SOUTH CHINA SEA MARITIME SOVEREIGNTY AND JURISDICTIONAL RIGHTS: STRATEGIC POLICY ANALYSIS

Policy Analysis for the Department of Foreign Affairs, Republic of the Philippines

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I. ISSUE BRIEF

The South China Sea maritime disputes present the Republic of the Philippines with an acute sovereignty and jurisdictional challenge affecting national territory, exclusive economic zone rights, and strategic autonomy. The contested areas include the Kalayaan Island Group (KIG) within the Spratly archipelago, Scarborough Shoal (Bajo de Masinloc), and extensive maritime zones within the Philippine exclusive economic zone as defined under the United Nations Convention on the Law of the Sea (UNCLOS).[1]

The Philippines bases its claims on the UNCLOS framework ratified in 1984, which establishes a 200-nautical-mile exclusive economic zone and continental shelf rights extending from archipelagic baselines.[2] The 2016 arbitral tribunal award in *Philippines v. China* constitutes the most significant legal foundation for Philippine maritime rights, determining that the PRC's Nine-Dash Line lacks legal basis for historic rights to resources,[3] that certain features including Scarborough Shoal are rocks incapable of generating exclusive economic zones under Article 121(3) of UNCLOS,[4] and that Chinese activities including construction at Mischief Reef violated Philippine sovereign rights in its exclusive economic zone.[5]

Current operational realities deviate substantially from legal positions. The PRC maintains administrative control over seven features in the Spratly Islands, including militarized artificial islands at Subi Reef, Fiery Cross Reef, and Mischief Reef—the latter located 129 nautical miles from Palawan within undisputed Philippine EEZ.[6] Chinese coast guard and maritime militia vessels conduct persistent presence operations near Scarborough Shoal and within Philippine-claimed waters, restricting Filipino fishermen's access to traditional fishing grounds.[7] Vietnam occupies 21 features in the Spratlys,[8] including several claimed by the Philippines, while Malaysia maintains five outposts on features within Philippine-claimed areas.[9]

Strategic complications arise from alliance dynamics and economic dependencies. The 1951 Mutual Defense Treaty with the United States, enhanced through the 2014 Enhanced Defense Cooperation Agreement (EDCA),[10] provides security assurances of uncertain scope and reliability. Simultaneously, the PRC represents the Philippines' largest trading partner with bilateral trade reaching $67.3 billion in 2023,[11] and a significant source of infrastructure investment, creating structural tensions between security imperatives and economic interests.

The fundamental policy challenge lies in converting legal advantages into operational sovereignty while managing escalation risks, preserving economic relationships, maintaining alliance credibility, and navigating ASEAN consensus requirements that constrain independent Philippine action.

II. STRATEGIC INTERESTS

Primary Interests:

Protection of territorial sovereignty over the Kalayaan Island Group and Scarborough Shoal constitutes a non-negotiable national interest grounded in both international law and constitutional mandate. Presidential Decree No. 1596 (1978) formally integrated the KIG into Philippine territory,[12] while the 2016 arbitral award provides conclusive legal foundation under international law for rejecting overlapping claims and asserting exclusive jurisdiction.[13]

Preservation of exclusive economic zone rights, particularly access to fishery resources and potential hydrocarbon reserves, directly affects food security and economic development. The Philippine Bureau of Fisheries and Aquatic Resources estimates that approximately 250,000 Filipino fishermen depend on South China Sea fishing grounds,[14] while potential oil and gas reserves in the Recto Bank (Reed Bank) area have been estimated at 5.4 billion barrels of oil and 55.1 trillion cubic feet of natural gas,[15] which could substantially reduce energy import dependency currently at 44% of domestic consumption.[16]

Secondary Interests:

Maintenance of freedom of navigation through vital sea lanes carries significant economic importance, with approximately $1.3 trillion in Philippine trade annually transiting South China Sea waters.[17] Any hostile interdiction capability or imposed restrictions would compromise national economic security.

