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## **Background Briefing:**

### **Malaysia: Prime Minister Najib Visits China**

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We request your assessment on Malaysia PM Najib Razak's visit to China this week, based on the issues raised below.

Q1- There are reports that Malaysia will be buying up to ten littoral mission ships from China in the first defence deal between both sides. Among the ten deals to be signed includes a multi-billion rail project to China for the construction of the Kuala Lumpur-Kelantan line. What is the significance of the defence deal in light of the South China Sea disputes and the tribunal ruling, and why?

ANSWER: The Award by the Arbitral Tribunal is binding only on China and the Philippines. While China has rejected the Award it seems clear that there may be a domestic reconsideration of how China should present its claims in the South China Sea in future. Because of President Duterte's visit to Beijing a two-year hiatus in bilateral relations is at an end. China has every incentive to exercise self-restraint and pursue diplomatic discussions with Manila.

From Malaysia's perspective, this is good news but it does not end the stand-off at Luconia shoals and illegal Chinese fishing in Malaysia's Exclusive Economic Zone. Malaysia has generally adopted a low-key posture on the South China Sea that has won public praise from China. Malaysia, however, supports the role of international law, including UNCLOS, in resolving territorial disputes and the expeditious conclusion of a Code of Conduct in the South China Sea (COC). Malaysia, it should be recalled, released and then later retracted ASEAN's consensus press statement following the Special ASEAN-China Foreign Ministers Meeting earlier in the year as a sign of its frustration over China's foot dragging.

The South China Sea dispute is not a major irritant in bilateral relations. Thus, Malaysia's procurement of littoral ships and other platforms and weapons systems adds further ballast to the bilateral relationship. No doubt economic considerations such as cost factors weighed heavily on this decision. China, in fact, will be enhancing Malaysia's maritime security capacity. This a confidence building measure and gesture of political trust.

Q2- Najib's visit follows that of Philippine and Vietnamese leaders to China since September that saw three of the four ASEAN claimant-states inking deals and pledging closer ties with China. Chinese media reported that these visits show a warming of ties between China and ASEAN.

ANSWER: All members of ASEAN, including the four claimant states, have robust trade relations with China. Most ASEAN states cannot secure sufficient financial assistance from international lending agencies such as the ADB (Asian Development Bank), World Bank and IMF (International Monetary Fund) to meet infrastructure needs. China is a major alternate source of capital for infrastructure development. Vietnam wants Chinese investment at the same time as it would like greater market access to China and a lowering of its trade deficit. The Philippines too needs investment from China to finance the infrastructure projects Duterte promoted during the recent national elections. Malaysia already has good relations with China. Vietnam and China are currently attempting to restore political trust after the HD 981 crisis in May and both have agreed that the South China Sea should not overshadow their overall bilateral relations. President Duterte has seized the opportunity to restore relations with China. The trend clearly is to work with China across the board on economic, trade and investment matters while at the same time discussing territorial disputes in the South China Sea on a bilateral basis.

Q3-Should the visits and the outcomes be seen as a Chinese victory particularly in light of the tribunal ruling, and why? What factors contributed to this current scenario and what challenges could China face in maintaining the improved ties?

ANSWER: ASEAN as an organization, and most ASEAN states, back “legal and diplomatic processes” to resolve disputes in the South China Sea. This is ASEAN-speak for arbitration. Since the Award by the Arbitral Tribunal is a bilateral matter between China and the Philippines, and since China has so vociferously denounced the award, both Malaysia and Vietnam have been circumspect in not provoking China. In the vernacular, neither “has a dog in this fight.” China has not won a victory so much as a respite. At present both China and the Philippines have an incentive to lower tensions and pursue diplomacy. This development will have positive impact on regional maritime security. The ball is now in China’s court to reciprocate and follow through on the opening created by Duterte. Duterte, it should be noted, has stated he will not give up the Award. Indeed, UNCLOS states that in cases like this the disputants should adopt measures of a practical nature. One example would be for China to permit Filipino fishermen to return to their traditional fishing ground in the waters around Scarborough Shoal.

The decision of the Arbitral Tribunal is now part of international case law and any further maritime disputes settled under UNCLOS will take this Award into account. The main conundrum faced by China is whether or not to accept its international responsibility to curb illegal activities by its flag-state vessels, including maritime law enforcement, maritime militia and fishing fleet. China could also come under international pressure to address the massive damage caused to the marine environment by its construction of artificial islands if international NGOs take up this case. China’s prestige and reputation will be put at stake.

Finally, China is under its self-imposed deadline of agreeing to a framework for the COC by mid-2017. ASEAN states will use political and diplomatic pressure to conclude an agreement on the COC.

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