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# AFJAGS Podcast: Episode 69

## Taiwan, the South China Sea, and the Gray Zone Capt Matthew Ormsbee (National Security Law Competition)

**Host:** Major Charlton Hedden

**Guest:** Captain Matt Ormsbee

This episode is a continuation of our National Security Law Competition series. In this episode, Major Hedden sits down with Captain Ormsbee to discuss ways in which the United States can take advantage of our existing treaty with Taiwan to help prevent Chinese Gray Zone activity in the South China Sea.

[Music: Band playing clip of Air Force song]

### Introduction

#### **Major Charlie Hedden:**

Hello and welcome back to The Air Force Judge Advocate General's School Podcast. We are joined today again by Captain Matt Ormsbee. Capt Ormsbee's currently finishing up an assignment as the area defense counsel at Misawa Air Base, Japan. And we're going to be talking to him about his recent article that he submitted for the National Security Law Writing competition that is hosted by the Air Force Judge Advocate General's School and supported by the JAG School Foundation.

This year the topic was how national security law impacts America's strategic competition in the gray zone. Capt Ormsbee is no stranger to this competition and has submitted with a fair amount of success several times over the last several years. And he submitted this year paper called *Gray Dismay: A Strategy to Identify and Counter Gray Zone Threats in the South China Sea*.

Capt Ormsbee, welcome back.

#### **Captain Matthew Ormsbee:**

Thank you so much for having me.

**Maj Hedden:**

So I wanted to get—dive in here to your paper with you—kind of just giving us the 30 second version of what you wrote. What is kind of the thesis, as is the case with many of these papers, especially when you have a specific topic, the title doesn't give away a ton. So, give us the elevator speech version of your 20 odd page Law Review article before we get started.

**Capt Ormsbee:**

Absolutely. So in a nutshell, I argue that the U.S. has had a lot of success in conventional war fighting in past years. And because of that, we've been deterring our adversaries from that high end site and kind of driving them toward what we call gray zone threats. So threats that are not necessarily traditional military threats. And China is making advances in the gray zone on a regular basis in the South China Sea.

And so my argument is the best way to capture some of these gray zone initiatives from China is by strengthening international legal agreements or treaties and response obligations with allies in the Indo-Pacific, focusing and starting primarily with the Philippines, who has really the oldest Mutual Defense Treaty with the U.S.

## Gray Zone Threats

**Maj Hedden:**

Excellent. Yeah. So gray zone. This is kind of what we're all thinking about and talking about, writing about. And you defined it the way I think we all kind of understand it—that area between things that are clearly peaceful actions and clearly war and generally most people listening to this are going to—is going to know what we mean by gray zone without any more definition than that.

But you kind of discuss some specific things in your and one of your opening sections that I kind of wanted to pick your brain about and the first one of those is how gray zone threats are now more than ever, explicitly a focal point for our national security policy. So, can you talk a little bit about that and how you treated it and discussed it in your article?

**Capt Ormsbee:**

Gray zone threats received a lot of attention back in March 2021 because in that month the White House released its interim national security strategic guidance. And as you probably recall, this was very early in President Biden's administration, about two months after he was sworn in. But even early in his presidency, I think the president called on the U.S. to quote "develop capabilities to better compete and deter gray zone actions."

And that was probably the clearest mandate up until that point coming from the White House. So, you had this direct appeal of kind of shining a light on gray zone threats and emphasizing how the gray zone has become a new area of focus for revisionist regimes, much like China and other adversaries.

**Maj Hedden:**

Yeah. So that specific part kind of struck me because when we talk about these proposals and I'm, you know, we in the field, I'm talking to lots of people about different ideas, identifying threats and coming up with ideas to how we can, you know, mitigate, how we can deter those kind of threats. It's not something we're making up. It's something we've, like you've just said, been mandated to try to address. We as a Department of Defense. So that kind of struck me as a little different than how the conversation has been playing out. But another specific part of gray zone competition that I wanted to talk to you about is you spend a little time discussing three major factors that make something gray zone competition. So, can you tell us what three that you talked about in that section of your paper?

