



The Philippines' Dilemma: How to Manage Tensions in the South China Sea

Asia Report N°316 | 2 December 2021

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Principal Findings

What's new? Five years after President Rodrigo Duterte's pivot to China, tensions between Manila and Beijing are rising again in the South China Sea, compounded by increasing Sino-U.S. competition. The maritime disputes with China and other claimant states persist with little prospect for resolution.

Why does it matter? Armed conflict directly involving the Philippines is unlikely. But there is growing potential for incidents at sea to escalate. Despite President Duterte's China-friendly stance, Manila continues to struggle with Beijing's continuous efforts to assert sovereignty over most of the South China Sea.

What should be done? The Philippines should push for a substantive and effective Code of Conduct between ASEAN and China, while continuing to pursue bilateral talks with Beijing on maritime disputes. Manila should also try to boost regional cooperation on issues of common concern, such as fisheries management and law enforcement.

Executive Summary

The Philippines is a key player in the South China Sea territorial disputes, which are getting sharper due to China's growing assertiveness and the claimant states' competition over resources. Rather than appealing to international law as a bulwark against China's claims, President Rodrigo Duterte has instead pursued a more pragmatic approach that avoids confronting China in the hope of reaping economic benefits. But five years on, it appears that his pivot may not have entirely paid off. The simmering maritime dispute between Manila and Beijing is increasingly linked to geopolitical competition between China, on one hand, and the U.S. and its allies, on the other. Given the growing risk of escalatory incidents at sea, Manila should push for a substantive and effective Code of Conduct between China and the Association of Southeast Asian Nations (ASEAN) to manage maritime tensions while keeping open a diplomatic channel with Beijing to reduce misunderstandings. It should also strive to foster regional cooperation, for example on the question of fisheries management.

Eager to loosen ties with the U.S. and broaden his strategic options, Duterte has throughout his presidency minimised the issue of territorial sovereignty in the South China Sea and instead sought economic benefits from China. Consistent with this approach, he downplayed Manila's victory in a 2016 arbitration, awarded by a tribunal established under the 1982 UN Convention on the Law of the Sea (UNCLOS), which refuted Beijing's extensive claims of sovereignty and "historic rights" over the Sea. Manila has since pursued a flexible strategy, often perceived by local and international observers alike as erratic, aiming to strengthen ties with Beijing for the sake of economic growth. By proceeding cautiously, the Philippines hoped to prevent the maritime dispute from damaging its bilateral relationship with the region's dominant economic and military power.

Five years into Duterte's presidency, however, irritants remain. China's ships prowl the Philippine exclusive economic zone without interruption, and Filipino boats often cannot reach traditional fishing grounds at Scarborough Shoal due to Chinese harassment. Tangible economic benefits from overtures to Beijing, especially promised infrastructure projects, have fallen short of expectations and major gains are not expected before Duterte's term ends in 2022. Many in the Philippines are increasingly sceptical of rapprochement with China if it entails giving up claims to various disputed maritime features.

Since late 2019, Manila has been less willing to ignore Beijing's assertiveness in the South China Sea. It has sent diplomatic protest notes to China in response to perceived territorial violations in the Sea. More consequentially, Duterte has reversed his abrupt February 2020 cancellation of the Visiting Forces Agreement with the U.S., which allows the U.S. to station military personnel in the Philippines and conduct joint exercises with Manila. In June 2020, Duterte suspended the cancellation. The U.S. subsequently began terming China's claims in the Sea "unlawful", reaffirmed its alliance with the Philippines and confirmed that the Mutual Defence Treaty between Manila and Washington encompasses attacks on Philippine forces or vessels in the Sea. A March 2021 quarrel around Whitsun Reef in the disputed Spratly Islands, which saw Chinese ships mass by the hundreds, led to another wave of anti-China

sentiment in the Philippines and appears to have further strained relations. On 30 July 2021, Duterte unfroze the Visiting Forces Agreement, thus bringing it formally back into force.

Developing a coherent vision for the South China Sea while managing a treaty alliance with the U.S. and episodic tensions with neighbours, one of which is a rising great power, is particularly challenging. On one hand, Manila is tied to Washington by an alliance and longstanding cultural affinities. On the other, geography and economic imperatives impel the archipelago to find a *modus vivendi* with Beijing. At the same time, the Philippines must all the while maintain constructive relations with other South East Asian claimants. In addition, conflicting interests among and within the bureaucratic establishment and the military, as well as the interplay of elite positioning and Philippine public opinion, often result in apparent contradictions in government policy.

Manila, facing deadlock in a dispute it cannot resolve alone, should try to foster cooperation by discussing issues of common interest – such as fisheries management, law enforcement challenges and scientific research on environmental problems – in formal and informal interactions with neighbouring countries. Partnerships with other littoral states on joint management of resources could serve as a stepping stone for broader cooperation. In the interest of peace and stability in the South China Sea, Manila should both double down on its efforts to advance Code of Conduct negotiations and keep up bilateral dialogue with Beijing to sort out misunderstandings and manage disagreements. It should, for instance, negotiate rules of access to Scarborough Shoal, long a source of friction with China. It should also strengthen risk management mechanisms in case tensions between claimant states or the U.S. and China increase. None of these steps will resolve the increasingly entrenched maritime dispute, but they could help keep the risk low that incidents at sea will escalate toward conflict.

Manila/Brussels, 2 December 2021

The Philippines' Dilemma: How to Manage Tensions in the South China Sea

I. Introduction

In the South China Sea, the Philippines is party to a long-running quarrel that is a source of friction, and could even trigger an open confrontation, between China and the United States.¹ The dispute – to which Brunei, China, Malaysia, Taiwan and Vietnam are also party – is driven by competing claims to land features and the maritime entitlements they generate, including overlapping exclusive economic zones (EEZ).² The Philippine claim focuses on the Spratly Islands and the maritime space around them, including Scarborough Shoal, a small ring of rocks and reefs more than 200km west of Luzon, the Philippines' largest and most populous island.³

Manila's claim to the Spratlys goes back at least half a century. It conflicts with China's narrative of its own historic rights, expressed in the so-called nine-dash line, a boundary drawn on Chinese maps in 2009, but without clear historic or legal grounds, definition or delineation, and that lays claim to some 85 per cent of the South China Sea. The other littoral states are likewise affected, with Vietnam more emphatic than the rest in defending its interests against China. Both Beijing and Hanoi dispute Manila's claims, as do, to a lesser degree, Malaysia, Brunei and Taiwan.⁴

The Philippines' location accounts for both the U.S. and the Chinese strategic interest in the archipelago. Midway between mainland South East Asia and Indonesia, the region's other archipelago, the country is composed of 7,641 islands and has the world's fifth-longest coastline, with most of its provinces bordering the sea.⁵ Its proximity to the Taiwan Strait puts it close to a "powder keg of conflict".⁶ It also stands

¹ For background, see Crisis Group Asia Reports N°275, *Stirring Up the South China Sea (IV): Oil in Troubled Waters*, 26 January 2016; N°267, *Stirring Up the South China Sea (III): A Fleeting Opportunity for Calm*, 7 May 2015; N°229, *Stirring up the South China Sea (II): Regional Responses*, 24 July 2012; and N°223, *Stirring Up the South China Sea (I)*, 23 April 2012.

² The EEZ of a coastal state, in which the state is entitled to the marine and undersea resources, stretches 200 nautical miles (nm) from its baseline, itself determined by the low-tide coastline (or, in some cases, by offshore features). A coastal state can claim full sovereignty over land, sea and air only within a zone extending 12nm offshore. For more details, see Crisis Group Asia Report N°315, *Competing Visions of International Order in the South China Sea*, 29 November 2021, pp. 2-3.

³ The Spratlys and Scarborough Shoal are commonly referred to as part of the South China Sea. Around June 2011, however, the Philippines began using the term West Philippine Sea for the area in its official communications. President Benigno Aquino III officially renamed the body of water through Administrative Order 29 of 5 September 2012, issued after a standoff with China at Scarborough Shoal. The Philippines claims specific islands and areas of the sea rather than the Spratlys as a whole.

⁴ Indonesia is not a claimant in the South China Sea dispute, but it remains an important player as maritime zones generated by its Natuna Islands appear to overlap with China's claims.

⁵ Control over the South China Sea implies dominance over the Malacca and Sunda Straits, both crucial chokepoints for global trade, as well as the Sulu and Taiwan Straits.

⁶ Crisis Group online interview, retired diplomat, 23 July 2020. Some of the Philippine outposts in the Spratlys are also close to Itu Aba, the largest natural land feature in the archipelago, which is

between a segment of China's coast and access to the Pacific Ocean, thereby constituting a crucial part of what is often referred to as the "first island chain" that delimits China's near sea.⁷

The Philippines is thus a key player in the geopolitical contest playing out in the region. For Beijing, it could either become a stepping stone toward regional hegemony or an obstacle to such ambitions. Likewise, for Washington, it could continue to facilitate the U.S. forward presence in the South China Sea or become a stumbling block for its Indo-Pacific strategy. All these scenarios entail political costs and benefits for Manila. As Foreign Secretary Teodoro Locsin has said: "No other country feels the significant impact of the rivalry between the two superpowers more than the Philippines, the U.S. being its only defence treaty ally and China its biggest neighbour and top economic partner – with the U.S. second".⁸

This report provides a view of the Philippine perspective on developments in the South China Sea since 2016, against the backdrop of China's geopolitical ascendancy, heightened U.S.-China tensions and Rodrigo Duterte's presidency.⁹ It is published along with a report on Vietnamese perspectives on the South China Sea dispute, and an overview detailing the rising frictions between the U.S. and China as they relate to the Sea.¹⁰ It is based on more than 140 interviews and online discussions in Manila with current and former government officials, diplomats, academics, analysts and military officers, many of whom requested anonymity. Research was largely conducted remotely given travel restrictions caused by the COVID-19 pandemic, though the report includes input from a local researcher who visited Masinloc, the Philippine town closest to Scarborough Shoal.

occupied by Taiwan and is the forwardmost of Taipei's defences. Ralph Jennings, "Wary of Beijing, Taiwan doubles down on South China Sea island", *Voice of America*, 29 March 2021.

⁷ The first island chain refers to a chain of archipelagos stretching from Indonesia through Japan to the Kamchatka Peninsula in Russia. The concept has been known in both U.S. and Chinese strategic circles for decades, defined as a natural barrier that is disadvantageous for China since it contains Beijing's maritime power and access to the Pacific while serving as a forward defence perimeter for U.S. forces in Asia.

⁸ Recto Mercene, "Locsin: PHL to keep strong ties with both US and China", *Business Mirror*, 27 October 2020.

⁹ This report uses English-language terms for features in the South China Sea.

¹⁰ See Crisis Group Report, *Competing Visions of International Order in the South China Sea*, op. cit.; and Crisis Group Asia Report, *Vietnam Tacks Between Cooperation and Struggle in the South China Sea*, forthcoming.

II. Reefs and Ruptures

A. *The Philippine Claim over Time*

The Philippines' efforts to assert its claims in the South China Sea date back to the presidency of Ferdinand Marcos, the dictator who ruled the country from 1965 to 1986.¹¹ Marcos sent the military in two waves (from 1970 to 1971, and from 1977 to 1980) to occupy several features in the Spratly archipelago.¹² In 1972, the Marcos government officially incorporated the islets into the Philippines' westernmost Palawan province as the Kalayaan Island Group.¹³ In 1978, it formally created both a separate Kalayaan municipality in Palawan province and a Philippine exclusive economic zone.¹⁴ As a result, Manila has controlled nine of the Spratlys' land features since the late 1970s.¹⁵ It remained on the sidelines when armed conflict erupted between Vietnam and China around the Paracel Islands in 1988. At the time, the Philippines was less concerned with China occupying features in the Spratlys (in 1988 and 1989) and Beijing's heightened naval patrols than with Vietnam's presence in the contested waters around them.¹⁶

China's 1995 seizure of Mischief Reef, in the middle of the Spratlys, marked a major shift in the contest for control of those features. Seeing an opportunity after a Philippines Senate vote in 1991 compelled the U.S. to withdraw from its Philippine bases, China built light structures on the reef.¹⁷ The construction was a "shock" to the Philippines, deeply affecting its sense of security, particularly after Chinese troops occupied the new structures.¹⁸ Despite the 1951 Philippine-U.S. Mutual Defence Treaty, Washington remained neutral in Manila's ensuing quarrel with Beijing and gave its

¹¹ In 1956, a Filipino adventurer, Tomas Cloma, sailed out to the Spratlys seeking his fortune and laid claim to 33 features that he called Freedomland. Authorities arrested Cloma in 1974. Manila then asked him to formally transfer ownership of the features to the government, after which it asserted its sovereignty there.

¹² Marites Danguilan Vitug, *Rock Solid: How the Philippines Won Its Maritime Case Against China* (Manila, 2018), p. 10. In 1975, Vietnam occupied Southwest Cay, a feature where the Philippines had previously stationed an "on-and-off detachment". Ibid., p.12.

¹³ In 1976, Manila created the Western Command, a military district covering the Spratlys.

¹⁴ See Presidential Decree No. 1599, 1978. Although the UN Convention on the Law of the Sea (UNCLOS) was signed in 1982, UN members had been negotiating over the EEZ concept for years before the close of talks.

¹⁵ These are: Second Thomas Shoal (Ayungin), Thitu (Pagasa) Island, Nanshan (Lawak) Island, Northeast Cay (Parola Island), Flat (Patag) Island, Loaita (Kota) Island, Commodore (Rizal) Reef, West York (Likas) Island and Loaita Cay (Panata Island). Other Spratly features are controlled by Taiwan, China, Vietnam and Malaysia.

¹⁶ Crisis Group online interview, military officer, 10 November 2020.

¹⁷ In addition, China maintained a naval presence and constructed navigational aid facilities and a military observation post on the reef. Vitug, *Rock Solid*, op. cit., pp. 29-30.

¹⁸ Crisis Group online interview, academic, 6 August 2020. It was the first time that China had acted against the territorial entitlements of an Association of Southeast Asian Nations (ASEAN) member. Despite Manila's lobbying, its fellow members issued only a muted statement on the incident.

ally no clear assurances of support.¹⁹ Questions accordingly arose among Philippine policymakers and diplomats about the utility of the strategic alliance with the U.S.²⁰

In August 1995, Beijing and Manila signed a bilateral Code of Conduct to curb tensions in the aftermath of the Mischief Reef incident, though any respite was short-lived. The Chinese naval presence in the disputed areas and bellicose rhetoric from both sides continued to exacerbate tensions and soon highlighted the agreement's ineffectiveness. In 1997, fishermen from both countries squabbled around Scarborough Shoal.²¹ President Fidel Ramos' government responded by seeking a closer partnership with Vietnam and launching a modernisation of the Philippine armed forces. This effort was, however, beset with difficulties due to mismanagement and the impact of the Asian financial crisis on government finances.²² The dispute continued with ebbs and flows from 1998 to 2010, during the presidencies of Joseph Estrada and Gloria Macapagal-Arroyo.²³

It was Benigno Aquino's presidency (2010-2016), however, that significantly changed the dispute's dynamics, particularly after another Scarborough Shoal incident in 2012. Following an altercation between Chinese and Filipino fishermen in the area, the Philippine navy dispatched a ship to arrest the Chinese as poachers. Although Manila later replaced the vessel with a coast guard ship, Beijing retaliated by deploying more naval assets, leading to a month-long standoff.²⁴ The U.S. tried to broker a simultaneous withdrawal by both sides, but the verbal agreement Washington struck with a Chinese representative fell through.²⁵ While both countries did call their vessels home, the Chinese quickly returned and have occupied the shoal ever since.²⁶ The incident once again raised uneasy questions in Manila about Washington's stance despite the Philippines' status as a U.S. treaty ally. Manila also unsuccessfully appealed to the U.S. for a guarantee of assistance if China used force.²⁷

As a former Philippine official summed up the doubts: "Our position turned from what we thought was strategic clarity, as a partner and ally, to strategic ambiguity".²⁸

¹⁹ Longstanding U.S. policy was that the Mutual Defence Treaty did not cover contested territories in the South China Sea.

²⁰ "The Treaty was always subject to interpretation". Crisis Group online interview, former Philippine diplomat, 3 August 2020.

²¹ Scarborough Shoal, known in the Philippines as Bajo de Masinloc, is 220km or 120nm from the Philippine province of Zambales.

²² Crisis Group online interview, defence analyst, 30 June 2020.

²³ Appendix B describes the various Philippine presidents' policies in more detail.

²⁴ At the height of the standoff, China banned Philippine banana imports and encouraged its companies to reduce investment in the archipelago.

²⁵ Crisis Group Report, *Stirring Up the South China Sea (III)*, op. cit., p. 16.

