

OVERCOMING ROADBLOCKS TO THE NEW SILK ROAD - HOW CHINA CAN WIN OVER THE FILIPINO PEOPLE BY FOLLOWING JAPAN'S INVESTMENT STRATEGIES IN VIETNAM

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Introduction

While news outlets have been discussing the cooling of trade relations between the People's Republic of China ("China") and the United States ("U.S."), there is a warmer reception for China on the other side of the world: the Republic of the Philippines ("Philippines"). The answer as to why the Philippines is welcoming, even after winning in an arbitration against China regarding control of the South China Sea,¹ lies in one word: "DuterteNomics."² The Philippines government introduced this term to describe President Rodrigo Duterte's ("Duterte") economic programs and policies for bringing Philippines to the forefront of economic growth in Southeast Asia.³ Presidential Communications Secretary Martin Andanar discussed a main program of DuterteNomics called the Build Build Build Infrastructure Plan ("BBB"), which is meant "to [solve the puzzle] on how to grow the economy, reduce poverty and [ease] congestion in Metro Manila."⁴ It appears that the final puzzle piece lies with China's Belt and Road Initiative, also called the One Belt One Road Initiative ("BRI").⁵ China's ambitious BRI has received mixed

¹ The South China Sea Arbitration (Phil. v. China), Judgment, 2016 P.C.A. 2013-19 (July 12).

² *DuterteNomics unveiled*, Presidential Communications Operations Office (Apr. 18, 2017) (Phil.), <https://pcoo.gov.ph/dutertenomics-unveiled/>.

³ *Id.*

⁴ *Id.*

⁵ Xinhua, *China unveils action plan on Belt and Road Initiative*, The State Council (Mar. 28, 2015) (China), http://english.gov.cn/news/top_news/2015/03/28/content_281475079055789.htm; Tian Shaohui, *Chronology of*

reviews since it is viewed with either optimism or deep suspicion in the international community.⁶ On September 7, 2013, President Xi Jinping (“Xi”) gave a speech at Kazakhstan's Nazarbayev University, where he underscored how the ancient Silk Road was now full of new vitality with the rapid development of China’s relations with Asian and European countries to enhance mutual trust, consolidate friendship, and strengthen cooperation by moving towards the common development and prosperity of the people of these regions.⁷ The goals of the BRI are “to promote [an] orderly and free flow of economic factors, highly efficient allocation of resources and deep integration of markets by enhancing connectivity of Asian, European and African continents and their adjacent seas.”⁸ Xi succinctly described the BRI’s mission: “A near neighbor is better than a distant relative . . . We need to pass our friendship from generation to generation and always be good neighbors living in harmony.”⁹

Although China’s BRI appears to be in congruence with Duterte’s goal of ushering a “golden age of infrastructure,”¹⁰ the Filipino people are harder to convince. If China wishes to succeed in persuading both the Philippines government and its people, it should look to the investment strategies implemented by Japan in the Socialist Republic of Vietnam (“Vietnam”) and understand the manner in which Japan was able to move forward in establishing strong ties after its history of occupying Vietnam. Part 1 of this Paper provides background on the BRI, DuterteNomics, and the BBB. Part 2 is divided into three sections: (a) Japan’s history with Vietnam and the manner in which Japan’s investment strategies led to a shift in attitude among the Vietnamese; (b) China’s history with the Philippines and current shortcomings in its implementation of the BRI; and (c) how Japan-Vietnam relations can serve as a guide by China to

China’s Belt and Road Initiative, Xinhua News Agency (Mar. 28, 2015), http://www.xinhuanet.com/english/2015-03/28/c_134105435.htm.

⁶ See Charlie Campbell, *China Says It’s Building the New Silk Road. Here Are Five Things to Know Ahead of a Key Summit*, TIME (May 12, 2017), <http://time.com/4776845/china-xi-jinping-belt-road-initiative-obor/>.

⁷ Xinhua, *President Xi Jinping Delivers Important Speech and Proposes to Build a Silk Road Economic Belt with Central Asian Countries*, Ministry of Foreign Affairs (Sept. 7, 2013) (China), https://www.fmprc.gov.cn/mfa_eng/topics_665678/xjpfwzysiesgjtfhshzzfh_665686/t1076334.shtml.

⁸ *China unveils action plan on Belt and Road Initiative*, *supra* note 5; see Tian Shaohui, *Chronology of China’s Belt and Road Initiative*, Xinhua News Agency (Mar. 28, 2015), http://www.xinhuanet.com/english/2015-03/28/c_134105435.htm.

⁹ CCTV English, *President Xi Jinping delivers speech at Nazarbayev University*, YouTube (Sept. 8, 2013), <https://www.youtube.com/watch?v=dHkNzMjEv0Y>.

¹⁰ *DuterteNomics unveiled*, *supra* note 2.

combat anti-China sentiment among Filipinos, thus supporting its goals with the BRI. Part 3 of this Paper concludes on the future of the BRI in the Philippines.

1. Background

a. Overview of the Belt and Road Initiative

The Silk Road Spirit—"peace and cooperation, openness and inclusiveness, mutual learning and mutual benefit"—is embodied in the BRI: a multi-faceted initiative that is open to all parties and aims to promote the connectivity of Asian, European, Middle Eastern, and African regions and their adjacent seas.¹¹ The BRI has five major dimensions involving the cooperation of both public and private actors in: (a) policy coordination, (b) infrastructure development, (c) industrial investment and trade connectivity, (d) financial cooperation and integration, and (e) people-to-people ties.¹² Included in the five dimensions is the Digital Silk Road, which focuses on telecommunications and electronic commerce.¹³ To accomplish the BRI's goals, China is working with other countries to improve their infrastructure and install secure and efficient land, sea and air passages, thus fostering economic development, stronger trade relationships, and friendly cultural exchanges.¹⁴ Along with turning to bilateral and multilateral cooperation and working mechanisms, China is adopting a proactive strategy to comprehensively improve the openness of the Chinese economy.¹⁵

Despite these ambitious goals, it is important to understand that the BRI is not a free public service occurring out of the goodness of China's heart. China is looking to consolidate economic and strategic partnerships around the globe because it expects "that by 2025, BRI trade flows would reach \$2.5 trillion, with the end goal that by 2050 BRI countries should already comprise

¹¹ *China unveils action plan on Belt and Road Initiative, supra note 5.*

¹² *Id.*

¹³ Aaron Jed Rabena, *The Complex Interdependence of Chinas Belt and Road Initiative in the Philippines*, 5 *Asia & Pac. Pol'y St.*, 683–697 (2018).

¹⁴ *China unveils action plan on Belt and Road Initiative, supra note 5*; For a more updated report on the progress of the BRI with its five major dimensions, see *The Belt and Road Initiative: A new means to transformative global governance towards sustainable development*, CCIEE & UNDP (May 9, 2017), <http://www.cn.undp.org/content/dam/china/docs/Publications/UNDP-CH-GGR%202017.pdf>.

¹⁵ *China unveils action plan on Belt and Road Initiative, supra note 5.*

around 80 percent of world Gross Domestic Product.”¹⁶ The BRI should not be interpreted as a one-sided deal, as evidenced by Vietnam’s “Two Corridors, One Economic Circle,”¹⁷ the Sino-Singapore industrial projects¹⁸, and the partnerships of American enterprises such as General Electric¹⁹ and Honeywell with Chinese companies.²⁰ Some have compared the BRI to the Marshall Plan²¹—a U.S. program providing aid to Europe post-Second World War as a means to contain the expansion of communism and the Soviet Union.²² However, this may not be a fair comparison since the Marshall Plan served to reinforce the separation between communist and capitalist blocs of Europe, whereas the BRI attempts to move away from separation of ideologies by focusing on highly globalized integration.²³

The BRI’s impact is so large that along with Chinese and multilateral financial institutions, the World Bank Group (“WBG”)—one of the world’s largest sources of funding and technical assistance for developing countries in pursuit of its objectives of reducing poverty, increasing shared prosperity, and promoting sustainable development—is involved with commitments of about of about \$80 billion for projects addressing infrastructure, trade, and connectivity for BRI countries.²⁴ According to the WBG, the BRI accounts for over 30 percent of global Gross Domestic

¹⁶ Rabena, *supra* note 13.

¹⁷ Xinhua, *China, Vietnam reach consensus on trade, maritime cooperation: joint statement*, Belt and Road Portal (Nov. 14, 2017), <https://eng.yidaiyilu.gov.cn/qwyw/rdxw/34577.htm>.

¹⁸ Xinhua, *One year on, China-Singapore rail-sea route draws "Belt" and "Road" closer*, Belt and Road Portal (Sept. 26, 2018), <https://eng.yidaiyilu.gov.cn/qwyw/rdxw/67196.htm>; Xinhua, *B&R Initiative Infrastructure bonds issued in Singapore*, Belt and Road Initiative (Sept. 14, 2018), <https://eng.yidaiyilu.gov.cn/qwyw/rdxw/66181.htm>.

