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Time For ASEAN Minilateralism

By Richard Javad Heydarian

Synopsis

To save the principle of ASEAN centrality, the regional body should transcend its unanimity/consensus-based decision-making and embrace minilateral arrangements on divisive issues.

Commentary

FOR FOUR decades, ASEAN commendably established the foundations of a nascent security community in Southeast Asia, where the threat of war among neighbouring states has teetered on the verge of impossibility. In the past two decades, the regional body has tirelessly sought to create a broadly peaceful, rules-based and inclusive regional security architecture.

Yet, the regional body is increasingly suffering from what I call “middle institutional trap”: The type of decision-making arrangements that enabled it to reach its current stage of institutional maturity are insufficient to meet new challenges in the 21st century. In particular, the rise of China and its growing assertiveness is not only disturbing the regional security architecture, but also undermining ASEAN’s internal cohesion and quest for centrality in East Asian affairs.

Limitations of ASEAN Way

The ‘ASEAN Way’, where consensus and consultation undergird decision-making regimes, is no longer up to the task. The regional body’s unanimity-based decision-making mechanism has unwittingly handed a de facto veto power to weaker links that are under the influence of external powers.

Moving forward, the body will either have to modify its institutional configuration,

adopting an “ASEAN Minus X” or Qualified Majority (QM) voting modality, on politico-security affairs or fall into irrelevance.

This has been poignantly evident when it comes to the South China Sea disputes. Failing to embrace wholesale institutional innovation, the only way forward is a constructive form of ‘ASEAN minilateralism’, where likeminded and influential countries in the region coordinate their diplomatic and strategic calculations vis-à-vis the South China Sea disputes.

End of ASEAN Centrality?

In 2016, the leaders of ASEAN displayed encouraging unity – or at least a semblance of it – during [the Sunnylands Summit](#) with American President Barack Obama. At the end of the meeting, the two sides released a joint statement, which called for shared “commitment to peaceful resolution of disputes, including full respect for legal and diplomatic processes, [author’s emphasis] without resorting to threat or use of force, in accordance with universally recognised principles of international law and the 1982 United Nations Convention of the Law of the Sea”.

So both sides agreed that not only should UNCLOS be a basis for resolution of the disputes, but also mentioned “legal processes”, which could be interpreted as an implicit statement of support for the Philippines’ decision to resort to compulsory arbitration, in accordance to Article 287, Annex VII of UNCLOS, against China.

Both sides also emphasised the necessity for “non-militarisation and self-restraint”, which was particularly salient in light of China’s worrying deployment of surface-to-air-missile (SAM) systems, high-frequency radars, and fighter jets to contested land features in the Paracels and newly-built facilities across artificial islands in the Spratlys.

But as the Philippines’ arbitration case reached its final stages, ASEAN suddenly began to lose steam. Things [came to head during](#) the special foreign ministers meeting between ASEAN and China in Kunming, when the Southeast Asian countries failed to release a joint statement, forcing frustrated officials in the Malaysian Foreign Minister, which initiated the high-level meeting, to release a draft joint statement.

A Minilateralist Solution

It did not take long for some ASEAN countries to shut down any hope of ASEAN centrality on the South China Sea disputes, particularly after The Hague arbitration case. Cambodian Prime Minister Hun Sen openly criticised the Philippines’ compulsory arbitration against China, dismissing it as a provocative act that is “not about laws” and instead a “political conspiracy between some countries and the court”.

More disappointingly, when it became clear that the Philippines scored a clean sweep victory against China – with the court nullifying China’s historic rights doctrine and much of its nine-dashed line – most ASEAN countries immediately called for patience and calm rather than compliance to a binding decision by claimant states.

In a strange twist of events, the Philippine government, under President Rodrigo

Duterte, itself [has soft-pedalled](#) on the issue, refusing to raise it in multilateral fora. During its chairmanship of the ASEAN this year, the Philippines oversaw a joint statement, which, ironically, was even less critical of China than the previous years.

It is highly unlikely that the ASEAN will ever find a consensus or adopt a robust statement on the South China Sea disputes, which are tearing the fabric of maritime Asia asunder. The much-vaunted Code of Conduct (COC) framework looks like a repackaged Declaration on the Conduct of Parties in the South China Sea, since dispute settlement mechanisms and any reference to relevant UNCLOS provisions (and Philippine arbitration) is excluded.

COC: New Hope or Mirage?

Looking [at the outline](#) of the COC framework, the section on “objectives” states: “To establish a rules-based framework containing a set of norms to guide the conduct of parties and promote maritime cooperation in the South China Sea.” The operative term is ‘norms’, which denotes the absence of a legally-binding nature. In the section on “principles”, this is quite clear, where it states that the final COC will not be, “an instrument to settle territorial disputes or maritime delimitation issues”.

Key ASEAN countries like the Philippines, Vietnam, Singapore, Malaysia, and Indonesia though can, on a bilateral basis and on individual basis, release statements that communicate their disappointment with China’s activities in the area and relay their willingness to step up their ‘minilateral’ cooperation in the South China Sea.

The ASEAN claimant states can also negotiate a parallel legally-binding COC, which is grounded in international law, serves as framework for maritime delimitation, and is more substantive and maximalist: It should also call for immediate freeze on reclamation activities, construction of military facilities, deployment of military assets, and expansive illegal fishing in the area.

Otherwise, ASEAN runs the risk of complete irrelevance in shaping and managing potentially the most combustible conflict in the 21st century.

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