²⁶ Crisis Group online interview, journalist, 24 September 2020. Some observers have suggested that the U.S. did not consider intervening directly in the standoff as it was not an armed conflict and posed no direct threat to U.S. ships. See Humphrey Hawksley, *Asian Waters* (New York, 2018), p.71.

²⁷ Crisis Group Report, *Stirring Up the South China Sea (II)*, op. cit., p.9. During the standoff, the U.S. also failed to clarify whether the Mutual Defence Treaty covered the South China Sea. In a speech on the occasion of the 70th anniversary of the alliance in September 2021, Philippine Defence Secretary Delfin Lorenzana recounted that during the standoff, the U.S. "ruled out any robust intervention to assist the Philippines". "The U.S.-Philippines Mutual Defense Treaty at 70", Center for Strategic and International Studies (webinar), 8 September 2021.

²⁸ Crisis Group online interview, 1 November 2020.

B. *The 2016 Arbitration Award*

As direct negotiation with China on the maritime dispute led nowhere, Aquino pursued the legal option, filing a case challenging China's territorial claims under Annex VII of the UN Convention on the Law of the Sea (UNCLOS).²⁹ The Permanent Court of Arbitration hosted the proceedings. Manila resorted to the international tribunal to resolve questions of interpretation bearing on Beijing's maritime claims, including the validity of claims rooted in historic rights as manifested by the nine-dash line. The Philippine decision to take the legal route reportedly "was like a shock" for Beijing.³⁰ China cancelled several high-level events and summits and issued a travel advisory that diminished tourism in the Philippines. Overall, Beijing's response was "very disproportionate", according to a former Philippine official.³¹

On 12 July 2016, the Court finally delivered a ruling in the Philippines' favour. The central finding was that China's nine-dash line and assertion of "historic rights" have no basis in international law.³² The Court declared Scarborough Shoal a traditional fishing ground of Chinese (including from Taiwan), Philippine and Vietnamese fishermen, and ruled that China had violated international law by denying Filipinos access to the area. Importantly, the Court also ruled that no feature in the Spratlys could be legally classified as an island capable of generating an EEZ or a continental shelf.³³ Instead, all features were found to be "rocks" or "low-tide elevations" under UNCLOS.³⁴ A ruling on sovereignty over the Spratlys and their associated maritime zones was, however, outside the tribunal's jurisdiction. Likewise, territorial sovereignty over Scarborough Shoal remains ambiguous, as both Chinese and Philippine claims persist.³⁵

Though the ruling did not generate an explicit jurisprudential precedent, as it only binds the Philippines and China, "the practical reality is that the pronouncement of the arbitral tribunal will be difficult to disregard, let alone challenge in any future litigation or negotiated agreement in respect of the South China Sea".³⁶ The award

²⁹ The tribunal acknowledged the Philippine effort to seek a resolution through dialogue. "We tried to talk", a diplomat said. Crisis Group online interview, 18 September 2020.

³⁰ Crisis Group online interview, academic, 23 August 2020. ASEAN and most of its member states were conspicuously silent on the arbitration. Though Hanoi supported Manila's submission, the Philippines was otherwise on its own.

³¹ Crisis Group online interview, 25 September 2020.

³² As China did not participate in the arbitration, it avoided having to clarify the nine-dash line's path. Although Vietnam claims the entire Spratlys, it did not object to the award.

³³ Crisis Group Report, *Competing Visions of International Order in the South China Sea*, op. cit., pp. 2-3.

³⁴ An important merit of the arbitration was the definition of what constitutes an "island" under international law, particularly the necessity of sustaining human habitation.

³⁵ A coastal state's rights over its EEZ and continental shelf are "sovereign rights" that are not equivalent to sovereignty. Sovereign rights are recognised for the purpose of exploration and exploitation of the living and non-living resources in these areas. Crisis Group correspondence, legal scholar, 9 October 2020.

³⁶ Crisis Group email correspondence, legal scholar, 25 September 2020. A Philippine government official said: "We do not have control any more, since international law now owns the arbitration. The genie is out of the bottle". Crisis Group online interview, 18 September 2020.

spawned an immense body of literature and became an important reference point in international law.

But while Manila won the legal argument, the Aquino administration appeared to have given little if any thought to the possibility that China might refuse to enforce a ruling that went against its interests.³⁷ Beijing did just that, declaring the award “null and void”. An Aquino-era diplomat recalled: “It was a victory in the legal sense. But the question was: how do we implement it?”³⁸ Moreover, as the Philippines had acted independently of the Association of Southeast Asian Nations (ASEAN), which did not support the case for fear of antagonising China, Manila “bore the brunt” of Beijing’s ire.³⁹ Although the Philippines tried to drum up international support for the arbitration in the run-up to the decision, most foreign governments did little to support the ruling beyond lauding the victory of international law.⁴⁰ Part of the reason lay in the fact that President Rodrigo Duterte took office in June 2016; his administration was much more cautious in encouraging international support and using the victory against China.

³⁷ Crisis Group online interview, South China Sea expert, 14 August 2020.

³⁸ Crisis Group online interview, former diplomat, 11 September 2020.

³⁹ Crisis Group correspondence, legal scholar, 25 September 2020. ASEAN’s lukewarm support for the Philippines at the time frustrated Manila. Later, Vietnam and Malaysia observed the proceedings. Hanoi submitted a document to the tribunal in late 2014 reiterating its claims and formally opposing the nine-dash line.

⁴⁰ Australia and Japan gave strong messages of support, but the European Union, for example, was cautious in its phrasing, providing a “soft” statement, according to former Philippine officials. Crisis Group online interview, 4 November 2020. See also Robin Emmott, “EU’s statement on South China Sea reflects divisions”, Reuters, 15 July 2016.

III. Enter Duterte

A. *The Pivot to China*

That Rodrigo Duterte would adopt an idiosyncratic foreign policy was clear from the start of his term in 2016. Inheriting Aquino's arbitration victory, the Duterte administration noted the achievement but remained ambivalent about pressing its advantage, taking the view that triumphalism would anger Beijing.⁴¹ Some observers agreed it was necessary to shift away from Aquino's uncompromising stance. "Toning down the rhetoric and calibrating the response was good", one said.⁴² But Duterte's decision not to use the ruling at all led to missed opportunities at generating more robust international support. Instead, Manila gained only sympathy.⁴³

Duterte's approach owed as much to his lack of foreign policy experience and parochial political style as to his personal dislike of the U.S. Facing U.S. and EU criticism in his administration's first months on account of his brutal campaign to curb drug trafficking, Duterte moved closer to Beijing.⁴⁴ In August 2016, he sent former President Fidel Ramos as special envoy to Hong Kong to set a less confrontational course in the South China Sea dispute.⁴⁵ Ramos secured a non-binding communiqué emphasising cooperation and peaceful dispute resolution, with references to equal access for both countries' fishermen to Scarborough Shoal, prospective cooperation on environmental protection and a long-term vision of demilitarisation in the Sea.⁴⁶

Notwithstanding the rapprochement with Beijing and his distaste for the U.S., Duterte did not neglect other bilateral ties. He maintained a strong relationship with Japan, a traditional partner in development cooperation, the Philippines' largest source of foreign direct investment and a supporter of the peace process in the Bangsamoro, the southern region where the government has fought a series of insurgencies.⁴⁷ Under Duterte, Tokyo committed to developing the Philippines' maritime capabilities, particularly its coast guard.⁴⁸ The president also courted Russia, reflecting his desire to bolster ties with powers beyond the U.S. and China, but with limited success.⁴⁹

⁴¹ Crisis Group Commentary, "South China Sea Ruling Sweeps Away Diplomatic Ambiguities", 19 July 2016.

⁴² Crisis Group online interview, Richard Javad Heydarian, academic, 24 September 2020.

⁴³ Crisis Group online interview, journalist, 24 September 2020. Crisis Group correspondence, legal scholar, 25 September 2020.

⁴⁴ Many Chinese publications stress that Beijing and Manila "reached consensus on shelving the decision of the South China Sea arbitration". See, for example, Wu Shicun, "Preventing Confrontation and Conflict in the South China Sea", *China International Strategy Review*, vol. 2 (2020), pp. 36-47.

⁴⁵ The Philippine delegation's counterparts in Beijing were Wu Shicun, president of China's National Institute for South China Sea Studies, and Fu Ying, China's former vice foreign minister.

⁴⁶ Crisis Group online interview, former Philippine official, 2 November 2020. Ramos supported Aquino's push for the arbitration, but emphasised as early as January 2013 the need to engage China diplomatically as "it was creating facts on the ground." See Vitug, *Rock Solid*, op. cit., p. 162.

⁴⁷ For background on this peace process, see Crisis Group Asia Reports N°313, *Southern Philippines: Keeping Normalisation on Track in the Bangsamoro*, 15 April 2021; N°306, *Southern Philippines: Tackling Clan Politics in the Bangsamoro*, 14 April 2020; and N°301, *The Philippines: Militancy and the New Bangsamoro*, 27 June 2019.

⁴⁸ Crisis Group interviews, Japanese officials, Manila, 21 October 2019.

⁴⁹ Crisis Group online interviews, defence analyst, 30 June 2020; retired diplomat, 23 July 2020.

A side effect of these new foreign policy initiatives was a slowdown of multilateral efforts in dealing with the South China Sea, particularly the ASEAN-China negotiations over a Code of Conduct to better manage maritime tensions among littoral states.⁵⁰ “Duterte spoiled the process”, said a commentator, referring to Manila’s predominantly bilateral engagement with Beijing at the expense of a proactive multilateral approach.⁵¹ For Duterte, combining a quest for closer ties with multiple international actors and detente with Beijing was a way to achieve a “safe middle ground” through balancing and accommodation.⁵² Distracted by internal challenges, not least the battle in Marawi (a city in the Bangsamoro) that pitted government forces against Islamist militants for five months in 2017, the Philippines did not use its ASEAN chairmanship that year to advance the South China Sea agenda. Hoping to avoid the outright confrontation with Beijing that had occurred under Aquino, Duterte put the thorny issue of territorial disputes on the back burner.

B. *A Quiet Sea?*

The first months of Duterte’s presidency saw improvements in relations between Beijing and Manila, even though the broader dispute in the South China Sea simmered. China did not occupy further Philippine-claimed features or cause standoffs with coast guard or navy ships, direct confrontations between Philippine and Chinese vessels declined, and Filipinos were even briefly able to fish around Scarborough Shoal thanks to the informal agreement Ramos had secured during his visit to Beijing.⁵³ Manila faced issues with another claimant state in 2017, however, after a navy ship used force against a Vietnamese boat in Philippine coastal waters, resulting in the death of two fishermen and the arrest of several more, and leading to a diplomatic crisis with Hanoi.⁵⁴

But even under Duterte, China’s grey zone operations – calibrated actions at sea short of live-fire attacks but intended to coerce opponents – have remained the most serious challenge to Philippine maritime sovereignty. Despite the president’s cooperative stand, Beijing has maintained a consistent maritime presence in the Spratlys and at Scarborough Shoal.⁵⁵ Around Thitu Island, the largest Spratly feature Manila controls, Chinese coast guard vessels and fishing boats – some if not most of which analysts believe to be part of China’s maritime militia – engaged Filipino fishermen

⁵⁰ The idea of a multilateral Code of Conduct stems from developing a clearer and more precise instrument than the 2002 non-binding Declaration between China and the Philippines, which was fairly general. Consultations on the Code have been going on since 2013.

⁵¹ Crisis Group online interview, academic, 9 September 2020.

⁵² Aileen Baviera, “Debating the National Interest in Philippine Relations with China: Economic, Security and Socio-cultural Dimensions”, *National Security Review* (2017), p. 158.

⁵³ Part of the de-escalation stemmed from a recalibration of maritime forces. While President Duterte continued to support the coast guard build-up that started under Aquino, he encouraged the Philippine navy to be lenient with Chinese fishermen fishing illegally and not to board their boats. See “Gaining Competitive Advantage in the Gray Zone: Response Options for Coercive Aggression Below the Threshold of Major War”, RAND Corporation, 2019, p. 114.

⁵⁴ “Philippines assures Vietnam of ‘fair’ probe into fishermen’s deaths”, Rappler.com, 25 September 2017.

⁵⁵ Crisis Group online interview, think-tank analyst, 22 September 2020.

in standoffs from 2017 onward.⁵⁶ At Scarborough Shoal, power dynamics are even more uneven: China's coast guard regulates access to the shoal, often chasing Filipino fishermen away. Manila has dealt with these issues quietly, tackling violations of the informal agreement negotiated by Ramos through diplomatic means. As in the cases described below, it has regularly filed diplomatic protests following such incidents, to which Beijing has often reacted by making minor concessions, halting some of its provocative actions, but not all.

The foreign and defence ministries have often sought to counterbalance Duterte's stark pro-Beijing stance, and the Philippines has also taken incremental steps to strengthen its maritime position, irritating China. For example, it started repairing facilities at Thitu Island in 2018, after attempting to build new ones in nearby Sandy Cay a year earlier, an initiative that backfired by attracting Chinese vessels that have since remained in the area.⁵⁷

The July 2019 Reed Bank incident, in which a Chinese coast guard ship rammed a Philippine fishing vessel, also strained bilateral relations. With the Chinese vessel leaving the scene, the Filipino crew would have perished had Vietnamese fishermen not rescued them. After a joint investigation, Beijing offered a muted apology, but the incident fanned anti-China sentiment in Philippine public opinion.⁵⁸ In the following months, the relationship soured. When Duterte visited China in September 2019, he raised the 2016 arbitral ruling directly with President Xi Jinping for the first time; he came back without making progress on securing promised Chinese investments, leading observers to speculate that both leaders had left the meeting disappointed.⁵⁹ A few months after the Reed Bank incident, other littoral states also began to adopt more assertive positions toward China.⁶⁰

Duterte again proved unpredictable when in February 2020 he suddenly ordered the termination of the Visiting Forces Agreement with the U.S., apparently in retaliation for the cancellation of a U.S. visa for Ronald dela Rosa, one of his main political allies and a supporter of his anti-drug campaign. Had it been implemented, the termination, which was to take effect after six months, would have created substantive difficulties for U.S. forces present in the Philippines.⁶¹ Chinese experts interpreted

⁵⁶ Officially named the People's Armed Forces Maritime Militia, this force consists of fishing boats that are supported by the Chinese government with funding and operational guidance, under the navy's supervision. The maritime militia is particularly known for using grey zone tactics, which involve the use of water cannons, ramming and intimidation of other claimants' vessels. Nathan Swire, "Water wars", *Lawfare* (blog), 5 March 2019.

⁵⁷ Aquino had refrained from ordering reinforcement or repair of Philippine facilities on the island, assuming that China would use such works against the Philippines. Under Duterte, construction started with repair of a beach ramp.

⁵⁸ Crisis Group interviews, diplomat, 29 July 2020; foreign policy expert, 21 October 2019.

⁵⁹ Crisis Group interview, 24 July 2020.

⁶⁰ Crisis Group Report, *Competing Visions of International Order in the South China Sea*, op. cit.

⁶¹ "Philippines' Duterte tells US he is scrapping troop agreement", *The Guardian*, 11 February 2020. The Visiting Forces Agreement is a document laying out details of the Mutual Defence Treaty, stipulating rights and obligations for U.S. service personnel in the Philippines and rules for U.S. access to the country for military exercises and other activities. Without the Agreement, it would be "cumbersome" to make the alliance operational. Crisis Group interview, U.S. official, 21 October 2020.

the episode as a blow to Washington's efforts to contain Beijing's assertiveness in the South China Sea.⁶²

Overall, Duterte's economic pivot to China has had mixed results.⁶³ Philippine-Chinese trade ties have grown under his presidency.⁶⁴ But China's Belt and Road Initiative (BRI), which both governments billed as a link to Duterte's flagship Build, Build, Build program, has not lived up to the initial fanfare.⁶⁵ The large infrastructure that was envisioned remains unbuilt. As of June 2021, only a handful of smaller BRI projects are under way.⁶⁶ An analyst explained: "Both China and the Philippines oversold their partnership, raising expectations for the Philippine public that were unfulfilled".⁶⁷

C. *Geopolitics Come Back to the Fore*

In the last two years, the geopolitics of the South China Sea dispute have become more pronounced as Beijing has pressed its claims more vigorously and ties between Manila and Washington have strengthened, against the backdrop of the COVID-19 pandemic.

Beyond its devastating health effects on the Philippines' population, the pandemic also dealt a major blow to the economy, directly affecting the armed forces' modernisation program.⁶⁸ Although initial assessments indicated that Manila would proceed with "game changing" acquisitions such as submarines, cruise missiles and more advanced aircraft and ships, procurement has slowed as the government redirects funds to address the pandemic's effects.⁶⁹ Military modernisation, while supported by the opposition, seems unlikely to make headway before the end of Duterte's term.⁷⁰

Meanwhile, Manila felt compelled to respond to assertive actions Beijing was taking in the South China Sea. In February 2020, the foreign ministry filed a diplomatic protest after the navy reported that a Chinese warship had shown "hostile intent" by aiming its gun control radar at a Philippine vessel.⁷¹ In the following months, it also protested the Chinese navy's confiscation of gear from fishermen around Masinloc,

⁶² Li Kaisheng, "Manila's termination of military pact will upset US meddling in South China Sea", *Global Times*, 13 February 2020.

