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US Policy on the South China Sea: should the United States make adjustments following the  
Permanent Court of Arbitration Ruling?

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October 26, 2017

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## **ABSTRACT**

*US Policy on the South China Sea: should the United States make adjustments following the Permanent Court of Arbitration Ruling?* In July 2016 the Permanent Court of Arbitration (PCA) at The Hague ruled against the People's Republic of China on several South China Sea (SCS) disputes providing the Government of the Philippines, and international community, a diplomatic tool to counter Chinese encroachment in the Philippines exclusive economic zone and more broadly in the SCS. This paper presents background on US and Philippines policy on the SCS and the key elements of the PCA award. The paper will then argue that a shift in US policy to a more pro-Philippine position is required to enable US action and better support US and Philippine interests in the region. A counterargument shows that some scholars feel the status quo US policy is adequate for strategic US interests. Finally, the paper draws conclusions and provides recommendations for US policy to support US interests in the SCS.

## US AND PHILIPPINES POLICY POSITIONS ON THE SOUTH CHINA SEA

*The South China Sea is both a fulcrum of world trade and a crucible of conflict.*<sup>1</sup>

The United States and the Philippines find themselves locked in mutual interest in the struggle for power and control in the South China Sea (SCS). As Bill Hayton, a Southeast Asia expert at Chatham House, notes in the quote above, the SCS has been a critical node in the network of sea lines of communication for trade and commerce; an area of competition and contest between and among the regional states and foreign maritime powers seeking to secure access to resources and markets. While the United States and Philippines share many similar interests in the SCS, their different geostrategic positions have caused their respective policies to diverge in pursue of these interests. The recent decision by the Permanent Court of Arbitration (PCA) at the Hague on the SCS disputes presents an opportunity for partnership in pursuit of their mutual interest.

The US policy on the SCS outlined in the 2015 National Security Strategy (NSS) is neutral on matters of sovereignty, desires peaceful multilateral or bilateral resolution with respect to disputes, and values freedom of navigation (FON) in accordance with international law.<sup>2</sup> The 2017 Philippine National Security Policy (PNSP) describes the West Philippine Sea (SCS) as the “foremost security challenge to the Philippines’ sovereignty and territorial integrity” and seeks diplomatic resolution of disputes and compliance with international law.<sup>3</sup> Both countries affirm a national interest in freedom of the seas, adherence to international law, and the rights of nations within their exclusive economic zones (EEZs).

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<sup>1</sup> Bill Hayton, *The South China Sea* (New Haven: Yale University Press, 2014), xvi.

<sup>2</sup> Barack Obama, *National Security Strategy* (Washington, DC: White House, 2015), <http://nssarchive.us/wp-content/uploads/2015/02/2015.pdf>, 13.

<sup>3</sup> Republic of the Philippines, National Security Council, *National Security Policy for Change and Well-Being of the Filipino People* (Manila: Malacañan Palace, April 2017), <http://www.nsc.gov.ph/attachments/article/NSP/NSP-2017-2022.pdf>, 13.

In response to the PCA award on the SCS case number 2013-19, US policy and strategy on these disputes should become more pro-Philippine in order to support both enduring US interests and Philippine interests in the SCS. In the wake of the award, a more pro-Philippine policy backed with credible presence will better support long-term US and Philippine interests by enabling the United States to diplomatically leverage the PCA, signal commitment to deter China's gray zone strategy in the SCS, and build regional confidence to use diplomatic and international institutions to settle disputes.

### **THE SOUTH CHINA SEA ARBITRATION CASE**

On July 12, 2016, the PCA ruled against the People's Republic of China on several SCS disputes based on a case filed by the Government of the Philippines (GOP). It found that there was

“no legal basis for China to claim historic rights to resources within the sea areas falling within the ‘nine-dash line’; that none of the Spratly Islands is capable of generating extended maritime zones and none of the features claimed by China was capable of generating an exclusive economic zone; that Chinese law enforcement vessels had unlawfully created a serious risk of collision; and China had caused severe harm to the coral reef environment and violated its obligation to preserve and protect fragile ecosystems.”<sup>4</sup>

While the award provided the Philippines a clear legal victory, actions over the past 18 months by the GOP indicate that potential gains made possible by the ruling will be abandoned in favor of fostering closer ties with China. Philippine rhetoric has been particularly pro-China since President Duterte's inauguration in June 2016, and he has been reluctant to challenge China with the award. The Association of Southeast Asian Nations

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<sup>4</sup> Permanent Court of Arbitration, “The South China Sea Arbitration (The Republic of the Philippines v. the People's Republic of China),” press release, July 12, 2016, <https://pca-cpa.org/en/news/pca-press-release-the-south-china-sea-arbitration-the-republic-of-the-philippines-v-the-peoples-republic-of-china/>, 2.

(ASEAN) has also been unwilling to take a firm position in support of the PCA award revealing a regional unwillingness to use it to counter China's actions to dominate the SCS.

The PCA award lacks two fundamental components required for the Philippines to assert full rights over its maritime claims: a determination of sovereignty for the territorial features in the SCS and an enforcement mechanism.<sup>5</sup> As a result, one of the principle issues of regional conflict – sovereignty of the territorial features in the SCS – remains unresolved. With no enforcement mechanism, the award requires individual nations to police themselves in accordance with provisions in the United Nations Convention on the Law of the Sea (UNCLOS).

