

PERSPECTIVE

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The Duterte Administration's China Tensions

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EXECUTIVE SUMMARY

- President Duterte came into office in mid-2016 promising an independent foreign policy and better relations with China. His accommodation of Chinese interests has resulted in a less independent foreign policy stance.
- The administration's ongoing response to the hitting of a Philippine fishing vessel in the West Philippine Sea by a trawler from China highlights the breadth and depth of this accommodation.
- Strong popular opposition, contradictory messages from government agencies, and criticism by non-opposition senators of Duterte's deference to China expose the tensions between the president and other foreign and defence policy actors on Philippine-China relations.
- These concerns and the president's personalized approach to Philippine-China relations suggest that his successor in 2022 will pursue a more independent foreign policy in relation to Philippine-China relations.

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INTRODUCTION

The militant left has accused each presidential administration of breaking the 1987 Constitution in the service of American interests in the Philippines. Article 2, Section 7 of the constitution dictates that,

“The State shall pursue an independent foreign policy. In its relations with other states the paramount consideration shall be national sovereignty, territorial integrity, national interest, and the right to self-determination.”

Concerns that Philippine relations with the former colonial metropole were undermining the national interest spread beyond the militant left during the administration of Benigno Aquino III. Under Aquino, the Philippines strengthened security and diplomatic relations with the US in response to China’s seizure of Panatag (Scarborough) Shoal and unlawful activities in the West Philippine Sea.¹

President Rodrigo Duterte and his administration claimed that they would conduct an independent foreign policy by having a more distant, autonomous relationship with the US, strengthening ties with neighbouring countries, and repairing the very strained relations with China. The president’s travel schedule reflects this reorientation. President Duterte has officially visited Japan and China numerous times, hosted reciprocal state visits by Prime Minister Abe and President Xi, and has been to each Southeast Asian state. He has not visited the US (or any other “Western” state).

Halfway through the single six-year term of the Duterte presidency, the administration’s foreign policy, with the president as its “chief architect,”² accommodates Chinese interests even in key areas of domestic policy. The Duterte administration risks replacing a foreign policy perceived as being too deferential to US interests with one that is too deferential to Chinese ones. And this is happening at a time when the unlawful activities of vessels from China (and others) in the West Philippine Sea undermine Philippine territorial integrity. The 2017-2022 National Security Policy statement recognizes that,

“The dispute over the West Philippine Sea remains to be the foremost security challenge to the Philippines’ sovereignty and territorial integrity.”³

THE RECTO BANK INCIDENT

On 9 June, a small wooden fishing boat with 22 Filipino fishermen onboard anchored for the night at Recto (Reed) Bank in the West Philippine Sea. It was then struck by a larger steel-hulled trawler from China unlawfully fishing in the West Philippine Sea. The trawler then abandoned the 22 fishermen to their fate in violation of maritime law and good maritime practice. The stranded fishermen then hailed a nearby fishing vessel from Vietnam that rescued them from their sinking vessel.

The Duterte administration’s response so far to the 9 June incident, led by the president himself, serves as a good case study for the current Philippine foreign policy’s deference to

Chinese interests, particularly as it is in a key domestic policy area with clear constitutional requirements.

More than a week later, on 17 June, in his first public comments on the incident, President Duterte declared it a “little maritime incident” and suggested that an assertive Philippine response could lead to a nuclear weapon attack from China.⁴ This downplaying of the incident echoed the Chinese government’s 13 June description of the collision as a “normal maritime incident.” The next day, presidential spokesperson Salvador Panelo claimed that the Philippine government could not “summon” the Chinese ambassador to the Philippines and that President Duterte saw no reason to “invite” him for a discussion on the incident.⁵

Senior administration figures then questioned the Filipino fishermen’s account of the collision suggesting that they may have been at fault.⁶ The Philippine Coast Guard report on the incident submitted to the president does not support the claims that the 9 June incident was a little or normal maritime incident or that the Filipino crew was at fault.

Article 12, Section 2 of the 1987 Philippine Constitution requires that,

“The State shall protect the nation’s marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizen.”