⁶³ Crisis Group online interviews, economic experts, August and November 2020.

⁶⁴ So has foreign direct investment, but at a rate lower than in other South East Asian countries. Crisis Group online interview, economist, 28 October 2020.

⁶⁵ The Build, Build, Build program is an economic initiative launched under Duterte that aims to boost infrastructure across the Philippines.

⁶⁶ "Chinese investments in the Philippines", *Rappler.com*, 15 September 2020. Crisis Group online interviews, academics, 6 and 19 August 2020.

⁶⁷ Crisis Group online interview, Alvin Camba, assistant professor, University of Denver, 13 August 2020.

⁶⁸ Michael Toole, "The Philippines passes the 2 million mark as COVID-19 cases surge in Southeast Asia", *The Conversation*, 9 September 2021.

⁶⁹ Crisis Group correspondence, sources close to the process, 31 May 2021.

⁷⁰ Apart from two Korean-built missile frigates purchased in early 2021, the items that the armed forces are procuring are primarily for counter-insurgency purposes.

⁷¹ Anna Bajo, "Wescom confirms China's 'harassment' vs. Philippine navy vessel in February", *GMA News*, 23 April 2020.

close to Scarborough Shoal, and Beijing's announcement of new administrative units in the South China Sea.⁷²

More consequentially, on 2 June 2020, the Philippines suspended the Visiting Forces Agreement's cancellation that it had announced a few months earlier, citing "political and other developments in the region".⁷³ The reversal was a clear sign that, while the top leadership emphasised the independence of Manila's foreign policy, the security apparatus continued to value collaboration with the U.S., particularly as concerns about China's grey zone infractions raised the spectre of yet more assertive actions by Beijing.⁷⁴ Statements by Philippine officials implied a correlation between the decision and Beijing's actions in the South China Sea over the preceding month.⁷⁵

Shortly after it had suspended the Agreement's cancellation, Manila welcomed a statement by U.S. Secretary of State Michael Pompeo that clarified the U.S. position on the South China Sea. Notably, the statement affirmed the 2016 arbitration award and expressed support for "Southeast Asian allies and partners in protecting their sovereign rights to offshore resources", with specific reference to the Philippines, including Scarborough and Second Thomas Shoals.⁷⁶ The thaw in U.S.-Philippine relations benefited not only from the personal chemistry between Duterte and U.S. President Donald Trump, and concerns about China's maritime actions, but also from U.S. assistance to contain the coronavirus outbreak in the islands.⁷⁷

Beijing, meanwhile, took a public relations hit in April 2020, when the Chinese embassy in Manila released a song, along with a music video, as a tribute to front-line workers trying to contain the pandemic in both countries. Filipinos criticised the song on social media for its reference to what the Chinese embassy called cooperation between "friendly neighbours across the sea", saying China's behaviour in the dispute belied this rhetoric.⁷⁸

Beijing's continued activities also prompted Duterte to temper his hitherto starkly pro-Chinese public statements and instead stress Manila's distinct position in the South China Sea dispute.⁷⁹ In particular, the president highlighted the arbitration

⁷² On 12 April 2020, the State Council of China announced the creation of two new districts under Sansha City prefecture, located on Woody Island in the Paracels.

⁷³ Tweet by Teodoro Locsin, @teddyboyllocsin, 6:55pm, 2 June 2020.

⁷⁴ Crisis Group online interview, former military regional commander, 9 September 2020. In mid-July, for instance, the Philippine military renamed its top rank designations in accordance with the U.S. system.

⁷⁵ Crisis Group online interview, 28 July 2020. See also Sofia Tomacruz, "Duterte halted VFA termination due to South China Sea tensions", *Rappler.com*, 22 June 2020; and Darryl Esguerra, "PH envoy to US: COVID-19, South China Sea 'developments', reasons not to end VFA", *Inquirer*, 3 June 2020.

⁷⁶ "U.S. Position on Maritime Claims in the South China Sea", U.S. Mission to ASEAN, 13 July 2020.

⁷⁷ Crisis Group interview, Philippine official, 15 November 2020.

⁷⁸ Glee Jalea, "Chinese embassy's 'Tisang Dagat' tribute sparks outrage online", *CNN Philippines*, 26 April 2020.

⁷⁹ In the last year of Duterte's term, Manila remains too distracted by the pandemic and other challenges, such as natural disasters and internal conflicts, to formally overhaul its foreign policy. Manila's unresolved dilemmas were epitomised in the wavering course regarding the anti-COVID-19 vaccination campaign, when Duterte seemed to bet on China and Russia as suppliers. The public and politicians are critical of the Sinovac deal and its perceived low effectiveness, even as Chinese (and Russian)

award for the first time in front of an international audience at the UN General Assembly in September 2020, saying – without mentioning China – the Philippines “firmly rejects attempts to undermine it”.⁸⁰ This unexpected shift led some analysts to believe that Duterte might recommit to the U.S. alliance.⁸¹ Another sign of improvement in relations with the U.S. was Manila’s extension of the Visiting Forces Agreement (which it had previously slated for abrogation) for another six months on 11 November 2020 and then a third period on 14 June 2021.⁸² On 30 July, Duterte formally restored the pact after U.S. Defence Secretary Lloyd Austin visited Manila.⁸³

Relations with Washington keep warming with U.S. President Joe Biden in office, as the new administration does not seem to irritate the unpredictable Duterte. Biden’s secretary of state, Antony Blinken, reaffirmed the U.S. commitment to the alliance with the Philippines, reiterating U.S. support in case of armed confrontation in the South China Sea.⁸⁴ Manila’s foreign secretary, Teodoro Locsin, reciprocated with optimistic remarks about the alliance.⁸⁵ Joint military exercises have resumed, and the alliance received a further boost when the U.S. Marine Corps commandant, General David Berger, visited Manila in September.⁸⁶

Meanwhile, Manila continues to push back against Beijing. The most prominent assertion of maritime rights in the Duterte era stemmed from Manila’s outspoken criticism of China in the wake of an incident at Whitsun Reef in March 2021. Hundreds of Chinese vessels, including maritime militia boats, massed at this outlier of the Union Banks in the Spratlys.⁸⁷ Photos leaked by Philippine authorities provoked widespread public condemnation of the Chinese presence in the Philippines’ claimed

vaccines kept the campaign afloat until the U.S. increased its vaccine shipments. “Roque turns around on finality of Sinovac deal”, *Verafiles*, 30 January 2021.

⁸⁰ Statement of President Rodrigo Roa Duterte during the General Debate of the 75th Session of the UN General Assembly, 22 September 2020.

⁸¹ Crisis Group online interview, defence specialist, 2 September 2020.

⁸² No major changes in the text seemed imminent and both sides were mulling over the inclusion of “implementing guidelines” to clarify ambiguous matters. Crisis Group telephone interview, diplomat, 29 May 2021.

⁸³ Manila and Washington are working on a “supplementary” agreement that is likely to tackle matters of criminal jurisdiction in cases where U.S. servicemen violate Philippine laws. Michael Punongbayan, “VFA addendum to cover US soldiers’ custody”, *Philippine Star*, 5 August 2021. In the run-up to the announcement, the U.S. also increased its arms sales to the Philippines. “U.S. Military Delivers Php183 Million in New Weapons and Equipment to AFP”, U.S. Embassy in the Philippines, 22 June 2021. On 24 June, the U.S. State Department approved \$2.5 billion in sales of F-16 fighter aircraft, missiles and related equipment. Nick Aspinwall, “US clears F-16 sale to Philippines as South China Sea tensions brew”, *The Diplomat*, 30 June 2021.

⁸⁴ Sofia Tomacruz, “New US top diplomat calls Locsin, vows support vs. China ‘pressure’”, *Rappler.com*, 28 January 2021.

⁸⁵ Tweet by Teodoro Locsin, @teddyboylocsin, 8:05am, 28 January 2021.

⁸⁶ “US Marine Corps chief meets with Philippine counterparts in first visit since 2017”, *Philippine Star*, 13 September 2021.

⁸⁷ Researchers identified at least fourteen vessels as belonging to the maritime militia. See “Caught on Camera: Two Dozen Militia Boats at Whitsun Reef Identified”, Asia Maritime Transparency Initiative, 21 April 2021; and Ryan Martinson, “No Ordinary Boats: Cracking the Code on China’s Spratly Maritime Militias”, Center for International Maritime Security, 17 May 2021.

EEZ.⁸⁸ Manila filed a flurry of diplomatic protests and initiated navy and coast guard patrols and drills in the area.⁸⁹ In early April, Beijing shifted its vessels from Whitsun Reef to other features – a tactical victory for the Philippines, according to some officials, who argue that a “mix of diplomacy and deterrence” mitigated the situation to Manila’s satisfaction.⁹⁰ “China was caught off guard by the backlash”, said a military officer.⁹¹ Some observers fear the standoff at Whitsun Reef may be a preview of things to come, with Beijing further asserting itself as the 2022 Philippine presidential election draws near.⁹²

Given the warming ties between Manila and Washington, however, China may mull over options besides escalation, even if irritants persist. A recent editorial in the *Global Times* stated that Duterte had “promised not to harm China’s interest in geopolitics” during a call with Xi Jinping.⁹³ Given the source, which is an official Chinese mouthpiece, this report may indicate that Beijing prefers to avoid further confrontation.⁹⁴ Nonetheless, another incident occurred at Second Thomas Shoal on 16 November 2021, when two Chinese coast guard ships blocked Philippine boats resupplying a naval detachment at the BRP *Sierra Madre*, a ship grounded at the shoal in 1999 and manned by Philippine marines.⁹⁵ Washington released a statement in support of Manila and again reaffirmed the Mutual Defence Treaty’s vital role for the alliance.⁹⁶ Talks between Beijing and Manila eventually calmed tensions and, after a few days, the Philippine resupply mission resumed.⁹⁷

⁸⁸ Philippine policymakers and commentators looked at Beijing’s move as another step in its protracted strategy to dominate the waters around the Spratlys and the South China Sea as a whole, as well as a test of the Biden administration’s intentions vis-à-vis the dispute. Crisis Group correspondence, South China Sea expert, 21 April 2021.

⁸⁹ Philippine patrols coincided with entry of the U.S. Navy’s *Theodore Roosevelt* carrier strike group into the South China Sea on 4 April, a move that “certainly helped” push the Chinese vessels away from Whitsun Reef, even though the U.S. deployment may not have been a direct consequence of the Reef events. Crisis Group online interviews, 25 April and 5 May 2021.

⁹⁰ Crisis Group communication, Philippine navy officer, 3 May 2021. Crisis Group interview, Philippine official, 25 April 2021. China’s vessels roamed the eastern portion of the Spratlys after the incident, approaching other Philippine features and Palawan Island. Frances Mangosing, “Chinese militia vessels spotted at Sabina Shoal off Puerto Princesa”, *Inquirer*, 5 May 2021.

⁹¹ Crisis Group online interview, 30 April 2021.

⁹² Crisis Group online interview, 18 June 2021. The next presidential election is due in May 2022. Crisis Group interview, Philippine official, 30 May 2021.

⁹³ “Duterte vows not to harm China’s interest during phone conversation with President Xi”, *Global Times*, 27 August 2021.

⁹⁴ Crisis Group online interview, Philippine official, 10 October 2021.

⁹⁵ On President Joseph Estrada’s watch, the Philippines grounded this old U.S. landing craft, which Washington had transferred to the Philippine navy, and stationed a small detachment of marines on board. Regarding the Chinese action, foreign ministry spokesperson Zhao Lijian said that after the Philippine boats “trespassed”, the Chinese coast guard vessels “performed their official duties” and “upheld China’s territorial sovereignty”. “China and Philippines communicating on boat trespassing; sea area remains peaceful: FM”, *Global Times*, 18 November 2021.

⁹⁶ “On the Situation in the South China Sea”, press statement, U.S. Department of State, 19 November 2021. Australia, Canada, the European Union, France, Germany and Japan also issued statements of support to the Philippines.

⁹⁷ Crisis Group telephone interview, Philippine official, 21 November 2021. Duterte raised the incident with Xi during the ASEAN-China summit held just a few days after the episode. Mara Cepeda,

IV. Manila's Approach to Foreign Policy under Duterte: Pillars and Tensions

The Philippines' strategy toward the South China Sea and other external challenges has in recent years been shaped first and foremost by President Duterte, but other entities, interests and individuals both in and out of government have played important roles, at times appearing to temper the president's impulsive moves, and balancing some of his efforts to pivot toward Beijing and away from Washington. This has contributed to occasional contradictions in Manila's South China Sea policy.

A. *The President*

As the head of state, the Philippine president is commander-in-chief of the armed forces and the country's main foreign policy decision-maker, supported by his inner circle and advisers. The principle that the Philippines must have an independent foreign policy is enshrined in the Philippine constitution, but the meaning of that requirement is unclear, and each leader interprets it subjectively.⁹⁸ Therefore, as an academic pointed out, "the South China Sea policy changes with every president".⁹⁹

Duterte's foreign policy style is highly personalised, with key messages set by the president and his top advisers, none of whom are experts on foreign policy.¹⁰⁰ There is no apparent effort to reconcile varying – sometimes even contradictory – ideas within the administration on the South China Sea dispute. The president's approach is transactional and instinctive – as made evident by his overture to Beijing and brief flirtation with Moscow – and, throughout his presidency, he has seemingly more often reacted to events or acted out of impulse than pursued an articulated strategy. Government departments and agencies interpret his statements, and the handful of policy documents his term has produced, with a level of flexibility, leaving them room for manoeuvre.¹⁰¹

Beijing, for its part, considers Duterte to be its main interlocutor.¹⁰² Its outreach to Duterte is its biggest asset in its Philippines policy but also its biggest weakness, as it has failed to invest in institutional linkages beyond the president, who is now less than a year away from leaving office. "China does not trust the Philippines strategically", said an observer.¹⁰³

"In ASEAN summit with China, Duterte 'abhors' water cannon attack on PH vessels", Rappler.com, 22 November 2021. Martin Sadongdong, "Military watchful as resupply mission to Ayungin Shoal resumes", *Manila Bulletin*, 22 November 2021.

⁹⁸ Crisis Group online interview, former diplomat, 11 September 2020.

⁹⁹ Crisis Group online interview, academic, 7 September 2020.

¹⁰⁰ Crisis Group interview, Manila, 17 October 2020.

¹⁰¹ Duterte's statements have occasionally been quite blunt and undiplomatic, leaving officials scrambling to assert that the president had actually meant to say something else. He once announced a "separation" from the U.S. and said the Philippines would be "massacred" if it went to war with China.

¹⁰² Crisis Group online interview, Chinese academic, 25 August 2020. An editorial in the *Global Times* raised the following point: "It is also worth noting that the Philippine president's stance is in stark contrast to that of his foreign secretary". Wang Wenwen, "Leaning on Washington leads to trouble on maritime affairs", *Global Times*, 27 August 2020.

¹⁰³ Crisis Group online interview, Philippine academic, 6 August 2020.

B. *The Diplomats*

Former journalist and speechwriter Teodoro Locsin became foreign secretary in October 2018.¹⁰⁴ Driven by a strong desire to balance the Philippines' national interest and territorial sovereignty with geopolitical pragmatism, Locsin's policy has been more assertive toward China than that of his recent predecessors. His loyalty to the president has provided him with some room for manoeuvre.

Locsin's push for extending the Visiting Forces Agreement past its scheduled cancellation, for example, put him at odds with the president at first, but he eventually prevailed when Duterte agreed to change course.¹⁰⁵ Under Locsin's leadership, the foreign ministry has filed diplomatic protests with Beijing whenever it is faced with perceived territorial violations in the South China Sea.¹⁰⁶ At the same time, it has engaged China both multilaterally in the ASEAN Code of Conduct negotiations and one on one through channels such as the Bilateral Consultative Mechanism, a confidence-building measure between the two states launched in 2017 as a result of Duterte's rapprochement with Beijing.