### **THE SOUTH CHINA SEA ARBITRATION CASE AS A DIPLOMATIC TOOL**

*Power without legitimacy tempts tests of strength; legitimacy without power  
tempts empty posturing.*<sup>6</sup>

The PCA award is first and foremost a diplomatic tool. PCA decisions are governed by UNCLOS Article 296, which states that decisions “shall be final and shall be complied with by all the parties to the dispute” and that “any such decision shall have no binding force except between the parties and in respect of that particular dispute.”<sup>7</sup> While it does have implications for the international community and may be used as legal precedence for future arbitration or international court cases, case 2013-19 is specific to the parties involved, the Philippines and China, and requires those parties to directly enforce or diplomatically leverage its findings.

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<sup>5</sup> Sovereignty determination is not within the Arbitrations Court's jurisdiction. Permanent Court of Arbitration, *PCA Case Number 2013-19: The South China Sea Arbitration - The Republic of the Philippines v. the People's Republic of China - Award*, (The Hague, Peace Palace, July 12, 2016), 1.

<sup>6</sup> Henry Kissinger, *Diplomacy* (New York: Simon and Schuster, 1994), 77.

<sup>7</sup> *United Nations Convention on the Law of the Sea*, New York, December 10, 1982, *United Nations Treaty Series*, 1833, No. 31363, 132.



The PNSP is consistent with the Philippines' vital interests in freedom of the seas as established in UNCLOS, particularly the littoral zones and EEZ, which are both reinforced by the PCA ruling. Professor James Kraska of the US Naval War College Stockton Center for International Law concludes that there are two courses of action for a nation to preserve navigational freedom and rights in the EEZ: "first, nations should ensure their domestic oceans policy reflects collective strategic interest in a liberal order of the oceans" and "second, nations should conduct effective maritime diplomacy to generate greater international support for such an order."<sup>8</sup> The PCA award provides the Philippines a useful tool for their maritime diplomacy efforts.

As an underwriter of the liberal international order and the global enforcer for FON, the United States needs the Philippines to use the PCA award as a maritime diplomacy tool, because the it has no sovereignty claims in the SCS and is not a signatory to the UNCLOS. The latter point, while significant, has not prevented the United States from upholding UNCLOS principles consistent with key tenets of its NSS to maintain freedom of the seas, challenge excessive maritime claims, and deter or suppress threats to maritime security.<sup>9</sup> However, the conflict in the SCS today presents challenges to each of these principles. Without a sovereignty claim in the SCS, and not being a party to the PCA case, the United States has little to gain and much to risk by trying to enforce the PCA award without Philippine involvement. Therefore, while the United States can and does conduct routine FON patrols, it needs to closely cooperate with the Philippines to go beyond the basics of

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<sup>8</sup> James Kraska. *Maritime Power and the Law of the Sea: Expeditionary Operations in World Politics*. (New York: Oxford University Press, 2011), 2.

<sup>9</sup> Obama, *National Security Strategy*, 13.

enforcing the international order via FON patrols and flights and fully use the PCA award in the diplomatic arena.

As a pre-requisite to effective maritime diplomacy, the Philippines needs the United States to signal a stronger pro-Philippine policy, because it lacks credible enforcement tools to back its own diplomatic efforts. The PCA award gives the Philippines legitimacy, but it needs American power for enforcement. President Duterte recognizes this and, despite much anti-US rhetoric, noted the need for US presence in the Philippines in a 2016 speech: “I never said get out of the Philippines. For after all, we need them [the United States] in the South China Sea.”<sup>10</sup>

The Chairman of the Corbett Centre for Maritime Policy Studies, Geoffery Till, said of the source of diplomatic naval power: “The growing diplomatic utility of navies is a consequence of the fundamental characteristics of naval forces themselves.”<sup>11</sup> For the Philippines in the SCS, the naval forces must possess the characteristics that enable them to enforce maritime laws in the EEZ and deter rivals. According to Till, the key component upon which all other components rely is ‘presence’ – not mere existence, but presence by naval forces acting with purpose “in areas of interest to declare interest, reassure friends, and to deter.”<sup>12</sup> The Philippine Navy and Coast Guard lack the ability to have presence against China.

The Philippine Navy and Coast Guard are dwarfed by their Chinese counterparts in current size (see Figure 1 for relative comparison) and future investment. If the Philippines

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<sup>10</sup> Rodrigo Roa Duterte, “Speech to Agila Troopers of Camp General Manuel T. Yan, Sr.” (Mawab, September 20, 2016), <https://pcoo.gov.ph/sept-20-2016-speech-of-president-rodrigo-roa-duterte-during-his-talk-to-the-agila-troopers-of-camp-general-manuel-t-yan-sr/>.

<sup>11</sup> Geoffery Till, *Seapower: A guide for the twenty-first century*, 3<sup>rd</sup> Edition (New York: Routledge, 2013), 224.