The presence of the Chinese and Vietnamese fishing vessels at Recto Bank clearly violated this clause. When asked why the Philippine government was not enforcing this constitutional requirement in relation to fishing by Chinese vessels in the West Philippine Sea, the Office of the President provided four justifications:

- The Philippines needed to protect its overall relationship with China and China’s role in infrastructure financing⁷;
- As a “friend” of the Philippines, the Chinese government would not permit Chinese fishing vessels to fish in Philippine waters⁸;
- The Philippines could not enforce its constitutional requirements, and those of the 1998 Fisheries Code, on China as this may lead to an unwinnable war against China. Attempts to enforce Article 12, Section 2 would be thoughtless and senseless;⁹
- And finally, President Duterte had reached a previously unannounced verbal agreement with President Xi permitting Chinese vessels to fish in the West Philippine Sea, and not just in the territorial waters of the disputed Panatag Shoal.

The presidential spokesperson’s clarification of the last justification deepened the accommodation of Chinese interests in the West Philippine Sea even further. On 24 July, Presidential spokesperson Salvador Panelo stated that China had “legal and constructive possession of the South China Sea”, expanding on President Duterte’s claim in his 22 July State of the Nation Address that China had “legal possession” of the South China Sea.¹⁰ These official statements are inconsistent with the July 2016 unanimous arbitration tribunal ruling that China was infringing upon Philippine maritime rights in the West Philippine Sea,

and that China's nine-dash line claim to the majority of the South China Sea is not supported by the United Nations Convention on the Law of the Sea (UNCLOS).

The Duterte administration's deference to China's interests in the West Philippine Sea has pierced the separation between domestic and foreign policy. On 9 July Solicitor General Jose Calida argued that the Philippine Supreme Court should dismiss a petition filed against the government for failing to protect the marine environment in the West Philippine Sea. Calida argued that as the petition contests Chinese actions in the West Philippine Sea this makes it a foreign policy issue and beyond the scope of the Supreme Court.¹¹ The 1987 Constitution defines the exclusive economic zone as Philippine waters, making any actions undertaken in the West Philippine Sea a Philippine domestic, not foreign, policy issue.

DUTERTE'S CHINA RHETORIC

The response so far by President Duterte and his spokesperson to the Recto Bank incident is consistent with how the president has represented China for the duration of his term. President Duterte has represented China as a beneficent and punitive great power and the Philippine-China relationship as not one between sovereign equals under international law. Instead, it is one in which the Philippines is a friend dependent on China and President Xi Jinping's generosity and mercy.

In an interview with Chinese state media during his state visit to China in October 2016, President Duterte stated that "The only hope of the Philippines economically, I'll be frank with you, is China", and claimed that he himself is Chinese.¹² In 2018, on his way to the Boao Forum for Asia in China, President Duterte expressed his personal love for Xi Jinping and declared that "So I would say, I need China. More than anybody else at this time in our national life I need China."¹³

The president consistently contends that the Philippines cannot and should not act against Chinese interests in the Philippines even when these interests contravene Philippine laws, as China's punitive reaction will be too costly. President Duterte's response to public concern over the growing presence of illegal Chinese workers in Metro Manila reflected this view. In a mid-term campaign speech in February 2019, the president, referring to illegal Chinese workers in the Philippines, stated that, "the Chinese here, just let them work here. Just let them. Why? We have 300,000 Filipinos in China. That is why I cannot just say 'Leave.' What if the 300,000 are suddenly kicked out?"¹⁴ Later, the president claimed there are 400,000 Filipinos working in China.

These repeated references to likely punishments from China if the Philippine government enforces domestic laws appear to overstate both the likelihood of the threatened punishments and the depth of Philippine vulnerability to these punishments. The Joko Widodo administration in Indonesia has actively enforced its maritime rights in its exclusive economic zone including in areas that overlap with China's excessive claims in the South China Sea. Jakarta has detained erring foreign fishing vessels including from China and destroyed them. Beijing has not retaliated with military operations (or nuclear attacks).

According to the Philippine Statistics Authority, the number of registered overseas Filipino workers in Taiwan is greater than in mainland China.¹⁵ Central bank statistics on overseas

remittances also suggest that President Duterte significantly overstated the number of Filipinos working in China and the associated Philippine vulnerability. In 2018, monitored remittance inflows from mainland China to the Philippines accounted for less than 0.2% of total inflows. Those from Hong Kong accounted for less than 3% of the total. Singapore alone accounted for 6.4% of total inflows,¹⁶ and fewer than 300,000 Filipinos reside in Singapore.