In 2021, Manila's complaints about Chinese actions grew more vocal. In January, Secretary Locsin filed a protest after Beijing passed a law giving its coast guard authority to fire at vessels in areas it claims, even if they are in disputed waters.¹⁰⁷ Locsin then showed particularly strong resolve during the Whitsun Reef incident by publicly criticising Beijing and filing numerous protests.¹⁰⁸

Lastly, the foreign ministry under Locsin succeeded in settling a longstanding maritime boundary disagreement with Indonesia in 2019 and explored a similar opening with Palau as well as closer cooperation with Vietnam in 2020.¹⁰⁹

C. *The Military*

Traditionally pro-U.S., the Philippine armed forces have sought a delicate balance between Duterte's sometimes accommodationist rhetoric toward China and their own felt need to protect Philippine sovereignty.¹¹⁰ The military is central to Duterte's domestic agenda of counter-insurgency aimed at defeating communist rebels and stabilising Mindanao. The national defence department thus has enjoyed some lever-

¹⁰⁴ Locsin's term followed short stints by Perfecto Yasay and Alan Peter Cayetano.

¹⁰⁵ "Asia Society: Philippines", Asia Society (webinar), 26 October 2020.

¹⁰⁶ "Diplomacy works quietly; protests are one tool", said a diplomat formerly posted to the Philippines. Crisis Group online interview, 12 August 2020. As of 30 September 2021, the department had filed 211 such protests since Duterte took office, including 153 in 2021 alone. Joyce Rocamora, "72% of PRRD admin's diplomatic protests vs. China filed in 2021", Philippine News Agency, 22 October 2021.

¹⁰⁷ Christia Ramos, "Philippines protests new China coast guard law", *Inquirer*, 27 January 2021.

¹⁰⁸ "Locsin issues expletive-laced tweet over China sea dispute", Rappler.com, 3 May 2021.

¹⁰⁹ Sofia Tomacruz, "Beyond West Philippine Sea, diplomats defend waters behind the scenes", Rappler.com, 18 October 2020. Manila and Jakarta have also launched efforts to delineate their continental shelf boundaries. Joyce Rocamora, "PH, Indonesia prepare for delimitation of sea boundaries", Philippine News Agency, 2 November 2021.

¹¹⁰ Crisis Group interview, Philippine official, 15 November 2020. On the military's pro-U.S. stance, see Gregory Winger, "Alliance Embeddedness: Rodrigo Duterte and the Resilience of the US-Philippine Alliance", *Foreign Policy Analysis*, vol. 17, no. 3 (2021).

age in shaping Manila's relations with Washington and Beijing and its South China Sea strategy. National Defence Secretary Delfin Lorenzana's rhetoric has been assertive, at times proposing clarifications and interpretations of presidential statements that downplayed Beijing's maritime actions. While maintaining Duterte's overall objective of pursuing a policy of "friend to all, enemy to none", Lorenzana has continued to pay particular attention to longstanding Philippine-U.S. ties.¹¹¹

The armed forces are well aware of Manila's dilemma in needing both to assert sovereign rights and nurture the relationship with China. "We are trying to show the flag as much as possible and conduct maritime patrols", said a former military officer who is now a civilian official.¹¹² Defence officials tend to steer clear of controversial issues to avoid contradicting the commander-in-chief, but many feel the assertion of maritime rights does not really clash with the president's approach to China policy. An officer said of Duterte: "He is hedging".¹¹³

Against this backdrop, the military is increasingly less hesitant to follow up words with action.¹¹⁴ In response to the Whitsun Reef incident, for example, the Philippine navy repeatedly dispatched vessels to conduct patrols.¹¹⁵ The Western and Northern Commands, which respectively cover Palawan Island and Luzon and are jointly responsible for the West Philippine Sea, are developing greater capabilities as part of the armed forces' overall modernisation.¹¹⁶ For now, however, the shift to external defence as a strategic objective is aspirational, as domestic counter-insurgency remains paramount in the government's view.¹¹⁷

D. Other Security Actors

Headed by the chief of the National Security Council, former armed forces chief Hermogenes Esperon, the Task Force on the West Philippine Sea deals with maritime disputes, strategies related to the Philippine claims and their impact on relations with China and other claimants. While the Task Force tried, with some success, to play a coordinating role under Aquino, it has been less active under President Duterte.¹¹⁸ Nevertheless, its mandate complicates the bureaucratic architecture dealing with the

¹¹¹ Lorenzana interpreted the Mutual Defence Treaty differently from Secretary Locsin, highlighting the possibility of the Philippines being entangled by the alliance should a U.S.-China clash occur. "It is not the lack of reassurance that worries me. It is being involved in a war that we do not seek and do not want". Quoted in Paterno R. Esmaguél II, "Lorenzana-Locsin clash over Mutual Defence Treaty heats up", *Rappler.com*, 5 March 2019.

¹¹² Crisis Group online interview, 9 September 2020.

¹¹³ Crisis Group online interview, military officer, 30 April 2021.

¹¹⁴ Frances Mangosing, "AFP eyes logistics hub in Pagasa island for uninterrupted WPS patrols", *Inquirer*, 4 May 2021.

¹¹⁵ Andrea Calonzo, "Philippines sends more ships to reef targeted by China", *Bloomberg*, 13 April 2021. Between 1 March and 25 May, Philippine vessels patrolled the contested areas at least 57 times, according to data from the Asia Maritime Transparency Initiative.

¹¹⁶ Crisis Group interview, military officer, 17 October 2020. These regional units consist of all three services – army, navy and air force – and are directly under the command of the armed forces chief.

¹¹⁷ Crisis Group online interview, Lieutenant General Cirilito Sobejana, former chief of the Philippine army, 17 September 2020.

¹¹⁸ Crisis Group correspondence, former official, 16 November 2020. See Appendix B.

South China Sea, occasionally resulting in uncertainty as to different agencies' responsibilities in shaping policy.¹¹⁹

Another security actor, the coast guard, is on the front line warding off Chinese incursions and thus plays a major role in the maritime dispute. It patrols maritime areas, focusing on law enforcement around Palawan and supply runs to its detachment on Thitu Island in the Spratlys. The coast guard, like the navy, favours “calibrated” responses to incidents at sea, focusing on maritime patrols by a few assets rather than deploying large groups of vessels.¹²⁰ While the two services are traditional rivals, a more cooperative relationship is evident in the Duterte era, partly thanks to personal ties between commanders.¹²¹ Duterte has also scaled up relations with Beijing through “coast guard diplomacy”, for example through a joint coast guard committee and relatively frequent bilateral exchanges.¹²²

The coast guard is also integrated into the National Coast Watch System, an inter-agency mechanism, established under President Aquino and staffed by former navy and coast guard personnel, responsible for maritime security operations across the Philippines. The mechanism is supported by the U.S. and Japan, underscoring Manila's pragmatism in drawing support from various sources to boost its maritime law enforcement.

E. Political and Economic Elites

Thanks to the Philippines' strategic partnership and close cultural ties with the U.S., the majority of the country's political elite remains pro-U.S. at heart. Most politicians, however, also initially supported, or at least did not criticise, President Duterte's pragmatic approach to Beijing.¹²³ A long-time political observer remarked: “Politicians are pragmatic about China. If it's about [receiving] support, they will accept it”.¹²⁴

Local elites in coastal areas bordering the South China Sea are cognisant of maritime challenges and territorial disputes, but leave these matters to the national gov-

¹¹⁹ Crisis Group interviews, experts, 15 October 2020 and 18 May 2021; navy officer, 12 August 2020. During the Whitsun Reef incident and its aftermath, the Task Force played a key role in providing regular updates on China's movements in the Spratlys, close to Philippine-claimed features.

¹²⁰ Coast Guard Commandant Admiral George Ursabia, quoted in “Conceptualizing Archipelagic Security: Prospects for a Robust Philippine Maritime Response”, Office of Naval Strategic Studies (webinar), 19 May 2021.

¹²¹ Crisis Group online interviews, coast guard officer, 21 October 2020; military official, 15 November 2020. Since the Philippine navy is not large, its functions are sometimes taken over by the coast guard, including patrols near disputed features as well as supply of Philippine-occupied features. Nonetheless, naval ships also patrol the South China Sea.

¹²² J.C. Gotinga, “China coast guard ship arrives in Manila for ‘friendly visit’”, Rappler.com, 13 January 2020. Duterte has followed Aquino's path in boosting the coast guard's capacities. See also Jay Tristan Tarriela, “Duterte's coast guard diplomacy”, *The Diplomat*, 23 December 2019.

¹²³ As the 2022 presidential election draws near, however, criticism is growing. Some of the presidential candidates have been questioning Duterte's approach. See “Philippine president spars with Pacquiao over South China Sea”, Reuters, 9 June 2021.

¹²⁴ Crisis Group online interview, political analyst, 28 September 2020. Several communiqués attest to links between Duterte's party PDP-Laban and the Nacionalista Party, on the Philippine side, and the Chinese Communist Party. Beijing also looks upon presidential candidate Ferdinand “Bong-bong” Marcos Jr. favourably, attributing to him a “pragmatic attitude” toward China. Li Kaisheng, “The US has fewer cards to stir up trouble for China in ASEAN”, *Global Times*, 21 November 2021.

ernment.¹²⁵ Politicians in Luzon provinces such as Pangasinan, La Union and Zambales, as well the “last frontier” province of Palawan, are exclusively focused on local politics.¹²⁶ They may have different perspectives on foreign affairs, but “no one fights Manila in that respect”.¹²⁷

Business and economic elites, on the other hand, are forthcoming in expressing their foreign policy preferences. Some of the prominent families who play an important role in the national economy embraced the pivot to Beijing – without commenting on the foreign policy dimension – since it offered a potential quick infusion of capital. For example, the Davao-based entrepreneur Dennis Uy and other businessmen, including political players in previous administrations, served as go-betweens for Duterte’s opening to Beijing and subsequently benefited from contracts related to Chinese investments.¹²⁸

Some experts pointedly wonder whether Beijing’s economic largesse in the Philippines hinges on Manila’s accommodation of its claims in the South China Sea.¹²⁹ Chinese analysts and academics often point to Manila’s “friendly attitude”, and de-escalation in the Sea in particular, as preconditions for cooperation.¹³⁰ Against this backdrop, some Chinese investments in the Philippines have come under scrutiny for their national security implications.¹³¹

F. *Public Opinion*

Opinion polls consistently indicate that the Philippine public is sceptical of China, which it increasingly perceives as a regional hegemon that uses bullying tactics and lacks sensitivity toward the archipelago.¹³² Two main factors seem to have contributed to this negative image over the last few years: first, the repeated maritime incidents in the South China Sea; and secondly, Chinese online gambling operations concentrated in Manila. In 2016, Chinese firms emerged in the Philippines to offer online

¹²⁵ Crisis Group correspondence, political analyst, 5 October 2020.

¹²⁶ Crisis Group online interviews, maritime analysts, 15 August 2020. Most of these provinces are peaceful, other than minor incidents of communist insurgency.

¹²⁷ Crisis Group online interviews, think-tank analyst, 22 September 2020; local journalist, Palawan, 23 October 2020.

¹²⁸ Crisis Group interviews, foreign policy expert, Makati, 21 October 2019; Alvin Camba, assistant professor, University of Denver, 13 August 2020.

¹²⁹ Alvin Camba and Janica Magat, “How Do Chinese Investors Respond to Territorial Disputes? Evidence from the Philippines and Implications on Economic Strategy”, *Singapore Economic Review*, 2019. Crisis Group online interview, academic, 6 August 2020.

¹³⁰ “Continuous Concerns in Philippines-China Relations in the Post-COVID-19 Period”, Philippine Association for Chinese Studies (webinar), 6 November 2020.

¹³¹ Two cases are noteworthy. One venture was the proposed development of Sangley airport in Cavite, south of Manila, that was supposed to involve a Chinese contracting company. While the local government was eager, the Philippine navy raised national security concerns, prompting Cavite’s governor to cancel the deal. Another Chinese investor, Dito Telecom, partially owned by China Telecom, won a lucrative contract to build an extensive network of communication towers, including in military camps, that raised anxiety about espionage. The government stayed firm in its commitment and the company is rolling out the telecommunication services, albeit slowly.

¹³² See, for example, “Social Weather Stations Survey July 3-6 2020”, Social Weather Stations, 19 July 2020; “Digital Sentiments on US-China Competition”, WR Numero Research, 28 August 2020.

casino services to customers in China, where gambling is banned. While these services help boost the local economy by providing employment, they have a poor reputation as some Chinese operators are allegedly involved in illegal or unsavoury activities.¹³³ Opposition politicians, for example Senator Risa Hontiveros, have lambasted the gambling firms using rhetoric that conflates Duterte's responses to gambling and his responses to Chinese maritime assertiveness, indirectly pressuring the government to rein in the firms.¹³⁴

The maritime dispute and broader relations with China are unlikely to decisively shape the 2022 presidential election, but their emotional impact on voters, coupled with more immediate concerns such as economic hardships arising from the pandemic, could play a role.¹³⁵ Given how prominently the South China Sea dispute has figured in public debates throughout 2021, critics of the president running for office in 2022 might try to score some political points by arguing that the administration's China policy has been a failure.¹³⁶

¹³³ Crisis Group online interview, analyst, 12 August 2020; Crisis Group correspondence, Teresita Ang See, social activist and academic, 27 October 2020. Philippine authorities arrested and deported hundreds of Chinese over the last few years. "342 Chinese POGO workers without visas set to be deported", Rappler.com, 20 December 2019; "Philippine police arrest 90 Chinese for illegal gambling", The Associated Press, 31 May 2020. Online gambling firms are supposed to pay taxes but transparency is lacking. "You [the government] get something, but you do not know how much it is". Crisis Group interview, Alvin Camba, assistant professor, University of Denver, 13 August 2020.

¹³⁴ Aika Rey, "China owes us over P200 billion in West Philippine Sea damage" – Hontiveros", Rappler.com, 22 April 2020. On 23 September 2021, Duterte signed a law that would streamline taxation of online casinos.

¹³⁵ Crisis Group online interview, political analyst, 28 September 2020.

¹³⁶ Crisis Group online interview, political analyst, 22 September 2020. Likewise, the opposition and some analysts fear a "Manchurian candidate" who would be China-backed. Alain Robles and Raissa Robles, "The Manchurian candidate: Why China's interest in the Philippine election is under scrutiny as Duterte prepares to leave office", *South China Morning Post*, 20 November 2021. There is no sign of direct interference yet, but in the past China-based online networks have used fake Facebook accounts to post positive opinions of the Duterte administration. Jessica Fenol, "Facebook removes China-based, PH military and police-linked networks for 'coordinated inauthentic behavior'", ABS-CBN News, 23 September 2020.

V. Substantive Issues

President Duterte's strategy to de-escalate maritime disputes with China started out rather well, fostering agreements on fisheries in Scarborough Shoal and resource exploration close to Reed Bank and Palawan. Over time, however, old problems have resurfaced. Seen from Manila, the South China Sea situation looks increasingly like a long-term stalemate.

A. Territorial Disputes

1. Scarborough Shoal

Filipinos, fishermen and sailors alike, have regularly reported arbitrary acts – such as confiscation of catches or fishing equipment – by Beijing's ships at the shoal in the last few years.¹³⁷ At first, after the 2016 arbitral decision and the beginning of Duterte's term, China permitted Filipinos to fish at Scarborough, but since then it has equivocated.¹³⁸ The informal agreement between Duterte's envoy and Beijing was verbal, and its interpretation seems contingent on Chinese coast guard personnel's "mood".¹³⁹

Both sides feel entitled to Scarborough, which the Philippines calls Bajo de Masinloc. From China's perspective, control over the shoal would complete a maritime triangle extending to the Spratlys and Paracels, providing it with a strategic edge.¹⁴⁰ Dominating that area, and building a base on Scarborough, could even facilitate a Chinese declaration of an Air Defence Identification Zone over the South China Sea.¹⁴¹ It would likely use the creation of such a zone to unilaterally impose directives on flights entering it. This would be a way for China to show its strength and perhaps to bolster its claims to the area.¹⁴² Defence Secretary Lorenzana identified the "prospect" of this scenario as contributing to regional tensions.¹⁴³

¹³⁷ Crisis Group interviews, October–November 2020.

¹³⁸ In March 2017, reports cited local Chinese officials who seemed to be planning a build-up of environmental monitoring stations on Scarborough. Jesse Johnson, "China planning 'monitoring station' on hotly contested South China Sea shoal", *Japan Times*, 17 March 2017. No such station has been built.

¹³⁹ Crisis Group online interview, official, 10 November 2020; journalists, 4 and 17 November 2020. According to the former Philippine naval chief, Giovanni Bacordo, the shoal is regularly guarded by a few coast guard vessels along with three fishing vessels. Quoted in "Online Forum with Philippine Navy's FOIC Vice Admiral Bacordo", Foreign Correspondents Association of the Philippines (webinar), 9 August 2020.

¹⁴⁰ China's bases in the Spratlys and on Woody Island in the Paracels are the other points of the triangle. See also Jay Batongbacal, "Scarborough Shoal: A Red Line?", Asia Maritime Transparency Initiative, 25 April 2016.

¹⁴¹ Crisis Group online interview, 1 November 2020. Talk of establishing an Air Defence Identification Zone over the South China Sea has been going on for years, gaining traction in 2020. China already established such a zone in the East China Sea.