**Capt Ormsbee:**

And I hope it doesn't sound too simplistic, but I think of this at least from my frame of mind, as kind of the ABCs of gray zone warfare. Because not only is it easy to remember, but these are, in my mind, the most important basic traits of the gray zone. So, for me, gray zone competition is ambiguous and belligerent and coercive.

And so by using the word ambiguous, I mean that it is—gray zone threats are implied harm. They do not fit cleanly within the traditional war models that the U.S. has studied, you know, in the late 20th century, they're not clearly military or worrying nature. So, for example, you may see a State's Coast Guard, rather than traditional Navy vessels engaging in the gray zone.

So, they're ambiguous, they're belligerent. So, they are aggressive in nature. They have the ultimate goal of bringing about some sort of strategic advantage. It's a win lose, right? It's a zero-sum game in that sense. So, the receiving state in the gray zone is always worse off after a threat in the gray zone.

And finally, they're coercive. So these threats are meant to force some sort of outcome that the actors using to put the receiving state in a difficult decision to comply.

And so whether it's political, whether it's economic, or maritime, gray zone competition is very much calculated to bring about those desired outcomes.

**Maj Hedden:**

Right. And I do—I think it sounds like judging by your the rest of your ideas that we're going to get into, that we really focus a lot on the ambiguity part here. It sounds like your proposals address that heavily so that we end up with a less a category a, with a you know, smaller category of actions that are ambiguous, meaning we have a hopefully a little clearer menu of response options before us. But we'll get into that in a little bit.

But talk a little bit about that, I guess dig in some on that ambiguity aspect and why that makes something gray zone and why it makes it kind of hard to respond to and therefore kind of why that means it's—has been or can be effectively deployed by our competitors.

**Capt Ormsbee:**

Yeah, I think that's really the most important factor we talk about the gray zone—is that it's ambiguous so much so that oftentimes the receiving state doesn't

even understand it doesn't even register that there's an attack, per se, or that there's something at risk because it's so subtle that it's really falling below the radar. It's not a traditional attack or outright armed use of force. So, very often you have states sort of scratching their heads and wondering, where does this fall in the matrix of responses? Are we allowed to engage with them? Should we reciprocate in any way, or should we just sort of let this be an act of aggression without much more? So I think it really puts states in a in a tough bind where they don't know exactly how to respond appropriately.

**Maj Hedden:**

Yeah, I think an example that came to mind was China's actions with regard to these features in the South China Sea and kind of building those up where maybe one load of material that changes this feature from a little less submarine to a little more above the waterline, one load of material, that's nothing, right? That's not a act of war. But fast forward a few years and now there's a military base where before there was just a few rocks sticking out of the water.

**Capt Ormsbee:**

Absolutely. Yeah. Yeah, exactly. Yeah. I mean, a lot of what you see China doing is it's just those small acts, whether it's, you know, grouping in mass around an island or just chasing a boat, things of that nature to kind of stake a claim to, like you say, this is what our, you know, small rocks and shoals and reefs in the South China Sea.

But, you know, year after year, if these Chinese acts of aggression are not checked in, the Chinese will be emboldened and they will do more aggressive acts in the future because we allow a precedent to be set.

**Maj Hedden:**

Yes. Speaking of those actions in the South China Sea and being emboldened, talk about some of these other specific instances you mentioned where China has acted out kind of more and more against, especially in, you know, in our for our purposes today, the interests of

the Philippines in that area. And what are some of the behaviors they're engaging in over there?

**Capt Ormsbee:**

One of the biggest acts that they engaged in was in 2019, and that was this massing of boats kind of swarming around Thitu Island. And the Philippine government condemned this act and said that it was a violation of the UN Convention on the Law of the Sea. Thitu Island is the second largest of the chain of reefs and shoals in the South China Sea forming the Spratly Islands.

