

## Remarks at the Fifth Annual South China Sea Conference

### Remarks

**Daniel R. Russel**

**Assistant Secretary, Bureau of East Asian and Pacific Affairs**

**The Center for Strategic and International Studies**

**Washington, DC**

**July 21, 2015**

---

### *As prepared for delivery*

Good afternoon. Thank you, Murray, for the kind introduction. It's always a pleasure to be back at CSIS.

Let me start by laying out the essential context.

The United States has always had interests in Asia. These interests have only grown stronger as our economies have become more interconnected, and as our people have grown closer through travel and the Internet.

For the last seven decades, we've worked with allies and partners in the region to build shared prosperity and shared security. In the last six-and-a-half years, in particular, we've invested in building cooperative relations with every country in the region. This is the rebalance.

There are many types of investment the world, and Asia, needs in order to grow—investment in people, first and foremost; investment in business; in physical infrastructure, and just as important; investment in “cooperative capital” – the international law and order infrastructure that facilitates the interactions between countries, that advances regional economic integration, and helps states peacefully manage and settle disputes.

The U.S. makes balanced investments in all of these areas.

The last one, the international rules-based system, has been the ‘essential but underappreciated underpinning’ of global growth over the last 70 years. That's especially true in Asia, where many countries have grown – and continue to grow – their economies through international trade, especially trade with the U.S.

Asia's nations have achieved so much in recent decades—reducing poverty, raising living standards, and creating opportunities for their people. They've done it through hard work,

cooperation with each other, partnership with the U.S., and by jointly developing and operating within a rules-based system.

And we are helping them to do even more:

We're taking broad-based, sustainable economic growth to a new level with the Trans-Pacific Partnership.

The TPP embraces a future that reaches beyond trade and investment to include high standards for environmental protection, for labor rights.

TPP's provisions will support a thriving, growing, entrepreneurial middle class that is able to connect with the world and do business through a free, open Internet.

We're taking the security architecture that underpins this brighter future to a new level by investing in regional institutions like the East Asia Summit and the Association of Southeast Asian Nations (ASEAN), in addition to our longstanding work with global ones like the U.N.

These institutions uphold norms and tackle tough challenges; they can help bring parties together to hash out disagreements, or when bilateral diplomacy doesn't succeed, help to have those disputes resolved peacefully in a fair, impartial manner.

Standing behind and supporting these institutions is our system of alliances and partnerships.

This network has helped keep the peace in the region since World War II. And through a series of important agreements with key security partners over the last few years, we've refreshed them so they'll last for decades to come.

We're taking environmental protection to a new level, through our work on ocean preservation, on combatting climate change and its effects, and through programs like the Lower Mekong Initiative that help make economic growth environmentally sustainable.

As we pursue this broad, forward-looking vision for the region, we've worked constructively with China—a lot.

We've built greater understanding through President Obama's 20 some-odd meetings with the Chinese President or Premier; and through the Strategic and Economic Dialogue and an alphabet soup of other consultations.

We've put a floor under the relationship so it can withstand tensions or even a crisis.

And in the last couple years, all of this work has paid off—we've made measurable progress in a range of cooperative efforts: in low-carbon policies; countering piracy at sea; in stemming the Ebola crisis; supporting a better future for Afghanistan; and much more.

But unfortunately, the situation in the South China Sea does not fit this cooperative pattern.

Now, the U.S. is not a claimant. As I've said here at CSIS, these maritime and territorial disputes are not intrinsically a US-China issue. The issue is between China and its neighbors and – ultimately – it's an issue of what kind of power China will become. But for a variety of reasons, the competing claims and problematic behavior in the South China Sea have emerged as a serious area of friction in the U.S.-China relationship.

Let's take a step back and recall, as I'm sure you discussed this morning, that there is a history of competing assertions of sovereignty and jurisdiction in the South China Sea, and even violent conflicts in 1974 and 1988.

There are no angels here. The occupation of land features in this contested space over the years looked a lot like "squatters' rights." But that is something that in 2002 the claimants agreed to stop doing.

In that year, all the claimants (and the ASEAN states) signed a Declaration of Conduct. In it, and on other occasions, they have committed "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 ... inhabiting the presently uninhabited... features and to handle their differences in a constructive manner".