¹⁴² Alexander Vuving, "Will China Set Up an Air Defense Identification Zone in the South China Sea?", *The National Interest*, 5 June 2020.

¹⁴³ "The U.S.-Philippines Mutual Defense Treaty at 70", op. cit.

For Filipinos, fishing in Bajo de Masinloc has been a traditional occupation for centuries.¹⁴⁴ According to local government data, around 4,000 Masinloc residents on the mainland work in the fishing industry, with 500 to 800 small-scale boats and fifteen to twenty large commercial vessels registered.¹⁴⁵ Before the conflict, hundreds of men from Masinloc fished near Scarborough, with dozens of deep-sea fishing boats regularly venturing out to the shoal.¹⁴⁶

While there is no formal prohibition, most Filipinos now avoid going there. Larger fishing boats are blocked from entering the lagoon by the Chinese coast guard, while the combination of a fourteen-hour journey and the risk of encountering hostile Chinese vessels outweighs the economic benefits for small-boat operators.¹⁴⁷ “Now, we just fish nearby, in the northern tip of Zambales”, explained one fisherman, recalling how the Chinese had told him he could not fish in the area on his last trip there in 2017.¹⁴⁸ Another fisherman, however, recounted a more positive experience: in 2018, he was able to fish in the lagoon and traded his catch for noodles from the Chinese.¹⁴⁹

The economic impact of being cut off from traditional fishing grounds is visible in Masinloc. Fishing remains the main livelihood, but while some fishermen have been able to keep plying their trade in more accessible waters, others have had to seek lower-paying work as labourers or tricycle drivers.¹⁵⁰ One fisherman explained: “When Scarborough fishing was great, I could even save some money; but now, what I earn is just enough for our daily needs”.¹⁵¹

2. The Spratlys

The Philippines asserts that it enjoys “effective occupation” – a concept that policy-makers use to underline their claim to the islets strategically and legally – over nine features in the Spratlys, including Thitu Island.¹⁵² Manila insists on regular patrols to “not let up the claim”, but remains careful to demonstrate restraint.¹⁵³ Patrols circle Philippine-owned features within a twelve-mile radius and avoid passing through other international and disputed waters so as not to provoke China’s ire. Military personnel, responsible for maritime surveillance, rotate through the garrisons on the

¹⁴⁴ Traditionally, the reefs and rocks around the shoal were a fishing ground for fishermen from China, Taiwan, Vietnam as well. The fishermen from various countries regularly traded with one another. Crisis Group online interview, academic, 12 August 2020.

¹⁴⁵ Crisis Group interview, village official, Masinloc, October 2020.

¹⁴⁶ Crisis Group interviews, fishermen, Masinloc, 2020.

¹⁴⁷ Access to the lagoon by larger boats is prohibited by Chinese vessels that occasionally permit smaller boats to enter.

¹⁴⁸ Crisis Group interview, fisherman, Masinloc, October 2020.

¹⁴⁹ Crisis Group online communication, 8 December 2020.

¹⁵⁰ Crisis Group interview, academic, 12 August 2020. Wives of fishermen whose livelihood had been affected even prior to the standoff often left the Philippines to work abroad.

¹⁵¹ Crisis Group interview, fisherman, Masinloc, October 2020.

¹⁵² Crisis Group interview, military officer, Manila, 17 October 2020. Under international law, “effective occupation” enables acquisition of territory. A Philippine representative to the UN Seabed Committee in 1972 used the term to reiterate Manila’s claim. See Marwyn Samuels, *Contest for the South China Sea* (Abingdon, 2005), pp. 90-91.

¹⁵³ Crisis Group online interview, navy officer, 30 July 2020.

nine occupied features. Despite occasional provocations by Chinese vessels, Manila avoids actions that could cause disproportionate retaliation on the Scarborough model. In the words of the Philippine naval chief: “We are guided by the rule of law, and we want to maintain the moral high ground”.¹⁵⁴

Chinese fishermen, maritime militia boats and coast guard vessels roam the area, and the navy is often “around the corner”.¹⁵⁵ Officials, however, highlight that although irritants remain, they have achieved a *modus vivendi* with the Chinese under Duterte, albeit by accepting a certain level of Chinese interference.¹⁵⁶ For example, while Manila often tolerates Chinese vessels’ massing or “swarming” close to Philippine features, it considers acts of maritime interdiction, such as supply blockades, as violations of the status quo that warrant official protests.¹⁵⁷

Located outside the Philippine EEZ, Thitu Island is the only permanently inhabited islet among the features Manila controls, just 18km from China’s base at Subi Reef. Some 200 people live on the 37-hectare rock, including navy and air force personnel. Rudimentary facilities and difficult access to the main island of Palawan make everyday life challenging.¹⁵⁸ Most of the residents are fishermen who migrated from Palawan over the years, motivated by patriotism and the promise of government subsidies.¹⁵⁹

In 2017, Thitu fishermen found themselves on the front line of the maritime dispute. Regularly thwarted by water cannons from Chinese vessels, they had to withdraw several nautical miles from productive fishing grounds to the safety of Thitu’s shallow reefs.¹⁶⁰ While municipal authorities, prior to 2016, had often been keen to showcase the plight of Thitu’s inhabitants to the world, they adapted to new realities under Duterte.¹⁶¹ The newly elected local government has been less eager to publicise issues related to Thitu and Chinese vessels.¹⁶²

In 2017, the Bureau of Fisheries and Aquatic Resources funded the relocation of some 50 Palawan fishermen to Thitu Island.¹⁶³ While the move represented a potentially controversial assertion of sovereignty, it did not seem to be part of a wider strategy, and may even have been a unilateral decision by the Bureau. The fishermen,

¹⁵⁴ “Online Forum with Philippine Navy’s FOIC Vice Admiral Bacordo”, op. cit.

¹⁵⁵ Crisis Group interview, military officer, 16 October 2020.

¹⁵⁶ Crisis Group online interviews, 10 November 2020 and 24 April 2021.

¹⁵⁷ Crisis Group online interview, 25 April 2021.

¹⁵⁸ Crisis Group online interview, civil society leader, 13 October 2020. There is no hospital on Thitu island.

¹⁵⁹ Sebastian Strangio, *In the Dragon’s Shadow: Southeast Asia in the Chinese Century* (New Haven, 2020), p. 261.

¹⁶⁰ Crisis Group interview, researcher, 30 September 2020. By some accounts, the Chinese coast guard was particularly firm with Filipinos in areas rich with fish. The standard procedure involved a siren or alarm warning, followed by use of water cannons and finally the “chase”. Occasionally, instructions are broadcast in Mandarin. Dylan Michael Beatty, unpublished manuscript.

¹⁶¹ The outspoken mayor of Kalayaan, Eugenio Bito-On, was a source for many international and national news outlets. He lost the 2016 election to Roberto del Mundo. Since then, the municipality has been low-key in its public relations.

¹⁶² The Palawan-based Western Mindanao Command became also more cautious about reporting Chinese intrusions. Crisis Group online interview, journalist, 23 October 2020.

¹⁶³ Michael Fabynyi, “Maritime Disputes and Seafood Regimes: A Broader Perspective on Fishing and the Philippines-China Relationship”, *Globalisations*, vol. 17, no. 1 (2020), p. 151.

however, faced difficulties selling their catch, and ended up supplying local soldiers, making the enterprise a partial success at best.

In August 2017, the Philippine military tried to pre-empt Chinese occupation of Sandy Cay, a set of sandbars between Thitu and the Chinese-held Subi Reef, by building fishermen's shelters, thereby flouting the 2002 Declaration of Conduct between China and ASEAN.¹⁶⁴ Beijing's deployment of a navy ship and a coast guard vessel to the area eventually persuaded Manila to withdraw, illustrating the Chinese *modus operandi*: using a Philippine move as a pretext for what most observers perceive as a disproportionate response. Since then, the feature appears to be unoccupied, though the Chinese maintain a presence in its vicinity.¹⁶⁵ The tacit agreement seems to be to stick to the status quo.¹⁶⁶

Another Philippine concern in the Spratlys is Second Thomas Shoal. In both 2018 and 2019, Chinese vessels disrupted Philippine resupply missions to the grounded BRP *Sierra Madre*. Beijing's manoeuvres stemmed from the perception that Philippine forces would fortify or rebuild the *Sierra Madre*, which China maintains is on the shoal illegally. Manila stood its ground, and in the end reached an arrangement with Beijing, permitting resupply operations to continue.¹⁶⁷ Still, policymakers consider it a potential flashpoint in the Spratlys, as any attempt by Manila to replace or refurbish the ship would most likely trigger a Chinese reaction.¹⁶⁸ It is not fully clear what prompted Beijing to once again block the resupply in 2021, but Philippine sources have cited two possible factors: yet another Chinese misperception of Manila's intentions or an effort to enforce the coast guard law.¹⁶⁹

B. Declining Fish Stocks

A major long-term problem for the Philippines is the depletion of fish stocks in the South China Sea. Fishing grounds in the Sea have been likened to "cowboy country", where players competing with no regulation create a "free-for-all".¹⁷⁰ Fishing vessels from China, Vietnam and Taiwan all ply their trade within the Philippine EEZ.¹⁷¹ The level of overfishing is such that fish stocks in the region seem vulnerable to collapse

¹⁶⁴ Adopted in November 2002, the Declaration on the Conduct of Parties is a non-binding document spelling out principles for states' behaviour pending a full-fledged Code of Conduct for the South China Sea. With the code still under negotiation, claimant states occasionally refer to the Declaration when involved in maritime incidents.

¹⁶⁵ "Online Forum with Philippine Navy's FOIC Vice Admiral Bacordo", op. cit.

¹⁶⁶ Beijing seems unconcerned with construction and repair work on Thitu Island, unlike on Sandy Cay. Crisis Group online interviews, maritime expert, 28 July 2020; source close to the Philippine side, 25 April 2021.

¹⁶⁷ Beijing has protested the Philippine ship's presence since 1999, and its efforts to force Manila to withdraw from Second Thomas Shoal are likely to continue. Any perceived attempt by the Philippines to go beyond mere resupply is bound to bring a Chinese reaction. Crisis Group interview, Philippine navy officer, 30 October 2020.

¹⁶⁸ Crisis Group online interview, 10 October 2021.

¹⁶⁹ Crisis Group interviews, Philippine officials and analysts, 18, 21 and 22 November 2021.

¹⁷⁰ Crisis Group online interview, maritime specialist, 2 November 2020. Two thirds of the fishing in the South China Sea is said to occur around the Spratlys. Crisis Group online interview, biologist, 20 August 2020.

¹⁷¹ Crisis Group online interview, academic, 5 August 2020.

if resource mismanagement continues.¹⁷² Some statistics point to fish stocks potentially declining up to 59 per cent by 2045 due to the combination of overfishing and climate change.

The maritime dispute causes two main problems for Philippine fishing: first, overlapping claims mean more fishing boats competing for limited resources; and secondly, foreign vessels intimidate local fishermen, who prefer to avoid trouble.¹⁷³

These patterns affect different areas differently. In Palawan, fishermen do not go beyond municipal waters and are thus hardly affected by the dispute.¹⁷⁴ The situation is more complicated in the Spratlys. Commercial fishing companies reported a drop in their catches in the area as early as 2013. While local fishermen corroborated this observation, Filipino scientists found that coral reef fish assemblage around Thitu Island was actually increasing – a positive sign given the importance of such fish for stocks and maritime ecosystems.¹⁷⁵ Fish species abundance decreased, however, in Nansha and Flat Islands, two nearby Philippine-occupied features.¹⁷⁶ In other areas, such as the Lingayen Gulf in Pangasinan province, decreasing stock seems to be the result of local – sometimes illegal – overfishing rather than maritime disputes farther out to sea.¹⁷⁷ “It is hard to convince the fishermen to act sustainably”, said the wife of a fisherman from a coastal town.¹⁷⁸ Local government officials also noted the adverse impact of climate change on fisheries.¹⁷⁹

Scarborough Shoal is another matter because of its significance as a traditional fishing ground at the heart of the maritime dispute. Fishermen operating there report-

¹⁷² See U. Rashid Sumaila and William Cheung, “Boom or Bust: The Future of Fish in the South China Sea”, University of British Columbia, 2015. The Philippines has less fishing capacity than other littoral states. Crisis Group online interview, former Philippine official, 25 September 2020.

¹⁷³ In the Philippines, there are two fisheries sectors: small-scale and artisanal fishermen, on one hand, and larger commercial enterprises, on the other. The former do not venture beyond the 15km limit of municipal waters, while the latter go farther, some out to the open sea. Only larger boats can reach Palawan and the Spratlys. There are cases of Filipinos poaching in neighbouring countries' EEZs (particularly Indonesia's), but the absence of state subsidies for high-sea fishing keeps many fishermen close to shore.

¹⁷⁴ Overfishing in the province remains a problem, which has led to a fishing ban for some species in north-eastern Palawan and efforts to declare marine protected areas in some coastal towns. Moreover, some municipalities, such as Cuyo, Coron and Busuanga, regularly experience encroachment by commercial interests in their waters, according to statistics compiled by the NGO Oceana. Crisis Group online interview, 16 November 2020. Another concern in Palawan is the live reef fish trade that spurs fishermen to sell samples of rare species to regional and global customers.

¹⁷⁵ “Biodiversity and Ecological Connectivity”, DENR-Biodiversity Bureau (webinar), 23 September 2020. Aileen Baviera, “Territorial and Maritime Disputes in the West Philippine Sea: Foreign Policy Choices and Their Impact on Domestic Stakeholders”, *Public Policy*, vol. 15, no. 2 (2016), p. 26.

¹⁷⁶ “Biodiversity and Ecological Connectivity”, op. cit. Anecdotal evidence from a scientific expedition to both shoals and in the vicinity of Sabina Shoal suggests that Vietnamese and Chinese fishermen were present. Crisis Group correspondence, scientist, 10 November 2020.

¹⁷⁷ Crisis Group online interview, community worker, 19 October 2020.

¹⁷⁸ Crisis Group online interview, community worker, 19 October 2020. Some villages in La Union, for example, have not been affected due to proactive local government measures such as the creation of marine protected areas. Crisis Group telephone interview, local government official, 4 September 2020.

¹⁷⁹ Crisis Group online interview, local government official, 9 October 2020.

ed a significant drop in catches in 2020.¹⁸⁰ Their explanations included the presence of too many Filipino fishermen, unsustainable fishing methods (such as the use of dynamite), migration of fish stocks and the overwhelming presence of Chinese fishing boats since the 2012 standoff.¹⁸¹ A fisherman who works mostly in municipal waters said: “It seems there are fewer fish to catch. This morning, I came home with just 5kg. Before, I used to catch 20kg in one night”.¹⁸² Others, however, acknowledged the seasonality of fishing success.

In the absence of detailed research, the exact causes and extent of fish stock depletion in the Philippine EEZ and beyond are undetermined.¹⁸³ While all littoral states inevitably bear some responsibility, industrial fleets from China, Vietnam and Taiwan likely play a bigger role. Illegal, unreported and unregulated fishing by both foreign and local actors is a severe challenge for coastal communities.¹⁸⁴ According to a scientist, “it is a mix of everything: unregulated and illegal fishing, lower recruits, reduced stock, loss of connectivity”.¹⁸⁵ Calculating the losses the Philippines is incurring in its EEZ due to foreign vessels’ overfishing and other factors – locals’ illegal fishing and Chinese land reclamation, for instance – requires a detailed study.¹⁸⁶ Access to some of the areas concerned, however, remains a major hurdle due to the maritime dispute.

The plight of fisheries in the South China Sea cannot be separated from the state of the environment, as independent experts confirmed in the course of the 2016 arbitration proceedings. Indeed, the tribunal stated that the impact of Chinese land reclamation in the Spratlys between 2013 and 2015, and the illegal harvesting of protected species such as turtles and clams, sometimes through local middlemen, had led the maritime ecosystem to deteriorate.¹⁸⁷ The pressure on habitats is likely to have adverse effects upon fish abundance.¹⁸⁸

¹⁸⁰ Zambales fisherfolk reported an average 70 per cent income drop. Karl Ocampo, “Group: Fisherfolk income down by 70% amid Chinese presence in disputed waters”, *Inquirer*, 28 May 2021.

¹⁸¹ In 2019, Duterte was rumoured to have concluded a “verbal” fishing deal with Xi Jinping that would allow China to fish in Philippine waters. Almost two years later, shortly after the Whitsun Reef incident, the president’s office clarified that there was no such agreement. “Malacañang backtracks on Duterte’s ‘verbal fishing deal’ with China”, *Verafiles*, 24 April 2021.

¹⁸² Crisis Group interview, local fishermen, Masinloc, October 2020.