¹⁹ GE Reports Staff, *ASEAN’s Energy Future: Six Factors That Will Determine Belt And Road Success*, General Electric (Feb. 19, 2018), <https://www.ge.com/reports/aseans-energy-future-six-factors-will-determine-belt-road-success/>.

²⁰ *What is the Belt and Road Initiative?*, Honeywell (Sept. 8, 2017), <https://www.honeywell.com/newsroom/news/2017/09/what-is-the-belt-and-road-initiative#collapse-1e7413a9-a582-441e-b9da-b3345c3aafd8>.

²¹ , U.S. National Archives and Records Administration *The Marshall Plan* (June 5, 1947), <https://www.archives.gov/exhibits/featured-documents/marshall-plan>.

²² Simon Shen, *How China’s ‘Belt and Road’ Compares to the Marshall Plan*, *The Diplomat* (Feb. 6, 2016), <https://thediplomat.com/2016/02/how-chinas-belt-and-road-compares-to-the-marshall-plan/>; see Alek Chance, *The ‘Belt and Road Initiative’ Is Not ‘China’s Marshall Plan’. Why Not?*, *The Diplomat* (Jan. 26, 2016), <https://thediplomat.com/2016/01/the-belt-and-road-initiative-is-not-chinas-marshall-plan-why-not/>. *Contra* Peter Sabine, *Belt and road is ‘Marshall Plan without a war’, analysts say, as Beijing and banks woo private-sector investors*, *South China Morning Post* (Mar. 28, 2017), <https://www.scmp.com/special-reports/business/topics/one-belt-one-road/article/2082733/belt-and-road-marshall-plan>.

²³ Shen, *supra* note 22.

²⁴ Caroline Freund & Michele Ruta, *Belt and Road Initiative*, World Bank (Mar. 29, 2018), <https://www.worldbank.org/en/topic/regional-integration/brief/belt-and-road-initiative#02>.

Product, 62 percent of population, and 75 percent of known energy reserves due to the investment, trade, and infrastructure links between China and 65 other countries.²⁵ Many countries located along the BRI are also supported by the Asian Infrastructure Investment Bank (“AIIB”),²⁶—a China-based multilateral development bank for investing in sustainable infrastructure and other productive sectors—which has moved forward on 16 projects worth \$2.5 billion in countries like Pakistan and Indonesia.²⁷ This is in addition to more than \$15 trillion in deposits held by Chinese banks—Bank of China, Industrial and Commercial Bank of China, China Construction Bank, and Agricultural Bank of China—and the \$40 billion earmarked by the Chinese government.²⁸ And the New Development Bank²⁹—an alternative to the World Bank and the International Monetary Fund—will eventually be lending \$20 to \$25 billion per year to “support the efforts of governments of the countries along the [BRI] and their companies and financial institutions with good credit ratings.”³⁰ The BRI comes with a hefty price tag and with the participation of many countries, there are governance challenges as well.

Due to the BRI’s global reach, it is important to understand how disputes will be adjudicated. Although China has “turned to bilateral investment treaties to shield its outward investors from liability under foreign law, . . . [these] may not provide complete coverage.”³¹ On July 1, 2018, the Supreme People’s Court of China’s (“SPC”) “Regulations on Several Issues regarding the Establishment of International Commercial Courts” (“Regulations”) came into effect and set out two new international commercial courts in China (“CICCs”): one in Xian and the

²⁵ *Id.*

²⁶ Asian Infrastructure Investment Bank Articles of Agreement, *opened for signature* June 29, 2015, (*entered into force* Dec. 25, 2015), U.N. No. 54824.

²⁷ Wade Shepard, *The Real Role Of The AIIB In China's New Silk Road*, *Forbes* (July 25, 2017), <https://www.forbes.com/sites/wadeshepard/2017/07/15/the-real-role-of-the-aiib-in-chinas-new-silk-road/#4b83ef607472>.

²⁸ Simeon Djanjko & Sean Miner, *China’s Belt and Road Initiative Motives, Scope, and Challenges* (Mar. 2016), https://piie.com/system/files/documents/piieb16-2_1.pdf.

²⁹ Agreement on the New Development Bank, *opened for signature* July 15, 2014, (*entered into force* July 3, 2015), U.N. No. 53647, <https://treaties.un.org/doc/Publication/UNTS/No%20Volume/53647/Part/I-53647-0800000280472e68.pdf>.

³⁰ Shepard, *supra* note 27.

³¹ Matthew S. Erie, *The China International Commercial Court: Prospects for Dispute Resolution for the "Belt and Road Initiative"*, *ASIL* (2018), https://www.asil.org/insights/volume/22/issue/11/china-international-commercial-court-prospects-dispute-resolution-belt#_ednref8.

other in Shenzhen, where parties can choose between mediation, arbitration, and litigation.³² CICC's have jurisdiction to hear five categories of disputes: (1) First-instance international commercial cases with a total amount in dispute of more than \$50 million, whereby the parties agree to SPC's jurisdiction according to Article 34 of Civil Procedure Law; (2) First-instance international commercial cases under the jurisdiction of Higher People's Court of China that it deems should be heard by SPC, with SPC approval; (3) First-instance international commercial cases that have significant impacts nationwide; (4) Cases involving applications for preservation measures in arbitration, for setting aside or enforcement of international commercial arbitration awards according to Article 14; and (5) Other cases deemed appropriate by SPC.³³

An international commercial case must fall under the following categories: (1) one or both parties are foreign nationals; (2) one or both parties reside outside China (even if they are both Chinese nationals); (3) the object in dispute is outside the China's territory; or (4) legal facts that create, change, or terminate the commercial relationship have taken place outside China.³⁴ Although judgments are binding, the parties may apply for a rehearing if certain conditions are met, such as new evidence sufficient to overturn the original judgment.³⁵ CICC's have a panel consisting of three or more Chinese judges who are "familiar with international treaties, international usages, and international trade and investment practices, and capable of using Chinese and English proficiently," with the additional component of the International Commercial Expert Committee ("Committee").³⁶ The Committee—which will mainly consist of foreign national experts from other jurisdictions along the BRI—is part of China's desire to involve foreign experts in the dispute settlement process and promote transparency.³⁷ Currently, it is

³² Provisions of the Supreme People's Court on Several Issues Regarding the Establishment of the International Commercial Court (2018) (China), Fa Shi.

³³ Provisions of the Supreme People's Court on Several Issues Regarding the Establishment of the International Commercial Court, art. 2 (2018) (China), Fa Shi.

³⁴ Provisions of the Supreme People's Court on Several Issues Regarding the Establishment of the International Commercial Court, art. 3 (2018) (China), Fa Shi.

³⁵ Freshfields Bruckhaus Deringer LLP, *China establishes international commercial courts to handle Belt and Road Initiative disputes* Oxford Law Faculty (Aug. 17, 2018), <https://www.law.ox.ac.uk/business-law-blog/blog/2018/08/china-establishes-international-commercial-courts-handle-belt-and>.

³⁶ Provisions of the Supreme People's Court on Several Issues Regarding the Establishment of the International Commercial Court, art. 4, 5, & 11 (2018) (China), Fa Shi.

³⁷ Freshfields Bruckhaus Deringer, *supra* 35.

unclear how CICC's and the Committee will interact in ruling on disputes and how differences of opinion will be resolved.³⁸ Interestingly, some reports indicate that China is negotiating the Hague Convention on the Recognition and Enforcement of Foreign Judgments³⁹ to improve the enforceability of CICC's judgments and could ratify the Hague Convention on the Choice of Court Agreements⁴⁰, which it signed on September 12, 2017.⁴¹

Despite the BRI's global progress, it suffers from a variety of shortcomings in its implementations. Some projects were hastily done and "put too much emphasis on the benefits of the BRI for China itself . . . without considering the concerns of local governments, communities, and companies."⁴² Furthermore, some countries are unwilling to make their own contributions to the BRI and rely on China to pay for most of the costs.⁴³ What they fail to realize is that the BRI's projects "will often come with tough conditions—high interest rates, procurement guarantees for Chinese companies, [and] imported workers."⁴⁴ Sri Lanka's Hambantota Port Development Project ("HPD") serves as an example on why there must be more caution and analysis before entering into these types of ambitious projects.⁴⁵ Despite numerous feasibility studies against the HPD, especially with how major shipping lines currently route cargo through Sri Lanka's capital of Colombo, former President Mahinda Rajapaksa ("Rajapaksa") borrowed heavily from China.⁴⁶ After "years of construction and renegotiation with China Harbor Engineering Company . . . the

³⁸ Erie, *supra* note 31.