And there's not a whole lot on the island. There's some buildings. It's—the island itself is just a few feet above sea level during high tide, but it's inhabited by Filipino citizens. And they've been living there for a long time, even as the island has become this object of interest for China. So, what you had is in 2019, the Philippine Department of Foreign Affairs basically lodged a protest after the Philippine military was tracking more than 200 Chinese vessels around in the Thitu Island. And those vessels have been sighted hundreds of times near the island just in 2019 alone. And so it's just this great example of falling short of war, clearly, but such actions being intimidating, being ambiguous, being belligerent, seeming to be hostile in nature and in trying to intimidate and challenge this kind of—Philippine maritime claims to the waters around the islands and possibly, at a later time, to the island itself.

**Maj Hedden:**

So what was the international response to that?

**Capt Ormsbee:**

Yeah, the international response to that and even other incidents, too, has been pretty muted. It—as you'd expect, the Philippine government has always been up in arms and has always been very vocal about it, but they have reached out to other allies, such as Vietnam, Malaysia, for help with little to no response and to the U.S. too, because we are an ally as well of the Philippines.

We have agreements with them, legal agreements. So, treaties that have gone back for decades as well to come to their defense, so, they've reached out to us as well, right or wrong, though, there's been little to no meaningful help, at least in the eyes of the Filipino—Philippine government when it comes to these sort of acts of aggression from the Chinese.

## **Proposal**

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**Maj Hedden:**

Gotcha. Yeah. And that can at least arguably be tied back to the language of this treaty that exists. So, bring us in now from an—where we've been at 30,000 feet talking about gray zone threats and China and the Philippines, to the topic question at issue. So how can, what's your proposal to use national security law to positively impact our strategic competition in the gray zone? So, what does what does all this have to do with us and why and why do we care about this relationship and this treaty at all?

**Capt Ormsbee:**

Yeah, I argue that you have kind of a perfect situation here where the Philippine government is asking for help and where we have a preexisting treaty with them to aid them in as the U.S. is kind of turning its pivoting to Asia right now. So it is kind of a win-win for both the Philippines and the U.S. and I'm arguing that one of the best ways that we can counter gray zone threats is these preexisting alliances that we've had in some cases for decades coming back to right after the end of the Second World War, because that is a very unique asset that the U.S. has. That's a strategic advantage that competitors like China cannot match because they do not have those historic legal agreements. So, I say that those treaties, like the one between the U.S. and the Philippines, that is core international law. And in one step further, that is also a fundamental part of American national security law. So I say that basically there's just Mutual Defense Treaty, the MDT—I'll just call it the treaty for now. There's this treaty between the U.S. and the

Philippines that's now 70 years old, actually it'll turn 71 in August of 2022, signed about six years after the Second World War as the U.S. was forming this new world order and it was making agreements with defeated nations, allies, even neutral states. So, it signed in 1951, during the Korean War when the U.S. looking to make these very long term agreements in the Pacific.

## Element of Ambiguity

### **Maj Hedden:**

We've got this treaty and we've had it so long and it's with the Philippines. And now we see these actions that China is taking that are—that seem to be pretty obviously against the interests of our of our, you know, treaty partner in that region. What has kept the U.S. response so muted?

### **Capt Ormsbee:**

I think part of it goes to the element of ambiguity that we talked about in gray zone warfare, in part, the treaty between the Philippines and the U.S. was signed at a time when there wasn't such a thing as gray zone warfare, at least not as we know it in the modern sense. And so, it's really focused on conventional warfare, conventional attacks and responses and I don't think that the parties could have adequately foreseen what we would be facing in 2022 in the South China Sea.

So I think that's partly been to the U.S.' credit, partly been why we haven't necessarily stepped in so quickly.

### **Maj Hedden:**

What have American officials said about it?

### **Capt Ormsbee:**

Yeah, they've said effectively that we stand behind the Mutual Defense Treaty. We have been a steadfast ally of the Philippines. We would certainly come to their aid and an armed attack. But it hasn't been triggered in that way, at least not yet. That hasn't been exactly what the Philippines' leaders have wanted to hear. They have not been pleased and they've wanted greater assurances, I think from the U.S., from the State

Department. But at least to date, that's kind of been the U.S. response to the Philippines.