<sup>12</sup> Ministry of Defense (UK), *British Maritime Doctrine* (BR 1806), in *Seapower: A guide for the twenty-first century*, 3<sup>rd</sup> Edition (New York: Routledge, 2013), 225-227.

wants to achieve ‘presence,’ it requires in the near term a partnership that can provide naval forces to act in its interests in the SCS. It has built partnerships with regional navies and leveraged its long-standing relationship with the United States to conduct law enforcement training and operations but primarily outside of the contentious SCS. The Philippines restricts joint patrols with the United States to its southern border, the Sulu Sea, where the mission is heavily focused on countering rising militant activity.<sup>13</sup> Additionally, Indonesia, Malaysia, and the Philippines are cooperating through a tri-lateral agreement for joint patrols and information sharing along their common borders in the Sulu Sea.<sup>14</sup> However, the lack of presence in the SCS leaves the Philippines in a vulnerable position to defend its claimed sovereignty and EEZ or attempt to enforce the findings in the PCA award.

A pro-Philippines US policy coupled with US military forces has provided the Philippines ‘presence’ in the SCS in the past. In 2014, the United States supported the Philippines, diplomatically and militarily, to resupply its outpost at Second Thomas Shoal after a protracted period of tension in which China stationed vessels around the shoal to harass Philippine fishing and prevent resupply.<sup>15</sup> In the final month of the standoff, both the President and US State Department issued statements supporting the Philippines’ right to resupply the outpost while also criticizing Chinese harassment. Following these statements, US aircraft visibly circled the island while the Philippines conducted a mission to resupply the outpost. Jake Douglas from the Center for Strategic and International Studies (CSIS) concluded that US actions and statements “may have helped deter China from further

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<sup>13</sup> Reuters, “US, Philippines Navy Ships Patrol Sulu Sea,” July 1, 2017, <https://uk.reuters.com/article/uk-philippines-usa-defense/u-s-philippines-hold-naval-patrol-to-deter-islamist-militants-idUKKBN19M35Z>.

<sup>14</sup> Gustavo Guerra, “Indonesia/Philippines/Malaysia: Agreement on Patrolling Shared Maritime Border,” *Library of Congress*, June 30, 2017, <http://www.loc.gov/law/foreign-news/article/indonesiaphilippinesmalaysia-agreement-on-patrolling-shared-maritime-border/>.

<sup>15</sup> Michael Green et al., *Countering Coercion in Maritime Asia: The Theory and Practice of Gray Zone Deterrence* (Lanham: Rowman & Littlefield, 2017), 173-201.

escalation.”<sup>16</sup> The incident demonstrates a successful use of US presence to support Philippines action and can serve as a model for future cooperation. Both nations needed the other to deter Chinese coercion; the United States needed the Philippines to accept risk and confront China by resupplying the outpost, while the Philippines needed US ‘presence’ to credibly deter Chinese aggression.

### **SIGNAL A COMMITMENT TO DETER CHINA’S GRAY ZONE STRATEGY**

*In concert with other sources of the country’s military and nonmilitary power, naval power has a large role in deterring the outbreak of large-scale hostilities.*<sup>17</sup>

A pro-Philippine US policy signals a commitment to uphold the findings of the PCA award in support of US and Philippine mutual interest to counter China’s gray zone strategy in the SCS. Chinese actions over the past decade appear designed to disrupt the status quo and tilt the advantage in their direction. Two Asian security experts from the CSIS, Zack Cooper and Andrew Shearer, point out Chinese activities “are most aptly described as gray zone conflict”<sup>18</sup> in the SCS: “state on state conflict that does not involve combat between uniformed militaries.”<sup>19</sup> However, these actions should not be misinterpreted – their objective is domination of the SCS for power and influence. Two researchers from the China Maritime Studies Institute of the US Naval War College, Ryan Martinson and Katsuya Yamamoto, recently described the Chinese viewpoint on the SCS from a 2016 Chinese military article; “the struggle in the South China Sea is not just about contention over rights and interests. More than that, it is a struggle for dominance in regional security affairs.”<sup>20</sup>

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<sup>16</sup> Green et al., *Countering Coercion in Maritime Asia*, 173-201.

<sup>17</sup> Milan Vego, “On Naval Power,” *Joint Forces Quarterly*, Issue 50, (3<sup>rd</sup> Quarter 2008), 17.

<sup>18</sup> Zack Cooper and Andrew Shearer, “Thinking clearly about China’s layered Indo-Pacific strategy,” *Bulletin of the Atomic Scientists*, Vol 73, No.5 (2017): 307.

<sup>19</sup> Cooper and Shearer, “Thinking clearly about China’s layered Indo-Pacific strategy,” 306.

<sup>20</sup> Jin Jing, Xu Hui, and Wang Ning, “Military Crises in the South China Sea: Analysis, Assessment, and Responses,” in “Three PLAN Officers May Have Just Revealed What China Wants in the South China Sea”,

The PCA award provides a tool to focus on Chinese objectives and deter China's gray zone strategy in order to shift dispute resolution away from coercive actions at sea back to diplomacy and international institutions.

A detailed study from the CSIS, *Countering Coercion in Maritime Asia*, suggests deterrence in the SCS requires the United States to tailor its deterrence strategy and clarify its commitments.<sup>21</sup> To create an effective US deterrence policy that goes beyond FON and challenges the physical control of land and sea features in the SCS that China ultimately seeks to exploit to gain dominance, the United States must partner with nations in the region to accomplish specific objectives.