In the Declaration of Conduct, they also committed to negotiate a Code of Conduct that would lay out and lock in responsible behavior. But in the ensuing 13 years, work on the Code has stalled, and the Declaration has not been sufficient to prevent confrontations or to help claimants resolve these disputes peacefully.

Recently, the level of concern in the region has escalated as the scale and speed of China's reclamation work has become public. The Chairman's statement at the ASEAN leaders' summit in April was unusually blunt, speaking of "serious concerns" about "land reclamation being undertaken in the South China Sea, which has eroded trust and confidence and may undermine peace, security and stability...."

While China's statement on June 16 that it would stop reclamation work "soon" was presumably intended to reassure, its effect was in fact alarming since the statement went on to warn that China would construct military facilities on these reclaimed outposts.

So we are pushing the parties to revive the spirit of cooperation embodied in the 2002 Declaration of Conduct.

We see a broad consensus within ASEAN on a path forward to reduce tensions and promote peaceful handling of these disputes. And we support ASEAN's efforts to expeditiously conclude

an effective, rigorous Code of Conduct that builds on the Declaration by translating its cooperative spirit into specific “do’s and don’ts.”

But to make this happen, the parties need to create room for diplomacy.

In the famous words of Rich Armitage’s Dictum Number 1, “when you find yourself in a hole – stop digging.” That is the advice we are giving to all the claimants: lower the temperature and create breathing room by: stopping land reclamation on South China Sea features; stopping construction of new facilities; and stopping militarization of existing facilities.

These are steps the parties could commit to immediately; steps that would cost them nothing; steps that would significantly reduce risks; steps that would open the door to eventual resolution of the disputes.

Secretary Kerry has made this point to Chinese leaders and to the other claimants, and will be meeting with his counterparts early next month in Malaysia at the ASEAN Regional Forum, or ARF, to push for progress on this important priority.

Now, steps to exercise restraint through a moratorium and a Code of Conduct will create diplomatic space and help keep the peace, but they won’t address the question of maritime boundaries or sovereignty over land features.

So what’s the way forward?

When it comes to competing claims, two of the main peaceful paths available to claimants are negotiations and arbitration.

Countries across the region in fact have resolved maritime and territorial disputes peacefully and cooperatively, whether through direct negotiations or through third-party dispute settlement mechanisms.

Just a few examples: Indonesia and the Philippines recently agreed on their maritime boundary;

Malaysia and Singapore used international court and tribunal proceedings to resolve disputes concerning the Singapore Strait; and the International Tribunal for the Law of the Sea delimited the maritime boundary between Bangladesh and Burma.

A common thread runs through the maritime boundary disputes that have been resolved peacefully: the parties asserted maritime claims based on land features, and were prepared to resolve those disputes in accordance with international law.

This is why we’ve consistently called on all claimants to clarify the scope of their claims in the South China Sea, in accordance with international law as reflected in the 1982 Law of the Sea

Convention. Doing so would narrow the differences and offer the basis for negotiations and cooperative solutions.

Regrettably, I don't know anyone in the region who believes that a negotiated settlement between China and other claimants is attainable in the current atmosphere.

And the multiple competing claims in some parts of the South China Sea make negotiations that much more difficult.

And then there is the absolutist political position taken by some claimants who insist that their own claims are "indisputable" and represent territory – however distant from their shores – that was "entrusted to them by ancestors" and who vow never to relinquish "one inch."

What about arbitration? As this audience knows, there currently is an arbitration case pending under the Law of the Sea Convention between the Philippines and China.

At the heart of the case is the question of the so-called "Nine Dash Line" and whether that has a legal basis under the international law of the sea. It also asks what maritime entitlements, if any, are generated by features that China occupies? In other words, regardless of whose jurisdiction it may fall under, would Mischief Reef, for example, be entitled to a 12 nautical mile territorial sea? A 200nm exclusive economic zone? A continental shelf?

Now, it's important to note that the Tribunal is not being asked – and is not authorized to rule – on the question of sovereignty over disputed land features. Everyone recognizes that the sovereignty issue is beyond the Tribunal's jurisdiction. Claimants would need to agree to bring that sort of sovereignty dispute before a court or tribunal, typically the ICJ.

