

# PERSPECTIVE

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## The Bilateral Consultative Mechanism on the South China Sea and Philippines-China Relations

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*President Rodrigo Duterte pursued a paradigm shift in Philippine foreign and security policy when he vigorously enunciated a China-friendly approach. In this picture, Philippine President Rodrigo Duterte (L) and Chinese Premier Li Keqiang shake hands during their meeting at the Great Hall of the People in Beijing on August 30, 2019. Picture: HOW Hwee Young, AFP*

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## **EXECUTIVE SUMMARY**

- To promote the peaceful management of conflicts in the South China Sea and strengthen friendly relations between the Philippines and China, President Rodrigo R. Duterte pursued the bilateral approach favoured by China through the establishment of the Bilateral Consultative Mechanism (BCM) on the South China Sea.
- Launched in May 2017, the BCM held five meetings before COVID-19 hit.
- The five BCM meetings achieved some important milestones in building bilateral confidence to strengthen mutual trust and practical cooperation like joint resources development.
- While the BCM has helped improve Philippines-China relations under the Duterte administration, it is uncertain if this positive momentum can be sustained in the post-Duterte period.
- The BCM has inherent limitations in resolving maritime and territorial conflicts in the South China Sea. China's actions in the Philippine exclusive economic zone, domestic opposition in the Philippines, national positions of other claimants, involvement of other stakeholders, and actions of extra-regional powers, particularly the United States, arguably set limits to what the BCM can achieve.

## INTRODUCTION

President Rodrigo Duterte pursued a paradigm shift in Philippine foreign and security policy when he vigorously enunciated a China-friendly approach.<sup>1</sup> Soon after taking his oath of office, President Duterte visited China in October 2016 where he had a landmark meeting with President Xi Jinping. During their meeting, both leaders agreed to peacefully deal with their political differences on the South China Sea through a bilateral consultative mechanism. President Duterte decided to set aside the issue of Philippine victory in the international arbitration and even expressed his intention to separate with its only security ally, the United States. President Xi, on other hand, promised not to apprehend Filipino fishermen in the Scarborough Shoal and committed to assist the Philippines in its economic needs.

As a result, both countries formally established the Bilateral Consultative Mechanism (BCM) on the South China Sea to peacefully manage their disputes and to strengthen their friendly relations.<sup>2</sup> The BCM was a game changer in the two countries' relations since it meant that the Philippines had finally adopted a bilateral approach which China prefers. For China, bilateralism is more convenient, manageable and pragmatic.

The Philippines, on the other hand, has been internationalising the South China Sea disputes and utilising the multilateral approach in dealing with China since China's occupation of the Mischief Reef in 1995 and the Scarborough Shoal in 2012.<sup>3</sup> But President Duterte's reconciliatory policy towards China ushered in a new era of a closer friendship between the two countries.

From the lowest point of Philippine-China relations under the administration of President Benigno Simeon Aquino III, the two countries have risen to new heights in bilateral ties under the Duterte administration. The BCM provides a major turnaround in Philippine-China relations.

The BCM arguably achieved some breakthroughs that contributed to the general improvement not only of Philippine-China relations but also of the calming of the overall security situation in the South China Sea. However, the BCM has limitations in actually resolving the South China Sea disputes.

## ACHIEVEMENTS

As a consultative mechanism, the BCM is not a formal negotiation platform, though it can arguably contribute towards that end. It is instead part of the overall confidence building measures (CBMs) that the Philippines and China currently pursue in order to repair damaged political ties with China caused by the 2012 Scarborough Shoal standoff and the 2013-2016 international arbitration case.

On 19 May 2017, the Philippines and China launched the BCM in Guizhou, China where they also held their first meeting. The two countries held the First BCM amidst international criticisms of China's "expansive" construction activities in the Spratly Islands (particularly on Fiery Cross, Subi, and Mischief Reefs) and in the Paracel Islands (particularly on North, Tree, and Triton Islands). The First BCM was a turning point in Philippine-China relations in that it re-opened practical channels of communication between the two countries.<sup>4</sup> Despite international pushback against Beijing, the First BCM immensely contributed to the warming

of bilateral ties between the Philippines and China, which in turn contributed to the calming of the overall security situation in the South China Sea.<sup>5</sup>