³⁹ Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, Proposed Official Draft No. 262, May 24-29, 2018.

⁴⁰ Hague Convention On Choice Of Court Agreements, *concluded* June 30, 2005, 44 I.L.M. 1294.

⁴¹ Freshfields Bruckhaus Deringer LLP, *supra* note 35.

⁴² Fang Jin, *The Belt and Road Initiative: Progress, Problems and Prospects*, in *Parallel Perspectives on the Global Economic Order*, Center for Strategic and International Studies (2017), <https://www.csis.org/belt-and-road-initiative-progress-problems-and-prospects>.

⁴³ *Id.*

⁴⁴ Enda Curran, *What Is China's Asian Infrastructure Investment Bank Goal?*, Bloomberg.com (Aug. 6, 2018), <https://www.bloomberg.com/quicktake/chinas-world-bank>.

⁴⁵ *Regaining Sri Lanka: Part II Connecting to Growth: Sri Lanka's Poverty Reduction Strategy*, Ministry of Finance and Economic Affairs (Dec. 2002) (Sri Lanka), <http://www.erd.gov.lk/publicweb/publications/regaining/Part%20II%20-%20Regaining%20Sri%20Lanka%20-%20Connecting%20to%20Growth%20-%20Text.pdf>.

⁴⁶ Maria Abi-habib, *How China Got Sri Lanka to Cough Up a Port*, The New York Times (June 25, 2018), <https://www.nytimes.com/2018/06/25/world/asia/china-sri-lanka-port.html>; Bloomberg, *Inside China's \$1 billion port in Lanka where ships don't want to stop*, The Times of India (Apr. 18, 2018), <https://timesofindia.indiatimes.com/business/international-business/inside-chinas-1-billion-port-where-ships-dont-want-to-stop/articleshow/63811395.cms>.

[HPD] distinguished itself mostly by failing, as predicted. With tens of thousands of ships passing by along one of the world's busiest shipping lanes, the port drew only 34 ships in 2012."⁴⁷ Although Rajapaksa was voted out of office in 2015, Sri Lanka's new government struggled to make payments on the debt he had taken on, and after months of negotiations with China, it handed over the port and 15,000 acres of land around it for 99 years in December of 2017.⁴⁸ Ports and Shipping Minister Mahinda Samarasinghe announced that the agreement⁴⁹ bans any military use outside of Sri Lankan forces and is confined to "taking care of bunkering services, facilitating export and import activities, and transshipment of vehicles as industries."⁵⁰ However, the fate of the HPD brings up major concerns regarding the BRI, which is viewed by the international community with much suspicion, resistance, and public criticism on being a debt trap for countries that opt into it.⁵¹ Critics have noted that while China claims to be open and transparent in the purpose of the BRI, it provides little information available for public review on its infrastructure projects.⁵²

b. DuterteNomics and the Build, Build, Build Infrastructure Plan

DuterteNomics appears to be the ambitious answer to how the Philippines will transform itself into a high-income economy and catch up with its more developed neighbors by 2022.⁵³ At the April 18, 2017 forum, Executive Secretary Salvador Medialdea explained that "nine months since the Duterte administration took the reins of national governance, the economy is on a roll with Gross Domestic Product growing by 7.1 percent in the third quarter of 2016. To sustain the

⁴⁷ Abi-habib, *supra* note 46.

⁴⁸ *Id.*

⁴⁹ My online search for this agreement between Sri Lanka and China using keywords "Hambantota Port", "China," "Sri Lanka" and "agreement" failed to yield results on the actual document. If this agreement is unavailable to the general public, there are implications on China's transparency and accountability regarding its BRI projects and negotiations with recipient countries.

⁵⁰ Nushka Nafeel & Kelsey Ables, *Hambantota Port agreement purely a commercial transaction*, Daily News (June 28, 2018), <http://www.dailynews.lk/2018/06/28/local/155249/hambantota-port-agreement-purely-commercial-transaction-minister>.

⁵¹ Jin, *supra* note 42.

⁵² See Hermesauto, *Inside China's US \$1 billion port in Sri Lanka where ships don't want to stop*, The Straits Times (Apr. 18, 2018), <https://www.straitstimes.com/asia/south-asia/inside-chinas-us1-billion-port-in-sri-lanka-where-ships-dont-want-to-stop>.

⁵³ *TIMELINE for Duterte's economic agenda*, The Manila Times Online (May 29, 2017), <https://www.manilatimes.net/timeline-dutertes-economic-agenda/329785/>.

economic momentum, the President's economic managers formulated DuterteNomics, which is anchored on the Administration's 10-Point Socio Economic Agenda ("Agenda").⁵⁴ The Agenda, which is focused on improving infrastructure, promoting education, and providing economic stability, is underscored by Duterte's strongman approach against criminal elements.⁵⁵ Socioeconomic Planning Secretary Ernesto Pernia explained how it is "a zero to 10-point agenda . . . [with the zero being] precisely peace and order," to explain why the government is "[f]ighting criminality, fighting corruption, [and] fighting smuggling."⁵⁶

The BBB is meant to fulfill Duterte's promise to restore the country's "crumbling roads and bridges, glitch-ridden trains, as well as airports that seem to be behind the times."⁵⁷ While the Philippines ranked within the top 50 percent of economies on the World Economic Forum's Global Competitiveness Index 2017-2018,⁵⁸ it ranked in the bottom 30 percent for infrastructure, "with shortfalls identified as the second-most problematic factor for doing business, behind inefficient government bureaucracy."⁵⁹ According to the 2017 Corruption Perceptions Index, the Philippines ranked 111 out of 180 countries, falling in the bottom 30 percent of countries with a perceived level of public sector corruption.⁶⁰ Because Duterte's ambitious infrastructure vision could be hobbled by the risk of large-scale corruption, Presidential Spokesperson Ernesto Abella introduced the BBB portal (www.build.gov.ph), as part of the administration's commitment to transparency in governance.⁶¹ The BBB will roll out 75 flagship projects, including the country's first subway and the southern region of Mindanao's first mass transit railway.⁶²

⁵⁴ *DuterteNomics unveiled*, *supra* note 2.

⁵⁵ *Id.*

⁵⁶ *Zero To 10-Point Agenda*, The Manila Times Online (May 29, 2017), <https://www.manilatimes.net/zero-10-point-agenda/329787/>.

⁵⁷ Chrisee Dela Paz, *Duterte administration details 'ambitious' infra plan*, Rappler (Apr. 18, 2017), <https://www.rappler.com/business/167256-dutertenomics-build-build-build-infrastructure-plan>.

⁵⁸ Klaus Schwab & Xavier-Sala-i-Martin, *The Global Competitiveness Report 2017-2018*, World Economic Forum (Sept. 26, 2017).

⁵⁹ Oxford Business Group *Infrastructure investment in the Philippines set to drive growth*, BusinessWorld (Feb. 22, 2018), <http://www.bworldonline.com/infrastructure-investment-philippines-set-drive-growth/>.

⁶⁰ Corruption Perceptions Index 2017, Transparency International (Feb. 21, 2018), <https://www.transparency.org/country/PHL>; For more information on the Philippines' ranking with political transformation, economic transformation, and governance see *BTI 2018 Philippines Country Report*, Bertelsmann Stiftung, <https://www.bti-project.org/en/reports/country-reports/detail/itc/PHL/>.

⁶¹ *DuterteNomics unveiled*, *supra* note 2.

⁶² Paz, *supra* note 57.

The Department of Finance (“DOF”) has assured the public of the financial sustainability of the BBB, which will be partly supported by new tax reforms and is forecasted to generate \$15 billion within the next five years.⁶³ On January 23, 2018, Department of Finance Undersecretary Grace Karen Singson (“Singson”) unveiled the Tax Reform for Acceleration and Inclusion (“TRAIN”)⁶⁴, which simultaneously increased excises on fuel, vehicles, tobacco, and sugared drinks, and reduced personal income taxes.⁶⁵ Singson explained that TRAIN will partly fund the BBB as 70 percent of the incremental revenues “will be earmarked for infrastructure . . . with the government committed to keeping the budget deficit at 3 percent of GDP so that national government’s debt-to-GDP ratio target of 37.7 percent could be attained by the end of the Duterte administration.”⁶⁶ The Philippines is securing other financial sources as shown by “aid and investment pledges from China and Japan—the result of [Duterte’s] foreign policy rebalancing toward Asia—[which has] yielded \$7.3 billion in soft loans and grants from Beijing and another \$1.2 billion from Tokyo [that] will be spent on infrastructure, rebuilding efforts and on reinforcing the country’s maritime capabilities.”⁶⁷ After the Japanese International Cooperation Agency⁶⁸ (“JICA”) and the Metropolitan Manila Development Authority⁶⁹ (“MMDA”) noted how the economic cost of transportation in Metro Manila has risen to \$66.8 million a day, with it possibly worsening to \$103.1 million a day by 2035 without interventions,⁷⁰ JICA is dispatching Japanese experts to “assist the MMDA on intelligent transport systems, road traffic management, . . . [and] traffic policy beginning [2019] and ending in 2022 and will work in tandem with the BBB to ensure

⁶³ *Id.*

⁶⁴ An Act Amending Sections 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, and 288; Creating New Sections 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, and 265-A; and Repealing Sections 35, 62, and 89; All Under Republic Act No. 8424, Otherwise Known as the National Internal Revenue Code of 1997, As Amended, and For Other Purposes, Rep. Act No. 10963, (Dec. 19, 2017) (Phil.).