The PCA award can primarily deter gray zone coercion through rules and norms but can also complement deterrence efforts to counter gray zone coercion of physical control. The authors of *Countering Coercion in Maritime Asia* focus on four categories of gray zone coercion: contesting physical control, exploiting physical control, contesting rules and norms, and exploiting rules and norms (see Figure 2 for examples).<sup>22</sup> Since the PCA award did not deliver a determination on sovereignty claims, there is little opening for the United States or Philippines to alter or reverse China's existing island reclamation and development projects (physical control). However, in the third finding – Chinese Activities in the SCS – the PCA found that Chinese actions “had violated the Philippines’ sovereign rights in its EEZ”<sup>23</sup> and “had breached several UNCLOS articles governing safety and navigation at

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Ryan Martinson and Katsuya Yamamoto, *The National Interest*, July 9, 2017, <http://nationalinterest.org/feature/three-plan-officers-may-have-just-revealed-what-china-wants-21458>.

<sup>21</sup> Green et al., *Countering Coercion in Maritime Asia*, 266-271.

<sup>22</sup> Green et al., *Countering Coercion in Maritime Asia*, 267.

<sup>23</sup> Permanent Court of Arbitration, “The South China Sea Arbitration (The Republic of the Philippines v. the People's Republic of China) Press Release,” 2.

sea.”<sup>24</sup> As China seeks to expand their operations in the SCS through non-military means – e.g. their Coast Guard, maritime militia, and fishing fleet – the ruling provides leverage against their civilian fishing fleets, law enforcement and constabulary forces (Coast Guard, and maritime militia), and the PLA Navy, to compel China to act in accordance with international law.

The PCA findings open the door for the United States to shift to a pro-Philippine policy to deter future Chinese coercion by enforcing the rules and norms of UNCLOS and International Regulations for Preventing Collisions at Sea (COLREGS) within the Philippine EEZ. The award provides objectives around which a pro-Philippine US deterrence policy can be based, specifically that China (or other nations) cannot interfere with the Philippines’ sovereign rights in its EEZ – even if another country claims rights to a land feature within the EEZ (e.g. Scarborough Shoal). This provides the United States an opportunity to tailor its deterrence strategy and clarify its commitments to the Philippines towards this objective. Professor Kraska points out that “a successful deterrent strategy uses both resolve and restraint, and the balance must be recognized and understood by both allies and potential adversaries.”<sup>25</sup> US policy must explicitly state resolve in a manner understood by both the Philippines and China. Unfortunately, US policy and Philippine actions since the PCA award have sent conflicting signals, which weaken their collective ability to deter Chinese action.

Since assuming office in June 2016, President Duterte’s rhetoric has shifted away from the prevailing pro-US foreign policy approach toward one that is pro-China. On

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<sup>24</sup> Lyle Morris, “The Crucial South China Sea Ruling No One Is Talking About,” *The Diplomat*, September 9, 2016, <https://thediplomat.com/2016/09/the-important-south-china-sea-ruling-no-one-is-talking-about/>.

<sup>25</sup> Kraska. *Maritime Power and the Law of the Sea*, 398.

October 20, 2016, Duterte suggested he did not believe the United States would fulfill its obligations under the Mutual Defense Treaty “in the event of military confrontation with China over their competing territorial claims.”<sup>26, 27</sup> In December, he stated that he would not challenge China: “I will set aside the arbitral ruling... I will not impose anything on China.”<sup>28</sup> US policy has remained neutral, with a State Department representative in August 2017 stating that the United States will “press for due regard for legal processes, dispute resolution mechanisms, and upholding, certainly, international law and the UN Convention on the Law of the Sea.”<sup>29</sup> The combination of these statements has led to a perception that the Philippines will acquiesce to Chinese pressure while the United States looks on and not leverage the award to criticize current action or deter future aggression.

President Duterte’s decision to pursue a pro-China approach appears to also be influenced by two factors: his perception that the US response to China’s aggression, particularly the large-scale land reclamation projects, has been weak – and by the mismatch in capability between Chinese and Philippine Forces. In March 2017, he questioned the US response to China’s projects by saying, “why did you not send the armada of the Seventh Fleet” to tell China to “stop it [island building in the South China Sea]?”<sup>30</sup> Nehginpao Kipgen, Executive Director of the Center for Southeast Asian Studies at O.P. Jindal Global

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<sup>26</sup> Nehginpao Kipgen, “The Philippines’ South China Sea Flip-Flop,” *The Diplomat*, March 2, 2017, <https://thediplomat.com/2017/03/the-philippines-south-china-sea-flip-flop/>.

<sup>27</sup> Rodrigo Roa Duterte, “Speech at the Philippines-China Trade and Investment Forum” (Beijing, October 20, 2016), <https://pcoo.gov.ph/oct-20-2016-speech-of-president-rodrigo-roa-duterte-during-the-philippines-china-trade-and-investment-forum/>.

<sup>28</sup> Rodrigo Roa Duterte, “Speech during the 2016 Search for Outstanding Government Workers” (Malacañan Palace, December 19, 2016), <https://pcoo.gov.ph/dec-19-2016-speech-president-rodrigo-duterte-2016-search-outstanding-government-workers/>

<sup>29</sup> Susan A. Thornton, “Special Briefing on Secretary Tillerson’s Travel to the Philippines, Thailand, and Malaysia,” (August 2, 2017), <https://www.state.gov/r/pa/prs/ps/2017/08/272998.htm>.

