

MARITIME GRAY ZONE TACTICS: THE ARGUMENT FOR REVIEWING THE 1951 U.S.-PHILIPPINES MUTUAL DEFENSE TREATY

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U.S.-Philippine relations and caused Philippine Defense Secretary Delfin Lorenzana to call for a review of the relevance of the MDT in October 2018 with the main goal of determining whether the government should “maintain it, strengthen it, or scrap it.”²

SINCE ITS INCEPTION, THE UNITED STATES’ COMMITMENT TO THE MDT REGARDING ATTACKS ON PHILIPPINE ASSETS IN CONTESTED WATERS IN THE SOUTH CHINA SEA HAS BEEN UNCLEAR.

On August 31, 1951, representatives of the United States and the Republic of the Philippines signed the Mutual Defense Treaty (MDT) in Washington. In recognition that “an armed attack in the Pacific Area on either of the Parties would be dangerous to [the] peace and safety” of both countries, the treaty declared that each state would “act to meet the common dangers in accordance with its constitutional processes.”¹ However, like most conventional defense treaties and standards, the MDT is not clear about the increasingly common unconventional gray zone threats that skirt the definition of war to avoid prompting a kinetic response. Since its inception, the United States’ commitment to the MDT regarding attacks on Philippine assets in contested waters in the South China Sea has been unclear. Along with the controversial policies of the administration of Philippine President Rodrigo Duterte, the uncertainty of the MDT has strained

In March 2019, U.S. Secretary of State Mike Pompeo met with Philippine Foreign Secretary Teodoro Locsin, Jr. and affirmed that “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.”³ Many, including Foreign Secretary Locsin, were encouraged by Pompeo’s reassurance that the United States would help defend Philippine assets against Chinese forces in the contested waters of the South China Sea. However, others like Defense Secretary Lorenzana were unconvinced by this reassurance due to the ambiguity of the criterion

of a U.S. response. How does the United States define an attack on the Philippines? Is Secretary Pompeo assuring a U.S. response against obscure gray zone threats?

THE COMPLEXITIES OF GRAY ZONE TACTICS

Gray zone tactics, often used in the realm of asymmetrical or hybrid warfare, are defined as “an effort or series of efforts beyond steady-state deterrence and assurance that attempts to achieve one’s security objectives without resort to direct and sizable use of force.”⁴ They can include a mix of conventional warfare, irregular warfare, and cyberwarfare with other influencing methods, such as fake news, diplomacy, lawfare, and foreign electoral intervention. Through gray zone tactics, potential adversaries can inconspicuously coerce their targets to serve their interests while avoiding the possibility of large-scale conflict.

While Foreign Secretary Locsin contended that the vagueness of the MDT would act as a “deterrent” against attacks on the Philippines from China, Defense Secretary Lorenzana argued that this vagueness “will cause confusion and chaos during a crisis.”⁵ Foreign Secretary Locsin’s case that an ambiguous MDT acts as a deterrent loses potency when the threats themselves are ambiguous. Potential adversaries in the “gray zone” may bully targets through unconventional means that make it difficult to counter with the retributive actions normally available through the MDT.

The threats become so vague that the authority and capacity to respond are weakened. This is true even for the United States, which possesses the most powerful conventional military force in the world. The U.S. military’s incredible advancements, destructive capabilities, and size may act as a potent conventional deterrent against direct attacks. However, gray zone tactics, among other factors, complicate the conventional superiority of the U.S. military and have become a way for other states to level the playing field. Moreover, unconventional tactics have become an obstacle for typical methods of influence that the United States uses and the general institutional norms and standards it upholds. The United States thus can no longer rely on its conventional military strength to perform coercive diplomacy or retributive actions to defend the Philippines against unconventional threats from China, which has been working within the realm of the permissible through gray zone tactics.

A NEW REALITY IN THE MARITIME SPHERE

Gray zone tactics are closely associated with Russian tactics in its intervention in Ukraine and Syria by land.⁶ However, analysts now recognize that China similarly appears to use gray zone tactics as a means of countering U.S. influence and conventional military force in the South China Sea and navigating the maritime field by implementing a range of actions. China has wide ranging territorial claims in the South China Sea—over which the People’s Republic of China has claimed sovereignty since it took power in 1949—that overlap with those of several regional neighbors. “Rising” China has been particularly active in asserting its claims in the South China Sea since 2010, with the bulk of China’s efforts occurring in the period from late 2013 to late 2016 during its so-called Great Wall of Sand campaign, a series of large-scale land reclamation projects in the Spratly Islands that included the creation and fortification of artificial islands.⁷

During this time, China has adopted tactics that allow it to operate in the “gray zone.” These include the “swarming” of Philippine-held Thitu Island (called Pagasa Island by the Philippines) as seen in Chinese paramilitary vessels, intimidating acts against Philippine fishermen, and the restriction of supply lines for Philippine troops. An integral tactic to supplement other actions has been island-building and the development of military infrastructure in areas over which they have established control. Other dimensions involve cyberwarfare, disinformation campaigns, and “debt-traps” stemming from opaque infrastructural investments.

A combination of these tactics was seen during the naval standoff between China and the Philippines in April 2012.⁸ A Philippine Navy surveillance plane spotted eight Chinese fishing vessels in the disputed Scarborough Shoal. The largest Philippine naval ship, BRP Gregorio del Pilar, was then deployed for interception, surveillance, and confirmation of the presence of said vessels. The Philippine team intercepted the Chinese fishing vessels, shut off their satellite navigation systems and radio communication equipment, and discovered corals, giant clams, and live sharks that were illegally collected by the Chinese fishermen. The Philippine team attempted to arrest the Chinese fishermen but were blocked by two Chinese marine surveillance ships. In the following months, the first major cyber campaign occurred against the Philippine government; a Chinese cyber unit breached Philippine government and military networks, stealing military documents and other highly sensitive intelligence. At the same time, the website of the University of the Philippines, the Philippines’ leading state school, was hijacked. Hackers defaced the school’s website with a map of the South China Sea showing China’s “nine-dash line”—the demarcation of China’s claim over disputed territories.⁹ Philippine hackers struck back by hacking Chinese government-owned websites but the Chinese had already accomplished their mission to disrupt Philippine digital space.