⁶⁵ Oxford Business Group, *supra* note 59.

⁶⁶ DOF Tax Reform, “*Build, Build, Build*” to roll out 75 projects worth \$35.5-B, DOF Tax Reform (Jan. 23, 2018), <https://www.dof.gov.ph/taxreform/index.php/2018/01/23/build-build-build-roll-75-projects-worth-35-5-b>.

⁶⁷ *Id.*

⁶⁸ Eibun dokuritsugyōsei hōjin kokusai kyōryoku kikō-hō (kari wake) [Act of the Incorporated Administrative Agency-Japan International Cooperation Agency (tentative translation)], Act No. 136 of Dec. 6, 2002, *last amended* by Act No. 67 of June 13, 2014.

⁶⁹ An Act Creating Metropolitan Manila Development Authority, Defining Its Powers and Functions, Providing Funding Therefor and for other Purposes, Rep. Act No. 7924 (Mar. 1, 1995) (Phil.).

⁷⁰ JICA to help Philippines ease traffic congestion in Metro Manila, JICA (Sept. 20, 2018), <https://www.jica.go.jp/philippine/english/office/topics/news/180920.html>.

that transportation becomes a source of sustainable economic growth for the Philippines.”⁷¹ Although the Philippines government has slightly raised the country’s deficit ceiling to sustain the BBB's momentum, there are still challenges with securing the rest of the funds due to rising inflation in 2018 after the implementation of TRAIN, higher oil prices in the global market, and the shortage of cheap rice in the domestic market leading to a weakness in the Philippine Peso.⁷² Overall, it appears that the BBB is “lifting several sectors because during the first quarter of 2018, the public sector's construction activities grew by 25 percent and private sector construction also grew at 7 percent,” while maintaining spending targets.⁷³

The Philippines is seeking loans from China, which has led to critics warning about how these loans “could saddle the country with heavy debts. [After all, l]oans from China generally have heftier interests of around 2 percent to 3 percent, as compared to Japan with only 0.75 percent.”⁷⁴ Sri Lanka serves as an example of the Filipinos’ fear of being in a “Chinese debt trap,” which led to Socioeconomic Secretary Ernesto Pernia (“Pernia”) assuring the public that the government is “extra careful” in dealing with China.⁷⁵ Pernia further explained that the Philippines cannot solely rely on Japan for loans and that Chinese loans have better interest rates than commercial loans.⁷⁶ China’s ambassador to the Philippines, Zhao Jianhua, has also reassured the public that the Philippines will not fall into a “debt trap,” with China doing its utmost to prove that

⁷¹ Ben O. de Vera, *Japan to assist MMDA craft 5-year traffic management action plan*, Inquirer.net (Sept. 19, 2018), <https://business.inquirer.net/257534/japan-to-assist-mmda-craft-5-year-traffic-management-action-plan>.

⁷² Ralf Rivas, *The Philippine economy's health under Duterte*, Rappler (July 22, 2018), <https://www.rappler.com/newsbreak/in-depth/207742-health-philippine-economy-under-duterte-administration>.

⁷³ *Id.*; For more information on how DuterteNomics has impacted the Philippines’ international credit rating, see Luchi de Guzman, *Standard & Poor's upgrades Philippines credit outlook to 'positive'*, CNN Philippines (July 20, 2018), <http://cnnphilippines.com/business/2018/04/27/standard-poors-upgrade-Philippines-credit-outlook-positive.html>; *Issuer Credit Rating-Philippines*, S&P Global Ratings (May 4, 2018), https://www.standardandpoors.com/en_AP/web/guest/ratings/entity/-/org-details/sectorCode/SOV/entityId/126751.

⁷⁴ Rivas, *supra* note 72.

⁷⁵ *Id.*

⁷⁶ Tara Francis Chan, *China's debt-trap diplomacy reaches the Philippines, which is likely to accept Chinese loans 1,100% more expensive than other options*, Business Insider (Mar. 6, 2018), <https://www.businessinsider.com/chinas-debt-trap-diplomacy-hits-philippines-with-exorbitant-loans-2018-3>.

Duterte's "friendly and cooperative [foreign] policy towards China, will produce more tangible benefits to the people of the Philippines."⁷⁷

2. Analysis of Investment Strategies Implemented by Japan and China

a. Japan-Vietnam Relations

Although current Japan-Vietnam relations appear to thrive, a more complicated past exists between these two countries. At the beginning of the 20th century, Vietnam was inspired by Japan after learning about its victory over Russia⁷⁸, thus making it the first Asian power in modern times to defeat a European power.⁷⁹ Ironically, during the later years of the Second World War, the Vietnamese lived under Japanese occupation alongside their French colonial masters, posing difficulties for the nationalist movement.⁸⁰ In 1940, Jean Decoux, the French Governor-General appointed by the Vichy government after the fall of France to the Nazis, had an agreement⁸¹ that permitted the stationing of Japanese troops and the use of all major Vietnamese airports by Japanese military.⁸² Vietnam became one of the most important staging areas for all Japanese military operations in Southeast Asia,⁸³ placing a great burden on the population and resources and intensifying ill feelings against the Japanese.⁸⁴ Between 1944 and 1945, Japan had used Vietnam as a source of industrial and food procurement for the military, which profoundly distorted the colonial political economy, shattered its import-export system, and eroded many bonds across communities and classes.⁸⁵ In March of 1945, Japan ousted the French due to mounting distrust

⁷⁷ Karen Lema & Nick Macfie, *China won't allow Philippines to fall into a 'debt trap': envoy*, Reuters (July 17, 2018), <https://www.reuters.com/article/uk-philippines-china-loans/china-wont-allow-philippines-to-fall-into-a-debt-trap-envoy-idUSKBN1K717W>.

⁷⁸ *Russo-Japanese War*, Encyclopaedia Britannica (May 24, 2018), <https://www.britannica.com/event/Russo-Japanese-War>.

⁷⁹ Tran My-Van, *Japan through Vietnamese Eyes (1905–1945)*, 30 *J. Southeast Asian St.* 126–146 (1999).

⁸⁰ *Id.*

⁸¹ Agreement Between Japan And France Pledging Military Co-Operation In Defense Of Indo-China, Japan-Fr., July 29, 1941, <http://www.ibiblio.org/pha/policy/1941/410729a.html>.

⁸² Neil L. Jamieson & William S. Turley, *Vietnam*, Encyclopaedia Britannica (Oct. 24, 2018), <https://www.britannica.com/place/Vietnam/World-War-II-and-independence>.

⁸³ *Id.*

⁸⁴ My-Van, *supra* note 79.

⁸⁵ Geoffrey Gunn, *The Great Vietnamese Famine of 1944-45 Revisited 1944–45 年ヴェトナム大飢饉再訪*, 9 *Asian Pac. J.* (2011).

and fear that the French forces would turn against them as the Allies advanced in areas of Indochina.⁸⁶ Although Bao Dai—the last French-appointed Emperor of Vietnam—was allowed to proclaim the independence of his country and appoint a Vietnamese national government in Hue, he was viewed as a puppet since power remained in the hands of the Japanese military commanders.⁸⁷ When Japan surrendered to the Allies on August 15, 1945, this chaotic and dramatic environment spurred the Viet Minh League under Ho Chi Minh to launch the nationalist movement that brought the communists to power.⁸⁸ It was Japan's exploitation of Vietnam that generated a new sense of nationalism in which the Vietnamese wanted no foreigners to rule over them, whether Western or Asian.⁸⁹

Vietnam respects and admires Japan today, but this transformation from bitter resentment to supportive alliance arises from Japan's involvement in Vietnam's post-war economic progress.⁹⁰ Despite the tragic history between Vietnam and Japan, they established formal bilateral ties in 1973.⁹¹ The signing of the Paris Peace Accords to end the war with the U.S. and restore peace in Vietnam in January of 1973⁹² allowed Japan to establish diplomatic relations with Vietnam on September 21, 1973.⁹³ Although there were setbacks due to Japan's opposition to Vietnam's military involvement in the Cambodian conflict, once the Paris Peace Accords on Cambodia were concluded in 1991,⁹⁴ their relationship flourished in three key economic areas:

⁸⁶ U.S. Central Intelligence Agency, *Current Intelligence Study Number 4: Japanese Seizure of French Indochina*, Office of Strategic Services (Mar. 30, 1945), R&A 2998S.

