

# PERSPECTIVE

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## **The Philippines' Alliance Problems with the USA**

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### **EXECUTIVE SUMMARY**

- On 20 December 2018, Philippine Defense Secretary Delfin Lorenzana called for a review of the 1951 Mutual Defense Treaty between the U.S. and the Philippines, noting that scrapping it is an option.
- Lorenzana repeated this call after Secretary of State Michael R. Pompeo's visit to the Philippines two months later to assure the Philippines that the South China Sea was covered under the treaty.
- Lorenzana's repeated calls reflect deep Philippine disappointment with the U.S.-Philippine alliance in not deterring or effectively responding to China's aggression in the Philippine exclusive economic zone in the South China Sea, and the fear of the Philippines being entrapped in a U.S.-China conflict in the South China Sea.
- A formal review of the 1951 Mutual Defense Treaty is unlikely to revise the bilateral alliance to address the concerns voiced by Lorenzana and could fail to be ratified in either capital.
- Enhancing the Philippines' own limited external defense capabilities and deepening and broadening defence cooperation with the U.S. under the current alliance framework is a more prudent and potentially more productive approach.

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## INTRODUCTION

Secretary of National Defense Delfin Lorenzana's 2018 end-of-year news conference was newsworthy. He called for a review of the 1951 Mutual Defense Treaty that is the legal basis for the U.S.-Philippine alliance. A week later at a press briefing at Malacañang (the presidential palace), Lorenzana noted that the Philippine government had three post-review options for the treaty, "maintain it, strengthen it, scrap it".<sup>1</sup>

Lorenzana has repeated his call for a review numerous times since, even after U.S. Secretary of State Michael Pompeo visited Manila on 1 March and directly addressed a major Philippine concern with the Mutual Defense Treaty. Pompeo is the most senior U.S. official to publicly state that,

*"As the South China Sea is part of the Pacific, any armed attack on Philippine forces, aircraft or public vessels in the South China Sea will trigger mutual defense obligations under Article 4 of our mutual defense treaty,"*<sup>2</sup>

Currently, there is no public information that the Philippine government has made an official request to the U.S. for a formal review of the treaty though there have been high-level bilateral defense discussions about the Philippine concerns. A formal review is expected to meet difficulties, first in reaching agreement on amendments to the seven-decade old treaty and then in the ratification of an amended treaty in either capital.

## DISAPPOINTMENT AND FEAR

Lorenzana is not the first senior official in the Duterte administration to express deep misgivings with the U.S.-Philippine alliance in relation to Chinese infringements of Philippine maritime rights in the Philippine exclusive economic zone in the South China Sea. Early in his single term as president, Rodrigo Duterte repeatedly mused about withdrawing from the Mutual Defense Treaty and the 2014 Enhanced Defense Cooperation Agreement between the U.S. and the Philippines. Duterte's first foreign secretary Perfecto Yasay, in an emotional outburst on Facebook in October 2016, claimed that the US had mistreated and failed the Philippines.<sup>3</sup>

The loss of Scarborough Shoal to China in 2012 and the perceived lack of strong and active U.S. support for the Philippines was a worrying watershed moment for the U.S.-Philippine alliance in the eyes of many Filipinos. When a risen China pushed the Philippines hard in the Philippines' own waters, the alliance with the U.S. proved wanting and the Philippines had to cede to China.

The loss of control of Scarborough Shoal to China was for many a replay of the 1995 occupation by China of Mischief Reef in the Philippine exclusive economic zone, but this time with China being much more powerful and aggressive.<sup>4</sup> With China's power likely to continue to increase relative to the U.S. and to the Philippines, the loss of Scarborough Shoal in 2012 was even more foreboding strategically for the Philippines than Mischief Reef in 1995. This deep disappointment and worry about the future have provided justification for President Duterte's embrace of China.

Review supporters want to strengthen the alliance and Mutual Defense Treaty for the Philippines by removing or reducing ambiguity in the geographical coverage of the treaty. Article V of the treaty states,

*For the purpose of [Article IV](#), an armed attack on either of the Parties is deemed to include an armed attack on the metropolitan territory of either of the Parties, or on the island territories under its jurisdiction in the Pacific or on its armed forces, public vessels or aircraft in the Pacific.<sup>5</sup>*

As the Philippine territorial claims in the South China Sea that China disputes were made official years after the ratification of the 1951 treaty, they are not included in the treaty's definition of metropolitan territory. This very short treaty (the main body is less than 400 words) does not specify the geographical scope of "the Pacific" and whether it includes the South China Sea. Secretary Pompeo has addressed the latter concern verbally. However, China's taking over of Mischief Reef in 1995 and Scarborough Shoal in 2012 did not involve treaty-triggering Chinese armed attacks on Philippine armed forces, public vessels or aircraft. The July 2016 unanimous arbitration tribunal ruling in favour of the Philippine case that China was infringing upon its maritime rights in the South China Sea determined that no land feature in the Spratlys or Scarborough Shoal is an island.