¹⁸³ Jonathan Anticamara and Kevin Go, “Spatio-Temporal Declines in Philippine Fisheries and Its Implications to Coastal Municipal Fishers’ Catch and Income”, *Frontiers in Marine Science*, vol. 3 (March 2016).

¹⁸⁴ Navotas, the capital of fishing in metropolitan Manila and home to the largest fish market in the country, felt the effects of overfishing, too. Crisis Group online interviews, local government officials and community workers, 21 September, 19 October and 27 October 2020.

¹⁸⁵ Recruitment refers to juvenile fish surviving to enter an adult fish population. Connectivity refers to linkages between local marine populations. Crisis Group online interview, Deo Florence Onda, professor, Marine Science Institute, University of the Philippines, 9 October 2020.

¹⁸⁶ At present, only estimates are available. *Ibid.*

¹⁸⁷ Official Chinese communications on the land reclamation attempted to explain protection measures taken during the construction. Most subject matter experts, however, are sceptical of both mitigation measures and efforts to reverse the damage.

¹⁸⁸ For example, clam poaching has led to the destruction of coral reefs, which are critical to fish mobility and are a source of food for some species.

Co-management of resources in tense waters is challenging, particularly when political considerations supersede the need for cooperation. While there have been modest efforts to foster scientific exchanges in the region, these may only work as long as technical issues do not impinge on perceived sovereignty. Lamenting the impact of politics on technical cooperation, a scientist involved underlined that any kind of collaboration on fisheries requires governments themselves to throw their support behind – or at least give their blessing to – such efforts.¹⁸⁹ Without a regional blueprint, unilateral initiatives by individual claimant states, such as declaring marine protected areas in territorial waters, will inevitably fall short of expectations.

Cooperation among the littoral states to tackle overfishing across the region is urgently required. Exchanges between scientists and data gathering are undoubtedly a small step in the right direction, even if access challenges are a complication.¹⁹⁰ But more effort and political capital should be invested by the Philippines and other littoral states to kickstart genuine technical cooperation between claimants, for example through regular meetings, workshops, joint review of scientific surveys and scenario analysis for fish stocks.

C. *Oil and Gas*

Although the exact quantities are unknown, the South China Sea is said to sit atop vast oil and gas reserves. With the Philippines presently importing oil and gas, and the major Malampaya gas field expected to run out within a few years, finding new energy sources is a high priority for policymakers.¹⁹¹ Gaining access to additional energy resources in its EEZ could have a “sizeable impact” on the Philippines’ economy, despite the relatively high cost of offshore hydrocarbon extraction.¹⁹² Manila, however, has limited capacity to exploit the reserves on its own, and complications associated with the littoral dispute tend to keep multinational companies away.

China could thus be a logical partner for such ventures. Talks have been under way for years, but collaborative exploration and development of hydrocarbons has been repeatedly frustrated amid recurrent episodes of friction. Previous attempts by the Philippines to explore reserves in its EEZ resulted in a strong reaction from Beijing, signalling Manila that the exercise would be fraught.¹⁹³ In 2014, President Aquino declared a temporary halt to all exploration efforts to avoid provoking Beijing.

¹⁸⁹ Crisis Group online interview, biologist, 20 August 2020. Regional initiatives to boost fisheries cooperation has been often aspirational and focused largely on exchanges between scientists, often driven by NGOs.

¹⁹⁰ Angaindrankumar Gnanasagaran, “Fishy business in the South China Sea”, *ASEAN Post*, 22 July 2018.

¹⁹¹ Operated by a consortium comprising the Philippine National Oil Company, Chevron and Shell (which sold its stake to a Philippine company, Udenna, in May 2021 in a deal under Philippine Energy Department review), reserves at the Malampaya gas field, north west of Palawan island, are likely to run out in 2026 or 2027. Crisis Group online interviews, Philippine official, 14 September 2020; South China Sea expert, 23 September 2020.

¹⁹² Bill Hayton, *The South China Sea: The Struggle for Power in Asia* (New Haven, 2014), p. 149.

¹⁹³ In March 2011, two Chinese vessels used “aggressive manoeuvres”, compelling the Philippine survey ship to leave the area. Crisis Group Report, *Oil in Troubled Waters*, op. cit., p. 15.

In principle, however, joint exploration of resources remains a way to facilitate cooperation between China and the Philippines. “Oil and gas could be a conflict minimiser”, argued a former diplomat, “and it need not compromise sovereignty”.¹⁹⁴ In 2018, as relations improved following Duterte’s election, Beijing and Manila signed an aspirational Memorandum of Understanding that expressed their willingness to engage in joint exploration and development. The memorandum stated that officials would continue discussions under the Bilateral Consultative Mechanism on how to make joint development work in practice. Shortly afterward, Duterte lifted Aquino’s moratorium on exploration. Local and international companies have since expressed interest, though no contracts have been signed.¹⁹⁵ Several areas are presently under consideration for exploration. The largest is Reed Bank, within the Philippine’s continental shelf north west of Palawan, which covers an area three times the size of Malampaya.¹⁹⁶

The legal dimension of potential cooperation in the Reed Bank is particularly complex, as the area lies within the nine-dash line, thereby raising concerns over sovereignty and sovereign rights. The framework for exploration, in accordance with national law, focuses on the service contract model, whereby a Philippine corporation or a foreign entity may enter into a contract with the Philippine government.¹⁹⁷ But with the 2016 ruling stipulating that the Reed Bank area is clearly within the Philippine EEZ, an agreement for joint exploration following this model would have to manoeuvre around sovereign rights disputes. By entering into a service contract with Manila, an oil or gas company would de facto recognise Philippine sovereignty, something Chinese companies would clearly refuse to do, while a contract with a non-Chinese foreign oil or gas company would most likely incur Beijing’s ire.

Legal creativity could overcome the challenge. Legal experts and analysts have developed proposals, including for a joint Philippine-Chinese authority to manage the resources, and joint ventures to engage in exploration through commercial contracts. Alternatively, the two parties could negotiate a treaty, with Manila enacting an implementing law, thus bypassing the service contract model and its requirements.¹⁹⁸

A safer bet for cooperation would be to focus on an area around the Calamian Islands, covered by Service Contract 57 and located in another part of Palawan. As the field lies outside the nine-dash line, and there is already a partnership between Phil-

¹⁹⁴ Crisis Group online interview, diplomat, 12 August 2020.

¹⁹⁵ Crisis Group online interview, government official, 14 September 2020. The lifting of the moratorium was not limited only to Chinese companies, even though Beijing is highly sceptical about Philippine cooperation with companies outside the region, or even unilateral efforts. Crisis Group interviews, diplomats, Manila, September-October 2020; May 2021.

¹⁹⁶ Other reserves are near Palawan proper, including Service Contracts 75 (also Reed Bank), 58 (West Calamian), 54 (North West Palawan), 59 (West Balabac) and 57 (Calamian). The first two, and perhaps some of the others, seem to lie within the (imprecise) nine-dash line, implying that Beijing would object to any non-Chinese activity there.

¹⁹⁷ Any agreement would need to take into account Philippine law on allocation of profits. The 1972 Oil Exploration and Development Act stipulates that the Philippines government should retain 60 per cent of net profit with 40 per cent going to the contractor. Paragraph 1, Section 2, Article XII of the 1987 constitution stipulates that “the exploration, development and utilisation of natural resources shall be under the full control and supervision of the State”.

¹⁹⁸ Crisis Group online interviews, academics, 14 August and 8 November 2020.

ippine and Chinese state-owned companies that could do the work thanks to an existing arrangement, there is no evident hindrance to joint exploration.¹⁹⁹ An agreement on the area covered by Service Contract 57, and by extension other areas nearby, could be a test case for Philippine-Chinese collaboration and even serve as a catalyst during negotiations over the contested fields. But as the end of Duterte's term draws closer, putting the 2018 memorandum into practice may prove challenging especially given the administration's focus on managing the pandemic and its economic impact.²⁰⁰ Should Manila pursue exploration on its own, or through a non-Chinese joint venture, it would need safeguards and contingency plans in the event of an adverse Chinese reaction.²⁰¹

¹⁹⁹ Service Contract 57 was awarded to the Philippine National Oil Company, which has a partnership with the China National Offshore Oil Corporation since 2007. The third partner is Jadestone Energy. The Philippine company estimates that drilling could start in the fourth quarter of 2021; other experts are less optimistic. Crisis Group telephone interview, source close to the Philippine side, 30 May 2021.

²⁰⁰ Crisis Group online interview, source close to the process, 25 April 2021. Moreover, Energy Secretary Alfonso Cusi is a leader of Duterte's ruling party PDP-Laban and is heavily involved in electoral politics, raising the question of the department's priorities for the rest of the year.

²⁰¹ Pia Ranada, "Lifting of West Philippine Sea moratorium tests Duterte's China strategy", Rappler.com, 24 October 2020. A unilateral move by Manila, whether via a government or private initiative, and irrespective of naval involvement, could prompt Beijing to dispatch vessels to shadow Philippine ships, to conduct its own survey in the area or to engage in other tactics of non-military coercion. Crisis Group online interviews, China policy expert, 8 November 2020; diplomat, 29 May 2021.

VI. Beyond the Status Quo: Options for a Maritime State

A. *Dealing with Dilemmas*

Manila faces a dilemma in navigating the South China Sea dispute: its two objectives of strengthening national security and resolving maritime disputes peacefully are overlapping, but not necessarily congruent. Boosting defence ties with Washington and strengthening the Philippines' maritime position will serve the first goal, while good ties with Beijing are a prerequisite for the second. More broadly, the Philippines may also have to decide whether it will continue to cope with geopolitical tensions by hedging or, instead, fully commit to its alliance with the U.S. A Philippine official admitted that "a balancing position is not going to be easy".²⁰²

At present, the tide seems to be turning toward better relations with Washington, as indicated by Manila's recommitment to the Visiting Forces Agreement. While Beijing remains an important economic partner and may have gained some good-will through vaccine diplomacy in early 2021, the Whitsun Reef standoff, and more generally Chinese assertiveness in the Spratlys over the last few years, have had the opposite effect, both in government corridors and among the Filipino public. Yet fully reinvigorating the Philippine-U.S. alliance risks antagonising China, and complete recommitment to it will depend on Manila's perception of Washington's long-term assurances and the level of mutual trust.²⁰³ One step Manila could take would be to continue enhancing its defence posture (ie, establishing a military capability that could provide a minimum credible deterrence) while drawing support from countries willing to assist in pushing back against Chinese territorial assertiveness.²⁰⁴ With Duterte's term ending in mid-2022, however, such key foreign policy decisions will most likely be left for the next Philippine president.

Another major dilemma lies in how to engage Beijing. While Manila has decades of experience in negotiating with its U.S. ally, it is relatively inexperienced in dealing with an increasingly assertive China.²⁰⁵ Even though bilateral relations have improved, Filipino experts emphasise the need to bridge the gap beyond high-level exchanges by engaging China in more technical discussions, for example about fisheries, and increasing the frequency of meetings.²⁰⁶ Some also believe that Beijing could do more to show its commitment to peaceful resolution of disputes. As one Philippines dip-

²⁰² Crisis Group online interview, 10 October 2021.

²⁰³ Crisis Group online interview, official, 30 April 2021. Washington's level of support for the Philippines in case of an armed attack does not seem to be a major concern for policymakers any longer, given the Biden administration's assurances, even though the specifics of the U.S. response may still need further clarification. Another question is whether China's grey zone operations could be a motive for invoking the Mutual Defence Treaty, a point some commentators suggest Philippine and U.S. officials should urgently discuss. Crisis Group online communication, 20 June 2021. A review of the treaty, however, may trigger objections from China, which has already indicated its concern. Sofia Tomacruz, "Lorenzana: Ex-China envoy told me, 'Please do not touch' PH-US military treaty", Rappler.com, 30 September 2021. Crisis Group online interview, 10 October 2021.

²⁰⁴ Crisis Group interview, naval analyst, 15 August 2020. The concept of credible deterrence appears in the Philippine National Security Strategy from 2018.

²⁰⁵ Notwithstanding the historical and cultural ties between the two countries regularly emphasised by diplomats.

²⁰⁶ Crisis Group online interviews, academics, 7 September and 8 November 2020.

lomat said: “We can only do so much. The ball is now in Beijing’s hands”.²⁰⁷ Manila, however, should not forget that it also has agency. It should clearly communicate any present or future “red lines” to China and insist on its rights – for example, regarding access to Scarborough – while keeping up aspects of the relationship unrelated to the territorial dispute and avoiding overheated rhetoric.²⁰⁸

B. Risk Management Mechanisms

Three scenarios that could involve Manila in a maritime incident with the potential to escalate into an armed encounter, exacerbating regional tensions in the process, are as follows:

First, a collision between U.S. and Chinese forces near the Philippine Spratly features or Scarborough Shoal might drag Manila into the picture, even if indirectly. This scenario is unlikely but not impossible given the large presence of Chinese vessels, and the U.S. navy’s regular Freedom of Navigation operations in the area.²⁰⁹ Both sides worked to mitigate tensions in the run-up to the 2020 U.S. presidential election and took steps to develop a crisis communications working group in order to prevent incidents from escalating.²¹⁰ But accidental encounters remain a real risk, which could be diminished by further strengthening crisis communication channels between Beijing and Washington.²¹¹

One way forward could be to clarify language in the 2014 U.S.-China understandings on rules of behaviour and major military activity notifications that is, for now, open to interpretation.²¹² Direct crisis communications between the U.S. Indo-Pacific Command and its Chinese counterpart, and more broadly, channels that can facilitate timely communications at the leadership level during a crisis, are also overdue.²¹³ In any case, Washington should keep Manila in the loop about its existing channels

²⁰⁷ Crisis Group online interview, 18 September 2020.

²⁰⁸ While the Philippines is no match for China militarily, these red lines can still have a deterrent effect. For example, Manila identified Chinese construction on Scarborough Shoal or forceful action by Beijing at Second Thomas Shoal aimed to remove the BRP *Sierra Madre* as such red lines, which China has so far respected. Crisis Group phone interview, source privy to Philippine-China talks, 28 July 2020. See also Patricia Viray, “Philippines, China draw ‘red lines’ in South China Sea dispute”, *Philippine Star*, 29 May 2018.

²⁰⁹ The U.S. uses these operations to challenge what it views as other states’ excessive maritime claims. Fifteen of 34 such operations reported in the South China Sea between October 2015 and February 2021 occurred around the Spratlys, including in the vicinity of Mischief Reef and Scarborough Shoal. Crisis Group online interview, retired U.S. Navy officer, 9 October 2020. A close encounter occurred on 1 October 2018 when the USS *Decatur* came near a Chinese Luyang-class destroyer in the vicinity of Gaven and Johnson Reefs, close to the Chinese-occupied features.

²¹⁰ The latest instrument is a U.S. Department of Defense Crisis Communications Working Group with China’s People’s Liberation Army. See “U.S. Department of Defense Hosts First Crisis Communication Working Group with People’s Republic of China’s People’s Liberation Army”, press release, U.S. Department of Defense, 29 October 2020.

²¹¹ See also Crisis Group United States Briefing N°2, *Nineteen Conflict Prevention Tips for the Biden Administration*, 28 January 2021.

²¹² The mechanism stems from a 2014 agreement between President Barack Obama and Xi Jinping. It aims to “to improve and normalise mutual notification of military crisis information [...] in order to reduce risk, foster mutual trust and increase openness”.

²¹³ Crisis Group online interview, China security expert, 5 May 2021.

with Beijing, so that the Philippines can strengthen its own crisis management and develop systematic contingency plans.

Secondly, an encounter between Philippine and Chinese maritime forces or vessels could lead to a diplomatic crisis and military escalation. Given the consistency of U.S. pronouncements about the Mutual Defence Treaty since 2019, Manila could in principle invoke this agreement in case of an armed confrontation with Chinese assets, hoping to bring Washington into the picture to assist its ally.²¹⁴ But while the treaty serves to deter full-fledged military hostilities, by its terms it applies in situations of “armed attack”, leaving some uncertainty in Manila about the extent to which it can look to Washington for support where Chinese actions appear threatening but fall below that threshold. Duterte’s rapprochement with China encouraged both Manila and Beijing to exercise caution and peacefully work out issues such as those around Sandy Cay, but the Whitsun Reef and Second Thomas Shoal incidents underlined that maritime tensions are likely to persist.²¹⁵ The operational environment is therefore hard to predict, particularly from Manila’s perspective.

To minimise the risk of misjudgment or miscalculation, the Philippines could seek clarity from Washington on what kind of assistance it can expect with respect to Beijing’s grey zone actions in the South China Sea. It should also, in general, work through scenarios stemming from these (and possible future) incidents, developing responses that could dial back any escalation and reduce tensions.