⁸⁷ Philip Shenon, *Bao Dai, 83, of Vietnam; Emperor and Bon Vivant*, *The New York Times* (Aug. 2, 1997), <https://www.nytimes.com/1997/08/02/world/bao-dai-83-of-vietnam-emperor-and-bon-vivant.html>.

⁸⁸ Tran My-Van, *supra* note 79. For details on the "August Revolution" see David G. Marr, *Vietnam 1945: The Quest for Power* (University of California Press, 1st ed. 1997); Stein Tønnesson, *The Revolution of 1945: Roosevelt, Ho Chi Minh and de Gaulle in a World at War* (SAGE, 1st ed. 1991).

⁸⁹ Tran My-Van, *supra* note 79.

⁹⁰ *Id.*

⁹¹ Le Hong Hiep, *The Strategic Significance of Vietnam-Japan Ties*, 23 ISEAS-Yusof Ishak Institute (2017) (citing Masaya Shiraishi, *Japanese Relations with Vietnam, 1951-1987* (Cornell University 1st ed. 1990)).

⁹² Agreement on ending the war and restoring peace in Viet-Nam, Jan. 27, 1973, 935 U.N.T.S. 13295.

⁹³ See Exchange of Notes Concerning the Establishment of Diplomatic Relations Between Japan and the Democratic Republic of Vietnam, National Archives of Japan, http://www.archives.go.jp/event/jp_vn45/english/ch04.html (last visited Nov. 21, 2018); see also Vienna Convention on Diplomatic Relations, *adopted* Apr. 14, 1961, 18 U.S.T. 2410, 500 U.N.T.S. 95.

⁹⁴ Agreement on a comprehensive political settlement of the Cambodia conflict (with annexes), *concluded* Oct. 23, 1991, 1663 U.N.T.S. 28613; Hiep, *supra* note 91.

Japanese Official Development Assistance (“ODA”)⁹⁵ to Vietnam; investment; and trade.⁹⁶ Japan’s ODA to Vietnam has been directed towards both economic infrastructure and education and human resource development, and combined with foreign investment, thus bolstering bilateral ties.⁹⁷ Japan’s ODA to Vietnam currently totals to about \$27 billion⁹⁸ with projects such as the Economic Management and Competitiveness Credit (III).⁹⁹

A core principle of Japanese ODA is non-intervention, leading to fewer political conditionalities and more participation and ownership of recipient government counterparts, thus allowing them to have more of a say in the use of the monies.¹⁰⁰ Because Japan has focused its ODA on field-level engagement rather than national-level policies, it can provide change at the local level and implement projects that are visible in their impact to the Vietnamese.¹⁰¹ For example, Japan addressed Vietnam’s shortage of hospitals and staff in providing high quality medical services through the JICA Project for Improvement of Hospital Management Competency, which aims to better coordinate hospitals and ensure their sound management and operation.¹⁰² This approach by Japan, which is Vietnam’s largest ODA provider and second biggest foreign investor, has been key in easing the harmony between their countries.¹⁰³

⁹⁵ Net ODA, OECD, <https://data.oecd.org/oda/net-oda.htm> (last visited on Nov. 19, 2018) defines ODA as government aid designed to promote the economic development of developing countries that is concessional, with a grant element of at least twenty-five percent. For information on the development of Japan’s ODA charter: Official Development Assistance Charter, Ministry of Foreign Affairs (June 30, 1992) (Japan); Official Development Assistance Charter, Ministry of Foreign Affairs (Aug. 29, 2003) (Japan); Development Cooperation Charter, Ministry of Foreign Affairs (Feb. 10, 2015) (Japan). And to understand the reasons for the changes in Japan’s ODA policies: Kazuo Sunaga, *The Reshaping of Japan’s Official Development Assistance (ODA) Charter*, FASID Discussion Paper on Development Assistance No.3 (Nov. 2004), <https://www.mofa.go.jp/policy/oda/reform/paper0411.pdf>.

⁹⁶ Hiep, *supra* note 91.

⁹⁷ *Vietnam-Japan relations develop stably in all aspects: Japanese politician*, The Voice of Vietnam (Sept. 19, 2018), <https://english.vov.vn/diplomacy/vietnamjapan-relations-develop-stably-in-all-aspects-japanese-politician-383633.vov>.

⁹⁸ *Japan’s ODA Data for Viet Nam*, Ministry of Foreign Affairs (2017) (Japan), <https://www.mofa.go.jp/files/000142552.pdf>.

⁹⁹ *Economic Management and Competitiveness Credit (III)*, JICA (Jan. 16, 2017), <https://www.jica.go.jp/english/news/press/2016/c8h0vm0000ap8ram-att/EMCC.pdf>

¹⁰⁰ Alina R. Menocal & Leni Wild, *Where can Japanese Official Development Assistance add value?*, ODI Project Briefing No. 71 (Feb. 2012).

¹⁰¹ *Id.*

¹⁰² *The Project for Improvement of Hospital Management Competency*, JICA (Dec. 22, 2016), <https://www.jica.go.jp/project/english/vietnam/044/outline/index.html>.

¹⁰³ Pham Hoang Mai, *Predictability and Stability of ODA Flows The Case of Vietnam*, Ministry of Planning and Investment-Vietnam (last visited Nov. 21, 2018); *PM appreciates Japan’s 26-year ODA to Việt Nam*, Viet Nam

Furthermore, Japan offers a “particular sensitivity, humility and understanding in its engagement [with recipient countries] . . . which may be linked to its own history as an aid recipient, making it more empathetic in its approach.”¹⁰⁴ Lastly, Japan’s efforts to maintain transparency by providing statistics on ODA data¹⁰⁵ and coherent ODA Evaluation from the ex-ante through ex-post phases of projects, which include stipulating the independence of third-party evaluations, establishing mechanisms that ensure meaningful changes based on past successes and failures, and disclosure of information through visualization,¹⁰⁶ foster trust and cooperation in Vietnam.

Japan’s partnership agreements with Vietnam have also contributed to pushing their relationship to new heights. On March 18, 2014, Japan and Vietnam deepened their relationship to the “Extensive Strategic Partnership for Peace and Prosperity in Asia” (“Partnership”) based on a framework of mutual trust and cooperation in science-technology, education-training, culture, . . . and people-to-people exchanges.”¹⁰⁷ This Partnership has led to the boosting of security ties, as shown by Japan’s first submarine visit to Vietnam.¹⁰⁸ Although this was characterized as a routine visit, it is significant in being one of several defense-related developments that commemorate 45 years of mutual trust and cooperation in maintaining the sovereignty, independence, and development of both countries.¹⁰⁹ And the Japan-Vietnam Joint Initiative,¹¹⁰—started in 2003 to promote an open and transparent business environment in Vietnam—is a recurring series of policy dialogues with both governments and the private sector jointly formulating an “action plan” on

News (Aug. 23, 2018), <https://vietnamnews.vn/politics-laws/464373/pm-appreciates-japans-26-year-oda-to-vietnam.html#rdqtjpEVyUGsbRxo.97>.

¹⁰⁴ Menocal & Wild, *supra* note 100.

¹⁰⁵ *ODA by Region East Asia*, Ministry of Foreign Affairs (Nov. 1, 2018), https://www.mofa.go.jp/policy/oda/page_000008.html#vietnam.

¹⁰⁶ *Annual Report on Japan’s ODA Evaluation 2017*, Ministry of Foreign Affairs (Jan. 2018) (Japan).

¹⁰⁷ Japan-Viet Nam Joint Statement on the Establishment of the Extensive Strategic Partnership for Peace and Prosperity in Asia, Japan-Viet., Mar. 18, 2014, <https://www.mofa.go.jp/files/000031617.pdf>.

¹⁰⁸ Prashanth Parameswaran, *Why Japan’s first submarine visit to Vietnam matters*, The Japan Times (Sept. 21, 2018), <https://www.japantimes.co.jp/opinion/2018/09/21/commentary/japan-commentary/japans-first-submarine-visit-vietnam-matters/#.XBGUueJ7mUl>.

¹⁰⁹ *Id.*; For more information on Japan-Vietnam relations within the context of security, see Mizuki Okada, *Vietnam Expects Bigger Role for Japan in Asia’s Security*, Japan Forward (Aug. 8, 2018), <https://japan-forward.com/vietnam-expects-bigger-role-for-japan-in-asias-security/>; *Vietnam, Japan hold sixth defence policy dialogue*, The Voice of Vietnam (July 4, 2018), <https://english.vov.vn/politics/vietnam-japan-hold-sixth-defence-policy-dialogue-378338.vov>.