Lorenzana posits that the 1951 treaty needs to be updated in light of the region and country's changed strategic environment. Four days after Pompeo's historic statement of reassurance, Lorenzana stated that,

*"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. The Philippines is not in a conflict with anyone and will not be at war with anyone in the future. But the United States, with the increased and frequent passage of its naval vessels in the West Philippine Sea, is more likely to be involved in a shooting war. In such a case and on the basis of the MDT, the Philippines will be automatically involved."<sup>6</sup>*

This fear of Philippine entrapment through the alliance in a U.S.-China conflict and the view that the Philippines is not in conflict with China despite China's active infringement of Philippine maritime rights, has been repeatedly and clearly stated by the commander-in-chief, President Duterte. This fear relates to Article IV of the 1951 treaty that states,

*Each Party recognizes that an armed attack in the Pacific Area on either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common dangers in accordance with its constitutional processes.*

The constitutional processes of the Philippines though should mitigate this fear. Section 2 of Article II of the 1987 Constitution renounces war as an instrument of national policy. Section 23(1) of Article IV states,

*The Congress, by a vote of two-thirds of both Houses in joint session assembled, voting separately, shall have the sole power to declare the existence of a state of war.<sup>7</sup>*

### **THREE PHILIPPINE PROBLEMS**

These two concerns motivating the calls for a review of the 1951 treaty together do not seem to enhance the mutuality of the 1951 Mutual Defense Treaty. Instead they appear to seek a clearer U.S. commitment to the Philippines in the South China Sea but a lesser Philippine commitment to the U.S.

Five years ago, the U.S.-Japan alliance was strengthened and updated to deal with the new security environment facing Japan in a way that enhanced mutual security cooperation. Japan successfully sought clearer U.S. reassurance about the U.S.-Japan alliance and the implementation of the 1960 Treaty of Mutual Cooperation and Security in the face of Chinese aggression in the disputed waters in the East China Sea. As part of the bilateral process of strengthening and updating the U.S.-Japan alliance (not reviewing the 1960 treaty), the two countries agreed in 2015 to enhance and expand Guidelines for Japan-U.S. Defense Cooperation to address both Japanese and American concerns. In that same year, the Japanese government passed legislation to permit Japan, despite its war-renouncing constitution, to participate in collective self-defense with allies and security partners.

It is hard to see under a Duterte administration, what the Philippines would be willing to offer the U.S. in return for clearer U.S. commitment. Under the previous Aquino administration, the alliance was strengthened and updated after the Philippine loss of Scarborough Shoal by the quick negotiation and ratification of the Enhanced Defense Cooperation Agreement.

The 2014 Enhanced Defense Cooperation Agreement provides U.S. forces enhanced access to mutually agreed-upon Philippine military bases and the ability to develop facilities on these bases with the approval of the Philippine government. As with the 1998 Visiting Forces Agreement, the Enhanced Defense Cooperation Agreement helps counteract the 1991 decision by the Philippine Senate not to renew the leases on the U.S. bases, thereby ending the deterrent function they served against China in the Philippine exclusive economic zone in the South China Sea. Four years after this Senate decision, China took control of Mischief Reef.

Under the Duterte administration, progress on implementing the Enhanced Defense Cooperation Agreement has been slow and uncertain.<sup>8</sup> President Duterte has suggested he may withdraw the Philippines from the Agreement and has opposed the implementation of the agreement in ways that he considers may displease China.<sup>9</sup> Combined with President Trump demanding more burden-sharing from allies in Asia (including major purchases of US arms), Philippine hesitancy in implementing the Enhanced Defense Cooperation Agreement, suggestions it may scrap this Agreement and the Mutual Defense Treaty, and no major purchases of US arms, do not provide a conducive political environment for a formal review of the treaty.

Even if agreement could be found on how to update and strengthen the 1951 Mutual Defense Treaty to mutually address Philippine and U.S. concerns, amending the treaty would require ratification by both the Philippine and U.S. Senate. Informed by the 1991 decision by the Philippine Senate not to renew the leases of the U.S. bases, the administration of Benigno Aquino, Jr. ensured that the Enhanced Defense Cooperation Agreement would not require Senate ratification. In 2015, a majority of senators signed a statement and a case was filed in the Philippine Supreme Court arguing ratification to be necessary. Two years after the signing of the agreement, the Supreme Court ruled against the necessity for ratification. It is very possible that even if there is agreement between the US and Philippine administrations on amendments to the 1951 treaty, either or both legislatures may not ratify the amended treaty. A failed treaty review process would damage the alliance, and the later in the review process this failure came, the worse the likely fallout.