CONTRADICTING VOICES

President Duterte's approach to Philippine-China relations is one that is most out of line with public opinion of all of his administration's policies. Rather than seeing China as a generous friend of the Philippines, Filipinos trust China the least by a considerable margin among seven foreign countries listed in the quarterly *Social Weather Stations* polls.¹⁷ In a poll taken after the Recto Bank incident, 87% agreed that "the government should apprehend Chinese fishermen causing the destruction of marine resources in the West Philippine Sea". Only 5% supported the current accommodative approach.¹⁸

In the first half of President Duterte's term, the Philippine Senate exhibited the most independence from the executive among the co-equal branches of government. Senators' reactions to the executive's response to the Recto Bank incident have been mixed and do not match the assumed division between the small Liberal party-aligned opposition and the super-majority of senators supposedly aligned with the president.

Senator Cynthia Villar, the top vote-getter in the 2019 mid-term elections, agreed with President Duterte that it was a small incident that should not affect relations with China.¹⁹ Senate President Vicente Sotto claimed that the Philippine Coast Guard had visual evidence that the trawler from China was not at fault for the collision.²⁰ The Coast Guard's final report did not support this view, however. Neophyte senator Francis Tolentino, who was personally endorsed by the president during the 2019 mid-term election campaign, argued that the secret verbal agreement between President Duterte and Xi Jinping on Chinese fishing in the West Philippine Sea was legally binding and did not require Senate ratification. This abnormal reading of the 1987 Constitution was questioned by opposition senator and Minority Floor Leader Franklin Drilon.²¹

Panfilo Lacson, an independent senator often included in the counting of Duterte's Senate super majority, struck a different note. In reaction to the presidential spokesperson Panelo's explanation of President Duterte's response to the Recto Bank incident, Lacson questioned whether Panelo was "lawyering for China," and noted that the president's 17 June statement appeared to be defending the trawler from China and not the 22 stranded Filipino fishermen.²² Senator Richard Gordon, also counted as part of the super-majority, argued that Philippine foreign policy should not rely on the personal relations of President Duterte with foreign leaders and that the Senate should have been advised of the verbal fishing agreement.²³

Members of President Duterte's own cabinet have also contradicted core elements of the president's response to the Recto Bank incident and the explanation of this response by Panelo. On 3 July, Foreign Secretary Teodoro Locsin publicly contradicted Panelo. Citing Drilon, Locsin countered that the secret verbal agreement to allow vessels from China to

fish in the West Philippine Sea was not legally binding or policy. It was an unenforceable verbal agreement.²⁴ On 1 August, the Philippine Department of National Defense released a statement of the West Philippine Sea (WPS) that states the Philippines is in legal possession and position of the West Philippine Sea. It elaborates further that,

“Ultimately, the UNCLOS, ratified in 1982 by many countries including the Philippines and China, is the legal basis of the Philippines’ claim of sovereign rights over its EEZ. This was further affirmed by the PCA award to the Philippines in 2016, which invalidated China’s so-called historical claim delineated by its Nine-Dash Line. Thus, the Philippines has two documents to support its claims versus none for the Chinese. Thus, the Chinese presence in the WPS is akin to somebody squatting on a piece of land owned by someone else.”²⁵

LOOKING FORWARD

Over the last three presidential terms, each succeeding president has taken a very different approach to Philippine-China relations and China’s unlawful actions in the West Philippine Sea than their predecessor. During her extended presidency from 2001 to 2010, Gloria Macapagal-Arroyo downplayed the West Philippine Sea problem and claimed Philippine-China relations had reached a golden moment. After Chinese public vessels disrupted energy exploration in Recto Bank and China took de facto control of Panatag Shoal, the Aquino administration from 2012 to 2016 focused Philippine-China relations on China’s infringement of Philippine maritime rights in the West Philippine Sea. President Duterte has returned to the Macapagal-Arroyo approach with an even greater accommodation of Chinese interests in the Philippines. He doubled down on this approach in his response to the 9 June incident, thus making it a much larger issue than it could have been.

