first time during an unplanned encounter with the PLAN. It has since been used many times. Going forward, the Department is also exploring options to expand the use of CUES to include regional law enforcement vessels and Coast Guards. Given the growing use of maritime law enforcement vessels to enforce disputed maritime claims, expansion of CUES to MLE vessels would be an important step in reducing the risk of unintentional conflict.⁵⁴

U.S. Navy officials have stated that the CUES agreement is working well, and that the United States (as noted in the passage above) is interested in expanding the agreement to cover coast

⁵¹ Jeff M. Smith and Joshua Eisenman, “China and America Clash on the High Seas: The EEZ Challenge,” *The National Interest*, May 22, 2014.

⁵² Jeremy Page, “China Won't Necessarily Observe New Conduct Code for Navies,” *Wall Street Journal*, April 23, 2014.

⁵³ Patrick Cronin, “China's Problem With Rules: Managing A Reluctant Stakeholder,” *War on the Rocks*, June 26, 2014. See also James Goldrick, “Cue co-operation? Pacific Naval Code Aims to Improve Collaboration at Sea,” *Jane's Defence Weekly*, May 21, 2014: 24-25.

⁵⁴ Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, p. 31.

guard ships.⁵⁵ Officials from Singapore and Malaysia reportedly have expressed support for the idea.⁵⁶ An Administration fact sheet about Chinese President Xi Jinping's state visit to the United States on September 24-25, 2015, stated:

The U.S. Coast Guard and the China Coast Guard have committed to pursue an arrangement whose intended purpose is equivalent to the Rules of Behavior Confidence Building Measure annex on surface-to-surface encounters in the November 2014 Memorandum of Understanding between the United States Department of Defense and the People's Republic of China Ministry of National Defense.⁵⁷

November 2014 U.S.-China Memorandum of Understanding (MOU) On Air and Maritime Encounters

In November 2014, the U.S. DOD and China's Ministry of National Defense signed a Memorandum of Understanding (MOU) regarding rules of behavior for safety of air and maritime encounters.⁵⁸ The MOU makes reference to UNCLOS, the 1972 COLREGs convention, the Convention on International Civil Aviation (commonly known as the Chicago Convention), the Agreement on Establishing a Consultation Mechanism to Strengthen Military Maritime Safety (MMCA), and CUES.⁵⁹ The MOU as signed in November 2014 included an annex on rules of

⁵⁵ See, for example, Rosalin Amthieson, "Chinese Navy in South China Sea Draws U.S. Admiral's Praise," *Bloomberg*, April 26, 2016; Michael Fabey, "Sino-U.S. Naval Drills Pay Off, Greenert Says," *Aerospace Daily & Defense Report*, August 20, 2015; David Tweed, "U.S. Seeks to Expand China Navy Code to Coast Guard, Swift Says," *Bloomberg Business*, August 25, 2015; Christopher P. Cavas, "New CNO Richardson Invited To Visit China," *Defense News*, August 25, 2015; Nina P. Calleja, "Positive Relations With China A Must—US Admiral," *Philippine Daily Inquirer*, August 26, 2015; Shannon Tiezzi, "US Admiral: China 'Very Interested' in RIMPAC 2016," *The Diplomat*, August 27, 2015; Andrea Shalal, "U.S., Chinese Officers Encouraged by Use of Rules for Ship Meetings," *Reuters*, January 20, 2016; Prashanth Parameswaran, "US Wants Expanded Naval Protocol Amid China's South China Sea Assertiveness," *The Diplomat*, February 18, 2016.

⁵⁶ See, for example, Prashanth Parameswaran, "Malaysia Wants Expanded Naval Protocol Amid South China Sea Disputes," *The Diplomat*, December 4, 2015; Prashanth Parameswaran, "What Did the 3rd ASEAN Defense Minister's Meeting Plus Achieve?" *The Diplomat*, November 5, 2015. See also Lee YingHui, "ASEAN Should Choose CUES for the South China Sea," *East Asia Forum*, April 6, 2016.

⁵⁷ "FACT SHEET: President Xi Jinping's State Visit to the United States," September 25, 2015, accessed November 24, 2015, at <https://www.whitehouse.gov/the-press-office/2015/09/25/fact-sheet-president-xi-jinpings-state-visit-united-states>

⁵⁸ Memorandum of Understanding Between The Department of Defense of the United States of America and the Ministry of National Defense of the People's Republic of China Regarding the Rules of Behavior for Safety of Air and Maritime Encounters, November 12, 2014.

⁵⁹ DOD states that

In 2014, then-Secretary Hagel and his Chinese counterpart signed a historic Memorandum of Understanding (MOU) on Rules of Behavior for Safety of Air and Maritime Encounters. The MOU established a common understanding of operational procedures for when air and maritime vessels meet at sea, drawing from and reinforcing existing international law and standards and managing risk by reducing the possibility of misunderstanding and misperception between the militaries of the United States and China. To date, this MOU includes an annex for ship-to-ship encounters. To augment this MOU, the Department of Defense has prioritized developing an annex on air-to-air encounters by the end of 2015. Upon the conclusion of this final annex, bilateral consultations under the Rules of Behavior MOU will be facilitated under the existing MMCA forum.

(Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, p. 30.)

For additional discussion of the MOU, see Peter A. Dutton, "MOUs: The Secret Sauce to Avoiding a U.S.-China Disaster?" *The National Interest*, January 30, 2015; Mira Rapp-Hooper and Bonnie Glaser, "In Confidence: Will We Know If US-China CBMs Are Working?" *Asia Maritime Transparency Initiative (Center for Strategic and International Studies)*, February 4, 2015; Mira Rapp-Hooper, "What's in a Confidence Building Measure?" *Lawfare*, (continued...)

behavior for safety of surface-to-surface encounters. An additional annex on rules of behavior for safety of air-to-air encounters was signed on September 15 and 18, 2015.⁶⁰

Negotiations Between China and ASEAN on SCS Code of Conduct

In 2002, China and the 10 member states of ASEAN signed a non-binding Declaration on the Conduct (DOC) of Parties in the South China Sea in which the parties, among other things,

... reaffirm their respect for and commitment to the freedom of navigation in and overflight above the South China Sea as provided for by the universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea....

... undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea....

... undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner....

...reaffirm that the adoption of a [follow-on] code of conduct in the South China Sea would further promote peace and stability in the region and agree to work, on the basis of consensus, towards the eventual attainment of this objective....⁶¹

In July 2011, China and ASEAN adopted a preliminary set of principles for implementing the DOC. U.S. officials since 2010 have encouraged ASEAN and China to develop the follow-on binding Code of Conduct (COC) mentioned in the final quoted paragraph above. China and ASEAN have conducted negotiations on the follow-on COC, but China has not yet agreed with the ASEAN member states on a final text. An August 5, 2013, press report states that “China is in no rush to sign a proposed agreement on maritime rules with Southeast Asia governing behavior in the disputed South China Sea, and countries should not have unrealistic expectations, the Chinese foreign minister said on Monday [August 5].”⁶²

China’s Approach to the Disputes

Map of the Nine-Dash Line

China depicts its claims in the SCS using the so-called map of the nine-dash line—a Chinese map of the SCS showing nine line segments that, if connected, would enclose an area covering roughly 90% (earlier estimates said about 80%) of the SCS (**Figure 3**). The area inside the nine

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February 8, 2015; Peter Dutton and Andrew Erickson, “When Eagle Meets Dragon: Managing Risk in Maritime East Asia,” *Real Clear Defense*, March 25, 2015.

⁶⁰ For a critical commentary on the annex for air-to-air encounters, see James Kraska and Raul “Pete” Pedrozo, “The US-China Arrangement for Air-to-Air Encounters Weakens International Law,” *Lawfare*, March 9, 2016.

⁶¹ Text as taken from <http://www.aseansec.org/13163.htm>.

⁶² Ben Blanchard, “China Says In No Hurry to Sign South China Sea Accord,” *Reuters.com*, August 5, 2013. See also Shannon Tiezzi, “Why China Isn’t Interested in a South China Sea Code of Conduct,” *The Diplomat*, February 26, 2014.

line segments far exceeds what is claimable as territorial waters under customary international law of the sea as reflected in UNCLOS, and, as shown in **Figure 4**, includes waters that are within the claimable EEZs (and in some places are quite near the coasts) of the Philippines, Malaysia, Brunei, and Vietnam.

Figure 3. Map of the Nine-Dash Line

Example submitted by China to the United Nations in 2009



Source: Communication from China to the United Nations dated May 7, 2009, English version, accessed on August 30, 2012, at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_vnm_37_2009.htm.

The map of the nine-dash line, also called the U-shaped line or the cow tongue,⁶³ predates the establishment of the People’s Republic of China (PRC) in 1949. The map has been maintained by the PRC government, and maps published in Taiwan also show the nine line segments.⁶⁴ In a document submitted to the United Nations on May 7, 2009, that included the map as an attachment, China stated:

China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof (see attached map [of the nine-dash line]). The above position is consistently held by the Chinese Government, and is widely known by the international community.⁶⁵

Figure 4. EEZs Overlapping Zone Enclosed by Map of Nine-Dash Line



Source: Eurasia Review, September 10, 2012.

Notes: (1) The red line shows the area that would be enclosed by connecting the line segments in the map of the nine-dash line. Although the label on this map states that the waters inside the red line are “China’s claimed territorial waters,” China has maintained ambiguity over whether it is claiming full sovereignty over the entire area enclosed by the nine line segments. (2) The EEZs shown on the map do not represent the totality of maritime territorial claims by countries in the region. Vietnam, to cite one example, claims all of the Spratly Islands, even though most or all of the islands are outside the EEZ that Vietnam derives from its mainland coast.

⁶³ The map is also sometimes called the map of the nine dashed lines (as opposed to nine-dash line), perhaps because some maps (such as **Figure 3**) show each line segment as being dashed.

⁶⁴ See Department of Defense, *Annual Report to Congress, Military and Security Developments Involving the People’s Republic of China*, 2011, pp. 15 and 39; Peter Dutton, “Three Disputes and Three Objectives, China and the South China Sea,” *Naval War College Review*, Autumn 2011: 44-45; Hong Nong, “Interpreting the U-shape Line in the South China Sea,” accessed on September 28, 2012, at <http://chinausfocus.com/peace-security/interpreting-the-u-shape-line-in-the-south-china-sea/>.

⁶⁵ Communication from China to the United Nations dated May 7, 2009, English version, accessed on August 30, 2012, at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_vnm_37_2009.htm.

The map does not always have exactly nine dashes. Early versions of the map had as many as 11 dashes, and a map of China published by the Chinese government in June 2014 includes 10 dashes.⁶⁶

China has maintained some ambiguity over whether it is using the map of the nine-dash line to claim full sovereignty over the entire sea area enclosed by the nine-dash line, or something less than that.⁶⁷ Maintaining this ambiguity can be viewed as an approach that preserves flexibility for China in pursuing its maritime claims in the SCS while making it more difficult for other parties to define specific objections or pursue legal challenges to those claims. It does appear clear, however, that China at a minimum claims sovereignty over the island groups inside the nine line segments—China’s domestic Law on the Territorial Sea and Contiguous Zone, enacted in 1992, specifies that China claims sovereignty over all the island groups inside the nine line segments.⁶⁸ China’s implementation on January 1, 2014, of a series of fishing regulations covering much of the SCS suggests that China claims at least some degree of administrative control over much of the SCS.⁶⁹

“Salami-Slicing” Strategy and “Cabbage” Strategy

Observers frequently characterize China’s approach for asserting and defending its territorial claims in the ECS and SCS as a “salami-slicing” strategy that employs a series of incremental actions, none of which by itself is a *casus belli*, to gradually change the status quo in China’s favor. At least one Chinese official has used the term “cabbage strategy” to refer to a strategy of consolidating control over disputed islands by wrapping those islands, like the leaves of a cabbage, in successive layers of occupation and protection formed by fishing boats, Chinese

⁶⁶ For an article discussing this new map in general (but not that it includes 10 dashes), see Ben Blanchard and Sui-Lee Wee, “New Chinese Map Gives Greater Play to South China Sea Claims,” *Reuters*, June 25, 2014. See also “China Adds Another Dash to the Map,” *Maritime Executive*, July 4, 2014.

⁶⁷ See Andrew Browne, “China’s line in the Sea,” *Wall Street Journal*, April 1, 2014; Peter Dutton, “Three Disputes and Three Objectives, China and the South China Sea,” *Naval War College Review*, Autumn 2011: 45-48; Hong Nong, “Interpreting the U-shape Line in the South China, Sea,” accessed September 28, 2012, at <http://chinausfocus.com/peace-security/interpreting-the-u-shape-line-in-the-south-china-sea/>. See also Ankit Panda, “Will China’s Nine Dashes Ever Turn Into One Line?” *The Diplomat*, July 1, 2014.

⁶⁸ Peter Dutton, “Three Disputes and Three Objectives, China and the South China Sea,” *Naval War College Review*, Autumn 2011: 45, which states: “In 1992, further clarifying its claims of sovereignty over all the islands in the South China Sea, the People’s Republic of China enacted its Law on the Territorial Sea and Contiguous Zone, which specifies that China claims sovereignty over the features of all of the island groups that fall within the U-shaped line in the South China Sea: the Pratas Islands (Dongsha), the Paracel Islands (Xisha), Macclesfield Bank (Zhongsha), and the Spratly Islands (Nansha).” See also International Crisis Group, *Stirring Up the South China Sea ([Part] I)*, Asia Report Number 223, April 23, 2012, pp. 3-4.

⁶⁹ DOD states that

China has not clearly defined the scope of its maritime claims in the South China Sea. In May 2009, China communicated two Notes Verbales to the UN Secretary General stating objections to the submissions by Vietnam and Malaysia (jointly) and Vietnam (individually) to the Commission on the Limits of the Continental Shelf. The notes, among other things, included a map depicting nine line segments (dashes) encircling waters, islands and other features in the South China Sea and encompassing approximately two million square kilometers of maritime space. The 2009 Note Verbales also included China’s assertion that it has “indisputable sovereignty over the islands in the South China Sea and the adjacent waters and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof.” China’s actions and rhetoric have left unclear the precise nature of its maritime claim, including whether China claims all of the maritime area located within the line as well as all land features located therein.

(Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, p. 8.)

Coast Guard ships, and then finally Chinese naval ships.⁷⁰ Other observers have referred to China's approach as a strategy of creeping annexation⁷¹ or creeping invasion,⁷² or as a "talk and take" strategy, meaning a strategy in which China engages in (or draws out) negotiations while taking actions to gain control of contested areas.⁷³

Use of China Coast Guard Ships, Fishing Boats/Maritime Militia, and Oil Exploration Platforms

China makes regular use of China Coast Guard (CCG) ships to assert and defend its maritime territorial claims, with Chinese Navy ships sometimes available over the horizon as backup forces.⁷⁴ China has, by far, the largest coast guard of any country in the region, and is currently building many new ships for its Coast Guard.⁷⁵ CCG ships are generally unarmed or lightly armed, but can be effective in asserting and defending maritime territorial claims, particularly in terms of confronting or harassing foreign vessels that are similarly lightly armed or unarmed.⁷⁶ In addition to being available as backups for CCG ships, Chinese navy ships conduct exercises that in some cases appear intended, at least in part, at reinforcing China's maritime claims.⁷⁷

China also uses civilian fishing ships as a form of maritime militia, as well as mobile oil exploration platforms, to assert and defend its maritime claims.⁷⁸

⁷⁰ See Harry Kazianis, "China's Expanding Cabbage Strategy," *The Diplomat*, October 29, 2013; Bonnie S. Glaser and Alison Szalwinski, "Second Thomas Shoal Likely the Next Flashpoint in the South China Sea," *China Brief*, June 21, 2013, accessed August 9, 2013, at http://www.jamestown.org/programs/chinabrief/single/?tx_ttnews%5Btt_news%5D=41054&tx_ttnews%5BbackPid%5D=25&cHash=6580ce14cee5ac00501d5439f3ee3632#.UdBFf8u9KSM; Rafael M. Alunan III, "China's Cabbage Strategy," *Business World (Manila)*, July 8, 2013. See also Loida Nicolas Lewis, Rodel Rodis, and Walden Bello, "China's 'Cabbage Strategy' in West PH Sea," *Philippine Daily Inquirer*, July 27, 2013; Huseyin Erdogan, "China Invokes 'Cabbage Tactics' in South China Sea," *Anadolu Ajansi*, March 25, 2015.

⁷¹ See, for example, Alan Dupont, "China's Maritime Power Trip," *The Australian*, May 24, 2014.

⁷² Jackson Diehl, "China's 'Creeping Invasion,'" *Washington Post*, September 14, 2014.

⁷³ See, for example, Patrick M. Cronin, et al., *Cooperation from Strength, The United States, China and the South China Sea*, Center for a New American Security, January 2012, pp. 16, 56, and 65 (note 19); David Brown, "China, Vietnam Drift in South China Sea," *Asia Times Online*, January 21, 2012; Derek Bolton, "Pivoting Toward the South China Sea?" *Foreign Policy In Focus*, June 11, 2012; John Lee, "China's Salami-slicing Is Dicing Diplomacy," *Hudson Institute*, November 27, 2013; Fernando Fajardo, "Asia and the US Interest," *Cebu Daily News*, April 16, 2014; Jacqueline Newmyer Deal, "Chinese Dominance Isn't Certain," *The National Interest*, April 22, 2014; David Brown, "Viets Gamble Vainly on Appeasement in South China Sea," *Asia Sentinel*, May 7, 2014.

⁷⁴ See Department of Defense, *Annual Report to Congress [on] Military and Security Developments Involving the People's Republic of China 2015*, pp. 3, 7, and 44, and Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, p. 14.

⁷⁵ See, for example, Office of Naval Intelligence, *The PLA Navy, New Capabilities and Missions for the 21st Century*, 2015, pp. 44-46.

⁷⁶ See, for example, Megha Rajagopalan and Greg Torode, "China's Civilian Fleet A Potent Force in Asia's Disputed Waters," *Reuters.com*, March 5, 2014.

⁷⁷ See, for example, Trefor Moss and Rob Taylor, "Chinese Naval Patrol Prompts Conflicting Regional Response," *Wall Street Journal*, February 20, 2014.

⁷⁸ See Department of Defense, *Annual Report to Congress [on] Military and Security Developments Involving the People's Republic of China 2015*, pp. 3, 7; Ryan D. Martinson, "Shepherds of the South Seas," *Survival*, June-July 2016: 187-212; Conor M. Kennedy and Andrew S. Erickson, "From Frontier to Frontline: Tanmen Maritime Militia's Leading Role Pt. 2," *Center for International Maritime Security (CIMSEC)*, May 17, 2016; Matthew Carney, "China's Secret Maritime Militia: Fishermen the Forward guard in South China Sea Dispute," *ABC News (Australia)*, May 8, 2016; Reuters, "Beijing Training 'Fishing Militia' for South China Sea," *Straits Times*, May 2, 2016; Megha Rajagopalan, "China Trains 'Fishing Militia' to Sail into Disputed Waters," *Reuters*, April 30, 2016; Conor M. Kennedy and Andrew S. Erickson, "Model Maritime Militia: Tanmen's Leading Role in the April 2012 Scarborough (continued...)"

Preference for Treating Disputes on Bilateral Basis

China prefers to discuss maritime territorial disputes with other parties to the disputes on a bilateral rather than multilateral basis. Some observers believe China prefers bilateral talks because China is much larger than any other country in the region, giving China a potential upper hand in any bilateral meeting. China generally has resisted multilateral approaches to resolving maritime territorial disputes, stating that such approaches would internationalize the disputes, although the disputes are by definition international even when addressed on a bilateral basis. (China's participation with the ASEAN states in the 2002 DOC and in negotiations with the ASEAN states on the follow-on binding code of conduct represents a departure from this general preference.) As noted above, some observers believe China is pursuing a policy of putting off a negotiated resolution of maritime territorial disputes so as to give itself time to implement the salami-slicing strategy.⁷⁹ China resists and objects to U.S. involvement in the disputes.

Comparison with U.S. Actions Toward Caribbean and Gulf of Mexico

Some observers have compared China's approach toward its near-seas region with the U.S. approach toward the Caribbean and the Gulf of Mexico in the age of the Monroe Doctrine.⁸⁰ It can be noted, however, that there are significant differences between China's approach to its near-seas region and the U.S. approach—both in the 19th and 20th centuries and today—to the

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Shoal Incident,” *Center for International Maritime Security (CIMSEC)*, April 21, 2016; Simon Denyer, “How China’s Fishermen Are Fighting A Covert War in the South China Sea,” *Washington Post*, April 12, 2016; Tom Hanson, “China’s Super Strategy to Dominate South China Sea: Little Green Fisherman,” *National Interest*, April 7, 2016; Teo Cheng Wee, “China’s Front-Line Fisherman,” *Straits Times*, April 5, 2016; Brendan Nicholson, “China’s Huge Fleet ‘Is Fishing for Information for Its Navy,’” *The Australian*, March 15, 2016; Minnie Chan and Liu Zhen, “Beijing Enlists Trawlers to Help Protect maritime Rights in Disputed Waters,” *South China Sea Morning Post*, March 7, 2016; Yao Jianing, “Maritime Militia Increases Drills, Expands in Scope,” *China Daily*, February 2, 2016; Andrew S. Erickson and Conor M. Kennedy, “Trailblazers in Warfighting: The Maritime Militia of Danzhou,” *Center for International Maritime Security*, February 1, 2016; Andrew S. Erickson and Conor M. Kennedy, “China’s Daring Vanguard: Introducing Sanya City’s Maritime Militia,” *Center for International Maritime Security (CIMSEC)*, November 5, 2015; Andrew S. Erickson and Conor M. Kennedy, “Irregular Forces at Sea: ‘Not Merely Fisherman—Shedding Light on China’s Maritime Militia,’” *Center for International Maritime Security (CIMSEC)*, November 2, 2015; Christopher P. Cavas, “China’s ‘Little Blue Men’ Take Navy’s Place in Disputes,” *Defense News*, November 2, 2015; Justin Chock, “China’s Non-Military Maritime Assets as a Force Multiplier for Security,” *Asia Pacific Bulletin*, September 22, 2015; Andrew S. Erickson and Conor Kennedy, “Directing China’s ‘Little Blue Men’: Uncovering the Maritime Militia Command Structure,” *Asia Maritime Transparency Initiative (Center for Strategic & International Studies)*, September 11, 2015; “Beijing Expands Its Maritime Militia in South China Sea,” *Want China Times*, August 3, 2015; Andrew S. Erickson and Conor M. Kennedy, “Tanmen Militia: China’s ‘Maritime Rights Protection’ Vanguard,” *The National Interest*, May 6, 2015; Andrew S. Erickson and Conor M. Kennedy, “Meet the Chinese Maritime Militia Waging a ‘People’s War at Sea,’” *Wall Street Journal (China Real Time)*, March 31, 2015; James R. Holmes, *A Competitive Turn: How Increased Chinese Maritime Actions Complicate U.S. Partnerships*, Washington, Center for a New American Security, December 2012, East and South China Sea Bulletin 7, p. 1, accessed March 25, 2012, at http://www.cnas.org/files/documents/flashpoints/CNAS_bulletin_Holmes_ACompetitiveTurn.pdf; James R. Holmes, “China’s Small Stick Diplomacy,” *The Diplomat*, May 21, 2012, accessed October 3, 2012, at <http://thediplomat.com/2012/05/21/chinas-small-stick-diplomacy/>; Jens Kastner, “China’s Fishermen Charge Enemy Lines,” *Asia Times Online*, May 16, 2012; Carlyle A. Thayer, “Paracel Island: Chinese Boats Attack Vietnamese Fishing Craft,” *Thayer Consultancy Background Brief*, May 28, 2013, p. 1; Kurt Campbell, “Trouble at Sea Reveals The New Shape of China’s Foreign Policy,” *Financial Times*, July 22, 2014; John Ruwitch, “Satellites and Seafood: China Keeps Fishing Fleet Connected in Disputed Waters,” *Reuters*, July 27, 2014; Wendell Minnick, “Fishing Vessels in China Serve as Proxy Enforcers,” *Defense News*, August 17, 2014.