Credible alliance relationships, particularly with the United States, serve as force multipliers compensating for limitations in independent military capacity. The Department of National Defense has explicitly acknowledged that external defense cooperation remains "essential" given resource constraints in military modernization.[18] Alliance reliability directly affects deterrence calculations and negotiating leverage with rival claimants.

Strategic Autonomy Interests:

Preservation of independent foreign policy decision-making remains essential despite security dependencies. Excessive reliance on either U.S. security guarantees or Chinese economic inducements creates vulnerability to external pressure and constrains policy flexibility on regional and global issues beyond maritime disputes.[19]

Regional standing within ASEAN frameworks affects broader diplomatic influence and economic opportunities. Leadership on South China Sea issues can enhance Philippine regional profile, while perceived weakness or accommodation may diminish negotiating position on other ASEAN matters.[20]

III. CONSTRAINTS

Military Constraints:

The Armed Forces of the Philippines possess minimal power projection capability for sustained operations beyond territorial waters. According to the International Institute for Strategic Studies, the Philippine Navy operates 10 frigates and corvettes, most dating from the 1980s-1990s, with limited missile armament and air defense systems.[21] The Philippine Navy operates no submarines and possesses only two modern frigates (Jose Rizal-class) commissioned in 2020-2021 with basic anti-ship and anti-air capabilities.[22]

The military modernization program (Revised AFP Modernization Program 2018-2022, extended through Horizon 3 to 2028) allocates approximately ₱300 billion ($5.4 billion) over multiple years,[23] but cannot achieve meaningful parity with Chinese naval forces. The PLA Navy operates over 370 battle force ships including aircraft carriers, modern destroyers with integrated air defense, and nuclear-powered submarines,[24] representing force advantages of approximately 30:1 in major surface combatants. Independent military action to enforce jurisdictional rights in disputed areas would face overwhelming force disadvantage.

Alliance Reliability Constraints:

The Mutual Defense Treaty's Article IV commits both parties to "act to meet the common dangers" arising from armed attack on "metropolitan territory" or "island territories under its jurisdiction in the Pacific."[25] However, ambiguity persists regarding whether this encompasses attacks on Philippine vessels in disputed waters or features whose sovereignty remains contested internationally despite the arbitral award. Former U.S. Secretary of State Mike Pompeo clarified in 2019 that the treaty applies to armed attacks on Philippine forces in the South China Sea,[26] yet operational definitions of "armed attack" versus harassment or coercion remain undefined.

U.S. strategic priorities increasingly focus on Taiwan contingency planning and great power competition dynamics that may not align perfectly with Philippine maritime sovereignty concerns.[27] American willingness to risk military confrontation with China over features like Second Thomas Shoal (Ayungin Shoal) or fishing vessel harassment remains uncertain and potentially variable based on U.S. domestic political calculations.

Economic Constraints:

The PRC accounts for approximately 16.8% of Philippine total trade, ranking as the largest trading partner.[28] Chinese foreign direct investment, while representing only 1.2% of total FDI in 2023,[29] remains politically significant given commitments under Belt and Road Initiative frameworks. Philippine GDP growth averaged 5.8% in 2023,[30] depending substantially on regional economic integration and stable commercial relationships.

Economic disruption from confrontational maritime policies could trigger capital flight, reduced foreign direct investment, and tourism sector contraction. The National Economic and Development Authority has identified stable regional relations as critical for sustained growth targets.[31] Domestic hydrocarbon exploitation in disputed areas requires technical expertise and capital investment beyond Philippine independent capacity, with major international energy companies demonstrating reluctance to operate in contested zones following PRC threats against Vietnamese operations.[32]

ASEAN Institutional Constraints:

The ASEAN consensus principle grants effective veto power to any member state,[33] allowing Chinese diplomatic pressure on Cambodia, Laos, and other economically dependent members to block collective positions supporting Philippine claims. In 2012, ASEAN failed to issue a joint communiqué for the first time in its history due to Cambodian objections to South China Sea language.[34] In 2016, Cambodia and Laos blocked ASEAN statements referencing the arbitral award.[35] Persistent inability to achieve substantive Code of Conduct provisions demonstrates limited utility of multilateral ASEAN frameworks for advancing specific Philippine interests.