<sup>30</sup> Rodrigo Roa Duterte, “Speech at the People’s Day Celebration” (Oriental Mindoro, March 29, 2017), <https://pcoo.gov.ph/march-29-2017-speech-of-president-rodrigo-roa-duterte-during-his-attendance-to-the-peoples-day-celebration/>.

University in India, summarized Duterte’s view that the Philippines “could not just resume control of the resource-rich Scarborough Shoal from Beijing despite the PCA ruling, as the Philippines’ military forces were no match for Beijing’s powerful forces.”<sup>31</sup> Duterte is understandably reluctant to commit weak Philippine forces against superior Chinese forces when the preeminent maritime superpower, America, also appears unwilling to confront China on these issues. A pro-Philippine US policy, therefore, can signal to both the Philippines and China that the United States has an interest and is willing to support the Philippines in upholding the PCA ruling.

### **BUILD REGIONAL CONFIDENCE FOR DIPLOMATIC SOLUTIONS**

*“You have no idea how much it contributes to the general politeness and pleasantness of diplomacy when you have a little quiet armed force in the background.”<sup>32</sup>*

A pro-Philippine US policy is required to build regional confidence to use diplomatic and international institutions to settle disputes in the SCS. Ronald O’Rourke, a naval specialist at the Congressional Research Service, summarizes current US policy on this matter in the Western Pacific as the “United States supports the principle that disputes between countries should be resolved peacefully, without coercion, intimidation, threats, or the use of force, and in a manner consistent with international law.”<sup>33</sup> However, events in the SCS demonstrate a pattern of countries acquiescing to Chinese coercion and failing to resolve disputes collectively or within international institutions. Building regional confidence leverages an advantage the United States normally holds – international

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<sup>31</sup> Kipgen, “The Philippines’ South China Sea Flip-Flop.”

<sup>32</sup> George Kennan, in *George F. Kennan: An American Life*, John Lewis Gaddis (New York: Penguin Books, 2011), 241.

<sup>33</sup> Ronald O’Rourke, *Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress*, CRS Report Number R42784 (Washington, DC: Congressional Research Service, April 1, 2016), <http://www.dtic.mil/docs/citations/AD1013587>, 2.



partnerships – to deter Chinese aggression through horizontal escalation. In *Countering Coercion in Maritime Asia*, the authors explain horizontal and vertical escalation as: “horizontal escalation is often defined as ‘expanding the geographic scope of a conflict’ but can also include escalation in other domains of conflict. Vertical escalation, on the other hand, is ‘an increase in the intensity of armed conflict or confrontation.’”<sup>34</sup> Thus, the United States can leverage horizontal escalation to increase pressure on China without risking vertical escalation.

The Philippines is not alone in its decision to acquiesce to China’s coercive actions and threats. In June 2017, Vietnam withdrew oil exploration vessels from an area within their EEZ – and outside of China’s 9-dash line – after a period of increasing Chinese coercion.<sup>35</sup> A prevailing concern for Vietnamese leaders in this decision was “that the Trump administration could not be relied upon to come to Hanoi’s assistance in the event of a confrontation with China.”<sup>36</sup> Bill Hayton pessimistically states, “Where Duterte and the Vietnamese leadership go, others will follow.”<sup>37</sup> Vietnam has a more-capable fleet of maritime forces than the Philippines, and yet they too are demonstrating little trust in any outside nation being willing to intervene with force in any SCS dispute. Similarly, ASEAN has also maintained a neutral position on the PCA award and has not issued a statement – in essence signaling their unwillingness to intervene with China on these issues.<sup>38,39</sup>

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<sup>34</sup> Green et al., *Countering Coercion in Maritime Asia*, 38.

<sup>35</sup> Bill Hayton, “The Week Donald Trump Lost the South China Sea,” *Foreign Policy*, July 31, 2017, <http://foreignpolicy.com/2017/07/31/the-week-donald-trump-lost-the-south-china-sea/>.

<sup>36</sup> Hayton, “The Week Donald Trump Lost the South China Sea.”

<sup>37</sup> Hayton, “The Week Donald Trump Lost the South China Sea.”

<sup>38</sup> Prashanth Parameswaran, “The Truth About Duterte’s ASEAN South China Sea Blow,” *The Diplomat*, May 4, 2017, <https://thediplomat.com/2017/05/the-truth-about-dutertes-asean-south-china-sea-blow/>.

<sup>39</sup> Prashanth Parameswaran, “Assessing ASEANs South China Sea Position in its Post Ruling Statement,” *The Diplomat*, July 12, 2016, <https://thediplomat.com/2016/07/assessing-aseans-south-china-sea-position-in-its-post-ruling-statement/>.

A pro-Philippines US policy encourages other SCS nations to resolve disputes peacefully within the international system by demonstrating that the United States is willing to provide credible deterrence to Chinese aggression, diplomatically and militarily, to enforce arbitration or settlement awards. Bringing more parties to the table for dispute resolution is an example of horizontal escalation that raises the stakes for China prior to resorting to vertical escalation (conflict) or submitting to Chinese coercion. However, horizontal escalation without credible deterrence is ineffective, so the United States must be willing to escalate vertically for specific objectives, such as in support of the Philippines to enforce the PCA award. The requirement for credible deterrence – willingness to escalate the conflict vertically – is likely a compelling factor to maintain the current US policy that seems to be neutral towards the Philippines on matters in the SCS. But, if the United States is unwilling to act in combination with the Philippines following a favorable PCA ruling, no other country is likely to use international courts or arbitration tribunals to resolve their own disputes.