¹¹⁰ Vietnam-Japan Joint Initiative to Improve Business Environment with a view to strengthen Vietnam’s Competitiveness, Japan-Viet., Dec. 4, 2003, <https://www.mofa.go.jp/region/asia-paci/vietnam/report0312.pdf>.

issues such as labor, intellectual property, customs, etc.¹¹¹ Lastly, the bilateral Vietnam–Japan Economic Partnership Agreement (“VJEPA”)¹¹² and multilateral ASEAN–Japan Comprehensive Economic Partnership Agreement (“AJCEP”),¹¹³ reflects a strong friendship that has been continuously nurtured by the leaders and peoples between these countries.¹¹⁴

Japan and Vietnam’s relationship has undergone a drastic improvement that transformed from enmity to traditional friendship and strategic partnership due to how Japan has invested in Vietnam’s integration into the world economy.¹¹⁵ Both countries continuously nurture their friendship and demonstrate the high esteem they have for each other through regular high-level visits and exchanges by leaders, along with Japan’s close and effective cooperation with Vietnam bilaterally and at multilateral forums and international organizations.¹¹⁶ This was shown by Vietnam’s President Trần Đại Quang (“Quang”), who has expressed his appreciation for the strong, comprehensive and substantial development of the relationship with Japan.¹¹⁷ During his stay in Japan, Quang met with Emperor Akihito, Empress Michiko, Prime Minister Shinzo Abe, and other leaders, and stated that he “always consider [Japan’s] success in Vietnam the country’s success.”¹¹⁸ This sense of camaraderie is felt even among the Vietnamese based on their positive responses to questions on whether Japan’s ODA funds promote friendship and foster economic

¹¹¹ *Vietnam-Japan Joint Initiative helps improve business climate*, Vietnam Plus (Dec. 7, 2017), <https://en.vietnamplus.vn/vietnamjapan-joint-initiative-helps-improve-business-climate/123002.vnp>.

¹¹² Agreement Between Japan And The Socialist Republic Of Viet Nam For An Economic Partnership, Japan-Viet., Dec. 25, 2008, <https://www.mofa.go.jp/region/asia-paci/vietnam/epa0812/agreement.pdf>.

¹¹³ Agreement on Comprehensive Economic Partnership Among Japan and Member States of the Association of Southeast Asian Nations, *opened for signature* Apr. 14, 2008, (*entered into force* Dec. 1, 2008), <https://www.asean.org/storage/images/archive/agreements/AJCEP/Agreement.pdf>.

¹¹⁴ Thuan Huu, *Strengthening Vietnam-Japan extensive strategic partnership*, Nhan Dan (May 28, 2018), <http://en.nhandan.org.vn/politics/editorial/item/6210302-strengthening-vietnam-japan-extensive-strategic-partnership.html>.

¹¹⁵ Ngo Xuan Binh, *The Adjustment of Japan’s ODA to Vietnam in the Context of Globalization and Localization*, Int. Research for Japanese Stud. (Mar. 3, 2010), <http://publications.nichibun.ac.jp/region/d/NSH/series/symp/2010-03-30/s001/s009/pdf/article.pdf>.

¹¹⁶ Huu, *supra* note 114; see *Vietnam-Japan relations develop stably in all aspects: Japanese politician*, The Voice of Vietnam (Sept. 19, 2018), <https://english.vov.vn/diplomacy/vietnamjapan-relations-develop-stably-in-all-aspects-japanese-politician-383633.vov>.

¹¹⁷ *Japan a long-term partner of Việt Nam: President*, Viet Nam News (Aug. 2017), <https://vietnamnews.vn/politics-laws/417087/japan-a-long-term-partner-of-viet-nam-president.html#C3uPkBjLUyY8ybR1.97>.

¹¹⁸ Nguyen Dat, *State visit gives boost to Vietnam-Japan relations*, Vietnam Investment Review (Aug. 6, 2018), <https://www.vir.com.vn/state-visit-gives-boost-to-vietnam-japan-relations-59947.html>.

growth in JICA's Data Collection Survey. Overall, Japan's efforts in Vietnam has been rewarded with a relationship that some believe is at its highest point.¹¹⁹

b. China-Philippines Relations

Despite the rising tensions between the Philippines and its neighbor China, there have been centuries of migration and trade binding these countries as generations of Chinese settled in the Philippines.¹²⁰ The origins of this tension lie in the Philippines' colonial past, starting from Spanish colonial rule, which lasted until 1898,¹²¹ when Spain lost the Spanish-American War and ceded the country to the U.S. for \$20 million upon the ratification of the Treaty of Paris¹²² During Spanish colonialism, the Chinese were allowed to become middlemen for the export trade¹²³ and had preeminent positions for monopoly contracting on rice, tobacco, sugar, and other goods, thus fostering a competitive situation with Filipino enterprises that was ripe for cultural biases.¹²⁴ Under U.S. colonialism, there was a rise in anti-China sentiment that stemmed from economic and cultural tensions in the U.S.,¹²⁵ where workers resented Chinese immigrants for taking jobs in gold mines, factories, and railroads, leading to legislature limiting future Chinese immigration through the Chinese Exclusion Act.¹²⁶ While Chinese and Filipino guerrilla forces were united in resisting Japanese occupation of the Philippines during the Second World War,¹²⁷ economic and cultural biases, such as the exemption of Filipinos from the Chinese Exclusion Act, and rising Filipino

¹¹⁹ *Friendship association marks Vietnam-Japan diplomatic ties*, Vietnam Plus (Sept. 19, 2018), <https://en.vietnamplus.vn/friendship-association-marks-vietnamjapan-diplomatic-ties/138597.vnp>.

¹²⁰ Bao Maohong, *On Studies of the History of the Philippines in China*, 60 *Phil. Studies* 102-116 (2012).

¹²¹ Michael Cullinane, Gregorio C. Borlaza, et. al., *Philippines-The Spanish period*, Encyclopædia Britannica (Nov. 30, 2018), <https://www.britannica.com/place/Philippines/The-Spanish-period>.

¹²² Treaty of Peace Between the United States and Spain, 55 Cong. 5-12, Dec. 10, 1898.

¹²³ Bobby M. Tuazon, *The Highs and Lows of Philippines-China Relations: Current Situation and Prospects*, CenPEG (Apr. 18, 2014), <http://www.cenpeg.org/pol-study/int/PAPER%20FOR%20GASS%20ISEAS%20lecture%20of%20April%2018%202014.pdf>.

¹²⁴ Edgar Wickberg, *Early Chinese Economic Influence in the Philippines, 1850-1898*, 3 *Pac. Aff.* 275-285 (1962).

¹²⁵ Cullinane, Borlaza, et. al., *supra* note 138.

¹²⁶ *Id.*; see *Milestones in the History of U.S. Foreign Relations, Chinese Immigration and the Chinese Exclusion Acts*, Office of the Historian (U.S.) (last visited Nov. 25, 2018); An act to execute certain treaty stipulations relating to the Chinese, ch. 126, 47 Cong. 58-61, *repealed by* An Act to repeal the Chinese Exclusion Acts, to establish quotas, and for other purposes, 8 U.S.C. §§ 263 et. al. (1943).

¹²⁷ Li Yuk-Wai, *The Chinese Resistance Movement in the Philippines during the Japanese Occupation*, 23 *J. Southeast Asian St.* 308-321 (1992); see *How Chinese guerrillas fought for Philippine freedom*, ABS-CBN News (Nov. 3, 2016), <https://news.abs-cbn.com/focus/02/19/15/how-chinese-guerrillas-fought-philippine-freedom>.

nationalism, allowed anti-China sentiment to become nationwide.¹²⁸ Although the U.S. relinquished sovereignty over the Philippines in 1946,¹²⁹ it has emerged as “a hybrid thing: formally sovereign, yet practically a neocolony of the [U.S.]. To this day, especially in the face of contemporary Chinese pressures over its territorial waters and islands, it continues to be tied to the geopolitical designs and interests of the [U.S.] even if its political and cultural developments have moved in other directions.”¹³⁰

The Philippines and China have established diplomatic relations on June 9, 1975,¹³¹ but bilateral relations have not been smooth sailing for these countries. Although there have been over 100 bilateral agreements ranging from tourism and culture,¹³² trade,¹³³ science and technology,¹³⁴ and even a joint statement on bilateral cooperation in the 21st century,¹³⁵ China-Philippines relations have not always been harmonious due to diplomatic fiascos such as the Philippines government’s close ties with Taiwan¹³⁶ (a sensitive issue for the One China principle), disputes on the salaries and treatment of overseas Filipino workers, and the involvement of former Filipino president Gloria Arroyo and other top officials in alleged corruption cases involving infrastructure

¹²⁸ Tuazon, *supra* note 123.

