

Quad's India problem : no different from Beijing

Gupta, Sourabh

2021

Gupta, S. (2021). Quad's India problem : no different from Beijing. RSIS Commentaries, 147-21.

<https://hdl.handle.net/10356/155326>

Nanyang Technological University

Downloaded on 29 Nov 2023 13:29:31 SGT

RSIS Commentary is a platform to provide timely and, where appropriate, policy-relevant commentary and analysis of topical and contemporary issues. The authors' views are their own and do not represent the official position of the S. Rajaratnam School of International Studies, NTU. These commentaries may be reproduced with prior permission from RSIS and due recognition to the author(s) and RSIS. Please email to Mr Yang Razali Kassim, Editor RSIS Commentary at RSISPublications@ntu.edu.sg.

Quad's India Problem: No Different From Beijing

By Sourabh Gupta

SYNOPSIS

The Quad, which held its first in-person leader-level summit meeting at the White House, aims to champion the role of international law in the maritime domain. Australia, Japan and the US should first get New Delhi to revise its UNCLOS-related rules and regulations, which bear far greater similarity with Beijing's than that of its Quad partners.

COMMENTARY

OVER THE past 12 months, the Quadrilateral Security Dialogue – or Quad – countries have racked up a series of impressive firsts: A first standalone meeting of the foreign ministers of Australia, India, Japan and the United States in one of their capital cities (Tokyo) in October 2020. A first Malabar series quadrilateral naval exercise in 13 years in the Bay of Bengal in November 2020. A first leader-level summit meeting, albeit held virtually, in March 2021. And as a crowning achievement (so far), a first-ever in-person leader-level summit meeting at the White House on 24 September 2021.

The Quad is here to stay as a loose entente of like-minded democracies within the Indo-Pacific's emerging security multilateralism. The idea of the Quad as a consultative forum dates back to 2006 when, in the wake of the Boxing Day Tsunami, the Bush administration proposed the four countries as democracies with substantial naval capabilities to set up a platform for exchange of views on regional maritime challenges.

India, China and the Law of the Sea Convention

The foremost challenge in the Quad's view, judging by its pronouncements, is to prioritise the role of international law in the maritime domain, as reflected in the United

Nations Convention on the Law of the Sea (UNCLOS). Implicit in this view is that the Quad is a responsible custodian of the rule of law and good order at sea, especially in the context of Beijing's presumptive threat to navigational and overflight freedoms and the 'rules-based order'.

But how accurate or plausible is this premise, particularly insofar as it applies to New Delhi? In most respects, New Delhi's observance of the rule of (maritime) law is just as questionable as Beijing's, and in a few instances, even more so.

In the territorial sea, India has maintained a prior notification requirement for innocent passage of foreign warships since 1976, much like China maintains a prior authorisation requirement since 1992. Beijing is pilloried for this excessive claim as tantamount to a denial of free navigation; New Delhi is not.

It may be relevant to point out too in this context: the tribunal in *Philippines v. China* had judged that Beijing did *not* consider the sea areas within the 'nine-dash line' (beyond 12 nautical miles of the features it administers) to be equivalent to its territorial sea or internal waters.

The 'nine-dash line' is not a limit of China's maritime sovereignty. As such, the geographic extent of Beijing's territorial sea-linked overreach in the South China Sea is no different from New Delhi's overreach from its outlying islands.

India: No Different from Beijing

Next, India draws straight baselines around the Lakshadweep group of islands in the Arabian Sea (since 2009), much like China drew similar baselines around the Paracel group of islands in the South China Sea in 1996. Neither India nor China is an archipelagic state, and these baselines exceed the maximum enclosable water-to-land ratio permitted by UNCLOS.

In the contiguous zone, New Delhi extends its territorial sea-linked security prerogatives to this sea area, just as Beijing does. Both violate the UNCLOS rulebook which limits the extension of the coastal state's territorial sea-linked prerogatives in the contiguous zone to customs, fiscal, immigration and sanitary matters only.

India's exclusive economic zone (EEZ)-related laws and regulations are, if anything, poorer. Contrary to UNCLOS, these rules have effect on a wholesale extension of Indian penal law beyond the territorial sea – a point that New Delhi did not deny in its losing effort in "*Enrica Lexie*" (*Italy v. India*) *Incident*, although it contended that these rules are limited to persons, not vessels.

New Delhi's submarine cable regime, too, fails to legally distinguish between cables and pipelines which are accorded different treatments on the continental shelf; India is just one of two Asian states (the other being Indonesia) that impede the freedom of user states to maintain and repair submarine cables in its EEZ.

More broadly, New Delhi's regulations on oceanographic surveys, compulsory measures against foreign warships, establishment of restricted navigation zones, and entry and exit of hazardous cargoes within its exclusive maritime zones are in principle

no different from Beijing's revised and recently promulgated Coast Guard and Maritime Safety Traffic Law. Each exceeds the limits specified by UNCLOS.

India and UNCLOS: It's Not All Bad

To be fair, India deserves credit for its unqualified adherence to adverse Law of the Sea tribunal awards. Indian nationalism can be no less pungent than China's, yet a tough-minded Indian government has shown as much grace in submitting to tribunal awards as an equally tough-minded leadership in Beijing has shown a lack of grace in caricaturing the court.

India also deserves credit for the panoply of maritime boundary agreements that it has stitched up with a majority of its neighbours. And unlike Beijing, New Delhi does not inject its coast guard or navy provocatively in sensitive waters at the first hint of tension.

On the other hand, Beijing has never denied the freedom of transit in ways that New Delhi enforced such as in 2015 against a neighbour. Annoyed that certain provisions of India's liking had not been adopted in the new constitutional settlement crafted by Nepal's constituent assembly, the Modi government instituted a five-month economic blockade of the land-locked country.

That 85 percent of a fractious constituent assembly – itself elected by 78 percent of the Nepalese electorate – had voted in favour of the constitution, and that this denial of transit aggravated the economic devastation wrought by a magnitude 7.8 earthquake in Katmandu earlier that summer, amounted to little in New Delhi's eyes.

The Quad is still a work in progress. It remains to be seen whether it can carve out a functionally relevant role that could swing the collective balance of power against China in the Indo-Pacific. Or whether the Quad will simply stand out as a veritable red shiny object of limited utility on the Indo-Pacific's landscape.

Regardless, if the Quad aspires to speak from a position of authority as a respectable custodian of the rule of law at sea, it must first get New Delhi to clean up its non-compliant UNCLOS act.

Sourabh Gupta is a resident senior fellow at the Institute for China-America Studies (ICAS) in Washington, D.C. He contributed this to RSIS Commentary.