Finally, Lorenzana's repeated calls for a review of the treaty with the option of scrapping it has not received full support within the Philippine executive. When asked about this during the 1 March joint press conference with Secretary Pompeo, Philippine Foreign Secretary Teodoro Locsin, Jr, in his prepared remarks, stated that

*"Some seek review of the MDT. This requires further thought. In vagueness lies uncertainty, a deterrent. Specificity invites evasion and actions outside the MDT framework."*<sup>10</sup>

Locsin's call for further thought on the proposal of a review more than two months after Lorenzana first raised it is more than a problem of mixed messages. Despite its brevity, the 1951 treaty is unambiguous on the leading role foreign ministers play in the implementation of the treaty. Article III states,

*The Parties, through their Foreign Ministers or their deputies, will consult together from time to time regarding the implementation of this Treaty and whenever in the opinion of either of them the territorial integrity, political independence or security of either of the Parties is threatened by external armed attack in the Pacific.*

Reflecting this, on his trip to the Philippines, Secretary Pompeo met with President Duterte and consulted with and held a joint press conference with Secretary Locsin on the implementation of the treaty.

## **PATH OF LESS RESISTANCE**

The problems with a review of the 1951 Mutual Defense Treaty to address the alliance concerns of the Duterte administration suggest that a review may be counterproductive.

Fortunately, there is ample scope for the Philippines, and the Philippines and the U.S. together, to enhance Philippine maritime security. The Philippine National Security Strategy released by the Duterte administration in July 2018 is a bracing document.<sup>11</sup> It argues that this new strategy will end the

*era of strategic drift that failed to effectively manage safety and security risks. Decades of inaction have led to devastating consequences to internal security and have undermined our ability to adequately prepare for external defense in the future.*

The document calls for a minimum annual defense budget of 2% of GDP. While there has been some increase in the Philippine defence budget in relation to share of GDP under the Duterte administration, the adjusted budget for the Department of National Defense in 2017 was still less than 1% of GDP.<sup>12</sup> The Philippine government has a long way to go before it achieves its own defence budget and defence modernization goals.

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<sup>1</sup> Cited in Elmor P. Santos, “Scrapping Mutual Defense Treaty with U.S. an option – Lorenzana”, *CNN Philippines*, 28 December 2018, <https://cnnphilippines.com/news/2018/12/28/Mutual-Defense-Treaty-with-U.S.-review.html>

<sup>2</sup> Michael R. Pompeo, “Remarks with Foreign Secretary Teodoro Locsin, Jr”, 1 March 2019, <https://www.state.gov/remarks-with-philippine-foreign-secretary-teodoro-locsin-jr/>

<sup>3</sup> See for more details Yuji Vincent Gonzales, “America has failed us – Yasay”, *Philippine Daily Inquirer*, 6 October 2016, <https://globalnation.inquirer.net/146263/america-has-failed-us-yasay>

<sup>4</sup> Lorenzana has mentioned the loss of Mischief Reef in 1995 in relation to his call for a review of the Mutual Defense Treaty, see Frances Mangosing, “Ambiguity in U.S.-Philippine defense treaty will bring chaos during a crisis”, *Philippine Daily Inquirer*, 5 March 2019, <https://globalnation.inquirer.net/173419/lorenzana-ambiguity-in-us-ph-defense-treaty-will-bring-chaos-during-a-crisis>

<sup>5</sup> The text of the treaty can be viewed at [http://avalon.law.yale.edu/20th\\_century/phil001.asp](http://avalon.law.yale.edu/20th_century/phil001.asp)

<sup>6</sup> Cited in Frances Mangosing, “Ambiguity in U.S.-Philippine defense treaty will bring chaos during a crisis”, *Philippine Daily Inquirer*, 5 March 2019, <https://globalnation.inquirer.net/173419/lorenzana-ambiguity-in-us-ph-defense-treaty-will-bring-chaos-during-a-crisis>

<sup>7</sup> The 1987 Philippine Constitution can be viewed at <http://hrlibrary.umn.edu/research/Philippines/PHILIPPINE%20CONSTITUTION.pdf>

<sup>8</sup> For more details, see Prashanth Parameswaran, “Why the new US-Philippines military pact’s first project launch matters”, *The Diplomat*, 19 April 2018, <https://thediplomat.com/2018/04/why-the-new-us-philippines-military-pacts-first-project-launch-matters/>

<sup>9</sup> For more details see Richard Heydarian, “Duterte reaches moment of truth over China”, *Nikkei Asian Review*, 16 April 2019, <https://asia.nikkei.com/Opinion/Duterte-reaches-moment-of-truth-over-China>

<sup>10</sup> <https://www.state.gov/remarks-with-philippine-foreign-secretary-teodoro-locsin-jr/>

<sup>11</sup> This document can be viewed at [http://www.nsc.gov.ph/images/NSS\\_NSP/NSS\\_2018.pdf](http://www.nsc.gov.ph/images/NSS_NSP/NSS_2018.pdf)

<sup>12</sup> For more details see the Department of Budget and Management details of the sectoral allocation of national expenditure <https://www.dbm.gov.ph/wp-content/uploads/BESF/BESF2018/B7a.pdf>

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