With the First BCM, the two countries started to meet face to face again to discuss the South China Sea issue after four bitter years of deliberately ignoring and even ridiculing each other during the administration of President Aquino III. After four years bearing grudges against each other, the two countries openly exchanged views on current regional issues and bilateral concerns on the South China Sea, and agreed to further discuss these issues and concerns and look for “acceptable approaches to deal with them.”<sup>6</sup>

The conclusion of the First BCM left positive signs for the improvement of Philippine-China relations as both parties committed to promote practical cooperation in the South China Sea by establishing technical working groups.<sup>7</sup> Rather than merely talk about their national positions, both decided to work together for conflict avoidance, for prevention of violent incidents at sea, and for win-win economic benefits through joint cooperation.

On 13 February 2018, the Second BCM was held in Manila against the backdrop of another round of strong international condemnation against China for alleged heightened “militarization” in the South China Sea. President Duterte also confronted domestic opposition to him not invoking the Philippines’ legal victory in the international arbitration case against China. He merely commented that China’s military development in the South China Sea was aimed at the United States and not at the Philippines and he even made a joke to make the Philippines a province of China like Fujian, where many of Chinese Filipinos came from.<sup>8</sup>

Despite international and domestic pressure against the Philippines and China, both countries leveled up the nature of the Second BCM agenda by discussing specific ways “to manage and prevent incidents at sea, promote dialogue and cooperation on maritime issues, and enhance mutual trust and confidence.”<sup>9</sup> They noted another achievement in their difficult but improving bilateral ties when they candidly discussed solid measures “to strengthen cooperation in areas such as marine environmental protection, fisheries, marine scientific research, and oil and gas, without prejudice to their respective positions on sovereignty, sovereign rights, and jurisdiction”.<sup>10</sup>

It was during the second BCM that the two countries decided to convene technical working groups in the areas of fisheries, oil and gas, marine scientific research and marine environmental protection, and even political security.<sup>11</sup> They also committed to cooperate in order to advance “just and human treatment of all persons in distress in the South China Sea” that both countries submitted for joint proposal in the Single Draft South China Sea Code of Conduct Negotiating Text adopted by China and ASEAN on 3 August 2018. The Second BCM was a huge breakthrough in the two countries’ relations as they committed to work together rather than only talk with each other.

The Philippines and China held the Third BCM in Beijing on 18 October 2018 despite persistent media reports of China’s “continuing militarization” in the South China Sea, particularly reports on the landing of China military transport planes on Mischief Reef, the deployment of advanced jamming equipment in Fiery Cross Reef, and the installation of surface air missiles and anti-ship cruise missiles in the Spratlys.<sup>12</sup> Domestically, opposition groups attacked President Duterte for continuously setting aside the Philippines’ victory in the arbitration case and for the alleged selling out of Philippine territories to China.

Undaunted by international and domestic pushbacks, the Philippines and China reasserted their commitment to promote practical and doable cooperation in the South China Sea during the Third BCM. They made a landmark decision, though a very controversial one, to pursue actual cooperation on joint exploration and development of maritime oil and gas. This decision eventually led to the signing on 20 November 2018 of the Memorandum of Understanding (MOU) on Cooperation in Oil and Gas Development announced during the visit to the Philippines of President Xi Jinping who declared the establishment of comprehensive strategic cooperation between the two countries.<sup>13</sup> Though international observers and opposition groups in The Philippines criticised the MOU, both parties assured their public that the signing of the MOU was done “without prejudice to the respective legal positions of both governments.”<sup>14</sup>

In the Third BCM, both countries “reaffirmed their commitment to the principles of freedom of navigation in and over flight above the South China Sea.”<sup>15</sup> They also reiterated their commitment “to maintain freedom of international commerce and other peaceful uses of the sea, addressing territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned and the exercise of self-restraint, in accordance with universally recognised principles of international law, including the Charter of the United Nations and the 1982 United Nations Convention on the Law of the Sea”.<sup>16</sup>

The Philippines and China held the Fourth BCM in Manila on 2-3 April 2019. This took place amidst controversies over alleged proliferation of Chinese maritime militias near the Pag-Asa Island. But during the Fourth BCM, they committed “to cooperate and to continue to find ways forward to strengthen mutual trust and confidence”.<sup>17</sup>

