

The Bilateral Consultation Mechanism

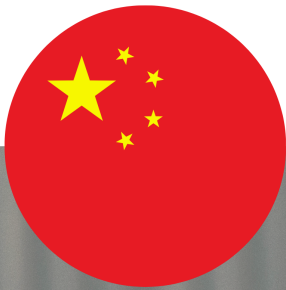
An Effective Management of Philippines-China Relations?

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Status Quo of the Philippines-China Relations on the South China Sea

Since the tense 2012 Scarborough Shoal standoff between the Philippine Navy and China's People's Liberation Army (PLA) Navy, the bilateral relations between Manila and Beijing have been walking on eggshells.¹ While many thrusts have been made on account of bilateral goodwill, territorial disputes present to be among the thorny aspects of Philippine-China relations. In the years that would follow, China would not relent in its illegal activities in the South China Sea (SCS) and has only sought to prejudice other ASEAN claimant-states² including Vietnam, Indonesia, and Malaysia among others. To mitigate the growing animosity between Manila and Beijing, both convened its first ever Bilateral Consultation Mechanism (BCM) last May 19, 2017, spearheaded by the late Philippine Ambassador to China Jose Santiago "Chito" Sta. Romana from the Philippine delegation and Chinese Vice-Minister of Foreign Affairs Liu Zhenmin from the Chinese delegation.³

The BCM sought to "promote the peaceful management of conflicts" in the disputed territories and "strengthen friendly relations" between the two countries.⁴ However, in the time since the 2016 Arbitral award was handed and subsequently recognized by other countries, and after the five (5) BCMs conducted before the pandemic hit in 2020, China has shown no signs of slowing down and has, in fact, only accelerated its activities in the disputed areas. The Philippines continues to risk facing a food crisis due to its inability to access its exclusive economic zones. Man-made risks to marine resources such as illegal, unregulated, and under-reported fishing (IUUF)⁵ and poaching,⁶ increasing assertiveness of the Chinese Coast Guard,⁷ and the hauntingly complete militarization of island features in the region⁸ also pose a threat to the Philippines' core interest of survival. With Philippine strategic needs unmet, these developments increasingly question the reliability of the BCM in managing and promoting peaceful Philippines-China relations.

This essay, firstly, seeks to understand what the BCM is at its core. Second, the essay explores the ways this mechanism manages Philippines-China relations, based on recently concluded BCMs. Finally, the essay determines ways to move the issue forward and how the performative assessment of BCMs implicate the broader Philippines-China bilateral relations and ASEAN-China relations.

The Bilateral Consultation Mechanism

Prior to the establishment of the BCM, Philippines and China coursed bilateral relations through their respective foreign ministers. The Foreign Ministry Consultation (FMC) was originally set up in 1991 to expand bilateral ties⁹ and has later evolved as a regular bilateral mechanism to “discuss bilateral, regional and multilateral issues of mutual concern, as well as to explore and deepen areas of cooperation in various fields, such as trade and investment, tourism, culture and education, defense, and security, agriculture and fisheries, transportation and communication, and consular matters.”¹⁰ The FMC enabled both countries to have in-depth exchanges on various issues and common interests until the mechanism stalled during the 19th FMC due to the heightening tensions in the South China Sea.

In an effort to normalize tensions with China, President Duterte during his milestone visit in China has agreed to create a mechanism to build mutual trust and confidence and exercise restraint in the SCS issue. As the 20th FMC resumed after four years, both countries followed through with their earlier endorsement and established the Bilateral Consultation Mechanism in 2017.

The BCM was envisioned as a dialogue platform held every six months at the vice-ministerial level for China and the Philippines to expand bilateral relations. Primarily, the BCM was established to manage and address the differences between the two countries over the South China Sea, exchange views on other issues of concern, and promote collaboration in areas of mutual interest. In purpose, the BCM serves as a platform to promote mutual trust and confidence and cooperate for peace and stability in the region.¹¹

China attaches great importance to the BCM. Even as the Philippines filed for arbitration over the SCS issue, Beijing has viewed bilateral talks as the ‘peaceful means’ and preferred bilaterally engaging with the involved ASEAN claimant states.¹² Although the bilateral mechanism is not a high-level dialogue and primarily involves the countries’ respective foreign ministries and relevant government agencies, China regards the BCM as the “most practical and feasible way” in addressing disputes with Southeast Asian claimant states. This lines up with China’s strategic interest and agenda to ensure that the disputes should be addressed through negotiations and consultations only among countries concerned and without any involvement of external regional powers.

In the case of the Philippines, the BCM marked a turning point from the confrontational policy of former President Benigno Aquino III, opening dialogue and cooperation channels with China.¹³ It was seen as a game changer in the two countries' relations, signalling that Manila is willing to adopt Beijing's preference for bilateral dialogue.

Beijing attributes the BCM to convenience, manageability, and pragmatism.¹⁴ Among the areas of cooperation that the two countries have agreed to include joint fishery management, marine scientific research, marine environmental protection, oil and gas development, and joint search and rescue operations.¹⁵ Despite the BCM's landmark contribution to furthering bilateral ties between Manila and Beijing, the scope it covers is limited. Even as the BCM was being conducted, the Philippines continued to note transgressions from China, eroding the credibility of the mechanism as a whole. The pandemic also momentarily stalled the BCM resulting in diplomatic spats between the two.

How does the BCM manage Philippines-China relations?

In the five BCMs conducted before the pandemic, the two countries agreed on the importance of the mechanism. It is deemed a platform for confidence-building measures that increase mutual trust and confidence, promotes maritime cooperation and maritime security, and stabilizes the growth of bilateral relations between Manila and Beijing. The two states recognize that the contentious maritime issues do not describe the whole Philippines-China relations, agreeing that the increasingly dynamic bilateral relations should serve the interests of both the Filipino and Chinese peoples.