Applying regional pressure through collective multilateral action can counterbalance Chinese preference for bilateral negotiations and coercion. Chinese strategy to resolve disputes has been described as “salami-slicing”, or dealing with each issue on a bilateral basis without US involvement.<sup>40</sup> Bill Hayton notes that “the Vietnamese ambassador in Beijing was told, bluntly, that unless the drilling stopped and Vietnam promised never to drill in that part of the sea ever again, China would take military action against Vietnamese bases in the South China Sea.” The Philippines, as revealed by Duterte, was threatened by China

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<sup>40</sup> O'Rourke, *Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China*, 26.

with war if it attempted to drill for oil in the SCS.<sup>41</sup> The Chinese have backed these threats with a growing presence of maritime militia, Coast Guard, and PLA Navy vessels operating in the SCS that are ready to intervene for Chinese interests. Based on current policy statements, the United States appears reluctant to draw a ‘red-line’ over sovereignty issues and threaten China, or invoke the US-Philippines Mutual Defense Treaty to defend oil drilling in disputed areas of the SCS.

A first step to countering the growing network of Chinese maritime actors is a pro-Philippines US policy designed in part to strengthen alliances with other nations in Southeast Asia – a key lesson identified by the authors in *Countering Coercion in Maritime Asia*. They assessed that “tighter relationships can best manage complex extended deterrence dynamics, including not only escalation but also de-escalation. Tighter alliances can better coordinate scenario-based plans, improve command and control mechanisms, and ‘federate’ shared defense capabilities.”<sup>42</sup> The authors suggest that “by providing a clearer commitment to the security of its allies and partners, the United States could decrease ally and partner concern about abandonment during a crisis or conflict.”<sup>43</sup> As demonstrated by the 2014 Second Thomas Shoal incident, US involvement providing a commitment of security created space for de-escalation and diplomacy able to counter China’s coercion.

### **COUNTER ARGUMENT – MAINTAIN THE STATUS QUO**

Some may argue that overall current US policy is adequate and pro-Philippine enough, and that long-term US interests in the Southeast Asia region demand a neutral policy

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<sup>41</sup> Rodrigo Roa Duterte, “Speech at the 33rd Philippine Coastguard Auxiliary National Convention” (Davao City, May 19, 2017), <https://pcoo.gov.ph/speech-of-president-rodrigo-roa-duterte-during-his-attendance-to-the-33rd-philippine-coastguard-auxiliary-pcga-national-convention/>.

<sup>42</sup> Green et al., *Countering Coercion in Maritime Asia*, 274.

<sup>43</sup> Green et al., *Countering Coercion in Maritime Asia*, 274.

in the SCS that does not take a position beyond maintaining “an enduring interest in freedom of navigation and overflight as well as the safety and sustainability of the air and maritime environments.”<sup>44</sup> An argument against a shift to a pro-Philippine US policy is that it will embolden China to escalate their actions and risk armed conflict in the SCS, or at its worst, test the limits of the Mutual Defense Treaty resulting in direct armed conflict between the United States and China.

A pro-Philippine US policy that leverages the PCA award unnecessarily risks giving China an opportunity to escalate tensions as a rational response to increased US involvement in what the Chinese view as their historic rights “driven by a nationalist narrative that is central to the legitimacy and survival of the Chinese Communist Party.”<sup>45</sup> The Chinese are not simply contesting the SCS for resources, but for national legitimacy. China may be more likely to escalate tensions in response to an action they perceive to be an overreach, such as the United States adopting a more pro-Philippine policy. China has historically acted to exploit situations of perceived overreach by US allies.<sup>46</sup> Two examples are cited in *Countering Coercion in Maritime Asia*: “China’s contestation of physical control of Scarborough Shoal in 2012 came after Philippines appeared to break convention by using a naval vessel to arrest Chinese fisherman,” and “China’s increased efforts to contest the physical control of the Senkakus after Japan nationalized several islands in 2012.”<sup>47</sup> China remains in control of Scarborough Shoal, while harassment of Japanese vessels around the Senkakus continues through today.

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<sup>44</sup> Obama, *National Security*, 13.

<sup>45</sup> Dale Rielage, “Coast Guard: Wrong Tool for the South China Sea,” *Proceedings Magazine* Vol. 143/9/1, (September 2017), <https://www.usni.org/magazines/proceedings/2017-09/coast-guardwrong-tool-south-china-sea>.

<sup>46</sup> Green et al., *Countering Coercion in Maritime Asia*, 270.

<sup>47</sup> Green et al., *Countering Coercion in Maritime Asia*, 270.

The conflict between the United Kingdom and Argentina serves as a warning to nations attempting to use naval compellence as a deterrence method today. Till notes that “if the primary aim of the [British] task force was to persuade the Argentines to leave peacefully, the Argentines may well have misinterpreted British motivation and instead concluded that, in effect, hostilities had already begun and that it was now too late in political terms for them to withdraw with honor.”<sup>48</sup> Viewed thusly, continuing the status quo approach may avert a misinterpretation of motivation and reduce the risk of armed conflict between the United States and China, particularly with Chinese sovereignty and national legitimacy at stake.