⁷⁹ See, for example, Donald K. Emmerson, “China Challenges Philippines in the South China Sea,” *East Asia Forum*, March 18, 2014.

⁸⁰ See, for example, Robert D. Kaplan, “China’s Budding Ocean Empire,” *The National Interest*, June 5, 2014.

Caribbean and the Gulf of Mexico. Unlike China in its approach to its near-seas region, the United States has not asserted any form of sovereignty or historical rights over the broad waters of the Caribbean or Gulf of Mexico (or other sea areas beyond the 12-mile limit of U.S. territorial waters), has not published anything akin to the nine-dash line for these waters (or other sea areas beyond the 12-mile limit), and does not contest the right of foreign naval forces to operate and engage in various activities in waters beyond the 12-mile limit.⁸¹

Chinese Actions Since Late 2013 That Have Heightened Concerns

Following a confrontation in 2012 between Chinese and Philippine ships at Scarborough Shoal, China gained *de facto* control over access to the shoal. Subsequent Chinese actions for asserting and defending China's claims in the ECS and SCS and China's position on the issue of whether it has the right to regulate foreign military activities in its EEZ that have heightened concerns among observers, particularly since late 2013, include the following:

- frequent patrols by Chinese Coast Guard ships—some observers refer to them as harassment operations—at the Senkaku Islands;
- China's announcement on November 23, 2013, of an air defense identification zone (ADIZ) for the ECS that includes airspace over the Senkaku Islands;⁸²
- ongoing Chinese pressure against the small Philippine military presence at Second Thomas Shoal in the Spratly Islands, where a handful of Philippine military personnel occupy a beached (and now derelict) Philippine navy amphibious ship;⁸³
- the previously mentioned December 5, 2013, incident in which a Chinese navy ship put itself in the path of the U.S. Navy cruiser *Cowpens*, forcing the *Cowpens* to change course to avoid a collision;
- the implementation on January 1, 2014, of fishing regulations administered by China's Hainan province applicable to waters constituting more than half of the SCS, and the reported enforcement of those regulations with actions that have included the apprehension of non-Chinese fishing boats;⁸⁴
- land-reclamation and facility-construction activities, begun in December 2013 and publicly reported starting in May 2014, at several locations in the SCS occupied by China (primarily the Spratly islands) that observers view as a prelude to the construction of expanded Chinese facilities and fortifications at those locations;⁸⁵

⁸¹ See, for example, James R. Holmes, "The Nine-Dashed Line Isn't China's Monroe Doctrine," *The Diplomat*, June 21, 2014, and James Holmes, "China's Monroe Doctrine," *The Diplomat*, June 22, 2012.

⁸² See CRS Report R43894, *China's Air Defense Identification Zone (ADIZ)*, by Ian E. Rinehart and Bart Elias.

⁸³ For a discussion of the situation at Second Thomas Shoal, see "A Game of Shark And Minnow," *New York Times Magazine* online news graphic accessed March 10, 2014, at <http://www.nytimes.com/newsgraphics/2013/10/27/south-china-sea/>. See also Ben Blanchard, "China Says [It] Expels Philippine [Vessels] from Disputed Shoal," *Reuters.com*, March 10, 2014; Oliver Teves (Associated Press), "Philippines Protests China Stopping Troop Resupply," *Kansas City Star*, March 11, 2014; Kyodo News International, "Philippines Protests Chinese Actions in Disputed Sea," *Global Post*, March 3, 2014.

⁸⁴ See, for example, Natalie Thomas, Ben Blanchard, and Megha Rajagopalan, "China Apprehending Boats Weekly in Disputed South China Sea," *Reuters.com*, March 6, 2014.

⁸⁵ See CRS Report R44072, *Chinese Land Reclamation in the South China Sea: Implications and Policy Options*, by Ben Dolven et al.. See also Edward Wong and Jonathan Ansfield, "To Bolster Its Claims, China Plants Islands in (continued...)"

- moving a large oil rig in May 2014 into waters that are near the Paracels and inside Vietnam's claimed EEZ, and using dozens of Chinese Coast Guard and Chinese navy ships to enforce a large keep-away zone around the rig, leading to numerous confrontations and incidents between Chinese and Vietnamese civilian and military ships; and
- the previously mentioned August 19, 2014, incident in which a Chinese fighter conducted an aggressive and risky intercept of a U.S. Navy P-8 maritime patrol aircraft that was flying in international airspace about 135 miles east of Hainan Island.

China's Land Reclamation and Facility-Construction Activities

China's land reclamation and facility-construction activities in the SCS have attracted particular attention and concern among observers, particularly since mid-February 2015,⁸⁶ due to the apparent speed and scale of the activities and their potential for quickly and significantly changing the status quo in the SCS. DOD states that:

China paused its two-year land reclamation effort in the Spratly Islands in late 2015 after adding over 3,200 acres of land to the seven features it occupies; other claimants reclaimed approximately 50 acres of land over the same period. As part of this effort, China excavated deep channels to improve access to its outposts, created artificial harbors, dredged natural harbors, and constructed new berthing areas to allow access for larger ships. Development of the initial four features—all of which were reclaimed in 2014—has progressed to the final stages of primary infrastructure construction, and includes communication and surveillance systems, as well as logistical support facilities.

At the three features where the largest outposts are located, China completed major land reclamation efforts in early October 2015 and began transitioning to infrastructure development, with each feature having an airfield—each with approximately 9,800 foot-long runways—and large ports in various stages of construction. Additional substantial infrastructure, including communications and surveillance systems, is expected to be built on these features in the coming year.

China's Government has stated these projects are mainly for improving the living and working conditions of those stationed on the outposts, safety of navigation, and research. However, most analysts outside China believe that China is attempting to bolster its de facto control by improving its military and civilian infrastructure in the South China Sea. The airfields, berthing areas, and resupply facilities will allow China to maintain a more flexible and persistent coast guard and military presence in the area. This would improve China's ability to detect and challenge activities by rival claimants or third parties, widen

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Disputed Waters," *New York Times*, June 16, 2014; Trefor Moss, "China Rejects Philippines' Call for Construction Freeze," *Wall Street Journal*, June 16, 2014; Wendell Minnick, "Beijing Continues S. China Sea Expansion," *Defense News*, June 14, 2014; Joel Guinto, "China Building Dubai-Style Fake Islands in South China Sea," *Bloomberg News*, June 11, 2014; David Dizon, "Why China Military Base in West PH Sea Is A 'Game-Changer,'" *ABS-CBN News*, June 10, 2014; Andrew Erickson and Austin Strange, "Pandora's Sandbox, China's Island-Building Strategy in the South China Sea," *Foreign Affairs*, July 13, 2014.

⁸⁶ Awareness of, and concern about, China's land reclamation activities in the SCS among observers appears to have increased substantially following the posting of an article showing a series of "before and after" satellite photographs of islands and reefs being changed by the work. (Mira Rapp-Hooper, "Before and After: The South China Sea Transformed," *Asia Maritime Transparency Initiative* [Center for Strategic and International Studies], February 18, 2015.)

the range of capabilities available to China, and reduce the time required to deploy them.⁸⁷

DOD stated in 2015 that

[China's] Recent land reclamation activity has little legal effect, but will support China's ability to sustain longer patrols in the South China Sea....

One of the most notable recent developments in the South China Sea is China's expansion of disputed features and artificial island construction in the Spratly Islands, using large-scale land reclamation. Although land reclamation—the dredging of seafloor material for use as landfill—is not a new development in the South China Sea, China's recent land reclamation campaign significantly outweighs other efforts in size, pace, and nature.

In the 1970s and 1980s, the Philippines and Malaysia conducted limited land reclamation projects on disputed features, with Vietnam and later Taiwan initiating efforts. At the time, the Philippines constructed an airfield on Thitu Island, with approximately 14 acres of land reclamation to extend the runway. Malaysia built an airfield at Swallow Reef in the 1980s, also using relatively small amounts of reclaimed land. Between 2009 and 2014, Vietnam was the most active claimant in terms of both outpost upgrades and land reclamation. It reclaimed approximately 60 acres of land at 7 of its outposts and built at least 4 new structures as part of its expansion efforts. Since August 2013, Taiwan has reclaimed approximately 8 acres of land near the airstrip on Itu Aba Island, its sole outpost.

China's recent efforts involve land reclamation on various types of features within the South China Sea. At least some of these features were not naturally formed areas of land that were above water at high tide and, thus, under international law as reflected in the Law of the Sea Convention, cannot generate any maritime zones (e.g., territorial seas or exclusive economic zones). Artificial islands built on such features could, at most, generate 500-meter safety zones, which must be established in conformity with requirements specified in the Law of the Sea Convention. Although China's expedited land reclamation efforts in the Spratlys are occurring ahead of an anticipated ruling by the arbitral tribunal in the *Philippines v. China* arbitration under the Law of the Sea Convention, they would not be likely to bolster the maritime entitlements those features would enjoy under the Convention.

Since Chinese land reclamation efforts began in December 2013, China has reclaimed land at seven of its eight Spratly outposts and, as of June 2015, had reclaimed more than 2,900 acres of land. By comparison, Vietnam has reclaimed a total of approximately 80 acres; Malaysia, 70 acres; the Philippines, 14 acres; and Taiwan, 8 acres. China has now reclaimed 17 times more land in 20 months than the other claimants combined over the past 40 years, accounting for approximately 95 percent of all reclaimed land in the Spratly Islands.

All territorial claimants, except Brunei, maintain outposts in the South China Sea, which they use to establish presence in surrounding waters, assert their claims to sovereignty, and monitor the activities of rival claimants. All of these claimants have engaged in construction-related activities. Outpost upgrades vary widely but broadly are composed of land reclamation, building construction and extension, and defense emplacements.

⁸⁷ Department of Defense, *Annual Report to Congress [on] Military and Security Developments Involving the People's Republic of China 2016*, p. 13. The report presents figures and photographs of the reclamation sites on pp. 14-20. See also pp. i, 7, and 44.

At all of its reclamation sites, China either has transitioned from land reclamation operations to infrastructure development, or has staged construction support for infrastructure development. As infrastructure development is still in its early stages, it remains unclear what China ultimately will build on these expanded outposts. However, China has stated publicly that the outposts will have a military component to them, and will also be used for maritime search and rescue, disaster prevention and mitigation, marine scientific research, meteorological observation, ecological environment conservation, navigation safety, and fishery production. At the reclamation sites currently in the infrastructure phase of development, China has excavated deep channels and built new berthing areas to allow access for larger ships to the outposts. China is also completing construction of an airstrip at Fiery Cross Reef, joining the other claimants with outposts—Malaysia, Philippines, Taiwan, and Vietnam—that have an airstrip on at least one of their occupied features, and may be building additional ones.

Though other claimants have reclaimed land on disputed features in the South China Sea, China's latest efforts are substantively different from previous efforts both in scope and effect. The infrastructure China appears to be building would enable it to establish a more robust power projection presence into the South China Sea. Its latest land reclamation and construction will also allow it to berth deeper draft ships at outposts; expand its law enforcement and naval presence farther south into the South China Sea; and potentially operate aircraft—possibly as a divert airstrip for carrier-based aircraft—that could enable China to conduct sustained operations with aircraft carriers in the area. Ongoing island reclamation activity will also support MLEs' ability to sustain longer deployments in the South China Sea. Potentially higher-end military upgrades on these features would be a further destabilizing step. By undertaking these actions, China is unilaterally altering the physical status quo in the region, thereby complicating diplomatic initiatives that could lower tensions.⁸⁸

For additional discussion of China's land reclamation and facility-construction activities, see CRS Report R44072, *Chinese Land Reclamation in the South China Sea: Implications and Policy Options*, by Ben Dolven et al.

U.S. Position on the Disputes

Some Key Elements

The U.S. position on territorial and EEZ disputes in the Western Pacific (including those involving China) includes the following elements, among others:

- The United States supports the principle that disputes between countries should be resolved peacefully, without coercion, intimidation, threats, or the use of force, and in a manner consistent with international law.
- The United States supports the principle of freedom of seas, meaning the rights, freedoms, and uses of the sea and airspace guaranteed to all nations in international law. The United States opposes claims that impinge on the rights, freedoms, and lawful uses of the sea that belong to all nations.
- The United States takes no position on competing claims to sovereignty over disputed land features in the ECS and SCS.
- Although the United States takes no position on competing claims to sovereignty over disputed land features in the ECS and SCS, the United States *does* have a

⁸⁸ Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, pp. 15-17.

position on how competing claims should be resolved: Territorial disputes should be resolved peacefully, without coercion, intimidation, threats, or the use of force, and in a manner consistent with international law.

- Claims of territorial waters and EEZs should be consistent with customary international law of the sea and must therefore, among other things, derive from land features. Claims in the SCS that are not derived from land features are fundamentally flawed.
- Parties should avoid taking provocative or unilateral actions that disrupt the status quo or jeopardize peace and security. The United States does not believe that large-scale land reclamation with the intent to militarize outposts on disputed land features is consistent with the region's desire for peace and stability.
- The United States, like most other countries, believes that coastal states under UNCLOS have the right to regulate economic activities in their EEZs, but do not have the right to regulate foreign military activities in their EEZs.
- U.S. military surveillance flights in international airspace above another country's EEZ are lawful under international law, and the United States plans to continue conducting these flights as it has in the past.⁸⁹
- The Senkaku Islands are under the administration of Japan and unilateral attempts to change the status quo raise tensions and do nothing under international law to strengthen territorial claims.

For examples of recent statements from U.S. officials regarding the U.S. position, see **Appendix B**.

Operational Rights in EEZs

Regarding a coastal state's rights within its EEZ, Scot Marciel, then-Deputy Assistant Secretary, Bureau of East Asian and Pacific Affairs, stated the following as part of his prepared statement for a July 15, 2009, hearing before the East Asian and Pacific Affairs Subcommittee of the Senate Foreign Relations Committee:

I would now like to discuss recent incidents involving China and the activities of U.S. vessels in international waters within that country's Exclusive Economic Zone (EEZ). In March 2009, the survey ship USNS Impeccable was conducting routine operations, consistent with international law, in international waters in the South China Sea. Actions taken by Chinese fishing vessels to harass the Impeccable put ships of both sides at risk, interfered with freedom of navigation, and were inconsistent with the obligation for ships at sea to show due regard for the safety of other ships. We immediately protested those actions to the Chinese government, and urged that our differences be resolved through established mechanisms for dialogue—not through ship-to-ship confrontations that put sailors and vessels at risk.

⁸⁹ At an August 26, 2014, press briefing, DOD Press Secretary Rear Admiral John Kirby, when asked about U.S. military surveillance flights close to China, replied in part: "We're going to continue to fly in international airspace the way we've been, just like we're going to continue to sail our ships in international waters the way we've been." (Source: transcript of press briefing, accessed September 26, 2014, at <http://www.defense.gov/Transcripts/Transcript.aspx?TranscriptID=5495>.) See also Bill Gertz, "Pentagon: No Plan to Reduce Spy Flights," *Washington Free Beacon*, August 26, 2014; Bill Gertz, "White House Rejects Chinese Demand to End U.S. Spy Flights," *Washington Free Beacon*, September 15, 2014.

Our concern over that incident centered on China's conception of its legal authority over other countries' vessels operating in its Exclusive Economic Zone (EEZ) and the unsafe way China sought to assert what it considers its maritime rights.

China's view of its rights on this specific point is not supported by international law. We have made that point clearly in discussions with the Chinese and underscored that U.S. vessels will continue to operate lawfully in international waters as they have done in the past.⁹⁰

As part of his prepared statement for the same hearing, Robert Scher, then-Deputy Assistant Secretary of Defense, Asian and Pacific Security Affairs, Office of the Secretary of Defense, stated that

we reject any nation's attempt to place limits on the exercise of high seas freedoms within an exclusive economic zones [sic] (EEZ). Customary international law, as reflected in articles 58 and 87 of the 1982 United Nations Convention on the Law of the Sea, guarantees to all nations the right to exercise within the EEZ, high seas freedoms of navigation and overflight, as well as the traditional uses of the ocean related to those freedoms. It has been the position of the United States since 1982 when the Convention was established, that the navigational rights and freedoms applicable within the EEZ are qualitatively and quantitatively the same as those rights and freedoms applicable on the high seas. We note that almost 40% of the world's oceans lie within the 200 nautical miles EEZs, and it is essential to the global economy and international peace and security that navigational rights and freedoms within the EEZ be vigorously asserted and preserved.

As previously noted, our military activity in this region is routine and in accordance with customary international law as reflected in the 1982 Law of the Sea Convention.⁹¹

For additional information on the issue of operational rights in EEZs, see **Appendix C**.

U.S. Freedom of Navigation (FON) Program

U.S. Navy ships challenge what the United States views as excessive maritime claims and carry out assertions of operational rights as part of the U.S. Freedom of Navigation (FON) program for challenging maritime claims that the United States believes to be inconsistent with international law.⁹² DOD's record of "excessive maritime claims that were challenged by DoD operational

⁹⁰ [Statement of] Deputy Assistant Secretary Scot Marciel, Bureau of East Asian & Pacific Affairs, U.S. Department of State, before the Subcommittee on East Asian and Pacific Affairs, Committee on Foreign Relations, United States Senate, July 15, 2009, [hearing on] Maritime Issues and Sovereignty Disputes in East Asia, p. 5.

⁹¹ Testimony [prepared statement] of Deputy Assistant Secretary of Defense Robert Scher, Asian and Pacific Security Affairs, Office of the Secretary of Defense, before the Subcommittee on East Asian and Pacific Affairs, Senate Committee on Foreign Relations, United States Senate, July 15, 2009, [hearing on] Maritime Issues and Sovereignty Disputes in East Asia, pp. 3-4. See also Raul (Pete) Pedrozo, "Preserving Navigational Rights and Freedoms: The Right to Conduct Military Activities in China's Exclusive Economic Zone," *Chinese Journal of International Law*, 2010: 9-29.

⁹² The State Department states that

U.S. Naval forces engage in Freedom of Navigation operations to assert the principles of International Law and free passage in regions with unlawful maritime sovereignty claims. FON operations involve naval units transiting disputed areas to avoid setting the precedent that the international community has accepted these unlawful claims. ISO coordinates DOS clearance for FON operations.

(Source: State Department website on military operational issues, accessed March 22, 2013, at <http://www.state.gov/t/pm/iso/c21539.htm>. See also the web page posted at <http://www.state.gov/e/oes/ocns/opa/maritimsecurity/index.htm>.)

(continued...)

assertions and activities during the period of October 1, 2014, to September 30, 2015, in order to preserve the rights, freedoms, and uses of the sea and airspace guaranteed to all nations in international law” includes a listing for multiple challenges that were conducted to challenge Chinese claims relating to “Excessive straight baselines; jurisdiction over airspace above the Exclusive Economic Zone (EEZ); restriction on foreign aircraft flying through an Air Defense Identification Zone (ADIZ) without the intent to enter national airspace; [and] prior permission required for innocent passage of foreign military ships through the TTS [territorial sea].”⁹³

Issues for Congress

Maritime territorial and EEZ disputes in the SCS and ECS involving China raise several potential policy and oversight issues for Congress, including those discussed below.

U.S. Strategy for Countering China’s “Salami-Slicing” Strategy

Particularly in light of the potential implications for the United States if China were to achieve domination over or control of its near-seas areas, one potential oversight issue for Congress is whether the United States has an adequate strategy for countering China’s “salami-slicing” strategy.

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A DOD list of DOD Instructions (available at <http://www.dtic.mil/whs/directives/corres/ins1.html>) includes a listing for DOD Instruction C-2005.01 of October 12, 2005, on the FON program, and states that this instruction replaced an earlier version of the document dated June 21, 1983. The document itself is controlled and not posted at the website. A website maintained by the Federation of American Scientists (FAS) listing Presidential Decision Directives (PDDs) of the Clinton Administration for the years 1993-2000 (<http://www.fas.org/irp/offdocs/pdd/index.html>) states that PDD-32 concerned the FON program. The listing suggests that PDD-32 was issued between September 21, 1994 and February 17, 1995.

