

POLICY BRIEF

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Taking the Cudgel for the 12 July 2016 UNCLOS Ruling? The Revival of the QUAD

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On 12 July 2016, the Permanent Court of Arbitration (PCA) in The Hague finally came out with its ruling on the case between the Philippines and China over the South China Sea dispute. The ruling represented a sweeping legal victory for the Philippines and fundamentally could alter the international legal and potentially the geopolitics of the South China Sea. No wonder most Filipinos were jubilant that their small country won an overwhelmingly legal victory against an emergent power bent of expanding into their country's vast exclusive economic zone (EEZ). The Filipino public's jubilation on the PCA ruling reflected its latent distrust on China generated by the raging territorial dispute between the two countries in the South China Sea that began in early 2010 and was intensified by the tense three-month stand-off between Philippine and Chinese civilian vessels near Scarborough Shoal in 2012.

The Philippine government's reaction, however, was sober with then Philippine Foreign Secretary Perfecto Yasay showing a gloomy face while announcing the administration's unenthusiastic reaction to the ruling. His subdued response to the award reflected the Duterte Administration's foreign policy goal of maximizing the Philippines' economic and trade ties with China by normalizing Sino-Philippine diplomatic relations. The Philippines' sweeping legal victory in the South China Sea case, however, would create political complications to its overarching goal. The administration's foreign policy gambit was to resolve this problem by seeking direct talks with China and in the process, expressed its willingness to set aside the UNCLOS ruling in exchange for the normalization of Sino-Philippine relations. More than a week after the 12 July 2016 was announced, President Duterte hinted that his administration is inclined to follow former President Fidel Ramos's suggestion that in exchange for the normalization of its bilateral relations with China, the Philippines should set aside the UNCLOS ruling. In September 2016, before departing to Laos for the Association of Southeast Asian Nations' (ASEAN) summit meeting, he announced that the 12 July 2016 UNCLOS ruling is a bilateral

matter between the Philippines and China, and is not a matter for ASEAN.

Way into his term, President Duterte became more determined to set aside the UNCLOS ruling on the South China Sea for the sake of the normalization of Philippine-China bilateral relations. On 20 December 2016, Chief Presidential Legal Counsel, Salvador B. Panelo, stated to set aside temporarily the UNCLOS ruling favoring the Philippines "since the country cannot enforce it against China." He further added "the ruling is a mere paper judgement." Accordingly, "instead of trying to enforce it against China with minimal chances for success, the Philippines should take advantage of economic benefits resulting from better relations with China." He went to say instead of trying to enforce it against China with a minimal chance of success, the Philippines should take advantage of economic benefits resulting from better relations with China. On 22 December 2016, President Duterte himself declared his readiness to set aside the PCA ruling amidst reports that PLAN has installed weapon systems in the seven land features which China occupies in the disputed waters. Succinctly, he said the changing nature of international politics in Southeast Asia prompted his decision.

Pleased by President Duterte's decision to side-line the ruling, China lifted its restriction on the importation of Philippine fruits that had been in place since the 2012 Scarborough Shoal stand-off and expressed interest in increasing its importation of agricultural and aqua cultural products. However, by deciding to side-line the UNCLOS ruling in favor of normalizing Philippine-China relations, the Duterte Administration showed that it was willing to ignore the public's support to the UNCLOS ruling on the South China Sea dispute.

Regional Implication of the Ruling

Despite the Duterte Administration's

and China's collusion to render the 12 July 2016 award as a bilateral matter between the two countries, the ruling on the invalidity of China's nine-dashed line has a wider regional implication as it encouraged other stake-holders in the dispute to seek more active participation in this maritime imbroglio. The adverse ruling on the legality of the nine-dash line and Beijing's decision to ignore it gave these countries an idea on how China will behave in the near future—an emergent great power determined to pursue territorial aggression with total disregard to international law. It also provided some states with the legal framework and rationale to coalesce to protect the freedom navigation, and the rules-based international order against China's maritime expansion and blatant disregard of international law.

Aware that international law is on their side, cooperation among some countries could be viewed as a joint effort to defend the rules-based international order against a revisionist power bent on asserting that might as right. The ruling facilitated negotiations among stakeholders who support it and eventually, created a strong incentive for cooperation to enforce the it despite China's efforts to render it a little more than a piece of trash. These are states that share the common objective of preventing the South China Sea from becoming a Chinese lake that will hamper the freedom of navigation in this important waterway. They also see the need for a collective effort against China as a means of protecting the rules-based international order.

In November 2017, Australia, India, Japan, and the United States revived the Quadrilateral Security Dialogue (QUAD) which has the goal of challenging China's expansive claim in the South China Sea while protecting their own economic ties with China. These four countries formed the original QUAD in 2007. Its goal was to provide a platform for these four Indo-Pacific states to exchange views on regional security issues with a special focus

on the rise of China and its implication for Asian Security. Unfortunately, the QUAD experienced a premature and sudden death when the Kevin Rudd-led Australia succumbed to Chinese diplomatic pressure to withdraw the country from the association, and as the Indian government tried to earn Chinese goodwill as it kept Japan out of its annual bilateral naval exercise with the U.S.

These four countries revived the QUAD in the light of China's expansion in the South China Sea marked by its increasing assertiveness of land reclamation and its decision to ignore the 12 July 2016 UNCLOS ruling that invalidated its expansive claim in the South China Sea. These four countries supported the ruling by calling for compliance by the parties involved in the territorial dispute, emphasizing the freedom of navigation, and extending efforts to strengthen security cooperation with their East and Southeast Asian security partners. After their November 2017 meeting in Manila, Australia and Japan separately called for "rules-based order" and respect for "international law" in the sea. Later in January 2018, India declared that it was committed to working together with ASEAN on maritime matters. This reflected, that while all these states are concerned about China's expansion and disregard of international law, they still have different strategic geography, threat perception, and the nature of their bilateral relations with China vary among the four powers.

Protecting the Rules-based International Order

The revival of the QUAD is the first multilateral pushback after China rejected the 12 July UNCLOS award to the Philippines. Notwithstanding their respective differences, these four countries are bound by a common view that the current balance of power is changing and the rules-based order is coming under increasing strain by China's emergence as a great power. They plan to use the QUAD

as a useful platform to share their respective assessment of Chinese capabilities, intentions, and formulate ways of dealing with them. They can discuss maritime security in the light of existing cooperation among their navies, the need to ensure the freedom of navigation, strengthening the rule of law in maritime disputes, humanitarian assistance and disaster relief, energy security, regional capacity-building, and finally an alternative regional connectivity initiative to China's One Belt One Road (OBOR) Initiative. They can also institutionalize the QUAD so that they can better coordinate their policies and pursue broader collaboration with smaller powers that are threatened by China's expansion in the South China Sea like Vietnam, Indonesia, and the Philippines. In the process, they can help establish a free, open, and inclusive Indo-Pacific region.

Although concerned about China's territorial expansion and disparaging attitude towards international law, these four states' goal is not the containment of China nor alliance formation. The revived QUAD is geared towards a more comprehensive partnership among the four member states less explicitly focused on defense issues. Although these four states currently reject any suggestion that the QUAD will become an Asian NATO or an alliance in the making, they believe that that if they would not collectively confront China's efforts to effect a revision of the current territorial and maritime arrangement, the next five years could enhance China's geo-strategic position. The result will be the unravelling of the current liberal international order in the Indo-Pacific region and its replacement by a Chinese-led illiberal/authoritarian regional order that will reign on the basis that "right makes might."