You can see we have a very distinguished panel here today, and we are going to try to cover an impossibly vast amount of real estate, including Law of the Sea, environmental law, China and the World Trade Organization (WTO), and China and international criminal law. You could not ask for a better group of experts to address these questions. And I have asked the panelists to think about some of the answers that their colleagues give and see if they can elicit some comparisons between China's approach to some of these different issues so that we will have, over the course of our time together, hopefully a compare-and-contrast moment in terms of China's overall approach to international law.

Inevitably, I should say, some of our panelists, and I myself, will make comparisons with America's approach to international law and use that as a pivot point, but I hope that we will limit ourselves to using the United States more as a comparator rather than as a direct subject of discussion. We want to keep our attention firmly focused on the Middle Kingdom, if we can.

In terms of the format of this discussion, it is going to be a Q&A. I have told our panelists that I may interrupt them in terms of their answers to questions and they have pledged not to take that personally. I have told them that I will play devil's advocate. Since we are here in Washington, I will say a number of things that I do not actually believe as part of my job as the moderator. And if I am doing my job well, none of you will have any idea of what I think about anything by the end of the hour. So I hope to achieve that goal.

I have received permission from all of the distinguished panelists, who have a number of different very distinguished titles, to address them by their first name. As we have told some of our international visitors, Americans are hopelessly informal, and I will adhere to that approach here, with their permission, of course.

With that as the sum total of preliminary and administrative matters that we have to cover, let us jump right in. And I will start with Ash on my immediate left. You are, obviously, one of the leading experts on the Law of the Sea and you have observed a very tense situation in the South China Sea over the past couple of years. It used to be said—by those of us working in the China field—that if the United States and China were ever to go to war, God forbid, it would be over Taiwan. I now think that we may have to revise that statement to say that if the United States and China were ever to have an armed conflict, it would either be over Taiwan or over the South China Sea.

Why is it, Ash, that China has made such a significant investment and such an expansive claim in the South China Sea? What is the skin in the game for them on this issue?

Remarks by J. Ashley Roach*

The skin in the game, as they often say, is that they have indisputable sovereignty over the features in the South China Sea. My sense is, the sovereignty issue aside, what is mostly driving China is the need for resources, whether they be living resources, whether they be mineral resources, whether they be fish, or whatever. It is a large country, it is a growing country, it is a growing economy and they need more, and they are going wherever they think they can get access to it. The South China Sea happens to be the closest one, but it is not the only place where they are looking for resources.

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THOMAS KELLOGG

Obviously there has been some level of vagueness in terms of China's South China Sea claims, which is something I hope that we will get a chance to talk about. But before we go there, you cannot talk about China and the South China Sea without helping all of us to understand the Nine-Dash Line. What is it and why is this such a controversial issue in terms of what China is saying and what the rest of the world is saying?

J. ASHLEY ROACH

Because we do not know what the Nine-Dash Line means.

It depends. And we may get an answer coming up by pending litigation before the Arbitral Tribunal. The State Department did a Limits in the Seas 143, I think it is, that came out not too long ago where they looked at various possibilities of what it might mean. And the conclusion, if I recall the study correctly, is that it is, at best, in terms of legality, an indication of where they believe they have rights.

THOMAS KELLOGG

I mean, we are all lawyers here. I assume our audience includes at least three or four lawyers. Lawyers like specificity. Lawyers like a well-fleshed-out legal argument. Why do they not just say what they mean and mean what they say on this?

J. ASHLEY ROACH

Because they may not know institutionally, in terms of the whole government, what they mean. The study I find most useful is one that Linda Jakobson published through the Lowy Institute back in December. And its title, in one sense, says it all: ''China's Unpredictable Maritime Security Actors.''

What that says, and what the report I think very clearly spells out, is that there are a whole lot of actors within the Chinese government, and each one of those actors has its own interests and they are not all the same. Now, that is not bureaucratically unique, I should say—but the difference is that it is a much bigger country, and I think Westerners expect that there would be uniformity in position and that is clearly not the case.

THOMAS KELLOGG

Tell me if you agree with this—that China may be keeping it vague because they want to continue to advance their interests in the South China Sea, continue to consolidate their position without even further alienating their neighbors in Southeast Asia, especially the Philippines, Malaysia, and Vietnam.

If they came out and definitively said, at the governmental level, this is all of ours; the Nine-Dash Line actually indicates that we have all of the features inside the Nine-Dash Line and the exclusive economic zone (EEZ) will cover more or less the entirety of that, what is affectionately known as the cow's tongue, do you think there is that political dynamic there as well?

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J. ASHLEY ROACH

I do not know the answer to that question. In one sense, what China has been doing in the last year has failed in your premise—

THOMAS KELLOGG

How so?

J. ASHLEY ROACH

—that they do not want to make things worse. They have made things worse, and they have made things worse with each one of their neighbors in various and sundry different ways. Now, why is that happening? Well, that is a question that is very hard to answer.

There is an opaqueness. And of course they do not have full disclosure, shall we say, of how the process works. But all of the things that I have seen—and my colleagues from the Center for International Law that are here and have been studying it—it is clear that they have not made their case to their neighbors that they really want to do things peacefully, because what is mine is mine; what is yours is negotiable.

