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The South China Sea Disputes

The PCA Ruling and ASEAN: A Call for Unity

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Synopsis

The much-awaited ruling of the Permanent Court of Arbitration on the maritime dispute in the South China Sea between the Philippines and China was finally delivered. Taken together, it was nothing short of a comprehensive rejection of Chinese claims. As expected, China has summarily rejected the decision. How will ASEAN deal with a defiant China?

Commentary

THE LONG-awaited ruling by the Permanent Court of Arbitration at The Hague, on a case filed by the Philippines against China over maritime rights and jurisdiction in the South China Sea, has finally been delivered. The ruling, announced on 12 July 2016, was comprehensive in its rejection of China's vast and expansive claims in the South China Sea.

The hardest blow to China was that the Tribunal concluded "there was no legal basis for China to claim historical rights to resources within the sea areas falling within the 'nine-dash line' ". The Tribunal also ruled that Chinese actions in the South China Sea such as persistent interference with Philippine fishing and exploration activities; large scale land reclamation and construction of artificial islands; failure to regulate its own fishing activities; and enforcement activities in the same area; were either in violation of the sovereign rights of the Philippines, or had breached various obligations under the Convention of the Law of the Sea (UNCLOS).

China's Reaction and ASEAN's Response

As anticipated, China has summarily rejected the PCA ruling and expressed every intention to continue its current South China Sea policy trajectory. Consequently, all eyes are on whether and how ASEAN can deal with a defiant China.

The South China Sea disputes have been described as a litmus test of ASEAN unity and the regional grouping's ability to maintain its self-assumed role in the "driver's seat" of regional affairs. The court's ruling will only intensify the pressure on ASEAN. At issue is whether ASEAN will be able to agree on a joint statement either on the ruling, or that makes mention of it, at the upcoming 49th ASEAN Ministerial Meeting that Laos will be hosting, or even earlier.

Further complicating matters for ASEAN is the impending 23rd ASEAN Regional Forum (ARF) Meeting and the 6th East Asia Summit (EAS) Ministerial Meeting, which will be attended by major external powers including China and the United States. Coming barely a month after the South China Sea ruling at the Hague, expectations are heavy on ASEAN's shoulders for it to shepherd the meetings in a way that recognises the challenges posed by the court's decision - and more specifically how concerned states choose to respond to the ruling – yet without alienating any particular party.

To some commentators, this might be a tall order. They will be quick to remind of the Phnom Penh ministerial meeting in July 2012 when ASEAN ministers failed for the first time in the organisation's history to issue a joint statement; the 3rd ASEAN Defence Ministers Meeting-Plus (ADMM-Plus) meeting in November 2015 which ended without a joint declaration; and more recently, the Special ASEAN-China Foreign Ministers Meeting in Kunming where a strongly-worded statement was released to the media and subsequently retracted in a seemingly uncoordinated manner.

Looking at these three examples as well as several others where the statements and positions of ASEAN member states appeared to be at odds with each other, there is no gainsaying how considerable a challenge unity and coherence is posing for the organisation.

ASEAN's Priorities

Yet in the haste to pass judgment on ASEAN on the basis of the absence of post-meeting statements, critics may have lost sight of the fact that the South China Sea disputes are not the only item on the regional agenda, nor should it be allowed to hijack that agenda by virtue of the absence of consensus on the South China Sea-related elements. Given the possibility of irreconcilable differences between claimant states and major powers over the South China Sea disputes, it is imperative that the issue not be allowed to render regional meetings irrelevant.

There is no doubt there will be parties heading to Laos at the end of July wanting to table the South China Sea issue for discussion. Given the timing of the meeting, the matter should be raised. However, ASEAN must find the strength to focus on the agenda and show its resolve to maintaining its unity and centrality. Joint statements

post meetings should be released focusing on the main agenda of the meetings.

ASEAN must continue to prioritise the implementation of the 2002 Declaration of the Conduct (DOC) of Parties in the South China Sea, and the early conclusion of the Code of Conduct (CoC). Therefore, a statement reiterating ASEAN's six-point consensus on its commitment to the 2002 DOC; the 2011 implementation guidelines; and a call for all parties to practise self-restraint and non-use of force to respect international law, and to resolve disputes peacefully, should be achievable.

Given the impasse to resolve competing claims by negotiation and reluctance to resort to third-party adjudication, proposals for joint developments should also be considered. Such proposals calling for parties to set aside sovereignty disputes to pursue joint development or other cooperative mechanisms have been mooted previously.

Greater Clarity in Claims

Yet very few of these initiatives were taken seriously because maritime claims remained ambiguous, thereby rendering it difficult to determine actual geographic areas of overlap and potential areas for cooperation. This may now change, given the clarity provided by the PCA ruling on the application of the law. With some effort to clarify their claims, claimant-states may finally be able to come together to consider the much-needed cooperative approach to managing the various maritime issues South China Sea.

Despite the PCA ruling, the fact remains that the competing territorial and maritime claims in the South China Sea will not be resolved any time soon. In fact, there are real concerns that tension may further escalate depending on how the claimants and major powers choose to response and react. ASEAN's ability to protect and preserve its interests will depend on how well it can manage its relations with major powers, particularly China and the United States. To do that, it is absolutely imperative that ASEAN must remain united.

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