However, a more pro-Philippine US policy need not be implemented at the expense of an anti-China policy. Bonnie Glaser, the director of the China Power Project at CSIS, notes, “American officials recognize that a policy that compels ASEAN members and other countries in the region to choose between the United States and China will fail.”<sup>49</sup> The United States cannot overlook the influence of economics on security decisions in the SCS. “China has become a leading trading partner of all Southern Asian countries, as well as a high-profile source of investments and official assistance for some of them. China is the largest trading partner of ASEAN as a whole. All ASEAN members, therefore, have a crucial stake in China’s continued rapid economic rise.”<sup>50</sup> While China will likely remain the economic partner of choice, the United States remains the security partner of choice for many who “seek reassurance that the United States would remain militarily engaged in

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<sup>48</sup> Till, *Seapower*, 235.

<sup>49</sup> Bonnie Glaser, “Understanding the evolution of US-China-ASEAN relations: a US perspective,” in *The South China Sea: A Crucible of Regional Cooperation Or Conflict-Making Sovereignty Claims?* edited by C.J. Jenner and Tran Truong Thuy (New York: Cambridge University Press, 2016), 116.

<sup>50</sup> Rodolfo C. Severino, “Global issues and national interests in the South China Sea,” in *The South China Sea: A Crucible of Regional Cooperation Or Conflict-Making Sovereignty Claims?* edited by C.J. Jenner and Tran Truong Thuy (New York: Cambridge University Press, 2016), 40.

Southeast Asia.”<sup>51</sup> Ultimately, a pro-Philippine US policy that seeks to “embrace a more robust approach to gray zone deterrence” will fail if the United States does not at the same time commit to continued strategic engagement with China.<sup>52</sup> Likewise, any attempt to counter China in the SCS without a pro-Philippine US policy will likely fall short of serving either US or Philippine interests.

## CONCLUSIONS AND RECOMMENDATIONS

Several conclusions can be drawn from these points to shape a pro-Philippine US policy. First, presence in the SCS is required for effective deterrence and diplomacy. Second, regional confidence is linked to US resolve; other nations are watching the US response to the Philippines following the PCA award. Third, a pro-Philippine policy should not be at the expense of an anti-China policy.

Until Philippine naval capabilities exist to patrol their entire EEZ, they will lack the ability to meet all of the demands imposed by current threats. The United States should continue and expand programs that build long-term capacity and capability for maritime law enforcement required within the Philippine EEZ. In the near term, the United States should pursue two paths to build presence in the SCS: First, in lieu of joint patrols which are restricted by Filipino leadership, conduct joint patrols outside of the SCS to enable the Philippines to move its own resources (vessels, aircraft, or funding) to that body of water. The United States should encourage other regional navies do the same. The tri-lateral agreement between Indonesia, Malaysia, and the Philippines provides a starting point. Second, the United States can conduct maritime air patrols within the Philippine EEZ and

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<sup>51</sup> Severino, “Global issues and national interests in the South China Sea”, 40.

<sup>52</sup> Green et al., *Countering Coercion in Maritime Asia*, 276.

provide a presence that supports the Philippines but does not directly involve vessels at sea and can therefore potentially reduce risk of escalation.

Regional confidence is built through consistent US resolve and can be demonstrated in ways in the SCS. First, through bilateral agreements and investment in the maritime domain; and second, by acting to uphold the findings in the PCA award. While doing either method is beneficial, one without the other is incomplete. To build maritime capability, two existing US programs must be continued and expanded: the Enhanced Defense Cooperation Agreement (EDCA) and Foreign Military Sales. In a Center for Naval Analysis (CNA) assessment of US policy options for the SCS, Rear Admiral Michael McDevitt (retired) recommends the United States “go ‘all-out’ in helping the Philippines modernize its maritime forces.”<sup>53</sup> He also notes that military capability investments must go beyond excess defense articles, which are typically outdated and insufficient.<sup>54</sup> This recommendation does not suggest that the Philippines can or should build maritime forces to rival China, but RADM McDevitt recognizes the essential need to modernize the Philippine Navy in order to provide credible deterrence. The second element, action, requires the United States to clarify its commitment to uphold the PCA award and demonstrate joint action with the Philippines. Joint action could be diplomatic, such as supporting the creation of a China-Philippines joint development area for resources, as suggested by RADM McDevitt.<sup>55</sup> in the CNA report. Joint action could also take the form of a joint US-Philippines military patrol in the SCS in the vicinity of Scarborough Shoal.

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<sup>53</sup> Michael McDevitt, “The South China Sea: Assessing US Policy and Options for the Future,” Center for Naval Analysis (November 2014), [https://www.cna.org/cna\\_files/pdf/IOP-2014-U-009109.pdf](https://www.cna.org/cna_files/pdf/IOP-2014-U-009109.pdf), 86.

<sup>54</sup> McDevitt, “The South China Sea,” 86.

<sup>55</sup> McDevitt, “The South China Sea,” 82-83.

Finally, continued engagement with China is essential. The United States can provide some measure of clarity to both China and the Philippines with respect to the Mutual Defense Treaty to enable more substantive diplomatic discussions. As recommended by RADM McDevitt, the United States should state that the Mutual Defense Treaty does not extend to territorial features in the SCS,<sup>56</sup> but at the same time the United States can reaffirm its commitment to intervene should China attempt to occupy or build infrastructure at Scarborough Shoal. This dual approach demonstrates both resolve and restraint, and signals that the United States is committed to upholding the PCA award while remaining neutral on matters of sovereignty.