¹²⁹ Treaty of General Relations Between the United States of America and the Republic of the Philippines, Phil.-U.S., July 4, 1946, 61 Stat. 1174.

¹³⁰ Vicente L. Rafael, *Colonial Contractions: The Making of the Modern Philippines, 1565–1946* (Oxford Research Encyclopedia of Asian History ed. 2018).

<http://oxfordre.com/asianhistory/view/10.1093/acrefore/9780190277727.001.0001/acrefore-9780190277727-e-268>.

¹³¹ See Vienna Convention on Diplomatic Relations, adopted Apr. 14, 1961, 18 U.S.T. 2410, 500 U.N.T.S. 95.

¹³² Cultural Agreement between the government of the Republic of the Philippines and the government of the People’s Republic of China, China-Phil., July 8, 1979, 1156 U.N.T.S. 95.

¹³³ Agreement between the government of the Republic of the Philippines and the government of the People’s Republic of China concerning encouragement and reciprocal protection of investments, China-Phil., July 20, 1992, 1994 U.N.T.S. 25.

¹³⁴ Executive Agreement concerning technical co-operation, China-Phil., Aug. 25, 1964, 511 U.N.T.S. 233.

¹³⁵ Joint Statement Between China and the Philippines on the Framework of Bilateral Cooperation in the Twenty-First Century, China-Phil., Nov. 15, 2000.

¹³⁶ Juvina Lai, *China concerned after Taiwan and Philippines sign deal*, Taiwan News (Dec. 9, 2017), <https://www.taiwannews.com.tw/en/news/3316723>. For background on One China principle, see Eleanor Albert, *China-Taiwan Relations*, Council on Foreign Relations (June 15, 2018), <https://www.cfr.org/background/china-taiwan-relations>.

projects¹³⁷ funded by Chinese companies.¹³⁸ The lowest point for their relationship was the filing of a petition for arbitration by the Philippines against China before the International Tribunal on the Law of the Sea in March of 2014 to resolve territorial disputes in South China Sea, where China has increased efforts to reclaim that area by physically expanding the size of islands or creating new ones; even militarizing them.¹³⁹

When Duterte visited China in 2016 to meet with Xi, Premier Li Keqiang, National People's Congress Standing Committee Chair Zhang Dejiang, and Vice Premier Zhang Gaoli, it was a “milestone visit” in which a joint statement¹⁴⁰ was released on how “both sides acknowledged the centuries-old bonds of friendship of the Filipinos and Chinese people and agreed to continue to make concerted efforts to cement the traditional friendship between the two countries.”¹⁴¹ This has culminated into the Memorandum of Understanding¹⁴² that formalized the Philippines’ intention to participate in the BRI, with both countries agreeing to hold regular dialogue on development strategies guided by mutual respect for territorial integrity and sovereignty and transparency.¹⁴³ However, Duterte’s pragmatic and flexible stance in “building bridges” with China has been unpopular among the traditional political elite and broader public.¹⁴⁴ Former President Benigno Aquino III, who oversaw a largely confrontational policy towards China, “likened any joint development agreement with China as an unfair arrangement, whereby the Asian powerhouse tells its smaller neighbor that ‘What is ours is ours, and what is yours, we

¹³⁷ Roel Landingin, *Chinese foreign aid goes offtrack in the Philippines*, PCIJ (2013), <http://www.realityofaid.org/wp-content/uploads/2013/02/ROA-SSDC-Special-Report8.pdf>; Camille Elemia, *Graft cases vs Arroyo over NBN-ZTE deal junked*, Rappler (Sept. 16, 2016), <https://www.rappler.com/nation/146463-sandiganbayan-junks-graft-cases-vs-arroyo-over-nbn-zte-deal>; see Ronalyn V. Olea, *Other Gov’t Deals with China also Marred by Bad Loans and Corruption*, Bulatlat (Sept. 29, 2007), <http://bulatlat.com/main/2007/09/29/other-gov%E2%80%99t-deals-with-china-also-marred-by-bad-loans-and-corruption/>.

¹³⁸ Tuazon, *supra* note 123.

¹³⁹ *The South China Sea Arbitration (Phil. v. China)*, *supra* note 1; *Territorial Disputes in the South China Sea*, Council on Foreign Relations, <https://www.cfr.org/interactives/global-conflict-tracker#!/conflict/territorial-disputes-in-the-south-china-sea> (last visited on Dec. 13, 2018).

¹⁴⁰ Joint Statement of the Republic of the Philippines and the People's Republic of China, China-Phil., Oct. 21, 2016, <https://dfa.gov.ph/dfa-releases/10748-joint-statement-of-the-republic-of-the-philippines-and-the-people-s-republic-of-china>.

¹⁴¹ *Phil-China Relations 菲中关系*, Embassy of the Philippines (July 7, 2017).

¹⁴² Memorandum of Understanding Between the Government of the Republic of the Philippines and the Government of the People's Republic of China on Cooperation on the Belt and Road Initiative, China-Phil., Nov. 20, 2018.

¹⁴³ *Id.*

¹⁴⁴ Richard J. Heydarian, *Pro- and anti-China lines harden in the Philippines*, Asia Times (Aug. 7, 2018), <http://www.atimes.com/article/pro-and-anti-china-lines-harden-in-the-philippines/>.

share.”¹⁴⁵ Foreign Secretary Alan Cayetano has struck back by accusing his predecessors of stoking unnecessary tensions in the South China Sea, leading to lost opportunities for cooperation in fields such as science and technology, education, etc.¹⁴⁶

Despite the support of Duterte’s administration, a majority of Filipinos remain skeptical of China’s intentions as they wait for it to “fulfill its commitment to provide billions of dollars of aid and investment to the country under [the BRI].”¹⁴⁷ China is not a big donor to the Philippines in terms of foreign aid and ODA because as of June 2018, China accounted for merely 0.82 percent of the total ODA at \$124.37 million and ranked 11th out of 18 according to the National Economic and Development Authority (“NEDA”).¹⁴⁸ Contrast this to China’s promise to deliver \$24 billion sum in 13 cooperation, financial assistance, and investment pledges, with \$15 billion in business to business contracts, \$9 billion in ODA, \$7 billion in loans, and \$2 billion in concessional loans.¹⁴⁹ However, the list of pipeline ODA projects pending approval or endorsement in the NEDA database reveal that the infrastructure projects that will be financed with Chinese ODA loans, if they go ahead, are about \$14 billion.¹⁵⁰ When Xi visited Manila recently, he and Duterte signed 29 additional agreements,¹⁵¹ including a Memorandum of Understanding on China’s \$1 trillion BRI and joint oil and gas development in the contested South China Sea, the details of which remain vague to public.¹⁵² The lack of transparency surrounding the deals agreed upon by both governments brings up another point of contention: the lack of information available to the public on what their country has signed up for with the BRI projects.¹⁵³ Another underlying source of tension is the Philippines’ arbitral win at the Hague’s Permanent Court of Arbitration.¹⁵⁴ Duterte

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ Dindo Manhit, *Growing Philippines-China relations: Boon or bane?*, Philippines Daily Inquirer (Dec. 5, 2018), <https://opinion.inquirer.net/118163/growing-philippines-china-relations-boon-or-bane>.

¹⁴⁸ *Indicative Total ODA (Loans and Grants) Ranking by Fund Source As of June 2018*, NEDA-Monitoring and Evaluation Staff (Sept. 4, 2018), <http://www.neda.gov.ph/wp-content/uploads/2013/10/Indicative-Overall-ODA-Ranking-by-Fund-Source-ao-June-2018-Generated-on-September-4-2018.pdf>.

¹⁴⁹ Bienvenido S. Oplas Jr., *The meager truth of China’s aid to the Philippines*, Asia Times (Dec. 5, 2018), <http://www.atimes.com/article/the-meager-truth-of-chinas-aid-to-the-philippines/>.

¹⁵⁰ *Indicative Total ODA (Loans and Grants) Ranking by Fund Source As of June 2018*, *supra* note 148.

¹⁵¹ Joint Statement of the Republic of the Philippines and the People’s Republic of China, China-Phil., Nov. 21, 2018.

¹⁵² Oplas Jr., *supra* note 149.