Thirdly, an incident could occur involving the Philippines and a littoral state other than China. The probability of a maritime encounter with a naval or coast guard vessel from a neighbouring state is fairly low. But the potential for conflict nonetheless remains, particularly due to fishing in the Spratlys or in adjacent areas such as the Sulu Sea and the Batanes Strait. The Philippines has managed those disputes well so far, thanks to its coast guard and navy’s good relations with neighbouring states’ forces. Given the geopolitical ramifications of South China Sea incidents, better risk management mechanisms in the region would nonetheless be worthwhile.

Minimising the risk of the last two scenarios would require clarity on rules of engagement involving non-navy vessels, such as coast guard ships.²¹⁶ The Philippine navy follows the 2014 non-binding Code for Unplanned Encounters at Sea.²¹⁷ Rules for encounters involving coast guard and maritime militia ships, however, need to be clarified.²¹⁸ Given the robust contacts between Philippine and Chinese coast guards, codifying bilateral rules of behaviour and replicating them at the regional level could further build confidence among the claimants. Port calls, joint workshops and hotlines are also valuable for promoting exchange.²¹⁹

²¹⁴ “Secretary Blinken’s Call with Philippine Secretary of Foreign Affairs Locsin”, U.S. Department of State, 8 April 2021.

²¹⁵ Crisis Group interview, Philippine official, 15 November 2020. Crisis Group online interviews, Philippine officials, 4 November 2020 and 25 April 2021.

²¹⁶ Crisis Group online interview, former diplomat, 3 August 2020.

²¹⁷ Crisis Group correspondence, former senior navy officer, 11 November 2020.

²¹⁸ Coast guards are important players in the dispute as the primary law enforcement agencies in the South China Sea, serving also as catalysts for diplomacy. At present, the Philippines is developing rules of engagement for its coast guard. Crisis Group online interviews, academic, 7 September 2020; coast guard officer, 11 September and 17 November 2020.

²¹⁹ Crisis Group online interviews, coast guard officers, September–November 2020.

While the coast guard is a crucial actor in incidents at sea, it is important to establish different channels for de-escalation as, in the views of one observer, “multiple links are ideal in that kind of situation”.²²⁰ Presently, the Philippine armed forces maintain a link to the Chinese Southern Theatre Command, which covers the South China Sea air and naval space.²²¹ A dedicated naval hotline between Manila and Beijing, similar to those used by ASEAN member states’ navy chiefs and supported by staff-to-staff connections, would be a useful complement.²²²

C. *Using Minilaterals to Fill Governance Gaps*

With territorial disputes unlikely to be resolved soon, Manila has little choice but to continue managing relations with other claimant states the best it can, seeking to minimise friction with those that occupy features in the disputed areas and share with them the South China Sea’s maritime space. Apart from bilateral engagements, it can best proceed through a “minilateral” approach – bringing together a smaller group of implicated countries (instead of all ten ASEAN member states and China, as is the case for the Code of Conduct negotiations). Discussions in smaller forums, involving only those directly concerned and focusing on areas of common interest, such as fisheries management, scientific research or law enforcement, would help build trust and sustain official and informal ties. Such alternative modes of cooperation would have the added advantage of avoiding overreliance on an increasingly paralysed ASEAN without questioning the concept of “ASEAN centrality” when it comes to Code of Conduct negotiations.²²³

In that spirit, some Philippine experts suggest that Manila should push for stronger engagement with Hanoi, Kuala Lumpur and Jakarta through informal consultations – possibly even on the sidelines of Code of Conduct meetings.²²⁴ It could, for example, start discussing maritime and continental shelf boundaries with Malaysia and Vietnam.²²⁵ Similarly, marine scientific research on environmental challenges in the South China Sea could be the topic of targeted discussions among South East Asian

²²⁰ Crisis Group interview, Manila, 30 October 2020.

²²¹ The Southern Theatre Command is based in Nanning, Guangxi Zhuang Autonomous Region, bordering Vietnam. Links to it make sense considering that the Chinese coast guard has been under the People’s Liberation Army’s command since July 2018. In the Whitsun Reef crisis, the Philippine military engaged with Beijing through its defence attaché.

²²² Crisis Group online interview, naval officer, 30 July 2020. Malaysia and the Philippines settled a maritime incident involving their vessels in 2016 through diplomatic means.

²²³ Richard Javad Heydarian, “At a Strategic Crossroads: ASEAN Centrality amid Sino-American Rivalry in the Indo-Pacific”, Brookings Institution, April 2020.

²²⁴ Crisis Group interviews, diplomat, 9 September 2020; military official, 20 September 2020; South China Sea expert, 23 September 2020. Existing mechanisms at the ASEAN level, for example the Sectoral Working Group on Fisheries, have not proven efficient, partly because they by default include non-claimants in discussions.

²²⁵ Manila could draw inspiration from its recently concluded border delineation with Indonesia to sort out the issue of its overlapping EEZ with Malaysia. Likewise, although it has no direct territorial disputes with Vietnam, it could work on delineating the maritime boundary or the continental shelf with Hanoi.

claimants, with China invited at a later stage.²²⁶ Moreover, the Trilateral Cooperation Agreement between the Philippines, Malaysia and Indonesia regarding the Sulu Sea, adjacent to the South China Sea, could serve as a model for a minilateral approach on law enforcement.²²⁷ Designed as a tool for curbing piracy and maritime militancy, this flexible instrument has managed to create political capital on a subject of common interest among the three neighbours.

Claimant states also all have an interest in tackling illegal fishing and increasing fisheries cooperation more broadly. While the Code of Conduct negotiations may touch upon fisheries dilemmas in the South China Sea, they are not geared at resolving them. Littoral states should opt for a more direct form of cooperation outside the Code's scope. Informal conversations might be a first avenue to building confidence, but a positive outcome will require an institutional framework. Deeper engagement among the littoral states' coast guards could be one way forward.²²⁸ Manila should also strengthen and promote science diplomacy in order to develop elements of a joint policy framework for fisheries in the South China Sea, facilitated by regular dialogue among claimant states. Initial steps could include data sharing on fish stocks, a mapping of particularly vulnerable areas around the Spratlys and an exchange about marine protected areas. Common guidelines on developing aquaculture could also contribute to reducing overfishing on the high seas.²²⁹

D. *Calibrate the Code of Conduct*

Under negotiation since 2002, the Code of Conduct for the South China Sea could be, if it becomes a reality, one of the few common denominators among Beijing and the ASEAN claimants. It is foreseen as an instrument for managing, rather than resolving, the maritime disputes. But while the need is pressing for a framework to contain simmering tensions, the draft under review is a complex and largely aspirational document that lays out what are currently irreconcilable positions.²³⁰ Crucial questions, such as the Code's geographic scope and legal status, as well as the question of dispute settlement mechanisms, remain unresolved. Still, if the Code talks have been arduous, they are so far the only mechanism with buy-in from both Beijing and the other littoral states.

²²⁶ The Philippines is particularly vulnerable to the impact of climate change; its maritime environment is no exception. Crisis Group correspondence, climate scientist, 20 September 2020. See also David Suh and Robert Pomeroy, "Projected Economic Impact of Climate Change on Marine Capture Fisheries in the Philippines", *Frontiers in Marine Science*, vol. 3 (April 2020). On 8 November 2021, Hanoi and Manila agreed to revive a joint maritime scientific research initiative, which had been interrupted since 2007. Jairo Bolledo, "PH, Vietnam agree to resume joint marine research expedition", *Rappler.com*, 17 November 2021.

²²⁷ This agreement is one of the few political-security agreements among ASEAN members. Its advantages are not primarily operational, but procedural, as it deepens ties between Manila, Jakarta and Kuala Lumpur in intelligence sharing, coordinated patrols and personal links. Crisis Group online interviews, diplomats, maritime analysts, July-August 2020.

²²⁸ Crisis Group online interviews, coast guard officer, September 2020.

²²⁹ Aquaculture is a controlled way of cultivating fish and other seafood organisms and colloquially means "fish farming".

²³⁰ Crisis Group online interviews, former diplomat, 3 August 2020; diplomat, 18 September and 1 October 2020.

Manila should continue to push for progress both at the negotiating table and behind the scenes. Following the minilaterals approach mentioned above, the Philippines could, for example, lobby for the creation of preparatory “working groups” that would help achieve bilateral or trilateral consensus on vital issues among key claimant states prior to going to the Code of Conduct negotiation table.²³¹

Procedure apart, Manila should also push for relevant content in the Code of Conduct to make the document more substantive. As one of the claimant states most affected by incidents at sea, the Philippines would for example have an interest in clarifying draft clauses such as language about “self-restraint”, about which the draft is presently vague, leaving plenty of room for misunderstandings at sea.²³² It could also promote clear phrasing regarding enforcement mechanisms and dispute settlement provisions, including by emphasising the relevant mechanisms that exist under UNCLOS, and more broadly advocate for adherence to accepted principles of proportionality and good faith in resolving contentious issues.²³³ Finally, Manila could draw from its bilateral talks with China to strengthen provisions on environmental cooperation and fisheries management. Whatever the case, the Philippines should push for a substantive, effective and legally binding Code of Conduct between ASEAN and China at the earliest, even after its term as coordinator of the process ended.²³⁴

E. *Keeping China in the Loop*

For the Philippines, as for all claimant states, China is an inescapable geographic reality. Considering the sovereignty disputes in the South China Sea are likely to be unresolved for some time, a pragmatic approach to managing differences with Beijing is crucial. “We can talk to China, but keep the expectations low. Yet talking is better than fighting”, said a former navy commander.²³⁵ China values negotiation, and the existing Bilateral Consultative Mechanism is, in principle, a good forum for talks, even if its track record is mixed.²³⁶ The five sessions that took place before the pandemic achieved progress on topics such as joint exploration for hydrocarbons and scientific research, while other issues stalled.²³⁷ A sixth round of talks took place in mid-May 2021, which officials deemed moderately successful as it allowed for con-

²³¹ While sectoral working groups exist under ASEAN on topics such as fisheries and coastal and marine environment, they have so far proven ineffective, partly due to the fact they include all ASEAN member states, many of which have no direct stake in the South China Sea, rather than focusing on claimant states.

²³² The Code of Conduct’s predecessor, the 2002 Declaration of Conduct of Parties in the South China Sea, stipulates that all parties will “exercise self-restraint in the conduct of activities that would complicate or escalate disputes”, but it does not define the notion of self-restraint. The draft of the Code of Conduct features some parties’ suggestions for clear wording but no agreed-upon definition.

²³³ Tweet by Teodoro Locsin, @teddyboylocsin, 12:39am, 26 November 2020.

²³⁴ Myanmar took over the role of coordinator for ASEAN-China relations from the Philippines in August 2021.

²³⁵ Crisis Group online interview, retired officer, 1 July 2020.

²³⁶ Crisis Group online interview, retired diplomat, 23 July 2020.

²³⁷ Part of the problem was the infrequency of meetings, exacerbated by the pandemic.

tinuing frank dialogue and for airing a number of constructive suggestions.²³⁸ Increasing the frequency of exchanges with tangible action points and specific outputs could build trust, improve Beijing's public standing in the Philippines, and set a precedent for future resolution of disputes.

Encouraging good-will through a formal agreement on access to Scarborough Shoal, including ground rules governing interactions between Chinese vessels and Philippine fishing and coast guard boats, would be a win for both sides. So, too, could demilitarisation of the shoal's lagoon, in the spirit of the 2016 arbitration award. As Scarborough concerns only China and the Philippines, it can be tackled bilaterally.²³⁹ Should there be no substantive results in bilateral channels, Manila could then bring up the issue at the Code of Conduct talks and advocate for Scarborough's inclusion in the agreement's geographical scope.

²³⁸ Crisis Group telephone interview, 30 May 2021. The main discussion points included "issues of concern" and "issues of cooperation". One breakthrough cited was compensation for Filipino losses during the 2019 Reed Bank incident. Observers also highlighted advances in fisheries cooperation, though details are scarce.

²³⁹ Crisis Group online interview, defence analyst, 30 June 2020.

VII. Conclusion

The South China Sea disputes are complex, involving a number of countries and a multitude of economic, strategic and security dimensions. Phases of escalation and confrontation are interspersed with periods of calm. Recent tensions are feeding back into U.S.-China strategic competition, drawing Manila into an increasingly thorny foreign policy predicament.

Following Duterte's 2016 election victory, the Philippines' foreign policy, and by extension its South China Sea strategy, shifted abruptly, with the president swiveling toward China. Five years on, there are divergent views in Manila about whether Duterte's rapprochement with Beijing has served national interests, especially given the president's ad hoc approach. Further incidents at sea are likely after Duterte steps down if the next president's course is less China-friendly. Nonetheless, as the Whitsun Reef affair has shown, it is at least sometimes possible for Manila to deal with Beijing by combining cooperation and deterrence. Manila's greatest asset in the long run could be its ability to isolate the dispute from other aspects of the China relationship, standing its ground in the Sea if required.

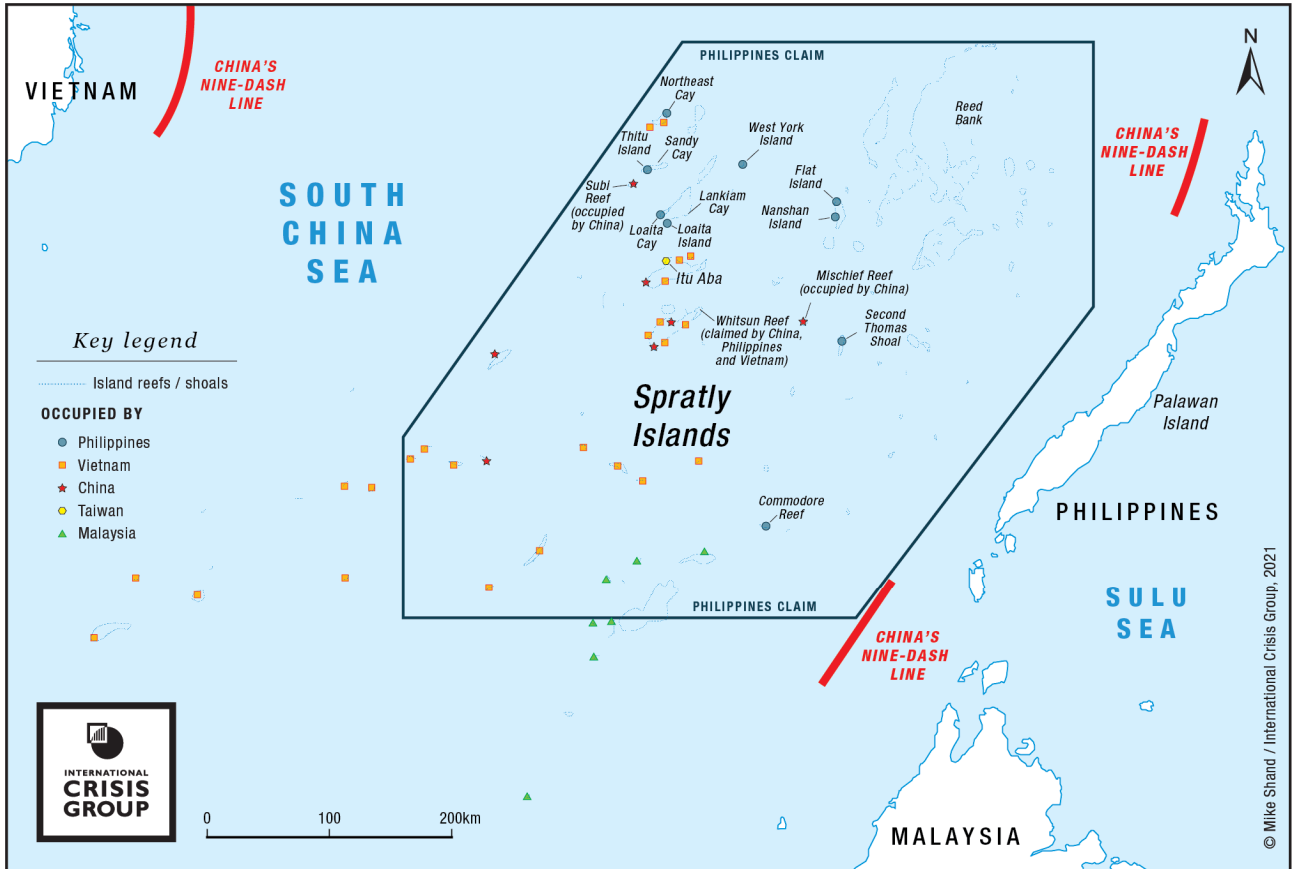
A crucial question remains whether the Philippines can navigate between China and the U.S. without an armed confrontation compelling it to choose sides. For now, Manila is hedging well. But its balancing act may soon become untenable as Beijing seeks to assert its regional ambitions and Washington pushes back. The South China Sea's deep waters look likely to remain troubled. But finalising the Code of Conduct and boosting regional cooperation could at least avoid further escalation.