## Response Matrix

### **Maj Hedden:**

Gotcha. And so that brings us to your first main proposal, which would work with this treaty to essentially reinvigorate our obligations under it, but then could definitely be applied more broadly to other agreements, to other situations, and to just a gray zone competition all over the globe. So, give us an idea of what this system you're proposing would look like.

### **Capt Ormsbee:**

Yeah, absolutely. It kind of goes a little bit to the language of the Mutual Defense Treaty, because that treaty has—Article Four effectively says if there's an armed attack in the Pacific on either the Philippines or the U.S., then both states are going to treat that as a danger to the other state's peace and safety. So it's a little akin to Article Five of the North Atlantic Treaty that form NATO.

So like I said, it kind of speaks more in terms of conventional warfare. So what I propose really is some sort of a response matrix basically that we need a system where we can classify threats that are below the conventional warfare level, that can talk about levels of severity, spell out appropriate recourse, things of that nature so that both Philippines and the U.S., but also allies and adversaries, everyone's on the same page about what exactly would be entailed.

And I didn't really want to recreate the wheel. So I refer to preexisting systems like defense readiness condition levels, so DEFCON levels or force protection conditions. So FPCON levels for terrorist activity—kind of use that idea and apply it to the gray zone conditions. And I call them GRAYCON levels. And obviously this is the earliest basis of just an idea in a paper. So if something like this was implemented, it would have far greater detail. And folks way above my pay grade would be involved, I'm sure.

**Maj Hedden:**

But essentially what you've come up with and what is actually an illustration in your paper is a table. Much like you said, the DEFCON or the FPCON table might look with rows and columns, each one corresponding to a different kind of or to a different GRAYCON, as you call it. So give us let me see. I can pull one up here and get you to give us an example of what this might look like within the context of a—of, say, China doing something in the South Pacific.

So GRAYCON—GRAYCON 4 is the baseline readiness, GRAYCON 1 is maximum readiness, immediate response. And then it kind of goes on a scale between those. So what would happen, what sort of thing might happen to trigger say a GRAYCON 2 in your in your mind.

**Capt Ormsbee:**

If in my mind GRAYCON 2 could be triggered if for example, we mentioned Thitu Island back in 2019 where you have this amassing of hundreds of vessels, whether they're Chinese, Navy, or Coast Guard, or even civilians being employed on behalf of the Chinese State. And they're starting to amass all around an island, even positioning in a way that could be construed as an attack position, or threatening, or preparation for an attack or invasion.

I could see that easily raised, rising to a GRAYCON level 2 too, if not GRAYCON level 1. A GRAYCON level 1, I think, would be more like if they are actually implementing some sort of invasion or attack, something along those lines or you know, or right before they're about to implement something like that. That's what in my mind what GRAYCON level 2 would be though, is you have basically a predictable or an imminent threat in the gray zone. So you can see that, you could see a pursuit being given, for example, not necessarily an act of violence per se, but just, you know, a clear act of intimidation, of harassment.

**Maj Hedden:**

Gotcha. So, maybe switching continents, something like amassing over 100,000 troops on the border of Ukraine, claiming to be performing military exercises, that sort of thing.

**Capt Ormsbee:**

Absolutely. And that's kind of what I wanted my paper was to be able to come up with ideas that could easily be used in the South China Sea, but also be applicable in any other area of the world. Obviously fighting multi-front wars in the Middle East still and keeping a very close eye on Ukraine as well.

**Maj Hedden:**

And it sounds like what to put it, in my words, one of the main benefits a system like this has is to fill in that gap that is currently gray. Right now, we know what peace looks like and then our treaty language defines war, armed attack. And then essentially that air between is the gray zone and your proposal would color in that gray zone with varying shades of, I guess, white to red or however you want to describe it.