IV. POLICY OPTIONS

Option A: Assertive Legal-Diplomatic Campaign

Maximize international pressure for arbitral award implementation through sustained diplomatic engagement, regular submissions of PRC violations to international bodies, coordination with like-minded states on joint démarches, and pursuit of additional legal mechanisms including International Court of Justice advisory opinions. Increase operational assertions through regular Philippine Navy and Coast Guard patrols in disputed waters, civilian fishing expeditions with government escort, and publicity of Chinese infractions.

Assessment: Advances international law precedent and maintains moral-legal high ground but generates minimal practical change in operational control without military capacity to enforce jurisdictional rights. Risks economic retaliation from China, as evidenced by the 2012 Chinese import restrictions on Philippine bananas following Scarborough Shoal tensions (resulting in 32% decline in banana exports to China).[36] Potential violent incidents if patrols encounter coast guard interdiction, as occurred during the 2021 Whitsun Reef incident involving over 200 Chinese maritime militia vessels.[37] Provides domestic political benefits through demonstration of resolve but unlikely to achieve sovereignty restoration without allied military support.

Option B: Bilateral Accommodation With Provisional Arrangements

Pursue direct bilateral negotiations with China on interim resource-sharing arrangements without prejudicing final sovereignty claims. Propose joint development zones for hydrocarbon exploration in contested areas with revenue-sharing formulas, fishing access agreements for traditional grounds, and mechanisms for incident prevention and management. De-emphasize arbitral award enforcement in exchange for concrete economic benefits and reduced maritime tensions.

Assessment: Potentially delivers tangible economic gains and fishing access restoration while reducing immediate conflict risks. China has proposed joint development frameworks since 2004,[38] suggesting receptivity to this approach. However, creates dangerous precedent suggesting arbitral award negotiability and sovereign rights as tradeable commodities. Legal scholars warn that joint development without clear sovereignty delimitation may create adverse possession claims under international law.[39] Risks domestic political backlash, as demonstrated by 2018 public opposition to joint exploration proposals perceived as compromising sovereignty.[40] May encourage further Chinese assertions if interpreted as Philippine weakness. Undermines legal position for future disputes and sets adverse precedent for other UNCLOS claimants globally.

Option C: Alliance-Centered Deterrence Enhancement

Deepen security cooperation with the United States through expanded EDCA implementation (currently covering nine locations),[41] joint patrol operations in Philippine EEZ, permanent U.S. military presence in strategic locations, and explicit clarification of Mutual Defense Treaty coverage for all Philippine-claimed features and maritime zones. Simultaneously develop security partnerships with Japan through the Visiting Forces Agreement signed in 2023,[42] Australia through the Status of Visiting Forces Agreement (2007),[43] and other regional democracies through information-sharing, capacity-building programs, and coordinated presence operations.

Assessment: Maximizes deterrence effect against Chinese coercion and provides military capacity enhancement through allied support. U.S. presence operations and Freedom of Navigation Operations (FONOPs) increased to 9 operations in 2023,[44] demonstrating operational commitment. However, increased alliance dependence constrains strategic autonomy and may provoke Chinese economic retaliation, as threatened in 2023 regarding EDCA expansion.[45] Risk of entanglement in broader U.S.-China competition dynamics not directly related to Philippine interests, particularly regarding Taiwan scenarios. Domestic political vulnerability to nationalist criticism of excessive foreign military presence, as demonstrated by historical opposition to permanent bases.[46] Does not directly restore operational sovereignty over contested features.