Manila/Brussels, 2 December 2021

Appendix A: Map of the South China Sea



Appendix B: Map of the Spratly Islands



Appendix C: Philippine Presidents and the South China Sea (since 1998)

Joseph Estrada (1998-2001)

Although domestic issues dominated his term, Joseph Estrada's presidency coincided with developments that would influence future Philippine foreign policy. Opposed to the presence of U.S. bases in the early 1990s, the president shifted gears after the Mischief Reef incident in 1995. Under his leadership, the Philippine Senate ratified the Visiting Forces Agreement with the United States in 1999. In the words of an analyst: "The Agreement was marketed as a way to deal with China".²⁴⁰ As a result, according to a diplomat, the relationship with Washington was "patched up".²⁴¹

While committed to a diplomatic resolution of the maritime disputes, Estrada did not shy away from strong statements or assertive actions. For him, "China's sweeping claim to the Spratlys [was] not merely about barren and uninhabitable islands. ... [but] about South East Asia's bottom-line security".²⁴² Estrada established a presence at Second Thomas Shoal with the grounding of the BRP *Sierra Madre* in 1999 but did not succeed in a comparable proposal regarding Scarborough Shoal. As a journalist put it, "while Estrada took one step forward with [Second Thomas Shoal], he also took one step backward in the case of Scarborough".²⁴³

Gloria Macapagal-Arroyo (2001-2010)

Under Gloria Macapagal-Arroyo, Estrada's successor, Philippines-China relations reached a surprising zenith, remembered as a "golden age" of bilateralism.²⁴⁴ The shift occurred when U.S.-China relations were smoothed by nascent anti-terrorism cooperation in a post-9/11 global order and improved economic ties. Whether it was a geopolitical gambit or a reaction to a temporary cooling-off period in relations with the U.S., Arroyo kept both powers by her side.²⁴⁵ She tried to gain traction for resolving the maritime dispute through diplomacy, leading to the 2002 China-ASEAN Declaration of Conduct of Parties in the South China Sea. Manila went a step further and aimed for an instrument to calm the waters of the disputed area through a strategy discussed more than ten years earlier: joint development of resources.

The Philippines government tabled a regional agreement on the joint exploration of energy resources in the South China Sea as early as 2003. Spearheaded by the members of Arroyo's inner circle, the Joint Maritime Seismic Undertaking was an effort to kick-start joint development with initial exploration, short of actual extraction of oil or gas.²⁴⁶ Hanoi joined the initiative later, eager to participate in surveys of waters it also claimed.²⁴⁷ The deal aimed to build on the momentum of cooperation and good-will, leaving sovereignty issues for a later stage. But after the initial survey,

²⁴⁰ Crisis Group interview, security analyst, 8 August 2020.

²⁴¹ Crisis Group interview, former diplomat, 3 August 2020.

²⁴² "Beijing is biggest security threat in region: Estrada", *The Straits Times*, 19 May 1999.

²⁴³ Vitug, *Rock Solid*, op. cit., p. 18.

²⁴⁴ "Speech of Gloria Macapagal-Arroyo during the 30th Anniversary Celebration of RP-China Diplomatic Relations", *Official Gazette of the Philippines*, 9 June 2005.

²⁴⁵ A security analyst said: "Arroyo was rebuffed by the U.S. and then swung back to China". Crisis Group online interview, 8 August 2020.

²⁴⁶ Crisis Group Report, *Oil in Troubled Waters*, op. cit., pp. 18-21.

²⁴⁷ Crisis Group online interview, former government official, 5 November 2020.

it ended with a whimper. With the Arroyo administration in domestic disarray, the agreement was not renewed.²⁴⁸ The Joint Undertaking was “short of actual exploration and some legal issues were insurmountable”, a former government official said.²⁴⁹

Good relations with China did not extend to the Scarborough Shoal area, where the dispute simmered amid a cycle of protests, dialogue and incidents.²⁵⁰ The Philippine navy, in particular, acted assertively, arresting Chinese fishermen²⁵¹. During Arroyo's second term, the Philippine Congress passed the 2009 Baseline Law (Republic Act 9522) that adjusted Manila's claims consistent with UNCLOS by harmonising pieces of three prior laws. Thereafter, the Philippines claimed specific islands and areas of the sea rather than the Spratlys as a whole.

Benigno Aquino III (2010-2016)

In the first years of his presidency, Benigno Aquino faced two major challenges related to the South China Sea.²⁵² In 2011, the Chinese coast guard expelled a Philippine survey vessel in the Reed Bank, within the Philippine EEZ, leading Aquino to realise that Beijing was intent on enforcing its nine-dash line claim.²⁵³ The biggest turning point, however, was the 2012 Scarborough Shoal incident.²⁵⁴ In the aftermath of the standoff, the Philippine's diplomatic engagement with Beijing invariably ended in acrimony.²⁵⁵ ASEAN's lukewarm support frustrated Manila.

The incident also changed the calculus of Manila's security establishment. Driven largely by concerns about China's ambitions in the region, Aquino actively invested in military modernisation.²⁵⁶ Although the Philippines cannot hope to reach parity with Chinese forces, one leitmotif for the defence sector is attaining “minimal credible defence” while dealing with the disputes.²⁵⁷ In the aftermath of the Scarborough Shoal incident, Aquino strengthened the coast guard, presided over the drafting of a maritime strategy, and signed a partnership with Vietnam in 2015 to increase economic

²⁴⁸ Arroyo's administration pursued a variety of other economic projects with Beijing and was accused of irregularities and corruption, also to the extent of trading Philippine sovereignty for Chinese monetary support. Arroyo's initial achievements were derailed in her second term leading to allegations of corruption and coup efforts by disgruntled military officers.

²⁴⁹ Crisis Group online interview, 25 September 2020.

²⁵⁰ Vitug, *Rock Solid*, op. cit., p. 55.

²⁵¹ In some cases, the Philippines waived the sentences early as a result of diplomatic talks with China, releasing the fishermen. In others, judges ordered their release due to procedural reasons.

²⁵² President Aquino was not as much an anomaly in Philippines-China relations as is often assumed. Early in his term, he reached out to China and visited Beijing for a five-day state visit in 2011. Crisis Group online interview, former cabinet member, 23 October 2020.

²⁵³ Crisis Group online interview, South China Sea researcher, 23 September 2020.

²⁵⁴ See Section II.A for more details on the incident.

²⁵⁵ Vitug, *Rock Solid*, op. cit., p.145.

²⁵⁶ Crisis Group online interview, defence analyst, 30 June 2020.

²⁵⁷ Crisis Group interview, navy officer, 12 August 2020.

and political cooperation based on shared concerns in the South China Sea.²⁵⁸ Toward the end of his term, he also organised the Task Force on the West Philippine Sea.²⁵⁹

Spurred by the Scarborough episode, Aquino finally sought international arbitration under UNCLOS despite reservations from his cabinet and foreign ministry officials.²⁶⁰ Months after China refused to take part in the proceedings hosted by the Permanent Court of Arbitration, it started to build artificial islands through massive land reclamation in the Spratlys. Although Chinese President Xi Jinping pledged not to militarise the reclaimed areas, features such as airfields, harbours and various facilities could easily serve dual purposes, while others are clearly military installations.²⁶¹

The island building likely resulted from a confluence of factors including the arbitration proceedings and the fallout of the Scarborough standoff.²⁶² Contrary to what some of Aquino's domestic critics assert, it preceded the Enhanced Defence Cooperation Agreement between Manila and Washington initiated by Aquino.²⁶³ Most analysts see the land reclamation as consistent with Beijing's more assertive foreign policy from late 2013.²⁶⁴ An analyst summed up: "For Beijing, security beats economics and even the environment".²⁶⁵

²⁵⁸ "Viet Nam, Philippines issue joint statement on strategic partnership", Vietnam News, 19 November 2015.

²⁵⁹ Foreign Secretary Del Rosario formed the first task force to respond to the developments around Scarborough Shoal in 2012. In 2014, Aquino created the Inter-Agency Coordinating Committee on the West Philippine Sea before transforming it into the task force in 2016.

²⁶⁰ Crisis Group online interviews, journalist, 24 September 2020; think-tank analyst, 05 September 2020. See Vitug, *Rock Solid*, pp. 176-177.

²⁶¹ China has also deployed military assets it described as "necessary national defense facilities, ... aimed at protecting China's sovereignty and security". "Beijing 'installs missiles' on South China Sea islands", Agence France Presse, 3 May 2018. The military significance of the features remains debated, with two main interpretations of Beijing's objectives: dominance of the South China Sea and power projection directed at Taiwan and the first island chain, or a defensive posture enhancing Beijing's coastal defence around Hainan province and the Paracel Islands, short of domination.

²⁶² Crisis Group online interview, Filipino-Chinese analyst, 5 September 2020.

²⁶³ The Duterte administration has frozen the defence pact.

²⁶⁴ Island building occurred around the same time as the launch of the Chinese Air Defence Identification Zone over the East China Sea and worsening Sino-U.S. relations. A Chinese analyst wrote: "The question was not whether China should build islands, but when. That moment came in 2013, when the PLA Navy, making a new pitch after a leadership transition, was given the green light by President Xi". Feng Zhang, "China's Long March at Sea: Explaining Beijing's South China Sea Strategy, 2009-2016", *The Pacific Review*, vol. 33, no. 5 (2019), p. 19.

²⁶⁵ Crisis Group online interview, Filipino-Chinese analyst, 5 September 2020.

Appendix D: Recommendations

This report is one in a three-part series treating important aspects of the maritime disputes in the South China Sea: *Competing Visions of International Order in the South China Sea*; *The Philippines' Dilemma: How to Manage Tensions in the South China Sea*; and *Vietnam Tacks Between Cooperation and Struggle in the South China Sea*. The recommendations below are common to all three.

To better manage tensions arising from conflicting claims to sovereignty and jurisdiction in the South China Sea:

To the governments of all claimant states:

1. Bring claims to jurisdiction in the South China Sea into conformity with international law by declaring baselines and maritime zones that accord with conventional readings of the UN Convention on the Law of the Sea (UNCLOS).

To the governments of ASEAN member states and China:

2. Accelerate negotiations on a substantive and legally binding Code of Conduct in the South China Sea.

To the government of the Philippines:

3. Encourage the establishment of risk management mechanisms among claimant states in order to reduce the risk of escalation during incidents at sea. These could include clear rules of engagement for non-navy vessels such as coast guard ships in the region.
4. Promote minilateral structures for negotiations focusing on issues of common interest among claimant states, such as scientific research or law enforcement. Increased cooperation on fisheries management is another vital tool to both build confidence and tackle the dwindling stocks in the South China Sea.
5. Maintain dialogue with China through the Bilateral Consultative Mechanism; and use this communication channel to negotiate rules of access to Scarborough Shoal and develop ground rules of interaction between both countries' vessels therein. Manila should also use the mechanism to clearly communicate its red lines in the maritime domain to China.

To the government of Vietnam:

6. Accelerate negotiations with China on delimitation of the waters outside the mouth of the Gulf of Tonkin.
7. Expedite talks with Indonesia to delimit the two countries' overlapping maritime claims.
8. Replicate and expand existing mechanisms of bilateral coast guard and fisheries cooperation at the regional level, including through minilateral structures.
9. Promote marine scientific collaboration with other littoral states to build confidence and nurture cooperation.

10. Push for the establishment of technical working groups on fisheries and environmental protection to support negotiations on a Code of Conduct in the South China Sea.

To the government of China:

11. Bring maritime claims into line with UNCLOS by:
 - a) Stepping away from its claim to “historic rights”;
 - b) Ending its practice of deploying survey vessels and large fishing fleets of vessels in the exclusive economic zones of the other littoral states.
12. Relinquish the legal argument that the Spratly Islands is a single unit that can be enclosed by straight baselines and generate an exclusive economic zone.
13. Reassure South East Asian neighbours by expressing willingness for a legally binding Code of Conduct in the South China Sea.
14. Explore with other littoral states mechanisms to prevent incidents at sea involving maritime law enforcement and fishing vessels, and develop operational principles to guide law enforcement behaviour at sea, including in their treatment of fishermen.

To the government of the United States:

15. Accede to UNCLOS to bolster U.S. credibility, strengthen the treaty regime and raise the reputational costs to China of flouting the law.
16. Calibrate efforts, alone and with partners, to pressure China through Freedom of Navigation operations, military exercises in the South China Sea and other means that increase the risk of unplanned incidents, which could escalate and reinforce Beijing's fears of encirclement.
17. Encourage cooperation among South East Asian claimant states on marine scientific research, fisheries conservation and environmental protection.

To the governments of China and the United States:

18. Intensify high-level dialogue to resolve possible misunderstandings and to communicate clear red lines.

Appendix E: About the International Crisis Group

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 120 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries or regions at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international, regional and national decision-takers. Crisis Group also publishes *CrisisWatch*, a monthly early-warning bulletin, providing a succinct regular update on the state of play in up to 80 situations of conflict or potential conflict around the world.

Crisis Group's reports are distributed widely by email and made available simultaneously on its website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board of Trustees – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policymakers around the world. Crisis Group is co-chaired by President & CEO of the Fiore Group and Founder of the Radcliffe Foundation, Frank Giustra, as well as by former Foreign Minister of Argentina and Chef de Cabinet to the United Nations Secretary-General, Susana Malcorra.

After President & CEO Robert Malley stood down in January 2021 to become the U.S. Iran envoy, two long-serving Crisis Group staff members assumed interim leadership until the recruitment of his replacement. Richard Atwood, Crisis Group's Chief of Policy, is serving as interim President and Comfort Ero, Africa Program Director, as interim Vice President.

Crisis Group's international headquarters is in Brussels, and the organisation has offices in seven other locations: Bogotá, Dakar, Istanbul, Nairobi, London, New York, and Washington, DC. It has presences in the following locations: Abuja, Addis Ababa, Bahrain, Baku, Bangkok, Beirut, Caracas, Gaza City, Guatemala City, Jerusalem, Johannesburg, Juba, Kabul, Kiev, Manila, Mexico City, Moscow, Seoul, Tbilisi, Toronto, Tripoli, Tunis, and Yangon.

Crisis Group receives financial support from a wide range of governments, foundations, and private sources. The ideas, opinions and comments expressed by Crisis Group are entirely its own and do not represent or reflect the views of any donor. Currently Crisis Group holds relationships with the following governmental departments and agencies: Australian Department of Foreign Affairs and Trade, Austrian Development Agency, Canadian Department of National Defence, Danish Ministry of Foreign Affairs, Dutch Ministry of Foreign Affairs, European Union Emergency Trust Fund for Africa, European Union Instrument contributing to Stability and Peace, Finnish Ministry of Foreign Affairs, French Development Agency, French Ministry of Europe and Foreign Affairs, Global Affairs Canada, Irish Department of Foreign Affairs, Japan International Cooperation Agency, Ministry of Foreign Affairs of the Principality of Liechtenstein, Luxembourg Ministry of Foreign and European Affairs, Norwegian Ministry of Foreign Affairs, Qatar Ministry of Foreign Affairs, Swedish Ministry of Foreign Affairs, Swiss Federal Department of Foreign Affairs, United Arab Emirates (Ministry of Foreign Affairs and International Cooperation and Anwar Gargash Diplomatic Academy), United Nations Development Programme, United Nations World Food Programme, UK Foreign, Commonwealth and Development Office, and the World Bank.

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Appendix F: Reports and Briefings on Asia since 2018

Special Reports and Briefings

Council of Despair? The Fragmentation of UN Diplomacy, Special Briefing N°1, 30 April 2019.

Seven Opportunities for the UN in 2019-2020, Special Briefing N°2, 12 September 2019.

Seven Priorities for the New EU High Representative, Special Briefing N°3, 12 December 2019.

COVID-19 and Conflict: Seven Trends to Watch, Special Briefing N°4, 24 March 2020 (also available in French and Spanish).

A Course Correction for the Women, Peace and Security Agenda, Special Briefing N°5, 9 December 2020.

Ten Challenges for the UN in 2021-2022, Special Briefing N°6, 13 September 2021.

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The Korean Peninsula Crisis (I): In the Line of Fire and Fury, Asia Report N°293, 23 January 2018 (also available in Chinese).

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Sri Lanka: Stepping Back from a Constitutional Crisis, Asia Briefing N°152, 31 October 2018.

After Sri Lanka's Easter Bombings: Reducing Risks of Future Violence, Asia Report N°302, 27 September 2019.

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Bangladesh-Myanmar: The Danger of Forced Rohingya Repatriation, Asia Briefing N°153, 12 November 2018.

Fire and Ice: Conflict and Drugs in Myanmar's Shan State, Asia Report N°299, 8 January 2019 (also available in Burmese).

A New Dimension of Violence in Myanmar's Rakhine State, Asia Briefing N°154, 24 January 2019 (also available in Burmese).

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