¹⁵³ *Id.*

¹⁵⁴ The South China Sea Arbitration (Phil. v. China), *supra* note 1.

has opted to set this issue aside, but many Filipinos want to ensure that the Philippines is not undermined and want “full control and supervision in the exploration and exploitation of its natural resources.”¹⁵⁵ As evidenced by its agreements with China, the Philippines government is receptive to the BRI given its congruence with its goal of ushering a “golden age of infrastructure” under Duterte’s regime.¹⁵⁶ However, there is room for improvement in stemming the rising anti-China sentiment among Filipinos.

c. Japan-Vietnam Relations as a Guide for China

There exists a great deal of distrust and anger among Filipinos regarding the BRI, which is why it is imperative that China adjusts its investment strategy by looking to Japan’s methods in Vietnam. China must address the lack of a “centralized aid agency affiliated with its foreign affairs ministry,” such as JICA for Japan’s ODA, and its failure to provide official statistics on its foreign aid activities.¹⁵⁷ Although China has undertaken extensive development assistance programs since 1950, the government has neither provided official ODA statistics nor an evaluation process for said foreign aid, fostering distrust and fear-mongering among its critics.¹⁵⁸ There must be also be an improvement in political interaction, which is a crucial factor in advancing diplomatic, economic, and sociocultural ties.¹⁵⁹ China and the Philippines must increase their high-level visits and exchanges to foster the mutual trust and friendship that both governments wish to develop. It is clear that a visible show of solidarity for the people of both countries has been lacking since Xi’s visit to the Philippines in November 2018 was the first state visit by a Chinese president in 13 years and Chinese Premier Li Keqiang’s visit in November 2017 was his first official visit in 10 years.¹⁶⁰ China must also address the arbitration matter and draft an official treaty that would bind

¹⁵⁵ Heydarian, *supra* note 144.

¹⁵⁶ Darlene V. Estrada, *China’s Belt and Road Initiative: Implications for the Philippines*, 5 FSI Insights 3 (Mar. 2018).

¹⁵⁷ Landingin, *supra* note 137.

¹⁵⁸ See *Regulation of Foreign Aid: China*, Library of Congress (U.S.) (June 9, 2015), <https://www.loc.gov/law/help/foreign-aid/china.php>; *China’s Foreign Aid (White Paper)*, promulgated by the State Council, China Daily (Apr. 21, 2011), <http://www.eu-china.net/web/cms/upload/pdf/nachrichten/2011-04-21Chinas-ForeignAid-WhitePaper.pdf>.

¹⁵⁹ Rabena, *supra* note 13.

¹⁶⁰ Pia Ranada, *Xi Jinping to visit PH from November 20-21*, Rappler (Nov. 17, 2018), <https://www.rappler.com/nation/216773-xi-jinping-philippine-visit-november-20-21-2018>.

both countries to rules on joint exploration to show its respect for the Philippines' legal claims and assuage environmental concerns.¹⁶¹

China and the Philippines must work to contain external sources of concern and suspicion regarding BRI projects, such as their quality, the requirement of Chinese workers for said projects, and environmental concerns, by being proactively transparent on their dealings and endorsing companies of good standing, preferably local firms, to prevent reputational costs and advance both an appreciation of Duterte's political capital and China's image.¹⁶² Hiring local firms would mitigate any allegations of corruption, prevent resentment among Filipino workers, and lower costs of BRI projects, thus easing the fear of the Philippines falling into a "debt trap." China should follow a similar concept to the Japan-Vietnam Joint Initiative¹⁶³ and involve the Filipino private sector in its dialogue on the BRI. By having policy dialogues with both the Philippines government and private sector, China has a better chance of proving its intentions to Filipinos through the marketing of the private sector. Finally, China must also maximize people-to-people diplomacy by increasing exchanges between Filipino scholars, academics, writers, scientists, etc. with their Chinese counterparts.¹⁶⁴ After all, these types of exchanges played an important role in opening diplomatic relations between the Philippines and China in 1975; the impact of people-to-people relations cannot be stated enough in how it can be "more lasting and perpetual compared with state-to-state relations which are confronted by constant shifts, challenges, and tensions. [P]eople-to-people relations [plant the seeds and soften] the ground for friendlier and harmonious relations between countries."¹⁶⁵

3. The Future of the BRI in the Philippines

The BRI's future in the Philippines hangs in the balance: on one hand, the Philippines government is receptive to Chinese aid; on the other hand, the Filipino population is skeptical of

¹⁶¹ *PH-China joint exploration needs treaty framework, says expert*, ABS-CBN News (Mar. 6, 2018), <https://news.abs-cbn.com/news/03/06/18/ph-china-joint-exploration-needs-treaty-framework-says-expert>.

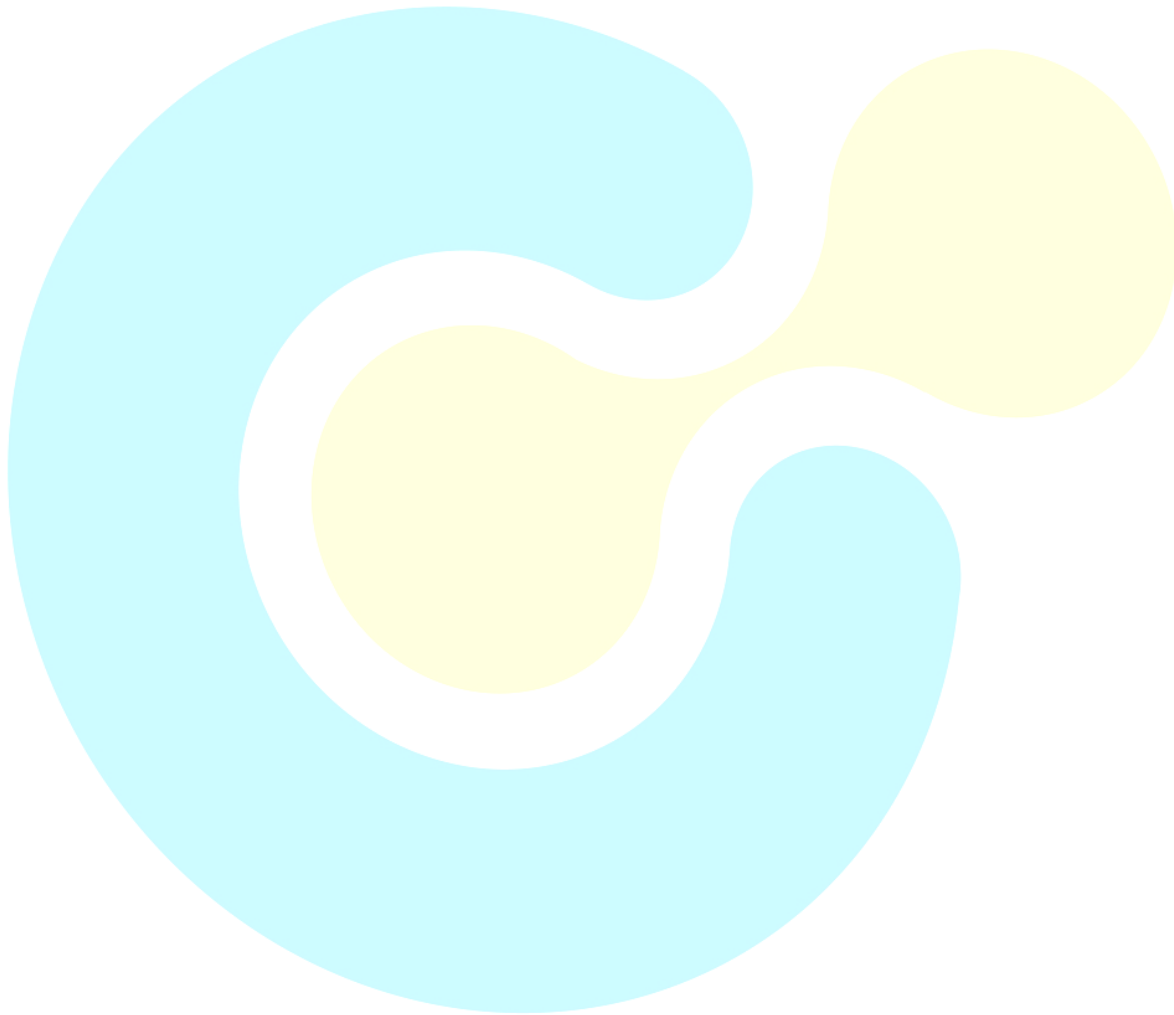
¹⁶² Rabena, *supra* note 13.

¹⁶³ Vietnam-Japan Joint Initiative to Improve Business Environment with a view to strengthen Vietnam's Competitiveness, *supra* note 110.

¹⁶⁴ *See* Tuazon, *supra* note 123.

¹⁶⁵ *Id.*

said aid. If China wishes to tip the scales in its favor, it must work on improving its image and win the hearts of Filipinos by being flexible in its aid development approach, respecting and understanding local histories and customs, providing more data for public review, and promoting open dialogues and exchanges with both public and private actors. To quote Xi's African proverb, "If you want to go fast, walk alone; and if you want to go far, walk together."¹⁶⁶



¹⁶⁶ Xinhua, *China pursues world peace, common development in international agenda*, People's <http://en.people.cn/n3/2018/0303/c90000-9432309.html>.