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WHAT PRICE ASEAN UNITY?

By Dylan Loh

Synopsis

Apparent disagreements within ASEAN over the South China Sea question has highlighted cleavages in the grouping and how its unity is coming under severe stress. What can be done to prevent further disunity? Is it time to reform ASEAN's consensus-forging mechanism?

Commentary

ON 24 JULY 2016, the Joint Communiqué of the 49th ASEAN Foreign Ministers' Meeting in Vientiane, Laos was released. The statement, remarkably, omit any reference to the Permanent Court of Arbitration's legal ruling on the South China Sea arbitration case initiated by the Philippines. The statement came after a period of deadlock, played out publicly through the media, where ASEAN could not move the statement forward as it emerged that Cambodia prevented any reference to the tribunal's legal award.

The Chinese saw this as a diplomatic victory and thanked Cambodia publicly after the issuance of the statement. The Chinese Foreign Minister, Wang Yi, noted that the ASEAN statement "was not against China".

What Happened to ASEAN Unity?

To be sure, Cambodia has traditionally been very close to China. In July this year, China agreed to give 3.6 billion yuan (about US\$550 million) in aid to Cambodia to support its 'election infrastructure, education and health'. What is worrying for ASEAN is that China seems able to successfully leverage on its economic support for some countries in exchange for indirect influence on ASEAN decision-making.

Equally worrying is that some ASEAN countries are seemingly nonchalant towards peer pressure and criticism from within ASEAN.

It should also cause ASEAN increasing discomfort that this was not an isolated incident. One recalls the failure of the ASEAN Foreign Ministers' Meeting in Phnom Penh, Cambodia in July 2012 to issue a joint communiqué for the first time in ASEAN history with observers noting the 'spoiler role' that certain ASEAN countries played then.

Fast forward four years later, while not an exact repeat, the echo is clear: There are some countries, such as Cambodia, that has proven itself willing to forego both ASEAN centrality and sacrifice its own and ASEAN's reputation to cooperate with China. This should be extremely disturbing to ASEAN leaders, especially since these recalcitrant members have shown little flexibility.

A month before the 49th ASEAN Foreign Ministers' Meeting in Vientiane, a somewhat similar incident took place during a special ASEAN-China Foreign Ministers' Meeting in Kunming, China. A statement that was strongly worded on the South China Sea issue was initially released by Malaysia. However, barely three hours later it was retracted as a result of Laos and Cambodia blocking it, as reported in the media.

In short, ASEAN's unity – and by extension its centrality and international reputation - will continue to come under strain due to the opposing interests and postures of one or two parties. Furthermore, this could be the start of what ASEAN has strenuously and assiduously avoided thus far: ASEAN as pawns in great power competition.

A Chance for Reform?

After the issuance of the joint statement from 49th Foreign Ministers' Meeting and the attendant disquiet over Cambodia's behaviour, there were emerging voices calling for its expulsion from ASEAN. While not a politically or diplomatically viable solution, it is worth looking at what the ASEAN Charter says or does not say about it.

Article 5 of the ASEAN Charter states that "In case of a serious breach of the Charter or non-compliance, the matter shall be referred to Article 20". What does Article 20 say? It reaffirms the consensus decision-making nature of ASEAN and notes that "In case of a serious breach of the Charter or non-compliance, the matter shall be referred to the ASEAN Summit for decision". What this paradoxically means is that the expulsion of any ASEAN member would need that country's consent to its own expulsion.

On the other hand, one could consider whether ASEAN could allow Cambodia to leave 'voluntarily'. There is no 'exit' or withdrawal provision in the ASEAN Charter akin to the one in the European Union (EU). Still Cambodia could, theoretically, not turn up for any ASEAN meeting or cease to provide its budgetary share to the ASEAN Secretariat in Jakarta. The wording of the ASEAN Charter is ambiguous enough that one can almost always argue against having committed a 'serious breach'.

But beyond the extreme, perhaps this presents ASEAN with an important opportunity to update and reform its *modus operandi*. The much vaunted consultative and 'consensus decision-making' character of ASEAN has now seemingly morphed into an ever-tightening rope binding ASEAN's hands. In practical terms, essentially all 10 members have a veto card. While most of them use this responsibly, some have shown a predilection to wielding it for purely selfish purpose without a modicum of respect for the long-term interest of the grouping.

Learning From Others

Other intergovernmental organisations have much clearer rules with regard to penalties, discipline and enforcement mechanisms towards errant members. For instance, within the EU, the Treaty of Lisbon (which amends the two 'founding Treaties of the EU) contains an exit clause for members who wish to withdraw from the Union and this negotiation ought to be conducted two years after notification of withdrawal.

Furthermore, Article 7 of the EU Treaty allows for the suspension of certain rights, including voting rights, if there is repeated violation of core EU norms and values such as rule of law, human rights and liberal democracy. While it is sometimes unfair to compare ASEAN to the EU as they are very different creatures, it certainly should not prevent ASEAN drawing lessons and inspiration from the EU (and vice versa).

To loosen its hands, ASEAN could consider incrementally revising its decision-making model. This could be done by introducing a voting system (where a consensus from 9 out of 10 members is sufficient to get things going) or by allowing joint statements to be issued with dissension and abstention recorded.

Also, beyond media criticism, further thought could be given into clearer penalty mechanisms. Admittedly, what constitutes 'wayward' as a basis for penalty could prove difficult but difficulty should not be an excuse for inaction. Also, while it is unfair for individual countries to bend to the will of ASEAN, surely, it is also equally unfair for ASEAN to be held hostage by one or two countries?

It is important to remember that a lot of political, diplomatic and economic capital have been invested into ASEAN. It is also true that ASEAN should not be defined entirely on how it deals with the South China Sea question. Nevertheless, the political reality is such that it is widely judged in and through this lens. How much political goodwill it has lost and how seriously ASEAN will be taken after these events is debatable but recent events, particularly over the South China Sea issue, have certainly not increased ASEAN's stature. It is time for ASEAN to act to regain its standing.

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