

114TH CONGRESS
2D SESSION

S. RES. _____

Calling for all parties to respect the arbitral tribunal ruling with regard to the South China Sea and to express United States policy on freedom of navigation and overflight in the East and South China Seas.

IN THE SENATE OF THE UNITED STATES

Mr. GARDNER (for himself, Mr. McCAIN, Mr. COTTON, Mr. SULLIVAN, Mr. RUBIO, and Mrs. ERNST) submitted the following resolution; which was referred to the Committee on _____

RESOLUTION

Calling for all parties to respect the arbitral tribunal ruling with regard to the South China Sea and to express United States policy on freedom of navigation and overflight in the East and South China Seas.

Whereas, on July 12, 2016, the Permanent Court of Arbitration (PCA) of the International Tribunal of the Law of the Sea (“Tribunal”), constituted under the United Nations Convention on the Law of the Sea (UNCLOS), done at Montego Bay December 10, 1982, issued a legally binding ruling on the parties in the case brought at the request of the Republic of Philippines against the People’s Republic of China concerning a dispute over the maritime jurisdiction in the South China Sea;

Whereas the Tribunal supported the Philippines' claim that China breached its sovereign rights, ruling that "China has, by promulgating its 2012 moratorium on fishing in the South China Sea, without exception for areas of the South China Sea falling within the exclusive economic zone of the Philippines and without limiting the moratorium to Chinese flagged vessels, breached Article 56 of the Convention with respect to the Philippines' sovereign rights over the living resources of its exclusive economic zone"

Whereas the Tribunal invalidated China's so-called "nine-dash line" sovereignty claims over the South China Sea, concluding that "as between the Philippines and China, China's claims to historic rights, or other sovereign rights or jurisdiction, with respect to the maritime areas of the South China Sea encompassed by the relevant part of the 'nine-dash line' are contrary to the Convention and without lawful effect to the extent that they exceed the geographic and substantive limits of China's maritime entitlements under the Convention";

Whereas, on January 22, 2013, arbitration began when the Philippines served China with a Notification and Statement of Claim pursuant to the UNCLOS provisions concerning the resolution of disputes and the arbitration procedure;

Whereas, on February 19, 2013, China rejected and returned the Philippines' Notification and since that date has refused to participate in the arbitration proceedings;

Whereas, on June 21, 2013, the Tribunal was constituted pursuant to the procedure set out in Annex VII of the UNCLOS to decide the dispute presented by the Philippines;

Whereas, on October 29, 2015, the Tribunal held that “both the Philippines and China are parties to [UNCLOS] and bound by its provisions on the settlement of disputes,” that “China’s decision not to participate in these proceedings does not deprive the Tribunal of jurisdiction,” and that “the Philippines’ decision to commence arbitration unilaterally was not an abuse of the Convention’s dispute settlement procedures”;

Whereas the South China is one of the world’s most strategically important commercial waterways, and almost 30 percent of the world’s maritime trade transits the South China Sea annually, including approximately \$1,200,000,000,000 in ship-borne trade bound for the United States;

Whereas, according to the United States Energy Information Administration, there are approximately 11,000,000,000 barrels and 190,000,000,000,000 cubic feet of proven and probable oil and natural gas reserves in the South China Sea;

Whereas, according to the United States Department of Defense, “[a]lthough the United States takes no position on competing sovereignty claims to land features in the region, all such claims must be based upon land (which in the case of islands means naturally formed areas of land that are above water at high tide), and all maritime claims must derive from such land in accordance with international law,”;

Whereas, according to the Department of Defense, “[s]ince 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”;

Whereas, according to Director of National Intelligence:

“China continued its land reclamation efforts at Subi and Mischief Reefs after 5 August 2015, based on commercial imagery. Between that date and late October, when reclamation activity ended, China reclaimed more than 100 additional acres of land.”;

Whereas, according to the Director of National Intelligence:

“We assess that China has established the necessary infrastructure to project military capabilities in the South China Sea beyond that which is required for point defense of its outposts. These capabilities could include the deployment of modern fighter aircraft, surface-to-air missiles (SAMS), and coastal defense cruise missiles, as well as increased presence of People’s Liberation Army Navy (PLAN) surface combatants and China Coast Guard (CCG) large patrol ships.”;

Whereas, according to the Director of National Intelligence:

“We assess 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 PLAN and CCG presence beginning in 2016.”;

Whereas, on May 30, 2015, Secretary of Defense Ashton

Carter stated at the Shangri-La Dialogue in Singapore, “[T]he United States will continue to protect freedom of navigation and [overflight—principles] that have ensured security and prosperity in this region for decades. There should be no mistake: the United States will fly, sail, and operate wherever international law allows, as United States forces do all over the world.”;

Whereas, in October 2015, January 2016, and May 2016, the United States Navy conducted three freedom of navigation operations (FONOP) in the area, transiting inside the 12-mile nautical zone of the contested features in the South China Sea;

Whereas Article 5 of the Mutual Defense Treaty Between the United States and the Republic of the Philippines, signed on August 30, 1951, states that “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”; and

Whereas the United States reiterates its security commitment to Japan and reaffirms that Article 5 of the United States-Japan Treaty of Mutual Cooperation and Security covers all territories under Japan’s administration, including the Senkaku islands; Now, therefore, be it

1 *Resolved*, That the Senate—

2 (1) supports the July 12, 2016, ruling issued
3 by the Tribunal as binding on all parties in the case,
4 and calls on all claimants to pursue peaceful resolution
5 of outstanding maritime claims in the South
6 China Sea consistent with international law;

7 (2) urges all parties to take action to implement
8 the Declaration on the Conduct of Parties in the
9 South China Sea and take steps towards early con-
10 clusion of a meaningful Code of Conduct, which

1 would provide agreed upon rules of the road to re-
2 duce tension among claimant states;

3 (3) opposes any actions in the South China Sea
4 to change the status quo by coercion, force, or the
5 threat of use of force;

6 (4) calls on the Government of the People's Re-
7 public of China to cease all reclamation and mili-
8 tarization activities in the South China Sea and end
9 provocative actions in the East China Sea, which un-
10 dermine peace and stability in the region;

11 (5) reaffirms Article V of the Mutual Defense
12 Treaty Between the United States and the Republic
13 of the Philippines;

14 (6) reaffirms Article V of the Treaty of Mutual
15 Cooperation and Security between the United States
16 and Japan;

17 (7) urges the Secretary of State to utilize all
18 diplomatic channels to communicate worldwide un-
19 wavered United States support for freedom of navi-
20 gation and overflight in the South China Sea; and

21 (8) urges the Secretary of Defense to routinely
22 enforce freedom of navigation and overflight in the
23 East and South China Seas, which is critical to
24 United States national security interests and peace
25 and prosperity in the Asia-Pacific region.