But under the Law of the Sea Convention, the Tribunal is authorized to first determine whether it has jurisdiction under the Convention over any of the Philippines' claims in the case and, if it does, whether the Philippines' arguments have merit.

The United States, of course, is not a party to this arbitration and does not take a position on the merits of the case. But when they became parties to the Convention, both the Philippines and China agreed to its compulsory dispute settlement regime.

Under this regime, the decision of the arbitral tribunal is legally binding on the parties to the dispute. It's a treaty. In keeping with the rule of law, both the Philippines and China are obligated to abide by whatever decision may be rendered in the case, whether they like it or not.

Now China has argued that the tribunal lacks jurisdiction, and the tribunal has specifically considered this issue in recent hearings in The Hague, looking very carefully at a position paper published by China. But if the Tribunal concludes that it in fact has jurisdiction in this case, it

will proceed to the merits, including potentially the question of the legality of China’s “Nine-Dash Line.”

Should it then rule that the “Nine-Dash Line” is not consistent with the Law of the Sea Convention, and particularly if the Tribunal ruled that the features cited in the case do not generate EEZ or continental shelf entitlements, the scope of the overlapping maritime claims – and hopefully the points of friction – would be significantly reduced.

But it’s also important to recognize that even in this outcome, important sovereignty and boundary issues would remain unresolved.

This is as good a time as any to acknowledge (as China has often pointed out) that the United States has not acceded to the Law of the Sea Convention, although accession has been supported by every Republican and Democratic administration since the Convention was signed and sent to the Senate in 1994. It is supported by the U.S. military, by industry, environmental groups, and other stakeholders.

For the United States to secure the benefits of accession, the Senate has to provide its advice and consent, as I hope it ultimately will.

But even as we encourage the parties to work for long term solutions, we are obligated to protect U.S. interests. Let me take a moment to examine what some of those interests are:

- Protecting unimpeded freedom of navigation and overflight and other lawful uses of the sea by all, not just the U.S. Navy;
- Honoring our alliance and security commitments, and retaining the full confidence of our partners and the region in the United States;
- Aiding the development of effective regional institutions, including a unified ASEAN;
- Promoting responsible marine environmental practices;
- Fostering China’s peaceful rise in a manner that promotes economic growth and regional stability, including through consistency with international law and standards.
- And more generally, an international order based on compliance with international law and the peaceful of disputes without the threat or use of force.

As a practical matter, in addition to our support for principles such as the rule of law, we are taking steps to help all countries in the region cooperate on maritime issues. For example, we’re investing in the maritime domain awareness capabilities of coastal states in the region.

This allows countries to protect safety at sea and respond to threats such as piracy, marine pollution and illegal trafficking. Maritime awareness also advances transparency, in line with our call to all claimants to be more open and transparent about their capabilities, actions, and intentions at sea.

The U.S. military's freedom of navigation operations are another element of a global policy to promote compliance with the international law of the sea.

Our goal is to ensure that not only can the U.S. Navy or Air Force exercise their navigational rights and freedoms, but ships and planes from even the smallest countries are also able to enjoy those rights without risk. The principles underlying unimpeded lawful commerce apply to vessels from countries around the globe.

And under international law, all countries—not just the United States—enjoy the rights, freedoms, and lawful uses of the sea that our diplomacy and the U.S. military's freedom of navigation operations help protect.

For us, it's not about the rocks and shoals in the South China Sea or the resources in and under it, it's about rules and it's about the kind of neighborhood we all want to live in. So we will continue to defend the rules, and encourage others to do so as well. We will also encourage all countries to apply principles of good neighborliness to avoid dangerous confrontations.

Let me close by mentioning that we have a host of cooperative initiatives we're working on for the upcoming ASEAN Regional Forum meeting, the Asia-Pacific Economic Cooperation forum, and the East Asia Summit—all of which will advance much more quickly and effectively when tensions in the South China Sea are lower.

President Obama and Secretary Kerry have shown that they are not afraid to tackle the biggest challenges facing US foreign policy and the world. And we're energized, here in the fourth quarter of this administration to do much more in partnership with our Allies, with ASEAN and with China.

For us, for the region, and for China – finding a peaceful, lawful and responsible way forward on the South China Sea is a prerequisite to achieving our longer term goals.

Thank you.