THOMAS KELLOGG

That is probably a good segue to the role of external actors, and in particular the United States. We were talking about China's skin in the game. Obviously the United States cannot make any claims under the United Nations Convention on the Law of the Sea (UNCLOS) to any of the resources in question. Why is the United States involved in this?

J. ASHLEY ROACH

The United States has longstanding interests across the spectrum of the countries that are there. We have defense obligations to some, not all. We have long histories with others. We have what we like to call ''freedom of navigation'' interests. And the freedom of navigation interests are not perceived the same by the United States and by China.

China is dependent upon freedom of navigation of commercial vessels and aircraft. There is just no question about that and they are very explicit about that. They have, however, taken views with regard to military activities which are different than ours. And if we have time I can go through a little bit of their history in terms of statutes as opposed to sort of executive actions and how, in many respects, they are inconsistent.

THOMAS KELLOGG

Since you raised that issue, let us face it. I initially began our panel by saying if the United States and China were to, God forbid, go to war, it would either be over Taiwan or over the South China Sea, but in terms of actual military-to-military contact, the action has been in the South China Sea. And obviously you are familiar with the Impeccable incident; you are familiar with the 2001 EP-3 incident. There is a lot of friction there. Tell us what is going on there.

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J. ASHLEY ROACH

Well, there is a two-part answer to that in terms of the Chinese behavior in the South China Sea in the context that you raised. The Chinese government has a longstanding view of defending its land territory from incursions, and this is centuries old. And the mission of the People's Liberation Army and the component called the People's Liberation Army Navy, PLAN, has traditionally been coastal defense. I think this behavior comes from that tradition. But the Chinese have developed, right now, the largest and most capable Asian navy in history, and they have been using that navy for what they call ''far-seas operations;'' that is, outside the second island chain. And they have done it a lot of times now, the most recent was the evacuation of both Chinese and foreign nationals from Aden in Yemen, using their anti-piracy patrols.

THOMAS KELLOGG

There was a similar dynamic in Libya a couple years back.

J. ASHLEY ROACH

Exactly. Exactly. But that raises the question of whether the dynamics are different because, to use the navy in that capacity, they are dependent upon military freedom of navigation and overflight, and yet in the South China Sea context, they seem to deny it. And so from an American lawyer's approach, it is inconsistent.

THOMAS KELLOGG

They deny it both in word and in deed, as it were, right?

J. ASHLEY ROACH

But not in law. That is what is interesting. If you look at the Chinese participation in the third UN conference back in 1973, they made a series of proposals for provisions on navigation to the Seabed Committee. And the only one that is different than what the United States has relates to the innocent passage of warships through the territorial sea.

The territorial sea law that was enacted thereafter has the same distinctions between commercial ships and military ships, but if you look at their EEZ law from 1998, it is written in terms of navigation and overflight and applies to everybody, which is of course entirely consistent with the convention and entirely inconsistent with their behavior.

THOMAS KELLOGG

One last question for this round and then I want to start firing away at Steve. Obviously the United States is not a party to UNCLOS—

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J. Ashley Roach

Regrettably.

Thomas Kellogg

—and the Chinese have repeatedly made the point that they are not interested in the United States' interpretation of a convention to which they are not a party. What is your response to that?

J. Ashley Roach

Two or three points. One, it is often forgotten that the United States is a party to the four 1958 Geneva Conventions. And in the context of navigation and overflight, that includes the Territorial Sea and the Contiguous Zone Convention and the Convention on the High Seas. The provisions, with some minor exceptions, on those subjects that matter in the two 1958 conventions were replicated in the 1982 convention and many of them have now been declared by international courts and tribunals as customary international law.

Even though we are regrettably not a party—I certainly would wish that we would be—the legal consequences, it seems to me, are the same in terms of rights. The political consequences of course are the same, and China's not the only one who casts stones at us for not being a party to the conference and the negotiations which we were a major player in. But that is the way the world is.

Thomas Kellogg

Steve, we were just talking about a very contentious issue between China and the United States. On climate change, on environmental law, there is a much more positive story to tell. Obviously we are meeting here just a few months after a major bilateral climate agreement between the United States and China. Now, before we get to that, we know of course that the engagement between the United States and China on climate change has not always been a happy story. Can you say a little bit about the background and the engagement between the United States and China pre-2014?

Remarks by Steve Wolfson*

Sure. I would be happy to. Thank you—pleasure to be here. Thanks, everybody, for coming. I go back, when you ask about climate, to an article that Bill Chandler at Carnegie wrote where he talked about what he described as a mutual suicide pact where each country refuses to act before the other. But of course, you know, that logjam was effectively broken last November when the United States and China announced a new set of ambitious commitments on climate and, we hope, really injecting some positive momentum to the UN negotiations. But it is also important, I think, to look at this from the perspective of how people in China are looking at this. You know, there is a very big increase in awareness of environmental issues in China.

* Leads the China Environmental Law Initiative at the U.S. Environmental Protection Agency Office of General Counsel, working to help China's Environment Ministry strengthen Chinese environmental law and institutions.

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