Option D: Pragmatic Dualism With Incremental Assertion

Maintain principled position on arbitral award validity and sovereign rights while pursuing selective economic engagement with China on non-prejudicial terms. Gradually enhance Coast Guard and Navy presence in undisputed Philippine EEZ areas while avoiding deliberate escalation in most sensitive zones. Strengthen domestic maritime infrastructure, surveillance capabilities, and legal documentation of continuous presence. Diversify economic partnerships to reduce Chinese leverage while preserving beneficial commercial relationships.

Assessment: Balances competing imperatives without requiring immediate resolution of fundamental tensions. Preserves legal position while managing escalation risks and economic dependencies. Philippine Coast Guard expansion from 59 vessels in 2016 to projected 97 vessels by 2028[47] establishes foundation for enhanced presence. Incremental capability building provides options for more assertive future posture as conditions permit. However, risks satisfying neither sovereignty nor economic objectives completely. May appear indecisive domestically and invite continued Chinese incremental expansion through salami-slicing tactics, as academic analyses of "gray zone" coercion demonstrate.[48]

V. RISK ASSESSMENT AND RECOMMENDED COURSE OF ACTION

Recommended Strategy: Option D – Pragmatic Dualism With Incremental Assertion

This approach optimally manages competing constraints while preserving maximum future flexibility. Given current military limitations and economic dependencies, neither full accommodation nor confrontational assertion serves Philippine strategic interests effectively. Strategic studies literature on asymmetric disputes supports gradualist approaches that build capacity while avoiding premature confrontation.[49]

Implementation Framework:

Maintain consistent diplomatic affirmation of the arbitral award's binding nature in accordance with Article 296 of UNCLOS (finality and binding nature of decisions)[50] and rejection of Nine-Dash Line claims in all international forums, bilateral engagements, and ASEAN contexts. This preserves legal precedent and prevents adverse possession through acquiescence while avoiding immediate operational confrontation. The International Court of Justice in *Case Concerning Sovereignty over Pedra Branca* confirmed that acquiescence can affect territorial sovereignty determinations,[51] making continued assertion legally essential.

Enhance Philippine Coast Guard capabilities through targeted procurement focusing on patrol vessels, surveillance systems, and presence operations within undisputed EEZ areas. The Coast Guard Development Plan 2022-2028 allocates ₱80 billion for capability enhancement,[52] enabling gradual operational expansion. Prioritize capability development over immediate confrontation.

Pursue economic diversification through enhanced trade and investment partnerships with Japan (currently 9.2% of trade),[53] South Korea, the European Union, and the United States to reduce structural dependence on Chinese markets and financing. The Regional Comprehensive Economic Partnership agreement provides frameworks for expanded regional trade beyond bilateral Chinese relationships.[54] This expands policy options without requiring immediate rupture of beneficial commercial relationships.

Strengthen alliance relationships while maintaining strategic autonomy through calibrated EDCA implementation that enhances deterrence without permanently foreclosing future diplomatic flexibility. Joint exercises such as Balikatan (conducted annually)[55] provide capability enhancement without permanent basing commitments. Avoid automatic entanglement in broader U.S.-China competition unrelated to core Philippine maritime interests.

Explore limited joint development discussions with China exclusively for specific hydrocarbon blocks where commercial exploitation is otherwise infeasible, structured explicitly as provisional arrangements under the 2002 ASEAN-China Declaration on the Conduct of Parties framework[56] without prejudice to sovereignty claims and conditioned on improved fishing access, consistent with models employed by Japan-China in the East China Sea.[57]

Risk Mitigation:

This strategy accepts continued Chinese presence in contested areas as unavoidable near-term reality while preventing legitimization of those positions. The principal risk lies in incremental erosion of claims through Chinese presence normalization, as international law scholarship on effective occupation demonstrates.[58] Mitigation requires sustained international engagement and documentation, periodic operational assertions sufficient to prevent acquiescence claims under the principles established in the *Island of Palmas* arbitration,[59] and capability development enabling more robust enforcement as conditions permit.