DOD states that

As part of the Department’s routine presence activities, the U.S. Navy, U.S. Air Force, and U.S. Coast Guard conduct Freedom of Navigation operations. These operational activities serve to protect the rights, freedoms, and lawful uses of the sea and airspace guaranteed to all nations in international law by challenging the full range of excessive maritime claims asserted by some coastal States in the region. The importance of these operations cannot be overstated. Numerous countries across the Asia-Pacific region assert excessive maritime claims that, if left unchallenged, could restrict the freedom of the seas. These excessive claims include, for example, improperly-drawn straight baselines, improper restrictions on the right of warships to conduct innocent passage through the territorial seas of other States, and the freedom to conduct military activities within the EEZs of other States. Added together, EEZs in the USPACOM region constitute 38 percent of the world’s oceans. If these excessive maritime claims were left unchallenged, they could restrict the ability of the United States and other countries to conduct routine military operations or exercises in more than one-third of the world’s oceans.

Over the past two years, the Department has undertaken an effort to reinvigorate our Freedom of Navigation program, in concert with the Department of State, to ensure that we regularly and consistently challenge excessive maritime claims. For example, in 2013, the Department challenged 19 excessive maritime claims around the world. In 2014, the Department challenged 35 excessive claim—an 84 percent increase. Among those 35 excessive maritime claims challenged in 2014, 19 are located in U.S. Pacific Command’s geographic area of responsibility, and this robust Freedom of Navigation program will continue through 2015 and beyond.

(Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, pp. 23-24.)

⁹³ U.S. Department of Defense (DoD) *Freedom of Navigation (FON) Report for Fiscal Year (FY) 2015*, accessed April 27, 2016, at http://policy.defense.gov/Portals/11/Documents/gsa/cwmd/FON_Report_FY15.pdf.

A Notional Framework

A notional framework for establishing, implementing, and assessing the effects of a U.S. strategy for countering China’s salami-slicing strategy in the ECS and SCS might include the following five elements:

- **goals and measures**—establishing and articulating a clear set of U.S. policy goals, and measures or benchmarks of success in achieving those goals;
- **identifying actions**—identifying specific actions that are intended to support those goals;
- **implementation**—implementing those actions;
- **assessment**—evaluating the success of those actions against the measures or benchmarks of success; and
- **iteration**—deciding whether to continue implementing the strategy, stop implementing it, or modify it in some way.

Regarding the first item above—establishing and articulating a clear set of U.S. policy goals—potential U.S. policy goals in connection with countering China’s salami-slicing strategy in the ECS and SCS might include, but are not necessarily limited to, one or more of the following, which are not mutually exclusive:

- **peaceful resolution of disputes**—defending the principle under the current U.S.-led international order that disputes between countries should be resolved peacefully, without coercion, intimidation, threats, or the use of force, and in a manner consistent with international law, and resisting the emergence of an alternative “right-makes-right” approach to international affairs;
- **freedom of the seas**—defending the principle under the current U.S.-led international order of freedom of seas, meaning the rights, freedoms, and uses of the sea and airspace guaranteed to all nations in international law, including the interpretation held by the United States and many other countries concerning operational freedoms for military forces in EEZs;
- **U.S. commitments and security structure**—fulfilling U.S. security commitments in the Western Pacific, and maintaining and enhancing the U.S.-led security architecture in the Western Pacific, including U.S. security relationships with treaty allies and partner states; and
- **preventing a regional hegemon**—preventing China from becoming a regional hegemon in East Asia, and potentially as part of that, preventing China from controlling or dominating the ECS or SCS.

Regarding the second of the five items listed at top—identifying specific actions that are intended to support U.S. policy goals—a key element would be to have a clear understanding of which actions are intended to support which goals, and to maintain an alignment of actions with policy goals. For example, U.S. freedom of navigation (FON) operations can directly support the second potential policy goal above, but might support the other policy goals only indirectly, marginally, or not at all.

On the basis of the above notional framework, potential oversight questions for Congress in assessing the Administration’s strategy for countering China’s salami-slicing strategy include the following:

- **Policy goals.** Has the Administration clearly identified and articulated a set of U.S. policy goals? If so, are the Administration's goals appropriate? Should other goals be added? Should some be dropped or modified? Has the Administration established adequate benchmarks or measures of success in achieving U.S. policy goals?
- **Actions.** Has the Administration identified adequate actions for supporting U.S. policy goals? Has the Administration implemented those actions at an appropriate pace? Has the Administration maintained a clear alignment between actions and policy goals?
- **Results.** How effective have the Administration's actions been in supporting U.S. goals? Should the current U.S. strategy for countering China's salami-slicing tactics be continued, ended, or modified?

Overview of U.S. Actions

In apparent response to China's "salami-slicing" strategy, the United States has taken a number of actions, including the following:

- reiterating the U.S. position on maritime territorial claims in the area in various public fora;
- expressing strong concerns about China's land reclamation and facilities-construction activities, and calling for a halt on such activities by China and other countries in the region;
- taking steps to improve the ability of the Philippines and Vietnam to maintain maritime domain awareness (MDA) and patrol their EEZs;
- taking steps to strengthen U.S. security cooperation with Japan, the Philippines, Vietnam, and Singapore, including signing an agreement with the Philippines that provides U.S. forces with increased access to Philippine bases, increasing the scale of joint military exercises involving U.S. and Philippine forces, relaxing limits on sales of certain U.S. arms to Vietnam,⁹⁴ and operating U.S. Navy P-8 maritime patrol aircraft from Singapore;⁹⁵
- expressing support for the idea of Japanese patrols in the SCS;⁹⁶ and
- stating that the United States would support a multinational maritime patrol of the SCS by members of ASEAN.⁹⁷

⁹⁴ See, for example, Michael R. Gordon, "U.S. Eases Embargo on Arms to Vietnam," *New York Times*, October 2, 2014; Associated Press, "U.S. Eases Ban on Arms Sales to Vietnam," *Wall Street Journal*, October 3, 2014; Lesley Wroughton and Andrea Shalal, "US Eases Arms Embargo Against Vietnam for Maritime Security," *Reuters*, October 2, 2014; Aaron Mehta, "US State Department Opens Door to maritime Defense Weapon Sales To Vietnam," *Defense News*, October 2, 2014; Aaron Mehta, "New Vietnam Ruling Could Open Door To Further Exports," *Defense News*, October 4, 2014.

⁹⁵ See, for example, Dan De Luce, "Singapore Approves U.S. Surveillance Flights," *Foreign Policy*, December 7, 2015; Mike Yeo, "U.S. to Deploy Navy P-8A Poseidon Aircraft to Singapore," *USNI News*, December 8, 2015; David Brunnstrom, "U.S. to Deploy Spy Plane in Singapore amid China Tensions," *Reuters*, December 8, 2015.

⁹⁶ Tim Kelly and Nobuhiro Kubo, "U.S. Would Welcome Japan Air Patrols in South China Sea," *Reuters*, January 29, 2015; Sam LaGrone, "U.S. 7th Fleet CO: Japanese Patrols of South China Sea 'Makes Sense,'" *USNI News*, January 29, 2015.

⁹⁷ Sam LaGrone, "U.S. 7th Fleet Would Support ASEAN South China Sea patrols," *USNI News*, March 20, 2015. See also "US Navy Head Calls For Regional Force to Patrol S China Sea," *Today*, March 18 (updated March 19), 2015; (continued...)

DOD “Lines of Effort”

DOD states that it

is enhancing our efforts to safeguard the freedom of the seas, deter conflict and coercion, and promote adherence to international law and standards.

The Department of Defense, in concert with our interagency partners, therefore is employing a comprehensive maritime security strategy [for the Asia-Pacific region] focused on four lines of effort: strengthening U.S. military capabilities in the maritime domain; building the maritime capacity of our allies and partners; leveraging military diplomacy to reduce risk and build transparency; and, strengthening the development of an open and effective regional security architecture.

DoD LINES OF EFFORT

First, we are strengthening our military capacity to ensure the United States can successfully deter conflict and coercion and respond decisively when needed. The Department is investing in new cutting-edge capabilities, deploying our finest maritime capabilities forward, and distributing these capabilities more widely across the region. The effort also involves enhancing our force posture and persistent presence in the region, which will allow us to maintain a higher pace of training, transits, and operations. The United States will continue to fly, sail, and operate in accordance with international law, as U.S. forces do all around the world.

Second, we are working together with our allies and partners from Northeast Asia to the Indian Ocean to build their maritime capacity. We are building greater interoperability, updating our combined exercises, developing more integrated operations, and cooperatively developing partner maritime domain awareness and maritime security capabilities, which will ensure a strong collective capacity to employ our maritime capabilities most effectively.

Third, we are leveraging military diplomacy to build greater transparency, reduce the risk of miscalculation or conflict, and promote shared maritime rules of the road. This includes our bilateral efforts with China as well as multilateral initiatives to develop stronger regional crisis management mechanisms. Beyond our engagements with regional counterparts, we also continue to encourage countries to develop confidence-building measures with each other and to pursue diplomatic efforts to resolve disputed claims.

Finally, we are working to strengthen regional security institutions and encourage the development of an open and effective regional security architecture. Many of the most prevalent maritime challenges we face require a coordinated multilateral response. As such, the Department is enhancing our engagement in ASEAN-based institutions such as the ASEAN Defense Ministers Meeting Plus (ADMM-Plus), ASEAN Regional Forum (ARF), and the Expanded ASEAN Maritime Forum (EAMF), as well as through wider forums like the Western Pacific Naval Symposium (WPNS) and Indian Ocean Naval Symposium (IONS), which provide platforms for candid and transparent discussion of maritime concerns.⁹⁸

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Andrea Chen and Agencies, “Asean Nations React Coolly to US Navy Commander’s Call for Joint Patrols in South China Sea,” *South China Morning Post*, March 19, 2015; Sharon Chen, “U.S. Navy Urges Southeast Asian Patrols of South China Sea,” *Bloomberg News*, March 17, 2015.

⁹⁸ Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, pp. 19-20. Italics as in original.

Joint Exercises with Other Countries

Regarding joint exercises with other countries in the region, DOD states that

U.S. Pacific Command maintains a robust shaping presence in and around the South China Sea, with activities ranging from training and exercises with allies and partners to port calls to Freedom of Navigation Operations and other routine operations. They are central to our efforts to dissuade conflict or coercion, preserve the freedom of the seas and our access to the region, encourage peaceful resolution of maritime disputes and adherence to the rule of law, and to strengthen our relationships with partners and allies....

The Department is also pursuing a robust slate of training exercises and engagements with our allies and partners that will allow us to explore new areas of practical bilateral and multilateral maritime security cooperation, build the necessary interoperability to execute multilateral operations, and promote regional trust and transparency. We are increasing the size, frequency, and sophistication of our regional exercise program, with a particular focus on developing new exercises with Southeast Asian partners and expanding our multilateral exercise program. We have also begun incorporating a maritime focus into many of these engagements in order to tailor our training to address regional partners' evolving requirements.⁹⁹

Efforts to Build Allied and Partner Capacity

Regarding efforts to build allied and partner capacity, DOD states:

Given the growing array of challenges the United States and our allies face in the maritime domain, one of the Department's top priorities is to enhance the maritime security capacity of our allies and partners, both to respond to threats within their own territories as well as to provide maritime security more broadly across the region. The Department is not only focused on providing enhanced capabilities, but also on helping our partners develop the necessary infrastructure and logistical support, strengthen institutions, and enhance practical skills to develop sustainable and capable maritime forces. The Department is particularly focused on helping our partners enhance their maritime domain awareness and establish a common maritime operating picture that would facilitate more timely and effective regional responses to maritime challenges.

In Northeast Asia, the Department of Defense is working closely with Japan to augment its already extremely capable maritime forces. The United States and Japan recently announced new Guidelines for Japan-U.S. Defense Cooperation, which will enable the U.S. Armed Forces and the Self-Defense Forces to work more closely together to support peace and security, including in the maritime domain. Our expanded bilateral cooperation will now encompass a wide range of activities from peacetime cooperation on shared maritime domain awareness up to cooperation in a contingency.

We are also working together with Japan to improve the maritime-related capabilities of the JSDF, which is especially salient given the new Guidelines for U.S.-Japan Defense Cooperation. The United States is augmenting Japan's amphibious capabilities for island defense, including through sales of AAVs and V-22 Ospreys. Through the sale of E-2D Hawkeyes and Global Hawk Unmanned Aerial Vehicles, Japan is improving its ability to monitor the maritime domain and airspace around the country, an issue of particular importance given the large increase in Chinese and Russian air and naval activity in the area, including continuing Chinese incursions in the vicinity of the Senkaku Islands.

⁹⁹ Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, pp. 23, 24. For details on some of these joint exercises, see pp. 24-25.

In Southeast Asia, the Department's first priority is working together with our allies and partners to develop the most effective mix of capabilities to provide credible maritime defenses and patrol capabilities. At the Shangri-La Dialogue on May 30, 2015, Secretary Carter announced the Southeast Asia Maritime Security Initiative, a new effort to work together with our allies and partners in Southeast Asia to build greater regional capacity to address a range of maritime challenges.¹⁰⁰ As part of this initiative, DoD, in coordination with the Department of State, will consult with our allies and partners to ascertain their needs and requirements more effectively and to explore new opportunities for maritime collaboration. In particular, we are focused on several lines of effort: working with partners to expand regional maritime domain awareness capabilities, with an effort to work towards a regional common operating picture; providing the necessary infrastructure, logistics support, and operational procedures to enable more effective maritime response operations; further strengthening partner nation operational capabilities and resilience by deepening and expanding bilateral and regional maritime exercises and engagements; helping partners strengthen their maritime institutions, governance, and personnel training; and identifying modernization or new system requirements for critical maritime security capabilities. To support this initiative, the Department is working to maximize and rebalance Title 10 security cooperation resources to prioritize the Southeast Asia region more effectively.

Even before this initiative, and in conjunction with the Department of State and the U.S. Coast Guard, we have dramatically expanded our maritime security assistance in recent years. In the Philippines, the Department is providing coastal radar systems and assisting the Department of State with naval maintenance capacity building as well as providing interdiction vessels, naval fleet upgrades, communications equipment, and aircraft procurement. We are helping Vietnam bolster its maritime ISR and command and control within their maritime agencies, and we are working with Malaysia to build maritime law enforcement training capacity and interagency coordination to help improve their maritime domain awareness. The Department also is working with Indonesia to increase its patrol capacity, ISR integration, and maintenance capability. In 2015, we established new bilateral working groups with both Indonesia and Vietnam to help clarify their maritime defense requirements.

An additional priority for the Department is helping our partners develop the institutional structures and procedures necessary to manage their growing maritime forces effectively. This includes establishing unified maritime agencies, such as the Malaysian Maritime Enforcement Agency (MMEA), as well as developing standard training protocols and procedures for maritime personnel. For example, the Defense Threat Reduction Agency (DTRA) is helping to construct a Philippine National Coast Watch Center in Manila that will assist the Philippine Coast Guard (PCG) in assuming increased responsibility for enhancing information sharing and interagency coordination in maritime security

¹⁰⁰ On May 30, 2015, in a speech at an international conference on security, Secretary of Defense Ashton Carter stated: "Today, I am pleased to announce that DoD will be launching a new Southeast Asia Maritime Security Initiative. And thanks to the leadership of the Senators here today... [ellipse as in original] and others, Congress has taken steps to authorize up to \$425 million dollars for these maritime capacity-building efforts." (Secretary of Defense Speech, IISS Shangri-La Dialogue: "A Regional Security Architecture Where Everyone Rises," As Delivered by Secretary of Defense Ash Carter, Singapore, Saturday, May 30, 2015, accessed August 7, 2015, at <http://www.defense.gov/Speeches/Speech.aspx?SpeechID=1945>. See also Prashanth Parameswaran, "America's New Maritime Security Initiative for Southeast Asia," *The Diplomat*, April 2, 2016; Prashanth Parameswaran, "US Launches New Maritime Security Initiative at Shangri-La Dialogue 2015," *The Diplomat*, June 2, 2015; Aaron Mehta, "Carter Announces \$425M In Pacific Partnership Funding," *Defense News*, May 30, 2015.

Carter's reference to the authorization of up to \$425 million appears to be a reference to the South China Sea Initiative, an effort that would be created by Section 1261 of the Senate-passed version of H.R. 1735, the FY2016 National Defense Authorization Act (see "Legislative Activity in 201").

operations. Brunei, Indonesia, Malaysia, and Vietnam are similarly improving their maritime capabilities.

One of the Department's top priorities is to promote greater maritime domain awareness, which is an essential capability for all coastal States. Given the size of the Asian maritime domain, no coastal State can provide effective maritime domain awareness on its own. This is why DoD is working closely with partners in the Asia-Pacific region to encourage greater information sharing and the establishment of a regional maritime domain awareness network that could provide a common operating picture and real-time dissemination of data. Singapore has been a leading partner in this effort. Together, we have established the Singapore Maritime Information-Sharing Working Group, an ideal platform to share best practices and lessons learned from recent regional maritime activities and explore options for increased information sharing across partnerships in the Asia-Pacific region. The near-term iterations of the working group will be bilateral and then expand to include other regional partners to participate in this community of interest. The United States and Singapore also are working together to support Singapore's development of the Information Fusion Center (IFC) into an interagency information-sharing hub for the region.

A key element of DoD's approach to maritime security in Southeast Asia is to work alongside capable regional partners. There is broad regional agreement on the importance of maritime security and maritime domain awareness, and we're working closely with our friends in Australia, Japan, South Korea, and elsewhere to coordinate and amplify our efforts toward promoting peace, stability, and prosperity in Asia. In part, we are partnering trilaterally to achieve these goals. In November 2014, President Obama, Prime Minister Abe, and Prime Minister Abbott hosted their first trilateral meeting and agreed to expand maritime cooperation, trilateral exercises, and defense development. The Department is working with these two allies in a coordinated fashion to maximize the efficiency and effectiveness of our maritime security capacity building efforts in Southeast Asia, beginning with the Philippines.¹⁰¹

Figure 5 shows a table that DOD presented in connection with the passage quoted above.

¹⁰¹ Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, pp. 25-28.

Figure 5. Table from August 2015 DOD Report

Select DoD Maritime Capacity Building Efforts in Southeast Asia			
	Initiative	Authority	Timeframe
Indonesia	Ministry of Defense Technical Expert.	Section 1081 Ministry of Defense Advisor Program (MoDA)	Arrived March 2015
	Integrated Maritime Surveillance System (IMSS): 18 coastal surveillance stations, 11 ship-based radars, 2 regional and 2 fleet command centers (\$51M) Note: FMP provided sustainment and integration in following years.	Section 1206 of the National Defense Authorization Act (NDAA) for FY 2006, as amended (Section 1206)	Funded FY2006-2008 Delivered 2011
	Reform of defense planning, defense strategy, and budget development and execution system and processes.	Defense Institution Reform Initiative (DIRI)	2013 to present
	Upgrade TNI Bell helicopters and Navy Special Forces Equipment, including 12 RHIBs (\$27M).	Section 1206	2010 funding, RHIBs delivered 2012
Malaysia	Integrated Maritime Surveillance System: 8 coastal surveillance radar stations, 28 small boats and associated maritime interdiction training, Joint Regional Command Center (\$42M).	Section 1206	Funded FY2007, 2008, 2011 Delivered 2010-2011
	National Coast Watch Center (\$19M).	Cooperative Threat Reduction Program	2013-2017
Philippines	Coast Watch Radar System.	Section 1206	
	Reform of defense planning system.	DIRI	2005-2012
Vietnam	Provision of WMD detection equipment; improved communications; construct coast guard training center; maritime security workshops (\$21M).	Cooperative Threat Reduction Program	FY2014-2015
	Law enforcement, advisory, and boat maintenance training (\$405K).	Counternarcotics and Global Threats Authority	FY2014-2015

Source: Department of Defense, *Asia-Pacific Maritime Security Strategy*, undated but released August 2015, p. 27.

April 2016 Press Report on U.S. Actions

An April 18, 2016, press report on U.S. actions to bolster the maritime security capabilities of Southeast Asian countries stated:

Defense Secretary Ash Carter said the department recently released funding under the Maritime Security Initiative, which totals \$425 million total over five years. Nearly 85 percent of this year’s funding, about \$42 million of \$50 million total, will go to the Philippines....

The Maritime Security Initiative will “enable our partners in the South China Sea (SCS) region to detect activity within their sovereign territorial domain more effectively, share information with domestic and international partners, and contribute to regional peace

and security,” according to a summary of the Fiscal Year 2016 Southeast Asia Maritime Security Initiative programs obtained by USNI News. FY 2016 projects, costing about \$50 million, are meant to help the Philippines, Vietnam, Malaysia, Indonesia and Thailand increase maritime security and maritime domain awareness, while also working with Brunei, Singapore and Taiwan on training and headquarter-level integration.

Philippines

MSI funds four separate projects between the United States and the Philippines this year, costing nearly \$42 million.

First, to assist Filipino military and law enforcement organizations, a maritime and joint operations center support project will “provide automatic identification systems (AIS) sensors, communications-network enhancements (software and hardware), and training to increase and strengthen the command and control (C2) relationships among the individual capabilities of the Armed Forces of the Philippines (AFP), the Philippines Coast Guard, and the Philippines National Coast Watch Center (NCWC).”

The Navy’s Space and Naval Warfare Systems Command (SPAWAR) will oversee the biggest part of this project – equipment upgrades for the three organizations to create a common operating picture, worth nearly \$15 million....

Second in the summary of projects is a maritime intelligence, surveillance and reconnaissance (ISR) improvement project worth nearly \$18 million....

In a third program, Naval Sea Systems Command (NAVSEA) will help determine what command, control, communications, and computers (C4) may be needed for Hamilton-class high- endurance cutters the Philippines bought from the U.S. Coast Guard under the Excess Defense Articles program....

Vietnam

The Pentagon included nearly \$1.8 million for programs with Vietnam, primarily to understand what Vietnam’s current capabilities are and assess what might be useful in the FY 2017 MSI programs....

Malaysia

SPAWAR will outfit Malaysia with \$1.2 million in secure communications and an expanded Malaysia Armed Forces (MAF) common operating picture to connect the Royal Malaysian Flight Operations Center, Operational Forces, and MAF headquarters....