**Capt Ormsbee:**

Yeah, absolutely. If we can take out some of the ambiguity of the gray zone, then I think we take the teeth out of those acts and threats within the gray zone and we can more easily move acts into the peace column or the war column, and that helps everyone I think.

## Mutual Defense Treaty

**Maj Hedden:**

So where does this fit with the treaty itself? Would you—what changes would you make to the treaty that we're talking about, the Mutual Defense Treaty with the U.S. and the Philippines? And how does this interplay, this GRAYCON idea interplay with those treaty changes, if at all?

**Capt Ormsbee:**

Yeah, I think it, what it will do is it's going to give the Philippines peace of mind. For about five years or so now, they have been asking for sit downs to discuss what the treaty is going to look like in the future, if it needs to be revitalized, keep it as is, or scrap it. The Defense and State—State Department ministers from the Philippines have met repeatedly with us to say, you know, we need revisions, we need reassurances in the treaty.

I think something like a matrix like this, even if it's not included in an amendment to the treaty itself, could be included in, you know, an official policy statement about how the treaty will be construed in the future. It's going to give the Philippines a lot more peace of mind. It will be a line in the sand for China, frankly, as well, to know okay, what we were doing prior was very much in the gray zone and sort of not clear what we were actually doing. But if it brings it to shines a light on some of those acts and forces them to declare, look, is this a peaceful act or is it or is an act of aggression? That's an overture to war. Then I think both parties are going to have a lot more faith in this in this treaty that's been around for 70 years now.

**Maj Hedden:**

Yeah, as we can already talked about, when we have partners who can rely on the treaty and we have adversaries who know where we stand, that positively impacts our national security and our ability to operate where and when we need to for our interests, I think, is kind of the point of your logical flowchart that you put into your paper there.

**Capt Ormsbee:**

Yeah, absolutely.

## **Response Requirement**

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**Maj Hedden:**

And so in addition to this sort of policy update with the treaty, you also talk about the inquiry and response requirement that would be part of a new system. What's that?

**Capt Ormsbee:**

This is a forced kind of question and answer, as you say, inquiry in response, set up with adversarial states to directly address and eliminate any sort of ambiguity in gray zone threats. So, Philippine leaders would be able to, for example, issue demands through diplomatic channels. So, in the example of a boat of journalists being chased by the Chinese Navy back to the mainland, for example, that happened in 2021. They would be able to say, look, China or any other State in the Indo-Pacific, explain the reason and the purpose behind those actions, or else those actions will be construed unambiguously as an aggressive overture. So potentially leading to armed conflict, because I wanted a paradigm where we could really undercut the ambiguity and the uncertainty of these kind of threats. And to root that out. But it also squarely addresses, I think, belligerence as well as one of those other factors, as well. So, I put the onus on the gray zone actor to either, one, you know, clearly admit a hostile act or, two, deny it and provide some sort of evidence to back that up. Or three, failed to respond or failed to respond adequately, which could be tantamount to an admission of hostility.

So I wanted to enforce reassurance from states, kind of put the onus on them that—and have them say that no pre-war acts were intended or else frankly admit hostile acts and then face consequences.

**Maj Hedden:**

Yeah, it's fascinating. It's interesting. So, to kind of tie the ideas all together, let's walk through this hypothetical where not hypothetically, that boat full of journalists does get chased back to the mainland by Chinese actors. So then step one, the Philippine government reaches out to the Chinese government through diplomatic channels to demand an answer for this action. China does or does not give an answer. Let's say they either admit that it was a hostile action or unconvincingly deny it, or they remain silent. Then, the Philippines and the United States, in theory, sort of consult the GRAYCON scale and place the action somewhere in there and decide on an appropriate response at that level, is that kind of how it would work?

**Capt Ormsbee:**

Absolutely. And what I kind of foresee in that scenario is China would probably reply either denying the hostile acts, but not providing sufficient evidence for it or completely failing to respond, which we would construe as an act of hostility. So, you know, these GRAYCON levels are not for the entire South China Sea area, obviously. Therefore, it can be applied to specific geographic areas for specific time frames. But you could see for that passage, for example, with the boat of journalists being chased, that was GRAYCON level 4, it's now being elevated to GRAYCON level 3 to signify higher than the normal readiness levels. And look, if it happens again, then we elevate it once again and we have these new response triggers that go with GRAYCON level 2, for example.