Though both countries acknowledged the persistence of their political differences on how to deal with the ground realities in the South China Sea, they stressed during the Fourth BCM “that the relevant differences between China and the Philippines in the South China Sea [are] only part of the bilateral ties and should not affect the mutually beneficial cooperation in other fields.” They also underscored “the importance of maintaining and promoting regional peace and stability, freedom of navigation in and over-flight above the South China Sea.” More importantly, both parties reasserted “their commitment to address their territorial and jurisdictional disputes by peaceful means, without resorting to or threatening with force, through friendly consultations and negotiations by sovereign states directly concerned.”<sup>18</sup>

The Fifth BCM was held on 28 October 2019 in Beijing. This took place while China and Vietnam were having a standoff in the Paracels over the issue of oilrigs in the area. The two countries stressed the continuing importance of the BCM “as a platform for regular dialogue that can play a significant role in the enhanced and stable development of bilateral relations and peace and stability in the South China Sea.”<sup>19</sup>

The Fifth BCM made another concrete innovation in Philippine-China relations when both parties finally established two working groups: 1) the Working Group on Political Security, Fisheries Cooperation; and, 2) the Working Group on Marine Scientific Research and Marine Environmental Protection. They regarded the creation of these two working groups as serious bilateral efforts to actually implement the Declaration on the Conduct of Parties (DOC) and provide vital inputs for the conclusion of the negotiations on the Code of Conduct (COC) in

the South China Sea. These two working groups have also demonstrated that the two countries are not only sitting on the consultation tables but also doing something more tangible.

It was during the Fifth BCM that the Philippines and China convened the First Meeting of The Philippine-China Inter-Governmental Joint Steering Committee on Cooperation on Oil and Gas Development as required by the MOU. In this meeting, both parties clarified their respective national positions on the issue. They also exchanged frank views on how to implement the MOU in accordance with their respective domestic requirements.

After the meeting, both parties still felt the strong need to discuss the following issues and to really have meaningful joint cooperation in the development of oil and gas in the South China Sea: 1) Legal framework for cooperation arrangements; 2) Scope of cooperation areas; 3) Taxation processes; and, 4) Dispute settlement mechanism.<sup>20</sup>

The Committee decided to hold their second meeting in early 2020 to continue their discussions. The COVID-19 pandemic interrupted the process, however, and also put on hold their planned BCM meetings in 2020.

During the pandemic, President Duterte pointedly lifted the moratorium on oil and gas exploration in the West Philippine Sea (WPS) in October 2020.<sup>21</sup> This removed one legal obstacle in the implementation of the MOU on oil and gas development conceived by the BCM.

## **LIMITATIONS**

The BCM arguably contributed to the improvement of Philippine-China relations under Duterte administration, but it is uncertain whether it will be sustained in the post-Duterte period.

Domestically, the BCM received strong public criticisms because of the perception that China had hijacked the agenda. Moreover, only people in the government shared the optimism created by the BCM. Filipinos still carry strong anti-China sentiments despite the achievements of the BCM. In a survey conducted by the Social Weather Station (SWS) released in July 2020, China continues to suffer a low trust rating from Filipinos.

Filipinos' thrust deficit towards Beijing makes it difficult for the next Philippine administration to advocate a China-friendly policy, especially if the next government does not have the same popularity presently enjoyed by President Duterte. Considering that the BCM is an executive effort rather than a state commitment, sustaining it after the Duterte administration will be an enormous challenge for the two countries.

Since the BCM is a bilateral effort, applying its various plans of cooperation in the South China Sea is problematic because of the involvements of other claimants and stakeholders, especially in the Spratlys. Claimants and stakeholders conduct their own unilateral and multilateral activities in the South China Sea and these can obstruct the implementation of the BCM's cooperative plans.

The Philippines and China, however, can implement its planned cooperation activities (like joint fishery management, marine scientific research, marine environmental protection, oil and gas development, and joint search and rescue operations) in their territorial waters or in the

Scarborough Shoal where only the two countries are directly involved. Cooperative principles of the BCM may be applied in the Spratlys if China and the Philippines are able to build a solid network of multilateral cooperative mechanisms with other claimants there. The BCM may also be applied in the wider South China Sea region if placed in the context of the ongoing China-ASEAN negotiation on the COC. In short, the implementation of BCM is inexorably constrained by regional realities and security dynamics among claimants.