Indonesia

U.S. Pacific Command will help outfit operations centers with commercial off-the-shelf (COTS) mobile devices with Android applications for data collection, assessment, analysis, and dissemination to Indonesia Maritime Command Centers.¹⁰²

Administration Actions Announced in November 2015

A fact sheet released by the Administration on November 17, 2015, stated:

We are increasing the maritime security capacity of our allies and partners, to respond to threats in waters off their coasts and to provide maritime security more broadly across the region. We are not only focused on boosting capabilities, but also helping our partners develop the necessary infrastructure and logistical support, strengthen institutions, and enhance practical skills to develop sustainable and capable maritime forces.

¹⁰² Megan Eckstein, “The Philippines at Forefront of New Pentagon Maritime Security Initiative,” *USNI News*, April 18, 2016 (updated April 17, 2016).

Advancing Maritime Capabilities

We are expanding our regional maritime capacity building efforts by:

- Committing \$119 million in FY 2015 to develop Southeast Asian maritime capabilities and will seek to provide \$140 million in assistance during FY 2016 subject to appropriation, totaling more than \$250 million over two years.
- Developing regional maritime security programs and funds to rapidly respond to evolving challenges.
- Pursuing the Southeast Asia Maritime Security Initiative announced by Secretary of Defense Ash Carter at the Shangri-La Dialogue, a new effort to work together with our allies and partners in Southeast Asia to build a shared maritime domain awareness architecture that will help countries share information, identify potential threats, and work collaboratively to address common challenges.
- Coordinating with our strong allies Japan and Australia on maritime security assistance to align and synchronize regional security and law enforcement assistance programs for maximum effect.
- Funding will be allocated to Southeast Asian countries, including the Philippines, Vietnam, Indonesia, and Malaysia, including as described below.

The United States is expanding its maritime cooperation with the Philippines:

- The Philippines remains the largest recipient of maritime security assistance, and will receive a record \$79 million in bilateral assistance of the FY 2015 funds allocated for developing Southeast Asian maritime capabilities. This assistance is largely focused on building the training and logistical base for expanding the Philippine Navy, Coast Guard, and Air Forces' ability to conduct operations within waters off the Philippines' coasts. We are assisting with naval maintenance capacity building as well as providing interdiction vessels, naval fleet upgrades, communications equipment, and aircraft procurement.
- We are prioritizing transfer of maritime related Excess Defense Articles (EDA) to rapidly enhance capability within limited budgets. The United States intends to grant the high-endurance U.S. Coast Guard Cutter (USCGC) Boutwell to the Philippine Navy, the third ship of its class that we have provided in the past few years. This will provide the Philippines the ability to maintain greater maritime presence and patrols throughout its EEZ. We are also in the process of transferring the research vessel R/V Melville to support naval research and law enforcement capabilities.
- We will continue to support the National Coast Watch System and assist the Philippines through the Global Security Contingency Fund (GSCF), building capacity in Philippine maritime vessel maintenance, training, law enforcement support, and intelligence assistance to expand the country's ability to detect, track, and interdict where necessary criminal and terrorist elements involved in the smuggling of sensitive items and illicit goods.
- We will hold increased and more complex exercises and training with U.S. government agencies and U.S. Pacific Command to increase interoperability and professionalization.
- We will continue assisting improvements in security at ports to prevent illegal activity and illegal shipments.

The United States is expanding its maritime assistance to Vietnam by:

- Increasing maritime program assistance to \$19.6 million in FY 2015 to support developing Southeast Asian maritime capabilities which we will seek to expand by providing \$20.5 million in FY 2016 subject to appropriation. We are helping Vietnam

bolster its maritime Intelligence, Surveillance, and Reconnaissance (ISR) and command and control within Vietnam's maritime agencies.

— Lifting the ban on sales of maritime-related lethal capabilities to allow development of Vietnam's maritime capacity and encourage interoperability with other regional forces.

— Expanding bilateral training and exercises, focusing on disaster relief and humanitarian issues.

The United States is expanding its maritime assistance to Indonesia by:

— Maintaining robust security assistance programs, with nearly \$11 million in maritime-related assistance in FY 2015 and almost \$10 million planned for FY 2016 subject to appropriations.

— Increasing Indonesia's patrol capacity, ISR integration, and maintenance capacity to enhance the Indonesian government's ability to protect its maritime areas, safeguard its natural resources, and contribute to regional security and stability.

— Supporting the Indonesian Coast Guard's organizational development, focusing on human resource capacity, technical skills, and educational partnerships.

The United States is assisting Malaysia by:

— Providing almost \$500,000 in FY 2015 and planning to provide over \$2 million in FY 2016, subject to appropriation, to work with Malaysia to build maritime law enforcement training capacity and interagency coordination to help improve their maritime domain awareness.

— Enhancing port security to prevent illicit activity and transshipment of illegal goods.¹⁰³

Potential Further U.S. Actions Suggested by Observers

Some observers, viewing China's ongoing activities in its near-seas region, argue that the current U.S. strategy for countering China's salami-slicing strategy as outlined above is inadequate, and have proposed taking stronger actions. **Appendix D** presents a bibliography of some recent writings by these observers. In general, actions proposed by these observers include (but are not limited to) the following:

- making even stronger U.S. statements to China about the consequences for China of continuing assertive or coercive actions in the ECS and SCS, and more generally, changing the U.S. tone of conversation with China;
- making a statement (analogous to the one that U.S. leaders have made concerning the Senkaku islands and the U.S.-Japan treaty on mutual cooperation and security) that clarifies what the United States would do under the U.S.-

¹⁰³ "FACT SHEET: U.S. Building Maritime Capacity in Southeast Asia," November 17, 2015, accessed November 24, 2015, at <https://www.whitehouse.gov/the-press-office/2015/11/17/fact-sheet-us-building-maritime-capacity-southeast-asia>. For press reports on these actions, see, for example, Michael D. Shear, "China in Mind, Obama Pledges Military Aid to Allies in Southeast Asia," *New York Times*, November 17, 2015; Josh Lederman and Kathleen Hennessey, "In Signal to China, Obama to Give 2 Ships to Philippines," *Associated Press*, November 17, 2015; Philippine News Agency, "US Identifies 2 Ships to be Given to PHL," *Manila Bulletin*, November 18, 2015; Manuel Mogato, "U.S. Raises Military Aid to Philippines Amid Sea Tension with China," *Reuters*, November 25, 2015.

See also "FACT SHEET: Advancing the Rebalance to Asia and the Pacific," November 16, 2015, accessed November 24, 2015, at <https://www.whitehouse.gov/the-press-office/2015/11/16/fact-sheet-advancing-rebalance-asia-and-pacific>.

- Philippines mutual defense treaty in the event of certain Chinese actions at Scarborough Shoal, Second Thomas Shoal, or elsewhere in the SCS,¹⁰⁴
- further increasing and/or accelerating actions to strengthen the capacity of allied and partner countries in the region to maintain maritime domain awareness (MDA) and defend their maritime claims by conducting coast guard and/or navy patrols of claimed areas;
 - further increasing U.S. Navy operations in the region, including sending U.S. Navy ships more frequently to waters within 12 nautical miles of Chinese-occupied sites in the SCS, and conducting freedom of navigation operations in the SCS jointly with navy ships of U.S. allies;
 - further strengthening U.S. security cooperation with allied and partner countries in the region, and with India, to the point of creating a coalition for balancing China's assertiveness;¹⁰⁵ and
 - taking additional actions to impose costs on China for its actions in its near-seas region, such as disinviting China to the 2016 RIMPAC (Rim of the Pacific) exercise, a U.S.-led multilateral naval exercise that takes place every two years, and/or inviting Taiwan to participate in the exercise.

Cost-Imposing Actions

Some of the actions taken to date by the United States, as well as some of those suggested by observers who argue in favor of stronger U.S. actions, are intended to impose costs on China for conducting certain activities in the ECS and SCS, with the aim of persuading China to stop or reverse those activities. Cost-imposing actions can come in various forms (e.g., reputational/political, institutional, or economic).¹⁰⁶

Although the potential additional or strengthened actions listed in the previous section all relate to the Western Pacific, potential cost-imposing actions do not necessarily need to be limited to that region. As a hypothetical example for purposes of illustrating the point, one potential cost-imposing action might be for the United States to respond to unwanted Chinese activities in the ECS or SCS by opposing the renewal of China's observer status on the Arctic Council.¹⁰⁷ Expanding the potential scope of cost-imposing actions to regions beyond the Western Pacific can make it possible to employ elements of U.S. power that cannot be fully exercised if the examination of potential cost-imposing strategies is confined to the Western Pacific. It may also,

¹⁰⁴ See, for example, Zack Cooper and Mira Rapp-Hooper, "Protecting the Rule of Law on the South China Sea," *Wall Street Journal*, March 31, 2016; Bill Gertz, "U.S. Mulls Pledge on Disputed Philippines Outpost," *Washington Times*, February 24, 2016.

¹⁰⁵ An August 2015 press report states that "The Philippines defense chief said he asked the visiting U.S. Pacific commander on Wednesday [August 26] to help protect the transport of fresh Filipino troops and supplies to Philippine-occupied reefs in the disputed South China Sea by deploying American patrol planes to discourage Chinese moves to block the resupply missions." (Jim Gomez, "Philippines Seeks U.S. Help to Protect Troops in Disputed Sea," *Military Times*, August 26, 2015. See also Agence France-Presse, "Spokesman: US, Philippines Hold Talks On Boosting Military Capacity," *Defense News*, August 26, 2015; Manuel Mogato, "Philippines Seeks 'Real-Time' U.S. Help in Disputed South China Sea," *Reuters*, August 27, 2015.

¹⁰⁶ For an example of a report that discusses potential cost-imposing strategies in some detail, see Patrick M. Cronin, *The Challenge of Responding to Maritime Coercion*, Center for a New American Security, Washington, September 2014.

¹⁰⁷ For more on the Arctic Council, see CRS Report R41153, *Changes in the Arctic: Background and Issues for Congress*, coordinated by Ronald O'Rourke.

however, expand, geographically or otherwise, areas of tension or dispute between the United States and China.

Actions to impose costs on China can also impose costs, or lead to China imposing costs, on the United States and its allies and partners. Whether to implement cost-imposing actions thus involves weighing the potential benefits and costs to the United States and its allies and partners of implementing those actions, as well as the potential consequences to the United States and its allies and partners of not implementing those actions.

U.S. Navy Freedom of Navigation (FON) Operations in SCS

At a September 17, 2015, hearing before the Senate Armed Services Committee on DOD's maritime security strategy in the Asia-Pacific region, DOD witnesses stated, in response to questioning, that the United States had not conducted a freedom of navigation (FON) operation within 12 miles of a Chinese-occupied land feature in the Spratly Islands since 2012. This led to a public debate in the United States (that was watched by observers in the Western Pacific) over whether the United States should soon conduct such an operation. Opponents argued that conducting such an operation could antagonize China¹⁰⁸ and give China an excuse to militarize its occupied sites in the SCS.¹⁰⁹ Supporters argued that *not* conducting such an operation was inconsistent with the underlying premise of the U.S. FON program that navigational rights which are not regularly exercised are at risk of atrophy; that it was inconsistent with the U.S. position of taking no position on competing claims to sovereignty over disputed land features in the SCS (because it tacitly accepts Chinese sovereignty over those features); that it effectively rewarded (rather than imposed costs on) China for its assertive actions in the SCS, potentially encouraging further such actions; and that China intends to militarize its occupied sites in the Spratly Islands, regardless of whether the United States conducts FON operations there.

The Administration reportedly considered, for a period of weeks, whether to conduct such an operation in the near future. Some observers argued that the Administration's extended consideration of the question, and the press reporting on that deliberation, unnecessarily raised the political stakes involved in whether to conduct what, in the view of these observers, should have been a routine FON operation.¹¹⁰

¹⁰⁸ A September 18, 2015, press report, for example, stated:

China said on Friday [September 18] it was "extremely concerned" about a suggestion from a top U.S. commander that U.S. ships and aircraft should challenge China's claims in the South China Sea by patrolling close to artificial islands it has built....

Chinese Foreign Ministry spokesman Hong Lei said China was "extremely concerned" about the comments and China opposed "any country challenging China's sovereignty and security in the name of protecting freedom of navigation".

"We demand that the relevant country speak and act cautiously, earnestly respect China's sovereignty and security interests, and not take any risky or provocative acts," Hong said at a daily news briefing.

(Ben Blanchard and Megha Rajagopalan, "China 'Extremely Concerned' By Proposed U.S. Challenge to Claims," *Reuters*, September 18, 2015. See also "Foreign Ministry Spokesperson Hong Lei's Regular Press Conference on September 18, 2015," accessed September 18, 2015, at http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2511_665403/t1298026.shtml.) See also Lyle Goldstein, "How Will China Respond In the South China Sea? Ask the Soviet Union," *National Interest*, November 2, 2015.

¹⁰⁹ See, for example, Doug Bandow and Eric Gomez, "Further Militarizing the South China Sea May Undermine Freedom of Navigation," *The Diplomat*, October 22, 2015.

¹¹⁰ See, for example, Michael Mazza, "In South China Sea, A Slow Death for Freedom of Navigation," American Enterprise Institute, October 16, 2015; Euan Graham, "South China Sea Dispute: US Challenge May Fall Into China (continued...)"

The Administration decided in favor of conducting the operation, and the operation reportedly was conducted near the Chinese-occupied site of Subi Reef on October 27, 2015 (which was October 26, 2015, in Washington, DC), using the U.S. Navy destroyer *Lassen* in conjunction with a U.S. Navy P-8 maritime patrol aircraft flying overhead.

Statements from executive branch sources about the operation that were reported in the press created some confusion among observers regarding how the operation was conducted and what rationale the Administration was citing as the legal basis for the operation. In particular, there was confusion among observers as to whether the United States was defending the operation as an expression of the right of innocent passage¹¹¹—a rationale, critics argued, that muddled the legal message sent by the operation, possibly implying U.S. acceptance of Chinese sovereignty over Subi Reef, which would inadvertently turn the operation into something very different and perhaps even self-defeating from a U.S. perspective.¹¹²

Following the October 27, 2015, FON operation near Subi Reef, Administration officials stated that the United States would continue to conduct freedom of navigation operations in the SCS at a rate of about twice per quarter.¹¹³ Press reports in late November 2015 stated that the next such operation would take place before the end of 2015 near the Chinese-occupied site of Mischief Reef, using two Navy ships.¹¹⁴ Subsequent press reports in December 2015 stated that the next operation would take place not in December 2015, but in 2016.¹¹⁵ The operation was conducted

(...continued)

Trap,” *Lowy Institute*, October 19, 2015; Sydney J. Freedberg, “The Price of Delay: US Navy To Challenge Chinese Claims,” *Breaking Defense*, October 26, 2015; Andrea Shalal, Matt Spetalnick, and David Brunnstrom, “Insight—As Obama Weighed Patrol to Counter China, Pentagon Urged Faster Action,” *Reuters*, October 28, 2015.

¹¹¹ See, for example, Christopher P. Cavas, “Navy Chiefs Talk, New Details On Destroyer’s Passage,” *Defense News*, October 31, 2015; Sam LaGrone, “U.S. Destroyer Made an ‘Innocent Passage’ Near Chinese South China Sea Artificial Island in Recent Mission,” *USNI News*, November 2, 2015; David Bosco, “How Far Did the United States Go with the Lassen Operation?” *Lawfare*, November 3, 2015; Adam Klein, “An Answer to the Innocent Passage Mystery?” *Lawfare*, November 6, 2015.

¹¹² See, for example, Adam Klein, “What Did The Navy Do In The South China Sea?” *Lawfare*, November 4, 2015; Brendan S. Mulvaney, “The Unintended Consequences of the US Freedom of Navigation Operations in the South China Sea,” *The Diplomat*, November 4, 2015; Timothy Choi, “Why the US Navy’s First South China Sea FONOP Wasn’t a FONOP,” *The Diplomat*, November 4, 2015; Anthony Cowden, “Opinion: USS Lassen’s Transit of Subi Reef Was Not So ‘Innocent,’” *USNI News*, November 4, 2015; Euan Graham, “Innocent Passage: Did the US Just Fumble Its South China Sea Strategy?” *Lowy Institute Interpreter*, November 4, 2015; Sam LaGrone, “Confusion Continues to Surround U.S. South China Sea Freedom of Navigation Operation,” *USNI News*, November 5, 2015; Keith Johnson and Dan De Luce, “Washington’s Muddled Message in the South China Sea,” *Foreign Policy*, November 5, 2015; Bonnie S. Glaser and Peter A. Dutton, “The U.S. Navy’s Freedom of Navigation Operation around Subi Reef: Deciphering U.S. Signaling,” *National Interest*, November 6, 2015; Demetri Sevastopulo and Geoff Dyer, “US Navy Operations Send Muddled Message to China,” *Financial Times*, November 7, 2015; Andrea Shalal, “U.S. Patrol Sought to Avoid Provocation, Not Reinforce China Island Claim: Officials,” *Reuters*, November 7, 2015; Sam LaGrone, “McCain Seeks Clarity on Recent U.S. South China Sea Freedom of Navigation Operation,” *USNI News*, November 10, 2015; James Holmes, “How Washington Can Get Back on Course in the South China Sea,” *Foreign Policy*, November 12, 2015; Raul “Pete” Pedrozo and James Kraska, “Can’t Anybody Play This Game? US FON Operations and law of the Sea,” *Lawfare*, November 17, 2015; Joseph A. Bosco, “PacNet #80—South China Sea Aftermath,” Center for Strategic and International Studies, November 24, 2015.

¹¹³ Morgan Chalfont, “U.S. Navy to Conduct Patrols of China’s Artificial Islands Twice Per Quarter,” *Washington Free Beacon*, November 2, 2015; Andrea Shalal and Idrees Ali, “U.S. Navy Plans Two or More Patrols in South China Sea Per Quarter,” *Reuters*, November 2, 2015.

¹¹⁴ Andrea Shalal and David Brunnstrom, “U.S. Likely to Make ANother South China Sea Patrol Before year-End: Navy Official,” *Reuters*, November 20, 2015; Bill Gertz, Navy Warships to Sail by Mischief Reef,” *Washington Free Beacon*, November 20, 2015.

¹¹⁵ See, for example, Andrea Shalal, “Exclusive: Another U.S. Patrol in South China Sea Unlikely This Year—Officials,” *Reuters*, December 15, 2016; David Larer, “U.S. Navy Plans more South China Sea Patrols in 2016,” *Navy* (continued...)

on January 30, 2016, near Triton Island in the Paracel Islands, by the U.S. Navy destroyer *Curtis Wilber*.¹¹⁶

An April 26, 2016, press report stated that

In recent weeks, the U.S. had sought to “lower the temperature” over Scarborough [Shoal], a senior U.S. official said. According to other U.S. officials, that included canceling one “freedom of navigation” patrol in the South China Sea that had been planned for this month....

The six U.S. aircraft that flew near Scarborough Shoal on April 19 are based at Clark [Air Base in the Philippines]. The four A-10 Thunderbolt fighters and two HH-60 Pave Hawk helicopters “conducted a flying mission through international airspace...providing air and maritime situational awareness,” [a] U.S. Air Force statement said.

None of the U.S. flights flew to within 12 nautical miles of Scarborough, according to a U.S. official, which would have amounted to a legal challenge to China’s claims on the shoal, but the proximity of the flights was clearly intended to send a message to Beijing.¹¹⁷

On May 10, 2016, the Navy conducted its next reported FON operation in the South China Sea, sending the destroyer William P. Lawrence to conduct an innocent passage within 12 nautical miles of Fiery Cross Reef, a Chinese-occupied feature in the Spratly Islands that is also claimed by Taiwan, Vietnam, and the Philippines.¹¹⁸

In assessing U.S. FON operations that take place within 12 nautical miles of Chinese-occupied sites in the SCS, one question relates to whether to conduct such operations, exactly where, and how often. A second question relates to the rationale that is cited as the legal basis for conducting them. Regarding this second question, one U.S. specialist on international law of the sea states the following regarding three key legal points in question (emphasis added):

(...continued)

Times, December 19, 2015.

¹¹⁶ See Jane Perlez, “U.S. Challenges China’s Claim of Islands With Maritime Operation,” *New York Times*, January 30, 2016; Sam LaGrone, “U.S. Destroyer Challenges More Chinese South China Sea Claims in New Freedom of Navigation Operation,” *USNI News*, January 30, 2016; Barbara Starr and Joshua Berlinger, “U.S. Navy Sends Ship Near Disputed Island in South China Sea,” *CNN*, January 31, 2016; Sam LaGrone, “China Upset Over ‘Unprofessional’ U.S. South China Sea Freedom of Navigation Operation,” *USNI News*, January 31, 2016 (updated February 1, 2016); Ben Blanchard, “China Says U.S. Seeks ‘Hegemony’ After South China Sea Sailing,” *Reuters*, February 1, 2016; Gregory Poling, “South China Sea FONOP 2.0: A Step in the Right Direction,” Asia Maritime Transparency Initiative, February 2, 2016; Shannon Tiezzi, “China Rejects Latest US FONOP in the South China Sea,” *The Diplomat*, February 2, 2016; Lawfare Staff, “Water Wars: U.S. Navy Back for FON in the South China Sea,” *Lawfare*, February 5, 2016; Sam Bateman, “Revealed: America’s ‘Soft’ Operation in the South China Sea,” *National Interest*, February 9, 2016; Truong-Minh Vu and Jeremy Lagelee, “U.S. Navy Sets the Record Straight on FONOPs,” *National Interest*, February 24, 2016.

¹¹⁷ Gordon Lubold and Jeremy Page, “U.S. Sees New Flashpoint in South China Sea Dispute,” *Wall Street Journal*, April 26, 2016. See also Ankit Panda, “The US Cancelled a Scheduled FONOP in the South China Sea. What Now?” *The Diplomat*, April 27, 2016.