So I think in a way puts the onus back on China or any other aggressor state, but it also gives them kind of clear expectations about, okay, we're starting at GRAYCON level 4, we will elevate unless you can give us sufficient responses for what you're doing.

**Maj Hedden:**

Right, yeah. And that makes a lot of sense—really cool idea. The—just to put a final point on this, this very—this hypothetical, let's say all that happens and a determination is made between the U.S. and Philippine government that, yep, we're going to treat this like it just got elevated from a GRAYCON 4 to a GRAYCON 3, that doesn't mean that we now are launching any kind of strikes against China. It doesn't mean now a military force of, you know, some part of our Navy is going to go actually attack that watercraft that was at fault. What does it mean for response options?

**Capt Ormsbee:**

Yeah, I try to lay that out in one of the columns that I have for basically consequences. So, at the baseline level, there is very little if no recourse for GRAYCON level 3, you're really talking about an increased intelligence watch. So increased monitoring and surveillance in a particular area, and it can build up easily to military

presence, if necessary. You know, security readiness, all the way up to immediate response, whether that's military, diplomatic, and or economic at the highest level of GRAYCON level 1, which would basically turn into an armed response at that point.

**Maj Hedden:**

Right. So, at the top of this eventually has to be we've crossed into something we're going to construe as a as an actual attack under the terms of the treaty, and respond accordingly.

**Capt Ormsbee:**

Exactly. Yeah.

**Maj Hedden:**

And the clearer and the easier it is for everyone to see where that line is, then the idea is, the smaller the gray zone ends up being and the less our competitors can enforce their will in that space.

**Capt Ormsbee:**

Absolutely.

**Maj Hedden:**

This—I was really intrigued by the simplicity of the inquiry and response part of this, and just wondered if you knew, is this kind of idea being used somewhere else that you know of?

**Capt Ormsbee:**

To be completely honest, I don't know. I hadn't heard of it being used anywhere else, though I wouldn't be surprised about it. It just struck me as the main, I think the lethality of the gray zone, why it's so potent is because it is the gray zone. So if you can attack the main reason that it's ambiguous or that, you know, receiving States can't determine how to respond to it, then they, maybe you're on surer footing.

So my thought was simply, okay, address the uncertainty, come up with a way and—we do this all the time. Right? To say whether it's a burden of proof in court or



something like that where we say, okay, you, the party, have the burden of showing this, and if you don't do it to our satisfaction, then we're going to interpret it this way.

So that I mean, that's kind of a model that we used 100 times in law school and in practice, but we could probably apply it to something like this with some success.

**Maj Hedden:**

Yeah, it sounds like another. I mean, in a sense it is due process. It is a notice and an opportunity to be heard and we'll do it that, you know, we're going to even forecast to you what the possible consequences are for this.

**Capt Ormsbee:**

Exactly, exactly.

**Maj Hedden:**

At least the range and the red line.

**Capt Ormsbee:**

Exactly. Yeah. It gives them fairness and notice.

**Maj Hedden:**

Yeah, it brings to mind just the law enforcement officer, you know, demanding an answer from a from a subject, you know, in a tense situation, you know, and with the understanding that, or not the understanding, but the explicit command that, hey, if you don't give me an answer, if you don't comply within a timely manner, then you know, here are some possible consequences.

**Capt Ormsbee:**

Exactly. Exactly. Yeah, yeah, exactly. It's pretty much the same set up. It gives the aggressor state the chance to respond and clear expectations and what they do with that thereafter. It's 100% on them.

**Maj Hedden:**

Yeah. And it also. Right. Has the advantage of presenting one side as being or, you know, letting the I guess the international community judge the actions and responses a little better, knowing what transpired, being

able to show what actually transpired leading up to a possible response to some sort of action.