The involvement of extra-regional powers, particularly the United States, also sets limits on what the BCM can achieve. Beyond the concept of freedom of navigation, the United States also has interests in fishery management, marine environmental protection, search and rescue operations, and oil and gas development in the South China Sea.<sup>22</sup> Thus, without the appreciation, if not full support, of the United States, the Philippines and China will find it cumbersome to implement the cooperative plans of the BCM.

Finally, the BCM does not have the intention to resolve the South China Sea disputes. The primary objective of the BCM is to facilitate bilateral cooperation and to contribute to preventive diplomacy in the South China Sea. Thus, the BCM only provides initial steps in a thousand mile journey towards eventual resolution of conflicts in the South China Sea.

## CONCLUSION

From their five consultative meetings, the BCM has promoted pragmatic cooperation through the establishment of working groups and steering committees in order to actually implement joint activities and joint development in the South China Sea. However, domestic opposition in the Philippines, regional realities and China-US rivalry can undermine these achievements, particularly in the post-Duterte period.

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<sup>1</sup> Rommel C. Banlaoi, "Duterte Presidency: Shift in Philippines-China Relations" in Yang Razali Kassim, ed., *The South China Sea Disputes: Flashpoints, Turning Points and Trajectories* (New Jersey and London: World Scientific, 2017), pp. 357-362.

<sup>2</sup> Lye Liang Fook, "The China-Philippine Bilateral Consultative Mechanism on the South China Sea: Prospects and Challenges," *ISEAS Perspective*, 7 March 2018.

<sup>3</sup> Steve Chan, "Multilateralism in the East and South China Sea Disputes" in his *China's Troubled Waters: Maritime Disputes in Theoretical Perspective* (Cambridge: Cambridge University Press, 2016), pp. 179-194.

<sup>4</sup> *Joint Press Release for the First Meeting of the Philippines-China Bilateral Consultative Mechanism on the SCS* (Guizhou, China, 19 May 2017).

<sup>5</sup> Rommel C. Banlaoi, "Bilateral Approach to Maritime Security Cooperation and Risk Management: Lessons Learned from Philippines-China BCM on the SCS" (Paper presented at the Symposium on Maritime Cooperation and Ocean Governance held in Haikou, China on 5-6 November 2020).

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> Rodrigo R. Duterte, Speech delivered at the Chinese Business Club, 19 February 2018.

<sup>9</sup> *Joint Press Release for the Second Meeting of the Philippines-China Bilateral Consultative Mechanism on the SCS* (Manila, Philippines 13 February 2018).

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> Office of the Secretary of Defense. *Military and Security Developments Involving the People's Republic of China 2018*. Annual Report to Congress (16 March 2018).

<sup>13</sup> "Philippines, China Ink MOU on Oil and Gas Development", *The Philippine Star*, 20 November 2018.

<sup>14</sup> *Memorandum of Understanding (MOU) on Cooperation on Oil and Gas Development between the Government of the People's Republic of China and the Government of the Republic of the Philippines* (Manila, Philippines 20 November 2018).

<sup>15</sup> *Joint Press Release for the Third Meeting of the Philippines-China Bilateral Consultative Mechanism on the SCS* (Beijing, China 18 October 2018).

<sup>16</sup> Ibid.

<sup>17</sup> *Joint Press Release for the Fourth Meeting of the Philippines-China Bilateral Consultative Mechanism on the SCS* (Manila, Philippines 2-3 April 2019).

<sup>18</sup> Ibid.

<sup>19</sup> *Joint Press Release for the Fifth Meeting of the Philippines-China Bilateral Consultative Mechanism on the SCS* (Manila, Philippines 28 October 2019).

<sup>20</sup> Ibid.

<sup>21</sup> Rommel C. Banlaoi, "Oil And Gas Development in West Philippine Sea and South China Sea Conflict," *Eurasia Review*, 22 October 2020.

<sup>22</sup> Congressional Research Service, *U.S.-China Strategic Competition in South and East China Seas: Background and Issues for Congress*, 18 February 2021.

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