¹¹⁸ See, for example, Jane Perlez, “U.S. Sails Warship Near Island in South China Sea, Challenging Chinese Claims,” *New York Times*, May 10, 2016; Sam LaGrone, “U.S. Destroyer Passes Near Chinese Artificial Island in South China Sea Freedom of Navigation Operation,” *USNI News*, May 10, 2016; Michael Martina, Greg Torode, and Ben Blanchard, “China Scrambles Fighters as U.S. Sails Warship Near Chinese-Claimed Reef,” *Reuters*, May 11, 2016; Zack Cooper and Bonnie S. Glaser, “How America Picks Its Next Move in the South China Sea,” *The National Interest*, May 11, 2016; Julian Ku, “We’ve Seen This Movie Before: The Latest U.S. ‘Innocent Passage’ Freedom of Navigation Operation in the South China Sea,” *Lawfare*, May 11, 2016.

- Regarding features in the water whose sovereignty is in dispute, “Every feature occupied by China is challenged by another claimant state, often with clearer line of title from Spanish, British or French colonial rule. The nation, not the land, is sovereign, which is why there is no territorial sea around Antarctica—it is not under the sovereignty of any state, despite being a continent. **As the United States has not recognized Chinese title to the features, it is not obligated to observe requirements of a theoretical territorial sea.** Since the territorial sea is function of state sovereignty of each rock or island, and not a function of simple geography, **if the United States does not recognize any state having title to the feature, then it is not obligated to observe a theoretical territorial sea** and may treat the feature as *terra nullius*. Not only do U.S. warships have a right to transit within 12 nm [nautical miles] of Chinese features, they are free to do so as an exercise of high seas freedom under article 87 of the Law of the Sea Convention, rather than the more limited regime of innocent passage. Furthermore, whereas innocent passage does not permit overflight, high seas freedoms do, and U.S. naval aircraft lawfully may overfly such features.... More importantly, **even assuming that one or another state may have lawful title to a feature, other states are not obligated to confer upon that nation the right to unilaterally adopt and enforce measures that interfere with navigation, until lawful title is resolved.** Indeed, observing any nation’s rules pertaining to features under dispute legitimizes that country’s claim and takes sides.”
- Regarding features in the water whose sovereignty has been resolved, “It is unclear whether features like Fiery Cross Reef are rocks or merely low-tide elevations [LTEs] that are submerged at high tide, and after China has so radically transformed them, it may now be impossible to determine their natural state. Under the terms of the law of the sea, states with ownership over naturally formed rocks are entitled to claim a 12 nm territorial sea. On the other hand, **low-tide elevations in the mid-ocean do not qualify for any maritime zone whatsoever. Likewise, artificial islands and installations also generate no maritime zones of sovereignty or sovereign rights in international law, although the owner of features may maintain a 500-meter vessel traffic management zone** to ensure navigational safety.”
- Regarding features in the water whose sovereignty has been resolved and which do qualify for a 12-nautical-mile territorial sea, “**Warships and commercial vessels of all nations are entitled to conduct transit in innocent passage in the territorial sea** of a rock or island of a coastal state, although aircraft do not enjoy such a right.”¹¹⁹

These three legal points appear to create at least four options for the rationale to cite as the legal basis for conducting an FON operation within 12 miles of Chinese-occupied sites in the SCS:

- One option would be to state that since there is a dispute as to the sovereignty of the site or sites in question, that site or those sites are *terra nullius*, that the United States consequently is not obligated to observe requirements of a theoretical territorial sea, and that U.S. warships thus have a right to transit

¹¹⁹ James Kraska, “The Legal Rationale for Going Inside 12,” Asia Maritime Transparency Initiative (Center for Strategic & International Studies), September 11, 2015. See also James Kraska, “The Nine Ironies of the South China Sea Mess,” *The Diplomat*, September 17, 2016.

within 12 nautical miles of the site or sites as an exercise of high seas freedom under article 87 of the Law of the Sea Convention.

- A second option, if the site or sites were LTEs prior to undergoing land reclamation, would be to state that the site or sites are not entitled to a 12-nautical-mile territorial sea, and that U.S. warships consequently have a right to transit within 12 nautical miles as an exercise of high seas freedom.
- A third option would be to state that the operation was being conducted under the right of innocent passage within a 12-nautical-mile territorial sea.
- A fourth option would be to not provide a public rationale for the operation, so as to create uncertainty for China (and perhaps other observers) as to exact U.S. legal rationale.

If the fourth option is not taken, and consideration is given to selecting from among the first three options, then it might be argued that choosing the second option might inadvertently send a signal to observers that the legal point associated with the first option was not being defended, and that choosing the third option might inadvertently send a signal to observers that the legal points associated with the first and second options were not being defended.

Risk of United States Being Drawn into a Crisis or Conflict

Another potential issue for Congress is whether the United States has taken adequate actions to reduce the risk that the United States might be drawn into a crisis or conflict over a territorial dispute involving China. Potential oversight questions for Congress include the following:

- Have U.S. officials taken appropriate and sufficient steps to help reduce the risk of maritime territorial disputes in the SCS and ECS escalating into conflicts?
- Do the United States and Japan have a common understanding of potential U.S. actions under Article IV of the U.S.-Japan Treaty on Mutual Cooperation and Security (see **Appendix A**) in the event of a crisis or conflict over the Senkaku Islands? What steps has the United States taken to ensure that the two countries share a common understanding?
- Do the United States and the Philippines have a common understanding of how the 1951 U.S.-Philippines mutual defense treaty applies to maritime territories in the SCS that are claimed by both China and the Philippines, and of potential U.S. actions under Article IV of the treaty (see **Appendix A**) in the event of a crisis or conflict over the territories? What steps has the United States taken to ensure that the two countries share a common understanding?
- Aside from public statements, what has the United States communicated to China regarding potential U.S. actions under the two treaties in connection with maritime territorial disputes in the SCS and ECS?
- Has the United States correctly balanced ambiguity and explicitness in its communications to various parties regarding potential U.S. actions under the two defense treaties?
- How do the two treaties affect the behavior of Japan, the Philippines, and China in managing their territorial disputes? To what extent, for example, would they help Japan or the Philippines resist potential Chinese attempts to resolve the disputes through intimidation, or, alternatively, encourage risk-taking or brinkmanship behavior by Japan or the Philippines in their dealings with China?

on the disputes? To what extent do they deter or limit Chinese assertiveness or aggressiveness in their dealings with Japan the Philippines on the disputes?

- Has the DOD adequately incorporated into its planning crisis and conflict scenarios arising from maritime territorial disputes in the SCS and ECS that fall under the terms of the two treaties?

Whether United States Should Ratify United Nations Convention on the Law of the Sea (UNCLOS)

Another issue for Congress—particularly the Senate—is the impact of maritime territorial and EEZ disputes involving China on the question of whether the United States should become a party to UNCLOS. As mentioned earlier, the treaty and an associated 1994 agreement relating to implementation of Part XI of the treaty (on deep seabed mining) were transmitted to the Senate on October 6, 1994.¹²⁰ In the absence of Senate advice and consent to adherence, the United States is not a party to the convention and the associated 1994 agreement. During the 112th Congress, the Senate Foreign Relations Committee held four hearings on the question of whether the United States should become a party to the treaty on May 23, June 14 (two hearings), and June 28, 2012.

Supporters of the United States becoming a party to UNCLOS argue or might argue one or more of the following:

- The treaty’s provisions relating to navigational rights, including those in EEZs, reflect the U.S. position on the issue; becoming a party to the treaty would help lock the U.S. perspective into permanent international law.
- Becoming a party to the treaty would give the United States greater standing for participating in discussions relating to the treaty—a “seat at the table”—and thereby improve the U.S. ability to call on China to act in accordance with the treaty’s provisions, including those relating to navigational rights, and to defend U.S. interpretations of the treaty’s provisions, including those relating to whether coastal states have a right under UNCLOS to regulate foreign military activities in their EEZs.¹²¹
- At least some of the ASEAN member states want the United States to become a member of UNCLOS, because they view it as the principal framework for resolving maritime territorial disputes.
- Relying on customary international law to defend U.S. interests in these issues is not sufficient, because it is not universally accepted and is subject to change over time based on state practice.

Opponents of the United States becoming a party to UNCLOS argue or might argue one or more of the following:

- China’s ability to cite international law (including UNCLOS) in defending its position on whether coastal states have a right to regulate foreign military activities in their EEZs¹²² shows that UNCLOS does not adequately protect U.S.

¹²⁰ Treaty Document 103-39.

¹²¹ See, for example, Andrew Browne, “A Hole in the U.S. Approach to Beijing,” *Wall Street Journal*, May 20, 2014.

¹²² For a discussion of China’s legal justifications for its position on the EEZ issue, see, for example, Peter Dutton, (continued...)

interests relating to navigational rights in EEZs; the United States should not help lock this inadequate description of navigational rights into permanent international law by becoming a party to the treaty.

- The United States becoming a party to the treaty would do little to help resolve maritime territorial disputes in the SCS and ECS, in part because China's maritime territorial claims, such as those depicted in the map of the nine-dash line, predate and go well beyond what is allowed under the treaty and appear rooted in arguments that are outside the treaty.
- The United States can adequately support the ASEAN countries and Japan in matters relating to maritime territorial disputes in the SCS and ECS in other ways, without becoming a party to the treaty.
- The United States can continue to defend its positions on navigational rights on the high seas by citing customary international law, by demonstrating those rights with U.S. naval deployments (including those conducted under the FON program), and by having allies and partners defend the U.S. position on the EEZ issue at meetings of UNCLOS parties.

Legislative Activity in 2016

FY2017 National Defense Authorization Act (H.R. 4909/S. 2943)

House

The House Armed Services Committee, in its report (H.Rept. 14-537 of May 4, 2016) on H.R. 4909, states:

Department of Defense Briefing on United States Ratification of the United Nations
Convention on the Law of the Sea

The committee has heard testimony from a multitude of U.S. military leaders who are supportive of the U.S. becoming a formal signatory of the United Nations Convention on the Law of the Sea (UNCLOS). The committee is aware that these military leaders testified that ratifying UNCLOS is in our national interest, specifically regarding developing territorial challenges in the South China Sea and the Arctic.

The committee therefore directs the Secretary of Defense to provide a briefing to the House Committee on Armed Services not later than September 30, 2016, regarding United States ratification of UNCLOS. The briefing should contain, at a minimum, the strategic implications and surmised impacts—both benefits and disadvantages—to national security, current foreign military relations, and ongoing military operations should the United States ratify UNCLOS or maintain the status quo. The brief should also identify those areas in which the lack of ratification has impacted the interests of the United States and our allies. (Page 215)

H.Rept. 114-537 also states:

(...continued)

“Three Disputes and Three Objectives,” *Naval War College Review*, Autumn 2011: 54-55. See also Isaac B. Kardon, “The Enabling Role of UNCLOS in PRC Maritime Policy,” *Asia Maritime Transparency Initiative* (Center for Strategic & International Studies), September 11, 2015.

Chinese Participation in Rim of the Pacific Exercise

The committee is concerned by certain unilateral actions taken by the People's Republic of China in the South China Sea and by the implications that those actions may have on regional stability. Rather than abiding by internationally accepted norms and contributing to a peaceful and equitable resolution to the many disputed claims in the South China Sea, China has engaged in controversial land reclamation projects and resorted to aggressive tactics, short of open conflict, to further its foreign policy goals.

The committee notes that the United States has maintained its invitation to China to participate, to a limited extent, in the Rim of the Pacific (RIMPAC) exercise for 2016, despite China's concerning actions in the South China Sea. The committee acknowledges the benefits of inviting China to participate in international exercises, which aim to reinforce the merits of cooperative security. However, the committee believes that these invitations should be continuously evaluated in light of China's conduct. Therefore, the committee directs the Secretary of Defense to provide a briefing to the House Committee on Armed Services, which may include a classified portion, not later than July 1, 2016, on the merits of continued Chinese participation in forthcoming RIMPAC exercises. (Pages 239-240)

Senate

Section 1241 of S. 2943 as reported by the Senate Armed Services Committee (S.Rept. 114-255 of May 18, 2016) states:

SEC. 1241. Annual update of Department of Defense Freedom of Navigation Report.

(a) In general.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives on an annual basis a report setting forth an update of the most current Department of Defense Freedom of Navigation Report under the Freedom of Navigation Operations (FONOPS) program. The purpose of each report shall be to document the types and locations of excessive claims that the Armed Forces of the United States have challenged in the previous year in order to preserve the rights, freedoms, and uses of the sea and airspace guaranteed to all countries by international law.

(b) Elements.—Each report under this section shall include, for the year covered by such report, the following:

- (1) Each excessive maritime claim challenged by the United States under the program referred to in subsection (a), including the country making each such claim.
- (2) The nature of each claim, including the geographic location or area covered by such claim (including the body of water and island grouping, when applicable).
- (3) The specific legal challenge asserted through the program.

(c) Form.—Each report under this section shall be submitted in unclassified form.

Section 1246 of S. 2943 as reported states:

SEC. 1246. Redesignation of South China Sea Initiative.

(a) Redesignation as Southeast Asia Maritime Security Initiative.—Subsection (a)(2) of section 1263 of the National Defense Authorization Act for Fiscal Year 2016 (P.L. 114-114-92; 129 Stat. 1073; 10 U.S.C. 2282 note) is amended by striking “the ‘South China Sea Initiative’” and inserting “the ‘Southeast Asia Maritime Security Initiative’”.

(b) Conforming amendment.—The heading of such section is amended to read as follows:

“SEC. 1263. Southeast Asia Maritime Security Initiative”.

Regarding Section 1246, S.Rept. 114-255 states:

Redesignation of South China Sea Initiative (sec. 1246)

The committee recommends a provision that would amend section 1261 of the National Defense Authorization Act for Fiscal Year 2016 (P.L. 114-114–92) to redesignate the South China Sea Initiative as the Southeast Asia Maritime Security Initiative.

The committee strongly supports the Southeast Asia Maritime Security Initiative. The committee encourages the Department to continue a robust effort to build the maritime capabilities of Southeast Asian countries that are committed to an inclusive maritime order where all states have access to the open seas. (Page 315)

S.Rept. 114-255 also states:

People’s Liberation Army Navy (PLAN) participation in Rim of the Pacific exercise

The committee is concerned by China’s ongoing reclamation and militarization of the South China Sea. Despite President Xi Jinping’s assurances in September 2015 that “China does not intend to pursue militarization” of the South China Sea, the committee is aware that China is now constructing runways, radar facilities, hangars, and other infrastructure that will enable the sustainment of military capabilities in the Spratly Islands. The committee notes the assessment of Director of National Intelligence James Clapper that “China will continue to pursue construction and infrastructure development at its expanded outposts in the South China Sea. Based on the pace and scope of construction at these outposts, China will be able to deploy a range of offensive and defensive military capabilities and support increased People’s Liberation Army Navy (PLAN) and Chinese Coast Guard (CCG) presence beginning in 2016.”

The committee notes that the United States invited China to participate in the 2014 Rim of the Pacific exercise (RIMPAC). The committee is aware that China sent four surface vessels to join the official exercise, in addition to a Dongdiao-class Auxiliary General Intelligence (AGI) surveillance ship. The committee recognizes that the inclusion of this vessel at an exercise designed to build trust and cooperation between global navies undermined the spirit of the exercise. The committee acknowledges the Department of Defense’s desire to build cooperative relationships through participation in bilateral and multilateral maritime exercises and the potential benefits to regional security gained through military engagements. However, the committee believes that military engagements such as RIMPAC should be routinely evaluated to identify the value of each individual exercise to U.S. national interests.

Therefore, the committee directs the Secretary of Defense to provide a briefing to the Senate Armed Services Committee, which may include a classified portion, not later than July 1, 2016, regarding the merits of continued Chinese participation in RIMPAC 2016, the intended scope of PLA participation in RIMPAC 2016, and the compliance of PLAN participation in RIMPAC 2016 with the 12 operational areas that were prohibited for military-to-military contact between the Department of Defense and PLA consistent with Section 1201(a) of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106-106–65). (Page 324)

Asia-Pacific Maritime Security Initiative Act of 2016 (S. 2865)

S. 2865 was introduced in the Senate on April 26, 2016. The text of the bill reads:

SECTION 1. Short title.

This Act may be cited as the “Asia-Pacific Maritime Security Initiative Act of 2016”.

SEC. 2. Definitions.

In this Act:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate committees of Congress” means—

(A) the Committee of Foreign Relations, the Committee on Armed Services, and the Committee on Appropriations of the Senate; and

(B) the Committee of Foreign Affairs, the Committee on Armed Services, and the Committee on Appropriations of the House of Representatives.

(2) **INCREMENTAL EXPENSES.**—The term “incremental expenses”—

(A) means the reasonable and proper cost of the goods and services that are consumed by a country as a direct result of that country’s participation in training under the authority of this section, including rations, fuel, training ammunition, and transportation; and

(B) does not include pay, allowances, and other normal costs of a country’s personnel.

(3) **OTHER SECURITY FORCES.**—The term “other security forces” includes national security forces that conduct maritime security, but does not include self-described militias and paramilitary organizations.

TITLE I—United States policy on Asia-Pacific maritime security

SEC. 101. Statement of policy on maintenance of freedom of operations in international waters and airspace in the Asia-Pacific maritime domains.

It is the policy of the United States that, as a longstanding Asia-Pacific power, the United States will maintain and exercise routine freedom of operations in the international waters and airspace in the Asia-Pacific maritime domains, which are critical to the prosperity, stability, and security of the Asia-Pacific region.

SEC. 102. Statement of policy on claims that impinge on rights, freedoms, and lawful use of the seas.

It is the policy of the United States—

(1) to oppose all claims in the maritime domains that impinges on the rights, freedoms, and lawful use of the seas that belong to all nations; and

(2) to uphold the principle that territorial and maritime claims, including territorial waters or territorial seas, must be derived from land features and otherwise comport with international law.

SEC. 103. Statement of policy on opposition to unilateral actions to change the status quo in the South China Sea.

It is the policy of the United States—

(1) to oppose the unilateral actions by any claimant seeking to change the status quo in the South China Sea through the use of coercion, intimidation, or military force;

(2) to oppose reclamation activities in the South China Sea, including the militarization of any reclaimed features;

(3) to oppose actions by any country to prevent any other country from exercising its sovereign rights to the resources of the exclusive economic zone (EEZ) and continental shelf by making claims to those areas in the South China Sea that have no support in international law;

(4) to oppose unilateral declarations of administrative and military districts in contested areas in the South China Sea;

(5) to oppose the militarization of new and reclaimed land features in the South China Sea;

(6) to oppose the imposition of new fishing regulations covering disputed areas in the South China Sea, which have raised tensions in the region; and

(7) (A) to welcome the expected landmark decision by the International Tribunal on the Law of the Sea in the case of “The Republic of Philippines v. The People's Republic of China”;

(B) to note that the decision is binding on all parties involved and will constitute international law;

(C) to call on all parties to abide by the ruling; and

(D) to encourage other South China Sea claimants to seek similar clarification of maritime disputes through arbitration.

SEC. 104. Statement of policy on the commitment and support of the United States for allies and partners in the Asia-Pacific region.

It is the policy of the United States—

(1) to reaffirm its unwavering commitment and support for allies and partners in the Asia-Pacific region, including longstanding United States policy regarding Article V of the United States-Philippines Mutual Defense Treaty;

(2) to reaffirm that Article V of the United States-Japan Mutual Defense Treaty applies to the Japanese-administered Senkaku Islands; and

(3) to station and regularly deploy the newest and most advanced United States air power assets to the Asia-Pacific region, including F-22 stealth fighters, B-2 and B-52 strategic bombers, and the expected forward-stationing of F-35 aircraft in Iwakuni, Japan.

SEC. 105. Statement of policy on efforts of the association of Southeast Asian nations and the People’s Republic of China to develop an effective code of conduct.

It is the policy of the United States—

(1) to support efforts by the Association of Southeast Asian Nations (ASEAN) and the People’s Republic of China to develop an effective Code of Conduct; and

(2) to encourage claimants not to undertake new or unilateral attempts to change the status quo since the signing of the 2002 Declaration of Conduct, including reclamation activities or asserting administrative measures or controls in disputed areas in the South China Sea.

SEC. 106. Statement of policy on the continuity of operations by the Armed Forces in the Asia-Pacific region.

It is the policy of the United States to assure the continuity of operations by the United States Armed Forces in the Asia-Pacific region, including, when appropriate, in cooperation with partners and allies, in order to reaffirm the principle of freedom of operations in international waters and airspace in accordance with established principles and practices of international law.

TITLE II—Maritime security initiative

SEC. 201. Maritime security initiative.

(a) Program authorized.—

(1) IN GENERAL.—The Secretary of Defense, in concurrence with the Secretary of State, is authorized to provide assistance, for the purpose of increasing maritime security and domain awareness for countries in the Asia-Pacific region—

(A) to provide assistance to national military or other security forces of such countries that have among their functional responsibilities maritime security missions;

(B) to provide training to ministry, agency, and headquarters level organizations for such forces; and

(C) to provide assistance to and training to other relevant foreign affairs, maritime, or security-related ministries, agencies, departments or offices that manage and oversight of maritime activities and policy that the Secretary may so designate.

(2) DESIGNATION OF ASSISTANCE AND TRAINING.—The provision of assistance and training under this section may be referred to as the “Maritime Security Initiative”.

(3) CONSTRUCTION OF LIMITATIONS.—The Secretary may provide assistance under this section without regard to any other provision of law, other than section 620M of the Foreign Assistance Act of 1961 (22 U.S.C. 2378d).

(b) Eligible countries.—In selecting countries in the Asia-Pacific region to which assistance is to be provided under the Initiative, the Secretary of Defense, in concurrence with the Secretary of State, shall prioritize the provision of assistance to countries that will contribute to the achievement of following objectives:

(1) Retaining unhindered access to and use of international waterways in the Asia-Pacific region that are critical to ensuring the security and free flow of commerce and achieving United States national security objectives.

(2) Improving maritime domain awareness in the Asia-Pacific region.

(3) Countering piracy in the Asia-Pacific region.

(4) Disrupting illicit maritime trafficking activities and other forms of maritime trafficking activity in the Asia-Pacific that directly benefit organizations that have been determined to be a security threat to the United States.

(5) Enhancing the maritime capabilities of a country or regional organization to respond to emerging threats to maritime security in the Asia-Pacific region.