Statements released by the Philippine Department of Foreign Affairs highlighted the importance of properly managing disputes in the South China Sea by safeguarding regional peace and stability. During the five BCMs, both China and the Philippines reaffirmed their commitment to the principles of freedom of navigation in and overflight above the South China Sea, freedom of international commerce and other peaceful uses of the sea, addressing territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by

sovereign states directly concerned and the exercise of self-restraint, in accordance with universally recognized principles of international law, including the Charter of the United Nations and the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

Technical working groups have also been formed to discuss and strengthen cooperation and possible joint initiatives in areas such as marine environmental protection, fisheries, marine scientific research, and oil and gas, without prejudice to their respective positions on sovereignty, sovereign rights, and jurisdiction. In the last three statements about BCMs, the importance of other complementary multilateral platforms, including ASEAN-China Dialogue Relations, ASEAN Regional Forum, and East Asia Summit, in promoting peace and stability in the region were also stressed. The full and effective implementation of the 2002 Declaration of Conduct in its entirety and the positive momentum on working towards a consensus on the Code of Conduct were also key highlights of the BCMs.

Former Foreign Affairs Secretary Alan Peter Cayetano has been proud to claim some positive developments in the South China Sea as a result of the earlier BCMs, which includes: 1) Filipino fishermen's access within the areas in dispute; 2) Measures that are put in place for all parties to protect the environment and marine ecosystem in the SCS; and 3) the commitment from all sides that none shall build on uninhabited features, in accordance with the Declaration of Conduct on the South China Sea.

Former Secretary Cayetano also noted that the restoration of the warm and friendly relations with China resulted in "tremendous economic benefits for the country" as Beijing lifted the ban on the import of bananas from the Philippines and over \$24 Billion worth of assistance, investment, pledges, commercial loans focused on infrastructure development under the "Build, Build, Build" program further increased economic development in the Philippines. With the channel provided by the BCMs, Cayetano said that the Philippines is no longer in a public "open shouting match" with China. In retrospect, it is only fair to say that the BCMs did achieve a level of progress that benefitted both the Philippines and China. A deeper rumination, however, reveals that much work remains to be done.

In terms of marine environmental protection and marine scientific research, engagement in the aspect of expertise sharing and capacity development programs have

been minimal. The two countries have yet to commence the conduct of the actual joint marine scientific research due to unresolved agreement over protocols involving sensitive and crucial information.

In environmental protection, agreed developments and plans remain undisclosed to the public. Experts and Philippine government officials are aware of the destructive effects under *business-as-usual* scenarios and stress the need to address the threats of ocean and climate change, establish policies to manage more productive coastal and marine environment for the benefit of all neighboring countries, identify areas with different priorities for sustainable use and manage, and regulate destructive and pollutive activities.¹⁶

Situations at sea have also significantly changed over the course of the five BCM meetings. While efforts from the BCM meetings saw the increase of Philippine coast guard patrols in the Scarborough Shoal (effectively allowing Filipino fisherfolks to resume their livelihood),¹⁷ untoward incidents from armed Chinese boats continue their harassment.¹⁸ China's passing of its Coast Guard Law, which unilaterally (and illegally) allowed its Coast Guard to exert enforcement measures.¹⁹

The continued disregard of bilateral mechanisms and the dissolution of restraint on the Chinese side, brings the effectiveness and utility of the BCM into question. It would seem that high-level dialogues and statements, like those of President Duterte and then-Secretary of Foreign Affairs Alan Peter Cayetano, addressed to Chinese counterparts, proved more effective in soliciting guarantees from China, even when these hardly materialized. It is also important to note, however, that closed-door discussions and what happens during BCMS may have contributed to the effectiveness of such high-level dialogues.

Moving Forward

Despite the decreasing impact of the BCMs in moving issues forward, the mechanism still remains a channel for communication that allows both parties to air their views, demand explanations and clarifications, and hear the other side of the story. Views expressed during the BCM should manage expectations on actions and policies. The BCM also affords the parties to compartmentalize issues. Separating the contentious issues from other aspects of the bilateral relations enables the two countries to discuss and look for possible areas of cooperation. This includes the economic and the socio-cultural facets of the bilateral relations and non-traditional security issues. Spaces like these allow for positive engagement necessary in maintaining peaceful relations and preventing conflicts in the future.²⁰

To ensure the credibility of the BCM as a whole, both parties should refrain from making empty motherhood statements and committing to promises that cannot be kept. For instance, claiming that Filipino fishermen regained access to *Bajo de Masinloc* and commitment to not build and militarize the features while doing the contrary greatly damages not only public sentiment on China but also the confidence over joint measures like the BCM and discussions on the Code of Conduct to work in the interest of the Philippines. The BCM, in its entirety, must show that cooperating with one another clearly benefits both sides. The complexity that is the Philippines-China relations is ridden with slow progress – but progress, nonetheless.

While the BCM emphasizes dialogue between the Philippines and China to forward issues at the South China Sea, it poses certain implications on China's relations with Southeast Asia. The BCM represents China's position to settle differences bilaterally, a methodical effort that insulates the dynamics of China-ASEAN relations from tense bilateral issues. Whereas it has ongoing negotiations to delimit areas beyond the Gulf of Tonkin with Vietnam²¹ and pursued a similar bilateral mechanism with Malaysia on a broader basis,²² China continues to economically engage the region. ASEAN, however, has fallen short of presenting a unified bloc in dealing with the SCS disputes. Unless ASEAN member states form a "coalition of the willing" with interested parties²³ or recognize each other's *de facto* occupation of specific features in the South China Sea to present a united stand²⁴ China will continue to exploit the lack of cohesiveness of the regional bloc.

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