

ON THE 70th YEAR OF THE 1951 PHILIPPINE-US MUTUAL DEFENSE TREATY

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China’s continued consolidation of its illegal claims in the South China Sea, as represented by its Nine-Dash Line Map, highlights the importance of strengthening the security in this region among countries which adhere to the Rule of Law and the preservation of the global commons in our oceans and seas.

For the Philippines and the United States, with the departure in 1992 of U.S. military forces from Subic Naval Base and Clark Air Base in Luzon, the 1951 US-Philippine Mutual Defense Treaty or “MDT” became the foundation of the security alliance between the two countries. As stated in the MDT, the purpose of the US and the Philippines in forging the MDT is to “declare publicly and formally their sense of unity and their common determination to defend themselves against external armed attack.”

In early 1995, barely three years after the departure of U.S. military forces from the Philippines and while the MDT was subsisting, China seized Mischief Reef from the Philippines, which could not send a naval force to resist the Chinese occupation.

In 2012 and while the MDT was subsisting, China seized Scarborough Shoal from the Philippines, by violating the US-brokered deal for a mutual withdrawal from the shoal.

These Chinese seizures of Philippine territory and waters happened in the context of the so-called “neutral position” where the US does not take sides over “sovereignty claims” in the South China Sea.

With China’s relentless expansionism and the 2016 Award won by the Philippines under the United Nations Convention on the Law of the Sea or UNCLOS, it is our humble view that this US position is shifting, which may lead to a more robust implementation of the MDT in the South China Sea and the West Philippine Sea.

On July 13, 2020, U.S. Secretary of State Michael Pompeo declared that the United States is “aligning” its position on China’s maritime claims with the 2016 UNCLOS Award which invalidated China’s Nine-Dash Claim.

This year 2021 and a few months after US President Biden took office, Secretary of State Anthony Blinken, through his spokesperson, Ned Price, reaffirmed this US commitment in the MDT.

US “alignment” with the UNCLOS Award unequivocally means that the US is siding with the Philippines over its rights in the West Philippine Sea, as upheld by the Award. This is backed by the pronouncements of Secretary Pompeo in 2019 and Secretary Blinken in 2021 that the MDT applies in the South China Sea as part of the Pacific and “any armed attack on any Philippine forces, aircraft, or public vessels in the South China Sea will trigger mutual defense obligations under...our Mutual defense treaty.”

Based on these pronouncements, the U.S. publicly committed through the MDT that it will back the Philippines in the event of a Chinese armed attack against Philippine armed forces, public vessels or aircraft which are rightfully stationed or transiting in the South China Sea, including the West Philippine Sea.

U.S. “alignment” with the UNCLOS Award also means that the U.S. is siding with Vietnam, Malaysia, Indonesia and Brunei which primarily rely on UNCLOS in defending their maritime rights against China’s illegal and historically baseless Nine-Dash Line claim.

The renewed commitments of the US under the MDT are made in the context of the consolidating support of the 2016 UNCLOS Award by other countries.

Last year 2020, the Philippines, Vietnam and Malaysia sent notes verbales strongly rejecting China’s claims in the South China Sea before the United Nations, as these countries have been doing so since China formally introduced its Nine-Dash Line claim to the world in 2009. These countries were followed by Indonesia’s note verbale on May 26, 2020 which invoked the 2016 Award as against China’s Nine-Dash Line claim.

On July 23, 2020, Australia sent a note verbale to the UN stating, among others, that the “Australian Government...disputes China’s claim that it is not bound by the Arbitral Award” and that “the Tribunal’s decision is final and binding on both parties to the dispute.”

On September 16, 2020, the United Kingdom, France and Germany sent a joint note verbale to the UN declaring that China’s claims in the South China Sea “do not comply with international law and UNCLOS provisions and...that the arbitral award in Philippines v. China case dating to 12 July 2016 clearly confirms this point.”

There are recent proposals to review the MDT, including from the Philippine Department of Defense, apparently based on the ambiguity of the text of the MDT.

We are of the humble view that what is important at this time is no so much the text of the MDT as the political will and commitment of the US and the Philippines in enforcing the treaty.

As shown by the renewed commitments of the US to the MDT declared in 2019 and 2021, it is the parties' actual political will and commitment that will make the MDT effective and credible especially in the South China Sea.

The commitments of the US and the Philippines to the MDT can be made ironclad if they are anchored on their respective national interests. It is critical that there be a convergence of interests, will and purpose between the US and the Philippines to make the MDT effective and credible against a third party aggressor. Moreover, it is important that the parties are able to clearly convey the message of enforcing the MDT to an aggressor like China. Through this, a conflict hopefully becomes preventable through credible deterrence.

Thus, we are of the view that the MDT can be made relevant in the South China Sea without need of formal re-negotiation as to its text. The Philippines and the US need to continue their security dialogue to reach a common understanding on how the MDT will be applied in particular situations.

Given the consolidating support of the UNCLOS Award in the international community, the Philippines should also continue to build security alliances with like-minded countries in addition to the MDT.

Our Philippine Government should actively build on this support by entering into agreements with countries to implement the Award; we should welcome and join joint patrols and freedom of navigation and overflight operations conducted by the United States, United Kingdom, France, Australia and Japan; and, importantly, the Philippines should modernize its navy, airforce and military and develop its own credible defense posture to protect its land and waters from China's incursions.

We regret to say that we need to recover from the damages inflicted by the Duterte administration which mindlessly pursued President Duterte's self-professed "love" for Chinese President Xi Jinping, treating the 2016 UNCLOS Award as a "scrap of paper," and in compromising our security alliance with the US as in President Duterte's threat to terminate the Visiting Forces Agreement, an implementing agreement of the MDT.

As we have said before, no other nation can support us more than we do ourselves, and there can be no unity over the right course of action unless we initiate this unity.

During this 70th anniversary of the MDT, may we remind ourselves that underlying our security considerations is the basic moral principle of doing what is right for the sake of humanity in this increasingly interconnected world. END