(c) Types of assistance and training.—

(1) AUTHORIZED ELEMENTS OF ASSISTANCE.—Assistance provided under subsection (a)(1)(A) may include the provision of equipment, supplies, training, and small-scale military construction.

(2) REQUIRED ELEMENTS OF ASSISTANCE AND TRAINING.—Assistance and training provided under subsection (a) shall include elements that promote the following:

(A) Observance of and respect for human rights and fundamental freedoms.

(B) Respect for legitimate civilian authority within the country to which the assistance is provided.

(d) Priorities for assistance and training.—In developing programs for assistance or training to be provided under subsection (a), the Secretary of Defense shall accord a priority to assistance, training, or both that will enhance the maritime capabilities of the recipient foreign country, or a regional organization of which the recipient country is a member, to respond to emerging threats to maritime security.

(e) Incremental expenses of personnel of certain other countries for training.—

(1) AUTHORITY FOR PAYMENT.—If the Secretary of Defense determines that the payment of incremental expenses in connection with training described in subsection (a)(1)(B) will facilitate the participation in such training of organization personnel of foreign countries specified in paragraph (2), the Secretary may use amounts available

under subsection (f) for assistance and training under subsection (a) for the payment of such incremental expenses.

(2) COVERED COUNTRIES.—The foreign countries specified in this paragraph are the following:

(A) Brunei.

(B) Singapore.

(C) Taiwan.

(f) Availability of funds.—

(1) FISCAL YEAR 2017.—Of the amounts authorized to be appropriated for fiscal year 2017 for the Department of Defense for operation and maintenance, Defense-wide, \$75,000,000 may be available for the provision of assistance and training under subsection (a).

(2) FISCAL YEARS 2018 THROUGH 2021.—In each of fiscal years 2018 through 2021, from amounts authorized to be appropriated for the Department of Defense for such fiscal year for operation and maintenance, Defense-wide, \$100,000,000 may be available for the provision of assistance and training under subsection (a).

(3) NOTICE ON SOURCE OF FUNDS.—If the Secretary of Defense uses funds available to the Department pursuant to paragraph (1) to provide assistance and training under subsection (a) during a fiscal half-year, not later than 30 days after the end of such fiscal half-year, the Secretary shall submit to the appropriate congressional committees a notice on the account or accounts providing such funds.

(g) Notice to congress on assistance and training.—Not later than 15 days before exercising the authority under subsection (a) or (e) with respect to a recipient foreign country, the Secretary of Defense shall submit to the appropriate congressional committees a notification containing the following information:

(1) The recipient foreign country.

(2) A detailed justification of the program for the provision of the assistance or training concerned, and its relationship to United States security interests.

(3) The budget for the program, including a timetable of planned expenditures of funds to implement the program, an implementation timeline for the program with milestones (including anticipated delivery schedules for any assistance under the program), the military department or component responsible for management of the program, and the anticipated completion date for the program.

(4) A description of the arrangements, if any, to support host nation sustainment of any capability developed pursuant to the program, and the source of funds to support sustainment efforts and performance outcomes to be achieved under the program beyond its completion date, if applicable.

(5) A description of the program objectives and an assessment framework to be used to develop capability and performance metrics associated with operational outcomes for the recipient force.

(6) Such other matters as the Secretary considers appropriate.

(h) Annual report.—The Secretary of Defense shall submit to the appropriate congressional committees each year a report on the status of the provision of equipment, training, supplies, or other services provided pursuant to the program carried out under this section during the preceding year.

(i) Expiration.—Assistance and training may not be provided under this section after September 30, 2022.

TITLE III—Special foreign military sales status for the Philippines

SEC. 301. Special foreign military sales status for the Philippines.

The Arms Export Control Act (22 U.S.C. 2751 et seq.) is amended—

(1) in sections 3(d)(2)(B), 3(d)(3)(A)(i), 3(d)(5), 21(e)(2)(A), 36(b), 36(c), 36(d)(2)(A), 62(c)(1), and 63(a)(2), by inserting “the Philippines,” before “or New Zealand” each place it appears;

(2) in section 3(b)(2), by inserting “the Government of the Philippines,” before “or the Government of New Zealand”; and

(3) in section 21(h), by inserting “the Philippines,” before “or Israel” each place it appears.

TITLE IV—IMET

SEC. 401. Authorization of appropriations.

There is authorized to be appropriated for fiscal year 2017 for the Department of State, out of amounts appropriated or otherwise made available for assistance under chapter 5 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2301 et seq.) (relating to international military education and training (IMET) assistance), \$15,000,000 for activities in the Asia-Pacific region in accordance with this Act.

TITLE V—Foreign military financing

SEC. 501. Authorization of appropriations.

In addition to any amounts appropriated pursuant to section 23 of the Arms Export Control Act (22 U.S.C. 2763) (relating to foreign military financing assistance), there is authorized to be appropriated \$10,000,000 for fiscal year 2017 for activities in the Asia-Pacific region in accordance with this Act.

SEC. 502. Priorities for assistance.

(a) Selection of countries.—In selecting countries in the Asia-Pacific region to which security assistance should be provided, the Secretary of State may prioritize the provision of maritime capacity building assistance to countries in the Asia-Pacific that will contribute to the achievement of following objectives:

(1) Retaining unhindered access to and use of international waterways in the Asia-Pacific region that are critical to ensuring the security and free flow of commerce and achieving United States national security objectives.

(2) Improving maritime domain awareness in the Asia-Pacific region.

(3) Countering piracy in the Asia-Pacific region.

(4) Disrupting illicit maritime trafficking activities and other forms of maritime trafficking activity in the Asia-Pacific that directly benefit organizations that have been determined to be a security threat to the United States.

(5) Enhancing the maritime capabilities of a country or regional organization to respond to emerging threats to maritime security in the Asia-Pacific region.

(b) Priorities.—In carrying out the provision of maritime capacity building—

(1) priority may be placed on assistance to enhance the maritime security capabilities of the military or security forces of countries in the Asia-Pacific region that have maritime missions and the government agencies responsible for such forces; and

(2) assistance may be provided to a country in the Asia-Pacific region to enhance the capabilities of that country, or of a regional organization that includes that country, to conduct—

- (A) maritime intelligence, surveillance, and reconnaissance;
- (B) littoral and port security;
- (C) Coast Guard operations;
- (D) command and control; and
- (E) management and oversight of maritime activities.

(c) Annual report.—The Secretary of State shall submit to the appropriate committees of Congress each year a report on the status of the provision of equipment, training, supplies, or other services provided pursuant to maritime capacity building in the Asia-Pacific in the preceding year.

TITLE VI—Maritime law enforcement initiative

SEC. 601. Authorization of appropriations.

There is authorized to be appropriated for fiscal year 2017 for the Department of State for International Narcotics Control and Law Enforcement (INCLE), \$7,500,000 for the support of the Southeast Asia maritime Law Enforcement Initiative.

TITLE VII—Transfer of excess defense articles

SEC. 701. Priority for transfer of excess defense articles.

Section 516(c)(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j(c)(2)) is amended by striking “and to the Philippines” and inserting “to the Philippines, and to other major non-NATO allies of the United States located in the Asia-Pacific region (including Japan, South Korea, Thailand, Australia and New Zealand) and other maritime ASEAN member states”.

SEC. 702. Transfer of naval vessels to foreign recipient.

The Secretary of State, with the concurrence of the Secretary of Defense, is authorized to transfer one OLIVER HAZARD PERRY class guided missile frigate on a grant basis under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j) to a foreign government pursuant to the program authorized in section 201(a) for the purposes of this Act.

TITLE VIII—Equality of treatment in arms sales for Taiwan

SEC. 801. Equality of treatment in arms sales for taiwan.

(a) In general.—The President shall ensure that the United States Government treats every proposed arms sales for Taiwan with the same timelines, processes, and procedures, including formal notification to Congress under the Arms Export Control Act (22 U.S.C. 2751 et seq.), accorded to proposed arms transfers for all other countries.

(b) Inspector General reporting.—Not later than one year after the date of the enactment of this Act, and annually thereafter for 5 years, the Inspectors General of the Department of State and the Department of Defense shall review and report to the appropriate congressional committees on the compliance of those departments with the requirements of subsection (a).

TITLE IX—Reports

SEC. 901. Report on plans for the maintenance of freedom of operations in international waters and airspace in the Asia-Pacific maritime domains.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall, with the concurrence with the Secretary of State, submit to the appropriate committees of Congress a report in classified form setting forth a plan, for each of the six-month, one-year, and three-year periods beginning on the date of such report, for freedom of navigation assertions, shows of force, bilateral and multilateral military exercises, port calls, and training intended to enhance the maritime capabilities, respond to emerging threats, and maintain freedom of operations in international waters and airspace in the Asia-Pacific maritime domains.

SEC. 902. Report on plans for partner capacity building.

Not later than 180 days after the date of the enactment of this Act, the Secretary of State shall, with the concurrence with the Secretary of Defense, submit to the appropriate congressional committees a report (in classified or unclassified form) setting forth a plan, for each of the six-month, one-year, and five-year periods beginning on the date of such report, for Partner Capacity Building assistance intended to enhance the maritime capabilities, respond to emerging threats, and maintain freedom of operations in international waters and airspace in the Asia-Pacific maritime domains.

SEC. 903. Annual report on military and nonmilitary activities of China in the South China Sea.

Not later than 90 days after the date of the enactment of this Act, and annually thereafter, the Secretary of State, in consultation with the Secretary of Defense, shall submit to the appropriate congressional committees an unclassified comprehensive report, with a classified annex if necessary, detailing the military and nonmilitary activities of the People's Republic of China in the South China Sea.

SEC. 904. Notice to Congress on assistance and training.

Not later than 15 days before exercising the authority under section 201, section 401, or section 501 or pursuant to the amendments made by section 301 with respect to a recipient foreign country, the Secretary of State or the Secretary of Defense, as the case may be, shall submit to the appropriate congressional committees a notification containing the following elements:

- (1) The name of the recipient foreign country.
- (2) A detailed justification for the provision of the assistance or training concerned, and its relationship to United States security interests.
- (3) The budget for the program, including—
 - (A) a timetable of planned expenditures of funds to implement the program;
 - (B) an implementation timeline for the program with milestones (including anticipated delivery schedules for any assistance under the program);
 - (C) the military department or component responsible for management of the program; and
 - (D) the anticipated completion date for the program.
- (4) A description of the arrangements, if any, to support host nation sustainment of any capability developed pursuant to the program, and the source of funds to support sustainment efforts and performance outcomes to be achieved under the program beyond its completion date, if applicable.
- (5) A description of the program objectives and an assessment framework to be used to develop capability and performance metrics associated with operational outcomes for the recipient force.
- (6) Such other matters as the Secretary considers appropriate.

S.Res. 370, Regarding the United States and ASEAN

S.Res. 370—“A resolution recognizing that for nearly 40 years, the United States and the Association of South East Asian Nations (ASEAN) have worked toward stability, prosperity, and peace in Southeast Asia”—was introduced in the Senate on February 10, 2016. The resolved portion of the resolution states:

Resolved, That the Senate—

(1) welcomes the leaders of the Association of South East Asian Nations (ASEAN) to the United States for the special February 2016 U.S.-ASEAN summit meeting at Rancho Mirage, California, and affirms the summit as the first regular U.S.-ASEAN summit;

(2) supports and welcomes the elevation of the United States-ASEAN relationship to a strategic partnership and recommits the United States to ASEAN centrality and to helping to build a strong, stable, politically cohesive, economically integrated, and socially responsible ASEAN community with common rules, norms, procedures, and standards consistent with international law and the principles of a “rule-based” Asia-Pacific community;

(3) supports efforts towards increasing two-way trade and investment, promoting trade and investment liberalization and facilitation, encouraging strong, sustainable, and inclusive economic growth and job creation, and deepening connectivity;

(4) urges ASEAN to continue its efforts to foster greater integration and unity, including with non-ASEAN economic, political, and security partners, including Japan, the Republic of Korea, Australia, the European Union, and India, both inside of and outside of Asia;

(5) supports efforts by ASEAN nations to address maritime and territorial disputes in a constructive manner and to pursue claims through peaceful, diplomatic, and legitimate regional and international arbitration mechanisms, consistent with international law;

(6) urges all parties to maritime and territorial disputes in the Asia-Pacific region to—

(A) respect the status quo;

(B) exercise self-restraint in the conduct of activities that would undermine stability or complicate or escalate disputes through the use of coercion, intimidation, or military force;

(C) cease land reclamation activities; and

(D) refrain from inhabiting or garrisoning or otherwise militarizing uninhabited islands, reefs, shoals, and other features;

(7) opposes actions by any country to prevent any other country from exercising its sovereign rights to the resources of the exclusive economic zone (EEZ) and continental shelf by making claims to those areas in the South China Sea that have no support in international law;

(8) opposes unilateral declarations of administrative and military districts in contested areas in the South China Sea;

(9) opposes the imposition of new fishing regulations covering disputed areas in the South China Sea, which have raised tensions in the region;

(10) urges parties to refrain from unilateral actions that cause permanent physical change to the marine environment in areas pending final delimitation;

(11) supports efforts by the Association of Southeast Asian Nations (ASEAN) and the People’s Republic of China to develop an effective Code of Conduct (COC) and urges

ASEAN to implement and work toward the expeditious conclusion of an effective Code of Conduct with regards to the South China Sea;

(12) urges ASEAN to develop a common approach to reaffirm the decision of the Permanent Court of Arbitration in The Hague’s ruling with respect to the case between the Republic of the Philippines and the People’s Republic of China;

(13) supports efforts by United States partners and allies in ASEAN—

(A) to enhance maritime capability;

(B) to retain unhindered access to and use of international waterways in the Asia-Pacific region that are critical to ensuring the security and free flow of commerce;

(C) to improve maritime domain awareness;

(D) to counter piracy;

(E) to disrupt illicit maritime trafficking activities and other forms of maritime trafficking activity; and

(F) to enhance the maritime capabilities of a country or regional organizations to respond to emerging threats to maritime security in the Asia-Pacific region;

(14) reaffirms the enhancement of United States-ASEAN economic engagement, including the elimination of barriers to cross-border commerce, and supports the ASEAN Economic Community’s goals, including strong, inclusive, and sustainable growth and cooperation between the United States and ASEAN that focuses on innovation and capacity building efforts in technology, education, disaster management, food security, human rights, and trade facilitation, including for ASEAN’s poorest countries;

(15) supports the Lower Mekong Initiative, which has made significant progress in promoting sustainable economic development in mainland Southeast Asia and fostering integrated subregional cooperation and capacity building;

(16) supports capacity building for the promotion and protection of human rights and related priority, programs, and activities;

(17) supports the Young Southeast Asian Leaders Initiative program as an example of people-to-people partnership building that provides skills and networks to a new generation of people who will create and fill the jobs of the future;

(18) reaffirms the commitment of the United States to continue joint efforts with ASEAN to halt human smuggling and trafficking of persons and urges ASEAN to make increased efforts to create and strengthen regional mechanisms to provide assistance and support to refugees and migrants;

(19) urges ASEAN nations to engage directly with leaders of civil society, human rights, and environmental groups before, during, and after the February 2016 summit; and

(20) encourages the President to communicate to ASEAN leaders the importance of releasing political prisoners and ending politically motivated prosecutions.

H.Res. 631, Regarding U.S. Ratification of UNCLOS

H.Res. 631—a resolution “calling upon the United States Senate to give its advice and consent to the ratification of the United Nations Convention on the Law of the Sea”—was introduced in the House on March 1, 2016. The resolved portion of the resolution states:

Resolved, That the House of Representatives—

(1) affirms that it is in the national interest for the United States to become a formal signatory of the United Nations Convention of the Law of the Sea;

(2) urges the United States Senate to give its advice and consent to the ratification of the United Nations Convention of the Law of the Sea (UNCLOS); and

(3) recommends the ratification of UNCLOS remain a top priority for the administration, having received bipartisan support from every President since 1994, and having most recently been underscored by the strategic challenges the United States faces in the Asia-Pacific region and more specifically in the South China Sea.

Resolutions Introduced in 2015

Resolutions introduced in 2015 include S.Res. 183 and S.Res. 153.

Appendix A. U.S. Security Treaties with Japan and Philippines

This appendix presents brief background information on the U.S. security treaties with Japan and the Philippines.

U.S.-Japan Treaty on Mutual Cooperation and Security

The 1960 U.S.-Japan treaty on mutual cooperation and security¹²³ states in Article V that

Each Party recognizes that an armed attack against either Party in the territories under the administration of Japan would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional provisions and processes.

The United States has reaffirmed on a number of occasions over the years that since the Senkaku Islands are under the administration of Japan, they are included in the territories referred to in Article V of the treaty, and that the United States “will honor all of our treaty commitments to our treaty partners.”¹²⁴ (At the same time, the United States, noting the difference between administration and sovereignty, has noted that such affirmations do not prejudice the U.S. approach of taking no position regarding the outcome of the dispute between China, Taiwan, and Japan regarding who has sovereignty over the islands.) Some observers, while acknowledging the U.S. affirmations, have raised questions regarding the potential scope of actions that the United States might take under Article V.¹²⁵

U.S.-Philippines Mutual Defense Treaty¹²⁶

The 1951 U.S.-Philippines mutual defense treaty¹²⁷ states in Article IV that

¹²³ Treaty of mutual cooperation and security, signed January 19, 1960, entered into force June 23, 1960, 11 UST 1632; TIAS 4509; 373 UNTS.

¹²⁴ The quoted words are from Secretary of Defense Chuck Hagel, in “Media Availability with Secretary Hagel En Route to Japan,” April 5, 2014, accessed April 9, 2014, at <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=5405>. See also Associated Press, “US: Will Stand by Allies in Disputes with China,” *Military.com*, April 3, 2014.

¹²⁵ See, for example, Yoichiro Sato, “The Senkaku Dispute and the US-Japan Security Treaty,” PacNet #57 (Pacific Forum CSIS, Honolulu, Hawaii), September 10, 2012, accessed October 2, 2012, at <http://csis.org/files/publication/Pac1257.pdf>; James R. Holmes, “Thucydides, Japan and America,” *The Diplomat*, November 27, 2012; Shigemi Sato, “Japan, U.S. To Discuss Revising Defense Guidelines,” *DefenseNews.com (Agence France-Presse)*, November 11, 2012; Martin Fackler, “Japan Seeks Tighter Pact With U.S. To Confront China,” *NYTimes.com*, November 9, 2012; “Japan, U.S. To Review Defense Guidelines,” *Japan Times*, November 11, 2012; “Defense Official To Visit U.S. To Discuss Alliance,” *Kyodo News*, November 8, 2012; Yuka Hayashi, “U.S. Commander Chides China Over ‘Provocative Act,’” *Wall Street Journal*, February 16, 2013: 7; Julian E. Barnes, “U.S., Japan Update Plans To Defend Islands,” *New York Times*, March 20, 2013. See also Kiyoshi Takenaka, “China ‘Extremely Concerned’ About U.S.-Japan Island Talk,” *Reuters*, March 21, 2013; Wendell Minnick, “Senkakus Could Be Undoing of Asia Pivot,” *Defense News*, April 15, 2013: 16; Item entitled “U.S. Warns China” in Bill Gertz, “Inside the Ring: NSA Contractor Threat,” *Washington Times*, June 19, 2013; Anthony Fensom, “Yamaguchi: China Military Build-Up Risks Accident,” *The Diplomat*, June 21, 2013.

¹²⁶ For additional discussion of U.S. obligations under the U.S.-Philippines mutual defense treaty, see CRS Report R43498, *The Republic of the Philippines and U.S. Interests—2014*, by Thomas Lum and Ben Dolven.

¹²⁷ Mutual defense treaty, signed August 30, 1951, entered into force August 27, 1952, 3 UST 3947, TIAS 2529, 177 UNTS 133.

Each Party recognizes that an armed attack in the Pacific Area on either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common dangers in accordance with its constitutional processes.

Article V states that

For the purpose of Article IV, an armed attack on either of the Parties is deemed to include an armed attack on the metropolitan territory of either of the Parties, or on the island territories under its jurisdiction in the Pacific or on its armed forces, public vessels or aircraft in the Pacific.

The United States has reaffirmed on a number of occasions over the years its obligations under the U.S.-Philippines mutual defense treaty.¹²⁸ On May 9, 2012, Filipino Foreign Affairs Secretary Albert F. del Rosario issued a statement providing the Philippine perspective regarding the treaty's application to territorial disputes in the SCS.¹²⁹ U.S. officials have made their own statements regarding the treaty's application to territorial disputes in the SCS.¹³⁰

¹²⁸ See, for example, the Joint Statement of the United States-Philippines Ministerial Dialogue of April 30, 2012, available at <http://www.state.gov/r/pa/prs/ps/2012/04/188977.htm>, which states in part that “the United States and the Republic of the Philippines reaffirm our shared obligations under the Mutual Defense Treaty, which remains the foundation of the U.S.-Philippines security relationship.” See also Associated Press, “US: Will Stand by Allies in Disputes with China,” *Military.com*, April 3, 2014.

¹²⁹ Statement of Secretary del Rosario regarding the Philippines-U.S. Mutual Defense Treaty, May 9, 2012, accessed September 20, 2012, at <http://www.gov.ph/2012/05/09/statement-of-secretary-del-rosario-regarding-the-philippines-u-s-mutual-defense-treaty-may-9-2012/>.

¹³⁰ See, for example, Agence France-Presse, “Navy Chief: US Would ‘Help’ Philippines In South China Sea,” *DefenseNews.com*, February 13, 2014; Manuel Mogato, “U.S. Admiral Assures Philippines of Help in Disputed Sea,” *Reuters.com*, February 13, 2014.

Appendix B. Statements from U.S. Officials Regarding U.S. Position

This appendix presents excerpts from some recent statements by U.S. officials regarding the U.S. position on maritime territorial and EEZ disputes involving China.