**Capt Ormsbee:**

Right.

## **Flexibility**

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**Maj Hedden:**

You are forthcoming in your article that there are a number of possible counterarguments or roadblocks to implementing a system like the one you proposed at. I wanted to start with this idea of flexibility. So what are—what's the I guess, the argument there about leaving room for flexibility?

**Capt Ormsbee:**

Yeah, the argument is that the Mutual Defense Treaty is drafted. It is ambiguous on gray zone issues, but that gives the parties flexibility in that, and so ambiguity in the treaty language is not always a bad thing. It can leave the parties in a lurch, but it gives some leeway if commitments aren't clearly triggered so it can be beneficial. And it's even somewhat common as a feature in other defense treaties that the U.S. has. So, clearly the Philippines is not the happiest they've been with the treaty because they're not sure when it will be triggered or when the U.S. will necessarily intervene on their behalf. But, you know, it also gives the U.S. some wiggle room to deny if treaty obligations have been triggered to our advantage potentially. So it does benefit the parties in this case, perhaps more the U.S. in this case. But it can also be, I guess the counter to that kind of argument is that it can appear self-interested, right? That the U.S. is wanting to be hands off in its approach, and that's oftentimes not the best way to do business with a longtime ally.

**Maj Hedden:**

Right. It's a kind of I read your counter argument to be that at least in this instance, at this time, the—the benefits of possibly losing some flexibility outweigh that cost.

**Capt Ormsbee:**

Correct. I think in terms of the long-term relationship with the Philippines and also just acknowledging that the Philippines is a key player in the South China Sea, so we have longtime allies like South Korea and Japan, Philippines not as close to us, but it has an equally, if not more important, geographical position in the South China Sea. We don't want to lose them or put any separation between us and them. So, I think biting the bullet and adding a little more detail to the treaty, even if it means us having to roll up our sleeves, is going to benefit us long-term in the Indo-Pacific.

## Cost

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**Maj Hedden:**

Yeah, that made sense to me. What about this idea about, I guess, the cost kind of, well this would this would end up costing us a lot in defense, coming to the rescue of the Philippines, either all the time or in a big way that we can or shouldn't expend the resources for.

**Capt Ormsbee:**

Yeah. I mean, with the example that we had of the swarming of Thitu Island back in 2019, you can imagine if the GRAYCON levels are elevated and we end up, you know, sending our Navy or Air Force to that island or that region in the South China Sea, that could be very expensive, right? I mean, the American taxpayers are correct to question what sort of commitments could actually be triggered in this. I don't deny that. I mean, I—we all know that the Department of Defense benefits greatly from the taxpayers, that our budget is large. But what I argue is the price for a guarantee for peace and stability in the Indo-Pacific is far worth it. That even if it's some sort of response based on this treaty, that would be triggered that would still be worth it if it means a reassurance to the Philippines and other allies in that region that we will come to the rescue and that we will check whether it's China or any other adversary, that we will respond accordingly.

## Politics

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**Maj Hedden:**

And this, the next one is just, I guess, kind of a pragmatic concern about, okay, politically, is it realistic to get the Senates of the respective parties to this treaty to even ratify any updates along the lines of what you're proposing?

**Capt Ormsbee:**

Yeah, and I just raised the issue that this should be an amendment to a treaty, so I would foresee significant negotiations and revisions and that any amendment would have to be ratified by the Senates of the U.S. and the Philippines, and that's an open question. And I won't opine on the political branch and whether they could or would pass some sort of amendment. But I also say that may be a reality, on the other hand, the parties could still benefit from a formal public statement. So, even coming out through the Department of Defense, the Department of State to clarify American policy for interpreting the Mutual Defense Treaty in the 21st century would be a strong step. And I say that, you know, it would not have as much staying power or authority as a treaty revision, but it would still be a great plan B with many of the same benefits as pushing through a treaty amendment.

**Maj Hedden:**

For sure, at least for at very least, as long as the same parties were in power and in place, that made those statements.