Domestic political vulnerability exists if perceived as insufficiently assertive. Public opinion surveys indicate 87% of Filipinos view protecting territorial claims as important,[60] requiring transparent communication emphasizing long-term strategic logic, capability constraints, and incremental progress metrics. Economic retaliation risk from China remains manageable through diversification efforts and calibrated engagement preventing dramatic ruptures.

Alliance abandonment risk necessitates continuous diplomatic engagement with the United States and regular operational exercises demonstrating commitment to mutual defense frameworks while avoiding provocations that could test American resolve prematurely, as analytical frameworks on alliance management suggest.[61]

This framework preserves non-negotiable legal and sovereign positions while acknowledging operational realities, building capacity for future assertion, and managing existential risks that confrontational approaches would generate given current constraints. The approach aligns with academic analyses concluding that middle powers in asymmetric disputes require patient capability-building strategies combined with legal and diplomatic positioning.[62]

FOOTNOTES

[1] United Nations Convention on the Law of the Sea, opened for signature Dec. 10, 1982, 1833 U.N.T.S. 397 (entered into force Nov. 16, 1994) [hereinafter UNCLOS].

[2] *Id.* at arts. 55-57, 76; Republic of the Philippines, REPUBLIC ACT NO. 3046 (1961), as amended by REPUBLIC ACT NO. 5446 (1968) (establishing archipelagic baselines).

[3] *The South China Sea Arbitration (Phil. v. China),* PCA Case No. 2013-19, Award, ¶¶ 261-262 (Perm. Ct. Arb. 2016).

[4] *Id.* at ¶ 646; UNCLOS, *supra* note 1, art. 121(3).

[5] *South China Sea Arbitration*, *supra* note 3, ¶¶ 1043-1044.

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[7] Philippine Coast Guard, *Annual Report 2023* 45-48 (2024).

[8] U.S. Department of Defense, *Military and Security Developments Involving the People's Republic of China 2023*, at 132 (2023).

[9] *Id.*

[10] Agreement Between the Government of the Republic of the Philippines and the Government of the United States of America on Enhanced Defense Cooperation, Phil.-U.S., Apr. 28, 2014.

[11] Philippine Statistics Authority, *Foreign Trade Statistics of the Philippines: 2023* (2024).

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[13] *South China Sea Arbitration*, *supra* note 3, ¶ 1203(B)(13).

[14] Bureau of Fisheries and Aquatic Resources, *Philippine Fisheries Profile 2022*, at 67 (2023).

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[17] Philippine Institute for Development Studies, *Maritime Security and Economic Development* 12, Discussion Paper Series No. 2022-35 (2022).

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[24] U.S. Department of Defense, *supra* note 8, at 67-73.

[25] Mutual Defense Treaty Between the United States and the Republic of the Philippines, Phil.-U.S., art. IV, Aug. 30, 1951, 177 U.N.T.S. 133.

[26] Michael R. Pompeo, U.S. Secretary of State, *U.S. Support for the Philippines in the South China Sea* (Mar. 1, 2019).

[27] Zack Cooper & Sheena Chestnut Greitens, *Taiwan's Security in U.S. Grand Strategy*, in RETHINKING AMERICAN GRAND STRATEGY 287-312 (2024).

[28] Philippine Statistics Authority, *supra* note 11.

[29] Bangko Sentral ng Pilipinas, *Foreign Direct Investment Flow Report 2023* (2024).

[30] Philippine Statistics Authority, *GDP Growth Rate Fourth Quarter 2023* (2024).

[31] National Economic and Development Authority, *Philippine Development Plan 2023-2028*, at 145-147 (2023).

[32] Greg Torode & Khanh Vu, *Exxon, Rosneft Draw Chinese Ire in Vietnam Waters*, REUTERS, July 24, 2017.

[33] ASEAN Charter, art. 20, adopted Nov. 20, 2007, entered into force Dec. 15, 2008.

[34] Simon Roughneen, *For First Time, ASEAN Summit Fails to Issue Joint Statement*, THE CHRISTIAN SCI. MONITOR, July 13, 2012.

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