December 14, 2015, Address by Commander, U.S. Pacific Fleet

In a December 14, 2015, address at a cooperative security forum held in Hawaii, Admiral Scott H. Swift, Commander, U.S. Pacific Fleet, stated:

Today all Indo-Asia-Pacific nations benefit from a rising tide of prosperity. We all have major stakes in this region's continued success, especially at sea, where so much of our trade, investment and interaction takes place. Global seaborne trade is expected to reach eleven billion tons by the end of this year, with half of that number shipped through this region. Eight of the world's busiest container ports are in the region; 30 percent of global maritime trade, roughly 5.3 trillion dollars yearly, passes through the South China Sea alone; of that, 1.2 trillion dollars transits to ports in the United States. Given those volumes, regional countries increasingly view access to maritime resources and freedom of the seas as the essential drivers of continued economic prosperity.

How nations pursue these interests matters greatly. This is especially true here in the Pacific as underscored by recent spikes in regional tensions. All nations want to reach ever-higher levels of prosperity—but we cannot all rise by pushing the competition down and then pulling the ladder up behind us—not if we want to continue up the shared path that benefitted so many in this region. I'm convinced the continued promotion of the rules-based system that evolved over the past 70 years remains the best way forward for all nations in this region—large and small—to continue to rise peacefully, confidently, securely and economically. My concern is that after many decades of peace and prosperity at sea, we may be seeing the leading edge of a return of “might makes right” to the region. Such an approach may once again impact the vibrant but vulnerable waters of Southeast Asia.

This is particularly true in the South China Sea, where excessive maritime claims, prolonged disputes involving multiple parties, and nascent militarization of outposts are challenging freedom of the seas and the rules-based system. In the Spratly Islands, larger claimants are piling sand, building facilities and deploying garrisons on disputed features at unprecedented rates. Though senior leaders vowed to prevent it, the question of future militarization of these features looms large on the horizon and on the minds of those in the region.

Even now, ships and aircraft operating nearby these features, in accordance with international law, are subject to superfluous warnings that threaten routine commercial and military operations. Merchant vessels that have navigated shipping lanes freely on behalf of lawful international commerce are diverted after entering so-called military zones. Intimidated by the manner in which some navies, coast guards and maritime militia enforce claims in contested waters, fishermen who trawled the seas freely for generations are facing threats to their livelihoods imposed by nations with unresolved, and often unrecognized claims. Taken together, these actions already transform the status quo in the South China Sea and are eroding the rules-based system in ways that affect security, stability and prosperity for all regional countries.

Alarmed by these trends, claimants and non-claimants alike are transferring larger shares of national wealth to develop more capable naval forces beyond what is needed merely for self-defense, raising the risk of a sustained arc of increased regional tension and

instability. As the Pacific Fleet commander, I'm focused on the behavior of all naval and maritime forces in the region, not on any specific country. I expect all naval and maritime forces, including my own, to operate responsibly, safely and in full compliance with international law. As more maritime actors share the South China Sea without established patterns of safe and professional behavior, tactical friction points at sea could become strategic friction points ashore. If even one regional navy—or maritime forces under its command—does not fly, sail or operate in accordance with international law, then unilateral assertiveness could become the new regional norm, driving increased instability in multiple domains. I think we all can agree that such a trend is unacceptable.

The lack of progress with respect to dispute resolution has opened the door for many of these destabilizing activities. As stated many times before, the United States does not take a position on the merits of competing claims but does care about how these claims are resolved. There are many ways to pursue resolution peacefully in accordance with international law, but global best practices and precedents point to the success of multilateral negotiations, agreements and third-party support. Given the prolonged nature of South China Sea disputes and a prevailing climate of mistrust, I am not surprised by the broad regional view that these issues are best resolved in a multilateral, collaborative, and transparent way. This view is particularly compelling with those smaller claimants who are challenged when faced with a negotiation across what is at best a lopsided table. With so many overlapping claims, how can two sides negotiate fairly without imposing on another claimant's equities?

As we saw with the latest round of regional summits, growing uncertainty and a lack of consensus are straining institutional mechanisms' ability to address disputes in the South China Sea transparently and multilaterally. More than thirteen years have passed since the Declaration on the Conduct of Parties was signed and yet the objective of a Code of Conduct in the South China Sea remains elusive and aspirational. Despite ongoing talks, claimants are not waiting to pursue enforcement of their claims. While it did not include all claimants, the Joint Statement on the ASEAN-U.S. Strategic Partnership was a welcome reaffirmation of the importance of fully implementing the Declaration and expeditiously concluding the Code of Conduct.

Until implementation occurs, the need for credible third parties, like the International Tribunal for the Law of the Seas, to help manage tensions and resolve disputes could not be greater.¹³¹

September 17, 2015, Defense Department Testimony

At a September 17, 2015, hearing before the Senate Armed Services Committee on DOD's Asia-Pacific maritime security strategy, David Shear, the Assistant Secretary of Defense for Asian and Pacific Security Affairs, stated:

I am pleased to be here to discuss maritime issues in the Asia-Pacific and the Department of Defense's new Asia-Pacific Maritime Security Strategy, which we released last month. This strategy reflects the enduring interests the United States has in the region and the premium we place on maritime peace and security in this critical part of the world. Throughout its history, the United States has relied upon and advocated for freedom of the seas, and this freedom is essential to our economic and security interests, nowhere more so than in the Asia-Pacific.

¹³¹ Commander, U.S. Pacific Fleet, Admiral Scott H. Swift, [address at] Cooperative Strategy Forum, Honolulu, Hawaii, December 14, 2015, [Text] As delivered, accessed December 22, 2015, at <http://www.cpf.navy.mil/leaders/scott-swift/speeches/2015/12/cooperative-strategy-forum.pdf>.

It is important to note that while this strategy reflects the Defense Department's maritime objectives and activities in the Asia-Pacific, DoD's efforts are simply one aspect of a much broader U.S. strategy to protect America's principled interests in upholding international law, freedom of navigation, unimpeded lawful commerce, and peaceful resolution of disputes. The United States has a comprehensive strategy to uphold maritime security in the region—one that leverages diplomacy, multilateral institutions, commitment to international law, maritime capacity building, trade, and continued engagement across the region.

The Department of Defense plays an important part in supporting these goals. For seventy years, our robust maritime capabilities, and the presence of U.S. sailors, soldiers, Marines, and airmen, have helped protect the freedom of navigation and commerce upon which the United States and all Asia-Pacific nations rely. As we note in the Asia-Pacific Maritime Security Strategy report, "freedom of the seas" reflects far more than simply freedom of navigation for commercial vessels. It also implies all of the rights, freedoms, and lawful uses of the sea and airspace, including for military ships and aircraft, recognized under international law.

Unfortunately, in recent years, we have seen a number of changes take place in the maritime security environment that have the potential to undermine the freedoms and the peace and security the region has enjoyed for decades. So before I discuss the details of our strategy, allow me to offer some thoughts on the strategic context for this report.

Strategic Context

Over the past several decades, the Asia-Pacific has experienced one of the most tremendous economic transformations in modern history, thanks in no small part to the growth of free and open trade across the region's sea lanes. As Secretary Carter noted, this growth has been the result of a peaceful security environment. While regional trade and prosperity continue to grow, recent developments in the maritime domain, if left unaddressed, could challenge the stable security environment that has enabled this historic progress. These include rapid military modernization, growing competition for resources, and intensifying territorial and maritime disputes.

In recent years, Asia-Pacific nations have significantly increased their surface, subsurface, and air capabilities, leading to a dramatic increase in the number of military planes and vessels operating in close proximity in the maritime domain. At the same time, this military modernization has been accompanied by a corresponding increase in regional law enforcement capabilities, which have become increasingly relevant as some countries, particularly China, are using their civilian assets to assert claims over disputed maritime areas.

While military modernization efforts are a natural and expected element of economic growth, they also increase the potential for dangerous miscalculations or conflict. This places a premium on the need for Asia-Pacific nations to adhere to shared maritime rules of the road, such as the Code for Unplanned Encounters at Sea (CUES), and to pursue increased transparency and risk reduction mechanisms to ensure safe behavior in the maritime domain.

The potential for instability is also exacerbated by the existence of long-standing territorial and maritime disputes across the region, most notably in the South China Sea. While we do not take a position on conflicting territorial claims in the South China Sea, we do emphasize that all maritime claims must be derived from land features in accordance with international law as reflected in the Law of the Sea Convention, and any disputes should be settled peacefully and in accordance with international law. We have called for all claimants to reciprocally and permanently halt land reclamation, the construction of new facilities, and the further militarization of outposts on disputed features. We have also encouraged all claimants to conclude a Code of Conduct by the

time of the East Asia Summit in November, one that would create clear rules of the road in the South China Sea.

China's large-scale land reclamation on disputed features over the past two years has brought concerns about regional stability into sharper focus. While land reclamation is not a new development, and China is not the only claimant to have conducted reclamation, China's recent activities significantly exceed other efforts in size, pace, and effect. China has now reclaimed more than 2,900 acres, amounting to 17 times more land in 20 months than the other claimants combined over the past 40 years, and accounting for approximately 95 percent of all reclaimed land in the Spratly Islands. China has clearly stated that the outposts will have a military component to them, and by undertaking these actions, China is not only unilaterally altering the status quo in the region, they are also complicating the lowering of tensions and the resolution of South China Sea disputes. We continue to encourage all claimants to commit to reciprocally and permanently halt further land reclamation, construction, and militarization of outposts in the South China Sea, in order to create space for diplomatic solutions to emerge.

DoD's Maritime Strategy

The Department has devised a comprehensive and systematic maritime strategy to meet these challenges. Our strategy is focused on three fundamental goals: safeguarding the freedom of the seas; deterring conflict and coercion; and promoting adherence to international law and standards.

In pursuit of these goals, the Department is: strengthening U.S. military capacity; building the maritime capabilities of allies and partners in maritime Asia; reducing the risk of potential conflicts by leveraging military diplomacy; and strengthening regional security institutions.

Strengthening U.S. Military Capacity

As part of the rebalance to the Asia-Pacific, we are strengthening our military capacity to ensure the United States can successfully deter conflict and coercion and respond decisively when needed. To achieve this objective, the Department is investing in new cutting-edge capabilities, deploying our finest maritime capabilities forward, and distributing these capabilities more widely across the region.

We also are enhancing our regional force posture—particularly air and maritime assets—to ensure our ability to execute key missions. We are deploying some of our most advanced surface ships to the Asia-Pacific, including replacing the aircraft carrier USS George Washington in 2015 with the newer USS Ronald Reagan; sending our newest air operations-oriented amphibious assault ship, the USS America, to the region by 2020; deploying two additional Aegis-capable destroyers to Japan; and home-porting all three of our newest class of stealth destroyers, the DDG-1000, with the Pacific fleet. Through these and other efforts, the U.S. Navy will increase the size of Pacific Fleet's overseas assigned forces by approximately 30 percent over the next five years.

This enhanced military capacity will allow the Department to maintain a higher tempo of routine and persistent maritime presence activities across the Asia-Pacific. In short, you will see more of the U.S. Navy in the region in the coming years. U.S. Pacific Command maintains a robust shaping presence in and around the South China Sea, with activities ranging from training and exercises with allies and partners to port calls to Freedom of Navigation Operations and other routine operations. These activities are central to our efforts to dissuade conflict, preserve our access to the region, encourage peaceful resolution of maritime disputes and adherence to the rule of law, and to strengthen our relationships with partners and allies.

A key component of DoD operations falls under the Freedom of Navigation (FON) program, conducted in conjunction with our interagency partners. The Department is

placing new emphasis on these operations, which challenge excessive maritime claims around the world and directly support adherence to international maritime law. Between 2013 and 2014, we increased global FON operations by 84 percent, the majority of which were conducted in the Asia-Pacific. As Secretary Carter has stated, the United States will continue to fly, sail, and operate wherever international law allows, as U.S. forces do all around the world, and our FON Operations are a critical example of this.

The Department is also enhancing its forward presence by using existing assets in new ways, across the entire region, with an emphasis on operational flexibility and maximizing the value of U.S. assets despite the tyranny of distance. This is why the Department is working to develop a more distributed, resilient, and sustainable posture. As part of this effort, the United States will maintain its presence in Northeast Asia, while enhancing defense posture across the Western Pacific, Southeast Asia, and the Indian Ocean. The cornerstone of our forward presence will continue to be our presence in Japan, and in an effort to ensure that this presence is sustainable, we have worked within the alliance to develop a new laydown for the U.S. Marine Corps in the Pacific. Through the bilateral Force Posture Agreement (FPA) with Australia and the Enhanced Defense Cooperation Agreement (EDCA) with the Philippines, the Department will be able to increase our routine and persistent rotational presence in Southeast Asia for expanded training with regional partners.

Through these efforts, there should be no doubt that the United States will maintain the necessary military presence and capabilities to protect our interests and those of our allies and partners against potential threats in the maritime domain.

Building Ally and Partner Capacity

However, our strategy involves far more than U.S. capacity and presence. The bedrock of our approach in the region is our strong network of allies and partners, and the combined capabilities these relationships can bring to bear. Through regular and close consultations with our allies and partners from Northeast Asia to the Indian Ocean, the Department of Defense is working to bolster the maritime capacity and capabilities of countries in the region.

First, we are building greater interoperability and developing more integrated operations with our allies and partners. For example, with our close ally Japan, we are working to improve the maritime-related capabilities of the Japan Self-Defense Forces. As Japan acquires advanced capabilities such as V-22 Ospreys, E-2D Hawkeyes, and Global Hawk Unmanned Aerial Vehicles, we are building a stronger and more interoperable alliance. Our expanded bilateral cooperation will now encompass a range of activities, from peacetime cooperation on shared maritime domain awareness, up to cooperation across a range of contingencies. In Southeast Asia, the Department is assisting the Philippines to more effectively establish a minimum credible defense, and we have established new bilateral working groups with Vietnam, Indonesia, and Singapore to support their maritime defense requirements. And in South Asia, we are working with the Indian Navy on aircraft carrier technology sharing and design; the U.S.-India Joint Aircraft Carrier Working Group (JACWG) had its first formal meeting in August, led by Vice ADM Cheema, the Commander in Chief of India's Western Fleet.

We also are increasing the size, frequency, and sophistication of our regional exercise program, with a particular focus on developing new exercises with Southeast Asian partners and expanding our multilateral exercise program. A large contingent of U.S., Philippine, and Australian military personnel participated in this year's exercise Balikatan in the Philippines, including observers from Japan. DoD is continuing to expand its maritime engagements elsewhere in Southeast Asia, with important partners like Indonesia, Malaysia, and Vietnam. In Indonesia, the April 2015 iteration of the Sea Surveillance Exercises included a flight portion over the South China Sea for the first time, and the U.S. Marine Corps participated in an amphibious exercise with the

Malaysian Armed Forces. In Vietnam, we are rapidly growing our maritime training, and in just six years, our naval cooperation has grown from a simple port visit to multi-day engagements that allow our sailors to better understand each other's operations and procedures.

But our maritime capacity building efforts in Southeast Asia do not stop there. As Secretary Carter announced at the Shangri-La Dialogue, the Department is implementing a new Southeast Asia Maritime Security Initiative (MSI) that will increase training and exercises, personnel support, and maritime domain awareness capabilities for our partners in Southeast Asia. As part of MSI, DoD, in coordination with the Department of State, will consult with our allies and partners to define the requirements needed to accomplish the goals of MSI and explore other enduring opportunities for maritime collaboration. In the near term, we are focused on several lines of effort: working with partners to expand regional maritime domain awareness capabilities and develop a regional common operating picture; providing the necessary infrastructure, logistics support, and operational procedures to enable more effective maritime response operations; strengthening partner nation operational capabilities through expanded maritime exercises and engagements; helping partners strengthen their maritime institutions, governance, and personnel training; and identifying modernization and new system requirements for critical maritime security capabilities. I not only thank you for remaining focused on this important effort, but also urge your continued support as we move forward to implement this strategy.

Reducing Risk

In addition to our efforts to improve regional capabilities, the Department is also leveraging defense diplomacy to build greater transparency, reduce the risk of miscalculation or conflict, and promote shared maritime rules of the road. The Department is pursuing a two-pronged approach to achieve this objective, one focusing on our bilateral relationship with China, and the other focused on region-wide risk reduction measures.

In recent years, we have reinvigorated efforts to expand bilateral risk reduction mechanisms with China, including the Military Maritime Consultative Agreement (MMCA) and the establishment of an historic Memorandum of Understanding (MOU) on Rules of Behavior for Safety of Air and Maritime Encounters in 2014. This MOU established a common understanding of operational procedures for air and maritime encounters to reduce the possibility of misunderstanding between the U.S. and Chinese militaries. The MOU currently includes an annex on ship-to-ship encounters and we are working to expand it further by the end of 2015. Already, U.S.-China defense diplomacy has yielded positive results; there have been no unsafe intercepts since August 2014. In further efforts to reduce risk, U.S. Navy and PLA Navy vessels have successfully employed CUES during recent interactions, lowering the likelihood of miscalculations that could lead to dangerous escalation.

Of course, reaching agreement on bilateral risk reduction measures with China is necessary, but not sufficient. The Department is also working to help the Association of Southeast Asian Nations (ASEAN) and other regional partners establish regional risk reduction mechanisms, such as operational-level hotlines to establish more reliable and routine crisis communication mechanisms. As I mentioned, MSI will help develop a regional common operating picture to reduce risk, but we also encourage the efforts of countries that seek to reduce tensions through their own initiatives—such as Indonesia and Malaysia—who recently announced their intention to exchange maritime envoys in an effort to increase mutual transparency. We also have supported the efforts between China and Japan to do the same in the East China Sea.

Building Regional Architecture

Finally, we are working to strengthen regional security institutions and encourage the development of a transparent, integrated, and diversified effective regional security architecture. ASEAN is an increasingly important DoD partner, and the Department is continuing to enhance its engagement in ASEAN-based institutions such as the ASEAN Defense Ministers Meeting Plus (ADMM-Plus). To this end, Secretary Carter will travel to Kuala Lumpur in November for the next ADMM-Plus meeting. This will follow a host of new initiatives and engagements with various ASEAN-related institutions. For example, at the May 2015 Shangri-La Dialogue in Singapore, the Secretary of Defense announced DoD's commitment to deploy a technical advisor to augment the U.S. Mission to ASEAN in support of ASEAN's maritime security efforts, and we are making progress toward that goal. We are also leveraging informal opportunities to strengthen regional cooperation, such as the first U.S.-ASEAN Defense Forum then-Secretary of Defense Chuck Hagel hosted in Hawaii in April 2014. Through these venues, we aim to promote candid conversations about ongoing challenges in the maritime domain, and encourage greater information sharing and cooperative solutions.

At its core, any discussion about the future of the Asia-Pacific naturally involves a discussion about maritime security, given the defining characteristic of the maritime domain in the region. Our strategy enables countries in the region to have confidence in our conviction to uphold our principled maritime interests. Our strategy also is designed to strengthen the rules-based order, where laws and standards, not size and strength, determine outcomes to disputes. We are not alone in seeking to advance this vision for the region, which aligns our interests with our values; indeed, it is widely shared by countries across the region that eagerly support our efforts. Even as we address immediate challenges to our interests and those of our allies and partners, we remain committed to this longer term goal.

Conclusion

The Asia-Pacific and its maritime waterways remain critical to U.S. security. The Department is actively working to stay ahead of the evolving maritime security environment in the Asia-Pacific by implementing a comprehensive strategy that will protect peace and stability in the maritime domain. Together with our interagency colleagues and regional allies and partners, the Department will help ensure that maritime Asia remains open, free, and secure in the decades ahead.¹³²

September 17, 2015, U.S. Pacific Command Testimony

At the same September 17, 2015, hearing before the Senate Armed Services Committee hearing on DOD's Asia-Pacific maritime security strategy, Admiral Harry B. Harris, Jr., Commander, U.S. Pacific Command (PACOM), stated:

The United States is a maritime nation and the importance of Asia-Pacific region to our Nation's security and prosperity cannot be overstated. Almost 30 percent of the world's maritime trade—\$5.3 trillion—transits the South China Sea annually. This includes \$1.2 trillion in ship-borne trade bound for the United States. The Asia-Pacific region is critical for our nation's economic future.

For decades, this region has remained free from major conflicts, allowing the United States and other Pacific nations, including China, to enjoy the benefits of its vast maritime spaces. However, the security environment is changing, potentially placing this stability at risk. Rapid economic and military modernization and a growing demand for

¹³² ASD [Assistant Secretary of Defense] [David] Shear, Statement for the Record, SASC [Senate Armed Services Committee] Hearing on DoD Asia-Pacific Maritime Security Strategy, [September 17, 2015].

resources have increased the potential for conflict. Peacetime freedom of navigation is under pressure.

If not handled properly, territorial and maritime disputes in the East and South China Seas could disrupt stability throughout the region. Claimants to disputed areas routinely use maritime law enforcement and coast guard vessels to enforce their claims while nominally keeping these issues out of the military sphere. While no country appears to desire military conflict, tactical miscalculations can lead to strategic consequences.

The United States does not take sides on issues of sovereignty with respect to these territorial disputes, but we do insist that all maritime claims be derived from naturally-formed land features in accordance with customary international law, as reflected in the Law of the Sea Convention. The United States also emphasizes the importance of peacefully resolving maritime and territorial disagreements in accordance with international law, and we oppose the use of intimidation, coercion, or aggression. The U.S. believes every nation, large or small, should have the opportunity to develop and prosper, in line with international laws and standards. If one country selectively ignores these rules for its own benefit, others will undoubtedly follow, eroding the international legal system and destabilizing regional security and the prosperity of all Pacific states. Part of PACOM's role in the Asia-Pacific Maritime Strategy will be ensuring all nations have continued access to the maritime spaces vital to the global economy.

International recognition and protection of freedom of navigation is vital to the world's economy and our way of life. To safeguard the freedom of the seas, USPACOM routinely exercises with allies and partners, executes Freedom of Navigation operations, and maintains a robust presence throughout the region. These activities help build partner capacity to contribute to the region's security, enhance relationships, improve understanding of shared challenges, and message the U.S.'s resolve.

The Asia-Pacific Maritime Security Strategy outlines our plan to safeguard freedom of the seas, deter conflict, and promote adherence to international law and standards. It reaffirms our commitment to the principles found in UNCLOS. In accordance with this strategy and in pursuit of these goals, Pacific Command's forces will fly, sail, and operate wherever international law allows, while continuing to strengthen the relationships and rule of law that enabled the peaceful rise of every nation in the region.