**Capt Ormsbee:**

Yeah, absolutely. So that could be a good alternative.

**Maj Hedden:**

Right. And then finally, the I guess the last one you really address is the risk that we're going to hitch our wagon to the Philippines and they're going to do something recklessly provocative and trigger a conflict with China that we're now going to be dragged into. That's over something minor that we might not otherwise have.

**Capt Ormsbee:**

Yeah, and I and I agree. And that is certainly a concern that I have for the parties. You know, some will liken it to a threat that, look, we may be dragged into another decades long conflict like in Iraq or Afghanistan. There will be politicians and people in the public that would be fearful for something like that. I argue, of course, that the alternative is worse that we have a clear mandate from the White House to address gray zone threats and in the concrete, that means defending the Philippines if necessary, because we made this agreement 70 years ago.

**Capt Ormsbee:**

So we need to sort of put our money where our mouth is here, and I think what we can do to sort of address this concern is there will be obviously numerous diplomatic and defense talks about treaties—treaty revisions to clarify the terms, to clarify the GRAYCON levels, for example, and what sort of responses will be triggered. Of course, America cannot be a guarantor of everything that the Philippines does in the South China Sea. So there will be limits. But, we can we can talk about that and that way we can sort of address any concerns, but also at the same time push through revisions that will address what China is doing in the South China Sea.

## Summary

**Maj Hedden:**

Yeah, thanks. You make a compelling case for this. And just to recap now, what we're kind of talking about is this gray zone threat, specifically these actions by China in the South China Sea against the Philippines that are—I guess they're good for China and bad for the Philippines, basically, you know, in simplest terms and how to combat those. You propose a few different measures, one of those being a system, a GRAYCON system, that would reduce some of the ambiguity and address the belligerence of these actions and give us and the Philippines and even China a clear vision of where we stand when they do things like that. And that's a part of our relationship with the Philippines, because we're in this 70-odd-year-old treaty. So you propose updating, revitalizing that treaty to make it triggered,

possibly, by things less than out and out armed conflict with systems like the GRAYCON, and also this idea of a forced mandatory inquiry in response, so that China is given an opportunity to explain the action and possibly, what's the word I'm looking for, deescalate things before we and our allies respond in kind or respond as we deem appropriate to mitigate that threat. I talked a little bit about the costs and the benefits and the counterarguments to that system.

So, Capt Ormsbee, thanks. Like I said, I think you make a very persuasive case. What parting thoughts can you leave us with regards to this paper and these proposals?

## Final Thoughts

**Capt Ormsbee:**

Well, I want to start with the premise that as much as we've all been following Russia's invasion of Ukraine, I still think China will remain the main focus for us in terms of defense and foreign affairs. So, that's why I started with my article with the quote that the United States is an Indo-Pacific power, again quoting the White House, As much as we should keep our eye on Russia, I think that the main challenge will be China for now. But I also wanted to come up with hopefully some ideas that are reproducible and scalable because we can't ignore Russia or the Middle East at this time either. So, I was hoping that, you know, if there are any kernels that could be taken out of this paper, that they could be applied to other situations, other adversaries, whether they're maritime or whether we're talking about on the border between Russia and Ukraine, that they could be reproduced and hopefully used in conflicts large and small.

So that's what I hope to do here, while not forgetting some of our allies, because, again, that—that the White House has foot stomped repeatedly, that they're turning to Asia, that they're wanting to focus and give a warm handshake to allies that have been with us since the end of the war. We don't want to neglect them. We want you to give them reassurances that the U.S. is here to defend our interests, but also their interests abroad.

[Music: Band playing clip of Air Force song]

**Maj Hedden:**

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## Glossary

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- **AFJAG:** Air Force Judge Advocate General
- **DEFCON:** defense readiness condition
- **FPCON:** force protection condition
- **GRAYCON:** gray zone condition
- **JAG:** Judge Advocate General
- **MDT:** Mutual Defense Treaty
- **NATO:** North Atlantic Treaty Organization
- **UN:** United Nations

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