The strong public disapproval of Duterte’s greater deference to China in the West Philippine Sea and in Philippine-China relations and the very personalized nature of current Philippine-China relations suggest that this alternating pattern may repeat in 2022. The next Philippine president may manage the tensions in the Philippines over how to deal with China and its unlawful activities in the West Philippine Sea in a manner that is less accommodating of Chinese interests in the Philippines and more accommodating of Philippine public opinion and the 1987 Constitution.

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- ¹ Administrative Order No. 29 in 2012 includes the Philippine exclusive economic zone in the South China Sea. The West Philippine Sea covers, “The maritime areas on the western side of the Philippine archipelago are hereby named as the West Philippine Sea. These areas include the Luzon Sea as well as the waters around, within and adjacent to the Kalayaan Island Group and Bajo De Masinloc, also known as Scarborough Shoal.”
<https://www.officialgazette.gov.ph/2012/09/05/administrative-order-no-29-s-2012/>
- ² The Philippine Supreme Court has repeatedly ruled that the president is the “chief architect of the nation’s foreign policy.” Cited in
<http://www.bworldonline.com/content.php?section=opinion=&titleForeign-policy:-not-the-president%E2%80%99s-job-alone&id=135571>
- ³ The National Security Policy 2017-2022 can be viewed at
<http://www.nsc.gov.ph/attachments/article/NSP/NSP-2017-2022.pdf>
- ⁴ Cited in <https://www.philstar.com/headlines/2019/06/18/1927498/duterte-sinking-it-was-little-maritime-accident>
- ⁵ Cited in <https://www.rappler.com/nation/233328-philippines-refuses-summon-chinese-ambassador-recto-bank>
- ⁶ See <https://globalnation.inquirer.net/177468/locsin-probe-shows-ph-crew-share-blame-in-recto-bank-hit>
- ⁷ See <https://www.bworldonline.com/duterte-cites-need-to-preserve-china-relations-after-collision/>
- ⁸ <https://www.rappler.com/newsbreak/in-depth/233900-is-philippines-lawyering-for-china-boat-sinking-recto-bank>
- ⁹ Cited in <https://www.rappler.com/nation/234083-duterte-constitutional-mandate-protect-ph-waters-thoughtless-senseless>
- ¹⁰ Cited in <https://globalnation.inquirer.net/178260/palace-china-has-legal-and-constructive-possession-of-south-china-sea>
- ¹¹ Cited in <https://www.pna.gov.ph/articles/1074506>
- ¹² Cited in <https://time.com/4536302/rodrigo-duterte-china-philippines-xi-jinping/>
- ¹³ Cited in <https://www.gmanetwork.com/news/news/nation/649403/duterte-i-love-xi-jinping-need-china-more-than-anybody-else/story/>
- ¹⁴ Cited in <https://newsinfo.inquirer.net/1089496/duterte-allow-illegal-chinese-to-work-here>
- ¹⁵ See <https://psa.gov.ph/content/statistical-tables-overseas-filipino-workers-ofw-2018>
- ¹⁶ See http://www.bsp.gov.ph/statistics/spei_pub/Table%2011.pdf
- ¹⁷ See <https://www.sws.org.ph/swsmain/artcldisppage/?artcsyscode=ART-20190719100415>
- ¹⁸ See <https://www.sws.org.ph/swsmain/artcldisppage/?artcsyscode=ART-20190712122047>
- ¹⁹ See <https://news.abs-cbn.com/news/06/19/19/villar-on-recto-bank-allision-maliit-na-incident-lang>
- ²⁰ See <https://globalnation.inquirer.net/177083/sotto-photos-could-prove-no-ramming-of-philippine-fishing-boat>
- ²¹ See <https://newsinfo.inquirer.net/1147723/baptism-of-fire-tolentino-defends-duterte-xi-verbal-fishing-deal-but-admits-hes-got-no-details>
- ²² Cited in <https://www.gmanetwork.com/news/news/nation/698276/panelo-acting-like-china-s-defense-counsel-lacson/story/>
- ²³ See <https://globalnation.inquirer.net/177085/gordon-dutertes-personal-friendships-should-not-dictate-ph-foreign-policy>
- ²⁴ Cited in <https://www.rappler.com/nation/234481-locsin-says-duterte-xi-jinping-fishing-deal-cannot-be-enforced>
- ²⁵ See
<http://www.dnd.gov.ph/PDF2019/DNDPASPressRelease20190801StatementoftheDNDOntheWestPhilippineSea.pdf>

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