Claims of sovereignty, nationalism, competition for resources, and commerce ensure tension and conflict in the SCS will persist for the foreseeable future. Given the geopolitical dynamics and importance of this area, the United States should remain committed to engagement and presence. US influence is best served by shifting to a pro-Philippine policy to support its interests in the SCS.

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<sup>56</sup> McDevitt, "The South China Sea," 87.



## FIGURES

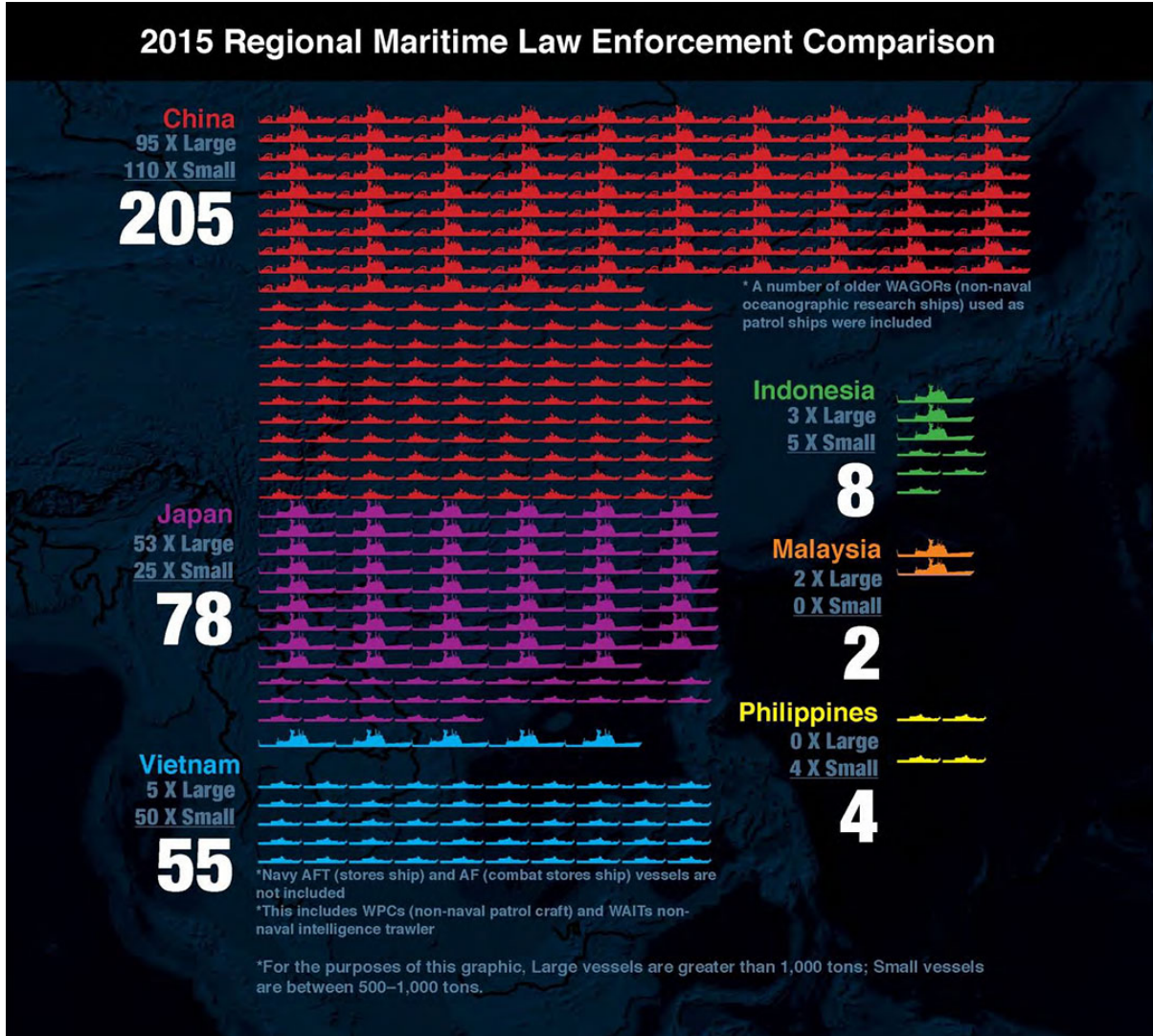


Figure 1: ONI graphic of Maritime Law Enforcement Capabilities around the South China Sea.<sup>57</sup>

<sup>57</sup> Office of Naval Intelligence, “The PLA Navy: New Capabilities and Missions for the 21<sup>st</sup> Century,” Washington D.C., 2015, 45.

	Physical Control	Rules and Norms
Contestation	- Senkaku Trawler (2010) and Nationalization (2012) Incidents - Scarborough Standoff (2012) and Second Thomas Incident (2014)	- Impeccable Harassment (2009) - “Top Gun” Incident (2014)
Exploitation	- Spratly Reclamation (2013-) - Oil Rig Standoff (2014)	- East China Sea ADIZ (2013)

*Figure 2: Types of Gray Zone Coercion with examples from 'Countering Coercion in Maritime Asia'.<sup>58</sup>*

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<sup>58</sup> Green et al., *Countering Coercion in Maritime Asia*, 267.

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