A fundamental factor in the feasibility of this new strategy has been the Rebalance to the Pacific. The Rebalance, initiated almost four years ago by President Obama, set the conditions for the implementation of this strategy. The Rebalance strengthened treaty alliances and partnerships, increased partner capacity and cooperation, improved interoperability, and increased security capabilities in the region. DoD's new maritime strategy capitalizes on the momentum of the Rebalance and continues with its initiatives. In executing the new maritime strategy, PACOM will continue to:

- Employ the most advanced and capable platforms as they are deployed or assigned to the Pacific.
- Use the forward presence of military forces to engage allies and partners and deter aggression.
- Reinforce internationally accepted rules and norms including the concepts of freedom of navigation and innocent passage.
- Train and exercise with allies and partners to increase interoperability and build trust.
- Implement risk reduction mechanisms such as the Code for Unplanned Encounters at Sea and the U.S.-China Confidence Building Measures to help prevent accidents and tactical miscalculations.

□ Continue deepening alliances and partnerships through strategic efforts in places like Japan, Korea, Australia, Thailand and the Philippines, while building new and deeper military relationships in places like Singapore, India, Vietnam, and with other likeminded friends and partners.¹³³

May 13, 2015, State Department Testimony

At a May 13, 2015, hearing before the Senate Foreign Relations Committee on safeguarding American interests in the ECS and SCS, Daniel Russel, Assistant Secretary of State, Bureau of East Asian and Pacific Affairs, stated:

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

¹³³ Statement of Admiral Harry B. Harris, Jr., U.S. navy, Commander, U.S. Pacific Command, Before the Senate Armed Services Committee on Maritime Security Strategy in the Asia-Pacific Region, September 17, 2015.

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.¹³⁴

¹³⁴ 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, May 13, 2015, [on] Maritime Issues in East Asia.

Appendix C. Operational Rights in EEZs

This appendix presents additional background information on the issue of operational rights in EEZs.

As mentioned earlier, if China's position on whether coastal states have a right under UNCLOS to regulate the activities of foreign military forces in their EEZs were to gain greater international acceptance under international law, it could substantially affect U.S. naval operations not only in the SCS and ECS (see **Figure C-1** for EEZs in the SCS and ECS), but around the world, which in turn could substantially affect the ability of the United States to use its military forces to defend various U.S. interests overseas. As shown in **Figure C-2**, significant portions of the world's oceans are claimable as EEZs, including high-priority U.S. Navy operating areas in the Western Pacific, the Persian Gulf, and the Mediterranean Sea.¹³⁵

Some observers, in commenting on China's resistance to U.S. military survey and surveillance operations in China's EEZ, have argued that the United States would similarly dislike it if China or some other country were to conduct military survey or surveillance operations within the U.S. EEZ. Skeptics of this view argue that U.S. policy accepts the right of other countries to operate their military forces freely in waters outside the 12-mile U.S. territorial waters limit, and that the United States during the Cold War acted in accordance with this position by not interfering with either Soviet ships (including intelligence-gathering vessels known as AGIs)¹³⁶ that operated close to the United States or with Soviet bombers and surveillance aircraft that periodically flew close to U.S. airspace. The U.S. Navy states that

When the commonly recognized outer limit of the territorial sea under international law was three nautical miles, the United States recognized the right of other states, including the Soviet Union, to exercise high seas freedoms, including surveillance and other military operations, beyond that limit. The 1982 Law of the Sea Convention moved the outer limit of the territorial sea to twelve nautical miles. In 1983, President Reagan declared that the United States would accept the balance of the interests relating to the traditional uses of the oceans reflected in the 1982 Convention and would act in accordance with those provisions in exercising its navigational and overflight rights as long as other states did likewise. He further proclaimed that all nations will continue to enjoy the high seas rights and freedoms that are not resource related, including the

¹³⁵ The National Oceanic and Atmospheric Administration (NOAA) calculates that EEZs account for about 30.4% of the world's oceans. (See the table called "Comparative Sizes of the Various Maritime Zones" at the end of "Maritime Zones and Boundaries, accessed June 6, 2014, at http://www.gc.noaa.gov/gcil_maritime.html, which states that EEZs account for 101.9 million square kilometers of the world's approximately 335.0 million square kilometers of oceans.)

¹³⁶ AGI was a U.S. Navy classification for the Soviet vessels in question in which the A meant auxiliary ship, the G meant miscellaneous purpose, and the I meant that the miscellaneous purpose was intelligence gathering. One observer states:

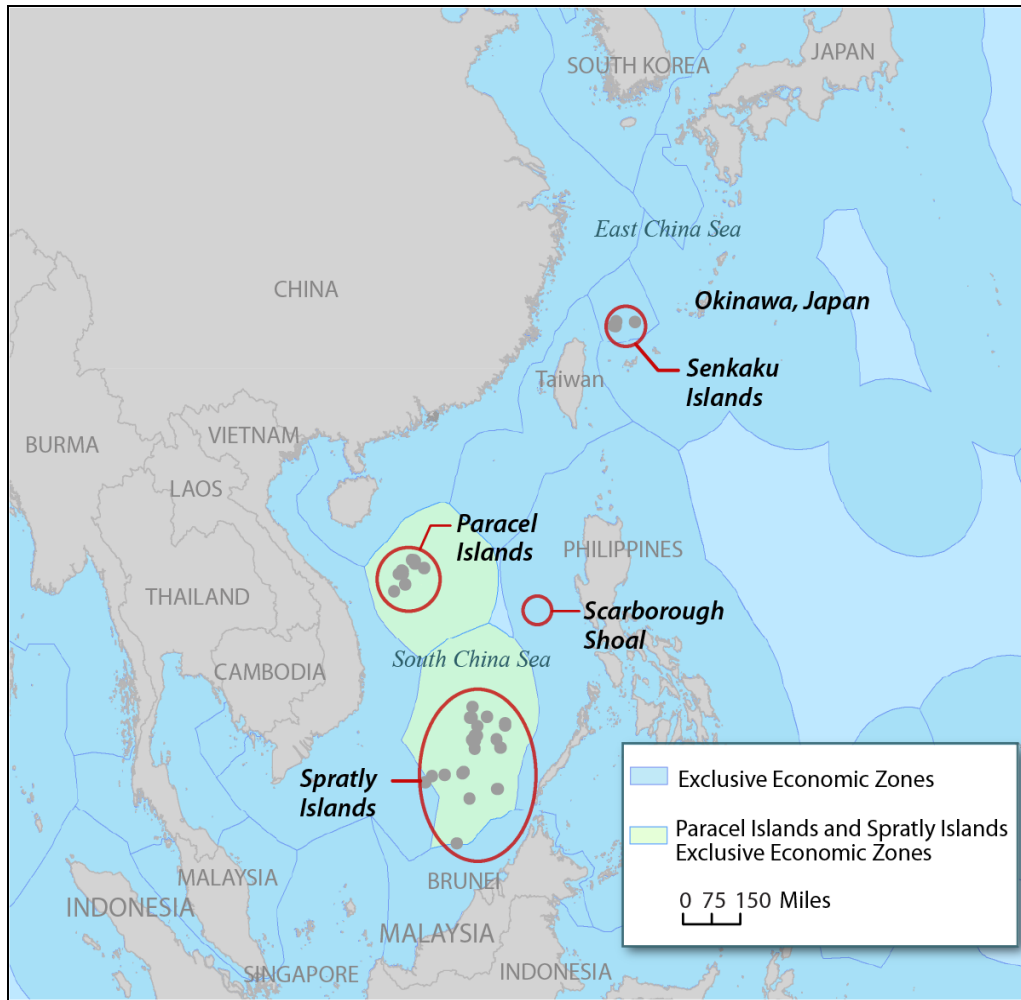
During the Cold War it was hard for an American task force of any consequence to leave port without a Soviet "AGI" in trail. These souped-up fishing trawlers would shadow U.S. task forces, joining up just outside U.S. territorial waters. So ubiquitous were they that naval officers joked about assigning the AGI a station in the formation, letting it follow along—as it would anyway—without obstructing fleet operations.

AGIs were configured not just to cast nets, but to track ship movements, gather electronic intelligence, and observe the tactics, techniques, and procedures by which American fleets transact business in great waters.

(James R. Holmes, "China's Small Stick Diplomacy," *The Diplomat*, May 21, 2012, accessed October 3, 2012, at <http://thediplomat.com/2012/05/21/chinas-small-stick-diplomacy/>)

freedoms of navigation and overflight, in the Exclusive Economic Zone he established for the United States consistent with the 1982 Convention.¹³⁷

Figure C-1. EEZs in South China Sea and East China Sea



Source: Map prepared by CRS using basemaps provided by Esri. EEZs are from the Flanders Marine Institute (VLIZ) (2011). Maritime Boundaries Geodatabase, version 6. Available at <http://www.vliz.be/vmdcdata/marbound>.

Note: Disputed islands have been enlarged to make them more visible.

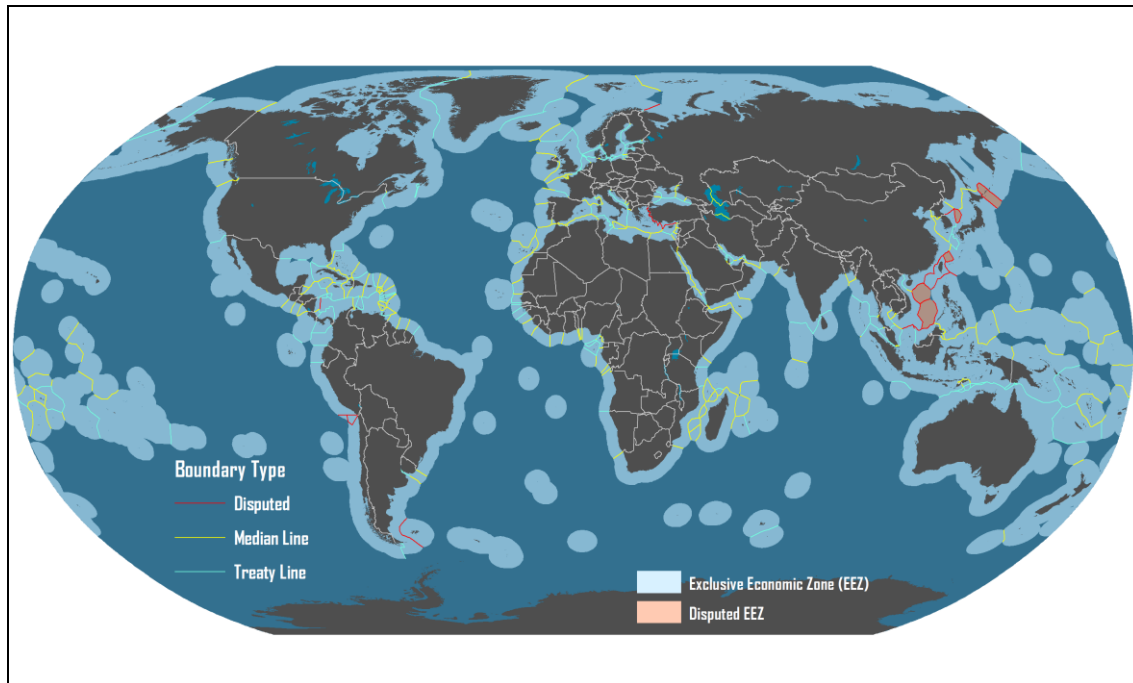
DOD states that

the PLA Navy has begun to conduct military activities within the Exclusive Economic Zones (EEZs) of other nations, without the permission of those coastal states. Of note, the United States has observed over the past year several instances of Chinese naval activities in the EEZ around Guam and Hawaii. One of those instances was during the execution of the annual Rim of the Pacific (RIMPAC) exercise in July/August 2012. While the United States considers the PLA Navy activities in its EEZ to be lawful, the activity undercuts

¹³⁷ Navy Office of Legislative Affairs email to CRS dated September 4, 2012.

China's decades-old position that similar foreign military activities in China's EEZ are unlawful.¹³⁸

Figure C-2. Claimable World EEZs



Source: Map designed by Dr. Jean-Paul Rodrigue, Department of Global Studies & Geography, Hofstra University, using boundaries plotted from Maritime Boundaries Geodatabase available at <http://www.vliz.be/vmdcdata/marbound>. The map is copyrighted and used here with permission. A version of the map is available at <http://people.hofstra.edu/geotrans/eng/ch5en/conc5en/EEZ.html>.

In July 2014, China participated, for the first time, in the biennial U.S.-led Rim of the Pacific (RIMPAC) naval exercise, the world's largest multilateral naval exercise. In addition to the four ships that China sent to participate in RIMPAC, China sent an uninvited intelligence-gathering ship to observe the exercise without participating in it.¹³⁹ The ship conducted operations inside U.S. EEZ off Hawaii, where the exercise was located. A July 29, 2014, press report stated that

The high profile story of a Chinese surveillance ship off the cost of Hawaii could have a positive aspect for U.S. operations in the Pacific, the head of U.S. Pacific Command (PACOM) said in a Tuesday [July 29] afternoon briefing with reporters at the Pentagon.

"The good news about this is that it's a recognition, I think, or acceptance by the Chinese for what we've been saying to them for sometime," PACOM commander Adm. Samuel Locklear told reporters.

¹³⁸ Department of Defense, *Annual Report to Congress [on] Military and Security Developments Involving the People's Republic of China 2013*, p. 39.

¹³⁹ See, for example, Sam LaGrone, "China Sends Uninvited Spy Ship to RIMPAC," *USNI News*, July 18, 2014; William Cole, "Chinese Spy Ship Off Hawaii Keeps Track of RIMPAC," *Star Advertiser*, July 18, 2014; Jeremy Page, "Chinese Ship Spies on U.S.-Led Drills," *Wall Street Journal*, July 19, 2014; Andrew S. Erickson and Emily de La Bruyere, "Crashing Its Own Party: China's Unusual Decision to Spy On Joint Naval Exercises," *Wall Street Journal, China Real Time*, July 19, 2014; Phil Stewart, "Update 1—China Sends Spy Ship Off Hawaii During U.S.-Led Drills," *Reuters*, July 21, 2014.

“Military operations and survey operations in another country’s [Exclusive Economic Zone]—where you have your own national security interest—are within international law and are acceptable. This is a fundamental right nations have.”¹⁴⁰

One observer stated:

The unprecedented decision [by China] to send a surveillance vessel while also participating in the RIMPAC exercises calls China’s proclaimed stance on international navigation rights [in EEZ waters] into question...

During the Cold War, the U.S. and Soviets were known for spying on each other’s exercises. More recently, Beijing sent what U.S. Pacific Fleet spokesman Captain Darryn James called “a similar AGI ship” to Hawaii to monitor RIMPAC 2012—though that year, China was not an official participant in the exercises....

... the spy ship’s presence appears inconsistent with China’s stance on military activities in Exclusive Economic Zones (EEZs).... That Beijing’s AGI [intelligence-gathering ship] is currently stationed off the coast of Hawaii suggests either a double standard that could complicate military relations between the United States and China, or that some such surveillance activities are indeed legitimate—and that China should clarify its position on them to avoid perceptions that it is trying to have things both ways....

In its response to the Chinese vessel’s presence, the USN has shown characteristic restraint. Official American policy permits surveillance operations within a nation’s EEZ, provided they remain outside of that nation’s 12-nautical mile territorial sea (an EEZ extends from 12 to 200 nautical miles unless this would overlap with another nation’s EEZ). U.S. military statements reflect that position unambiguously....

That consistent policy stance and accompanying restraint have characterized the U.S. attitude toward foreign surveillance activity since the Cold War. Then, the Soviets were known for sending converted fishing ships equipped with surveillance equipment to the U.S. coast, as well as foreign bases, maritime choke points, and testing sites. The U.S. was similarly restrained in 2012, when China first sent an AGI to observe RIMPAC....

China has, then, sent a surveillance ship to observe RIMPAC in what appears to be a decidedly intentional, coordinated move—and in a gesture that appears to contradict previous Chinese policy regarding surveillance and research operations (SROs). The U.S. supports universal freedom of navigation and the right to conduct SROs in international waters, including EEZs, hence its restraint when responding to the current presence of the Chinese AGI. But the PRC opposes such activities, particularly on the part of the U.S., in its own EEZ....

How then to reconcile the RIMPAC AGI with China’s stand on surveillance activities? China maintains that its current actions are fully legal, and that there is a distinct difference between its operations off Hawaii and those of foreign powers in its EEZ. The PLAN’s designated point of contact declined to provide information and directed inquiries to China’s Defense Ministry. In a faxed statement to Reuters, the Defense Ministry stated that Chinese vessels had the right to operate “in waters outside of other country’s territorial waters,” and that “China respects the rights granted under international law to relevant littoral states, and hopes that relevant countries can respect the legal rights Chinese ships have.” It did not elaborate.

As a recent *Global Times* article hinted—China’s position on military activities in EEZs is based on a legal reading that stresses the importance of domestic laws. According to

¹⁴⁰ Sam LaGrone, “U.S. Pacific Commander: Chinese Spy SHip Off Hawaii Has An Upside,” *USNI News*, July 29, 2014. Material in brackets as in original. See also Paul McLeary, “PACOM Chief: US Not Worried About Chinese Intel Ship off Hawaiian Coast,” *Defense News*, July 29, 2014.

China maritime legal specialist Isaac Kardon, China interprets the EEZ articles in the United Nations Convention on the Law of the Sea (UNCLOS) as granting a coastal state jurisdiction to enforce its domestic laws prohibiting certain military activities—e.g., those that it interprets to threaten national security, economic rights, or environmental protection—in its EEZ. China’s domestic laws include such provisions, while those of the United States do not. Those rules would allow China to justify its seemingly contradictory approach to AGI operations—or, as Kardon put it, “to have their cake and eat it too.” Therefore, under the Chinese interpretation of UNCLOS, its actions are neither hypocritical nor illegal—yet do not justify similar surveillance against China.

Here, noted legal scholar Jerome Cohen emphasizes, the U.S. position remains the globally dominant view—“since most nations believe the coastal state has no right to forbid surveillance in its EEZ, they do not have domestic laws that do so.” This renders China’s attempted constraints legally problematic, since “international law is based on reciprocity.” To explain his interpretation of Beijing’s likely approach, Cohen invokes the observation that a French commentator made several decades ago in the context of discussing China’s international law policy regarding domestic legal issues: “I demand freedom from you in the name of your principles. I deny it to you in the name of mine.”

Based on his personal experience interacting with Chinese officials and legal experts, Kardon adds, “China is increasingly confident that its interpretation of some key rules and—most critically—its practices reinforcing that interpretation can over time shape the Law of the Sea regime to suit its preferences.”

But China is not putting all its eggs in that basket. There are increasing indications that it is attempting to promote its EEZ approach vis-à-vis the U.S. not legally but politically. “Beijing is shifting from rules- to relations-based objections,” Naval War College China Maritime Studies Institute Director Peter Dutton observes. “In this context, its surveillance operations in undisputed U.S. EEZs portend an important shift, but that does not mean that China will be more flexible in the East or South China Seas.” The quasi-authoritative Chinese commentary that has emerged thus far supports this interpretation....

[A recent statement from a Chinese official] suggests that Beijing will increasingly oppose U.S. SROs on the grounds that they are incompatible with the stable, cooperative Sino-American relationship that Beijing and Washington have committed to cultivating. The Obama Administration must ensure that the “new-type Navy-to-Navy relations” that Chinese Chief of Naval Operations Admiral Wu Shengli has advocated to his U.S. counterpart does not contain expectations that U.S. SROs will be reduced in nature, scope, or frequency....

China’s conducting military activities in a foreign EEZ implies that, under its interpretation, some such operations are indeed legal. It therefore falls to China now to clarify its stance—to explain why its operations are consistent with international law, and what sets them apart from apparently similar American activities.

If China does not explain away the apparent contradiction in a convincing fashion, it risks stirring up increased international resentment—and undermining its relationship with the U.S. Beijing is currently engaging in activities very much like those it has vociferously opposed. That suggests the promotion of a double standard untenable in the international system, and very much at odds with the relationships based on reciprocity, respect, and cooperation that China purports to promote....

If, however, China chooses to remain silent, it will likely have to accept—at least tacitly, without harassing—U.S. surveillance missions in its claimed EEZ. So, as we watch for

clarification on Beijing's legal interpretation, it will also be important to watch for indications regarding the next SROs in China's EEZ.¹⁴¹

In September 2014, a Chinese surveillance ship operated in U.S. EEZ waters near Guam as it observed a joint-service U.S. military exercise called Valiant Shield. A U.S. spokesperson for the exercise stated: "We'd like to reinforce that military operations in international commons and outside of territorial waters and airspace is a fundamental right that all nations have.... The Chinese were following international norms, which is completely acceptable."¹⁴²

¹⁴¹ Andrew S. Erickson and Emily de La Bruyere, "China's RIMPAC Maritime-Surveillance Gambit," *The National Interest*, July 29, 2014. See also Andrew S. Erickson, "PRC National Defense Ministry Spokesman Sr. Col. Geng Yansheng Offers China's Most-Detailed Position to Date on Dongdiao-class Ship's Intelligence Collection in U.S. EEZ during RIMPAC Exercise," *Andrew S. Erickson*, August 1, 2014. See also Michael Auslin, "Wishful Thinking on China's Navy," *AEIdeas*, July 30, 2014.

¹⁴² Erik Slavin, "Chinese Ship Spies on Valiant Shield, And That's OK With US," *Stars and Stripes*, September 22, 2014.

Appendix D. Options Suggested by Observers for Strengthening U.S. Actions to Counter China's "Salami-Slicing" Strategy

This appendix presents a bibliography of recent writings by observers who have suggested options for strengthening U.S. actions for countering China's "salami-slicing" strategy, organized by date, beginning with the most-recent item.

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¹⁴³ PacNet also posted a response to this piece; see Sean P. Quirk, "Response to PacNet #35 'Rescind China's Invitation to Join RIMPAC,'" Center for Strategic & International Studies, PacNet Number 35R, April 19, 2016.

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