As of 2019, China has reclaimed more than 3,000 acres of land on the Spratlys and Paracels and developed military infrastructure that allows for naval and air deployment.¹⁰ Such actions create uneasiness among claimant states, given their inability to respond through the use of conventional forces and a lack of will to enter into an all-out war with China. For the past two years, the Philippines has been building up infrastructure on Thitu Island to firmly ground its defenses in the area. However, the Chinese government recently responded in April 2019 by implementing a “cabbage strategy”—deploying a “swarming” flotilla of fishing vessels and People’s Liberation Army-Navy (PLAN) and China Coast Guard (CCG) ships around Thitu Island.¹¹ This strategy involves three rings: the inner ring, surrounding the island itself, is comprised of Chinese fishing vessels, whereas fishing administration and marine surveillance ships run through the middle ring. The outermost ring is surveyed by marine warships from PLAN or CCG, thus forming a cabbage-like formation.¹² There are approximately 200 Chinese vessels that have been spotted around the island since April 2019.¹³

NECESSARY REEVALUATIONS AND ALTERATIONS

Considering China's use of gray zone tactics, Defense Secretary Lorenzana's concerns regarding the potency of the MDT are warranted. He stated that "the fact that the security environment now is so vastly different and much more complex than the bipolar security construct of the era when the MDT was written necessitates a review of the treaty."¹⁴ His statement encapsulates the reality of today's changing security environment in the South China Sea: China has been shifting from conventional tactics to non-conventional ones and the Philippines is struggling to cope with this threat.

The Philippine government's appeal to the law against China's activities in the South China Sea has so far been in vain. Even after the Philippines successfully challenged China's maritime claims at the Permanent Court of Arbitration in July 2016,¹⁵ China's encroachments into the South China Sea have continued unabatedly after it rejected the arbitral tribunal's decision.¹⁶ The Philippine Department of Foreign Affairs repudiated China's recent "swarming" of Thitu Island in April 2019 by pointing to the illegality of these actions, saying that they were a "clear violation of Philippine sovereignty, sovereign rights and jurisdiction, as defined under international law including the 1982 United Nations Convention on the Law of the Sea (UNCLOS)."¹⁷ However, international laws have had limited policing capability against China's unconventional hostility in the South China Sea. President Duterte's unwillingness to fully push the arbitral tribunal's decision has also frustrated many citizens of the Philippines. Disgruntled by the failings of the international community to protect the Philippines, Palawan fishermen and farmers recently filed a complaint to the Philippine Supreme Court, demanding that the Duterte administration enforce the Fisheries Code to defend against Chinese ships that damage coral reefs and endanger species.¹⁸ But without the means to enforce these laws, the Philippines is helpless against Chinese gray zone threats.

The Philippines has planned to buy new military equipment to counter China in conventional warfare, even though these military aspirations face budget constraints. President Duterte, who typically has taken a softer approach toward relations with China, joined the Department of Foreign Affairs in its repudiation of the swarming of Thitu Island. He told China to "lay off" the island and threatened the use of force, going as far as to say "I will tell the soldiers 'prepare for suicide mission.'"¹⁹ But with the Philippines' difficulties in acquiring adequate conventional means to defend itself, its government must consider boosting the country's capacity for gray zone tactics if it wants to effectively counter the new reality of China's gray zone tactics. This could include furthering the Philippines' capacity for cyberwarfare through technological developments and training, along with improving the Philippine military's asymmetrical capabilities against China and developing new military strategies. Although the Philippines has received new military equipment from Russia at a low cost, adopting gray zone tactics may be a much cheaper option that could lessen the Philippine govern-

ment's budget constraints. The United States can still act as a deterrent against conventional threats and help police the Philippines' territorial waters, whereas the Philippines can benefit from shifting its focus to hybrid warfare capabilities to efficiently utilize its available assets and assert its sovereignty.

IN TERMS OF ITS ALLIANCE WITH THE UNITED STATES, IT IS NOT ONLY IMPERATIVE FOR THE PHILIPPINES TO FOLLOW UP ON SECRETARY OF STATE POMPEO'S CLARIFICATION BUT TO ALSO ADVOCATE FOR REVISIONS TO THE MDT THAT ACCOMMODATE THE NEW REALITY POSED BY GRAY ZONE THREATS.

In terms of its alliance with the United States, it is not only imperative for the Philippines to follow up on Secretary of State Pompeo's clarification but to also advocate for revisions to the MDT that accommodate the new reality posed by gray zone threats. The United States and the Philippines should issue a joint statement on an elucidative and effective MDT that addresses gray zone threats and upholds the tribunal decision of the Permanent Court of Arbitration. Such an MDT should be multi-leveled, similar to the United States' defense readiness condition (DEFCON) levels, with well-defined rules of engagement, rationale for escalation of force, and appropriate consequences of corresponding Chinese actions. In doing so, the MDT would be revised to address China's various actions in the South China Sea and to limit the range

of Chinese activities that may be considered permissible. The revised format for the U.S.-Philippines MDT would be unprecedented, as most defense treaties are written to leave room for some flexibility. Taking such decisive action may improve U.S.-Philippine relations and contribute to a more effective strategy in countering Chinese belligerence in the region.

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