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ASEAN Stumbles in Phnom Penh by Don Emmerson

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Never in 45 years of regular meetings faithfully followed by bland communiques have the foreign ministers of the Association of Southeast Asian Nations (ASEAN) failed to agree on a statement for public consumption summarizing their private deliberations. Not, that is, until now.

At the end of their just-concluded gathering in Phnom Penh, the silence was deafening. The proximate cause was their inability to reach a consensus on whether the statement should mention Scarborough Shoal, the site of a tense stand-off that began in April between China and the Philippines, whose governments both claim that land feature in the South China Sea (SCS). The Philippines wanted to include such a reference. Cambodia objected. Neither gave in. The "ASEAN way" of consensus failed.

The details of what went on behind closed doors are still unclear; the repercussions not yet known. But it is not too early to speculate that, for China, the outcome amounts to an immediate victory that could prove tenuous in the longer run.

Cambodia and China

The underlying cause of the breakdown deeply implicates Beijing and its effort to defend its claim to exclusive sovereign rights over nearly the entire SCS. That claim is embodied in the cryptic nine-dash line on Chinese maps that laps deeply into the maritime heart of Southeast Asia. It denies the overlapping sovereignty asserted by Brunei, Malaysia, the Philippines, and Vietnam, which, with Cambodia, Indonesia, Laos, Myanmar, Singapore, and Thailand, make up ASEAN.

As the 2012 chair of ASEAN, Cambodia hosted the group's foreign ministers in Phnom Penh, and would have read out their final communique had there been one. Cambodian Prime Minister Hun Sen has never endorsed China's SCS claim. But no ASEAN leader is more sensitive to China's views and demands. By refusing to read a statement that mentions Scarborough Shoal, he acted in a manner consistent with China's positions. In Beijing's view, ASEAN has no business trying to resolve the disputes, which can only be settled bilaterally between China and each of the four claimants.

China is Cambodia's largest foreign investor. Beijing has lavished money on high-profile aid projects, including paying for the Peace Palace in Phnom Penh where the ASEAN ministers met. There is no question that Hun Sen has tried to use his country's chairmanship of ASEAN in 2012 to keep the SCS off the group's agenda. An observer might conclude that China has effectively hired the Cambodian government to do its bidding.

In fairness to Beijing and Phnom Penh, we do not yet know, if we ever will, the extent to which Manila may have shared responsibility for the infighting. Manila did press for a reference to Scarborough Shoal in the communique. Why couldn't the shoal have been obliquely alluded to? Did Hun Sen simply lose his temper and scuttle the statement rather than compromise? A more critical uncertainty is this: How badly has the rift in Phnom Penh damaged ASEAN's ability to sponsor a binding code in the SCS?

Coding conduct

In 2002, China and the ASEAN states signed a non-binding Declaration on the Conduct of Parties in the SCS. Some of ASEAN's leaders hoped to commemorate the document's 10th anniversary by drafting, among themselves, a binding code of conduct, in time to announce the draft at their meeting in Phnom Penh. The good news is that the draft code exists. It is apparently not a polished text, but it lists the points that, in ASEAN's collective judgment, a final text should make, including provisions for the settlement of disputes. If true, it will please analysts who doubted that ASEAN would be willing or able to go beyond the usual pieties.

It is the impunity with which claimants have repeatedly violated the hopeful terms of the 2002 document that has rendered so urgent the need for a code that explicitly opens the door to enforcement. One can be cautiously encouraged in this context that in Phnom Penh, ASEAN did give the draft code to China to review.

A communique noting what the ministers had accomplished would likely have mentioned their success in preparing a draft code. Absent that recognition, the text could languish in limbo. Cancelling the communique prevented ASEAN from publicly and prominently validating the draft as the group's official basis for negotiation.

If China really does want to avoid being bound by a code, what happened in Phnom Penh evokes *divide et impera* with Chinese characteristics – divide ASEAN and rule the waves. In fairness to Beijing, however, one must note that China did not manufacture from scratch the division inside ASEAN. Beijing was hardly responsible for ASEAN's inability to persuade four of its own members to compromise their claims, or to stop some of them from making destabilizing moves. Had the four first resolved their own contradictions, ASEAN could have presented a unified front in its negotiations with China.

Discussions between ASEAN and China on the draft code are scheduled for September. Because the draft is an ASEAN product, those talks will be multilateral in character. If China takes part, it will have to leave its bilateralist preference at the door. ASEAN's plan is to join China in signing a final text at the next round of ASEAN-related summits this November.

As mercurial as Hun Sen is, things could again go badly. Beijing, however, will think twice before it allows itself to be

implicated in yet another public embarrassment of ASEAN, especially in the presence of the foreign heads of state who will gather for the East Asia Summit. More likely, between now and then, China will work to postpone its completion or, failing that, to ensure that its contents are banal.

If this happens, ASEAN could face a Hobson's choice: admit failing to co-author a text with China, or unveil a toothless edition. In calculating what (not) to do and when (not) to do it, China will also be looking at the calendar, knowing that on Jan. 1, 2013 Cambodia, which is not a claimant, will cede the role of ASEAN chair to Brunei, which is.

ASEAN's draft is unlikely to stay hidden for long. If it does remain secret, no one but the governments directly involved will be able to identify China as the cause of any changes, including concessions made to satisfy Beijing. But if the draft is circulated in its current form, and China demands changes, deviations will eventually be public knowledge. ASEAN's diplomats will risk being charged with giving in to the dragon.

If China were to stonewall the code, consigning it to permanent limbo, could ASEAN go ahead and sign it all by themselves? Not in an atmosphere of intramural recrimination such as now exists. But if the passage of time heals present wounds while at the same time eroding ASEAN's patience, that could conceivably occur.

China could yet change its mind. Beijing could decide to embrace a multilateral effort under ASEAN's aegis to draft a code of conduct in the SCS. China could even agree to a dispute settlement mechanism of some sort. If in 2013, in line with expectations, the Xi-Li duo – Xi Jinping as president, Li Keqiang as premier – is fully ensconced in Beijing, the regime could feel confident enough to turn its "frown diplomacy" upside down, into a smile. One ought not hold one's breath waiting for such a conversion, however.

Size matters

If China wields its geo-economic and geopolitical power as a blunt instrument – "I'm big and you're not" – it will trigger joint pushback among Southeast Asians while earning their disrespect. Smart power in a networked world of high-speed linkages, flows, and innovations means knowing when recourse to physical preponderance is counter-productive. Size does matter, but how it is used matters more. By the evidence of Chinese diplomacy, that lesson has not been fully learned.

Earlier this year, for example, China proposed that an unofficial Eminent Persons and Experts Group (EPEG) be formed to discuss the draft code, comprised of 10 individuals, five from China and five from ASEAN. This appeared blatantly to illustrate an imperial mindset based on size alone: "Because we're big, we're entitled to half the seats. Because you're small, you'll have to share the other half."

It is possible that China floated the idea of an EPEG in order to postpone the code. With an EPEG in place, Beijing could delay decisions on the grounds that the advisory body had not yet completed its report. With half of the members representing China, the report could be postponed for years. Reportedly, in subsequent discussions, China has kept its five seats while agreeing to let ASEAN occupy 10. In order to limit Beijing's ability to use the advisory body to delay an agreement, Southeast Asians have insisted the EPEG be convened only after negotiation has already begun. Had a communique been issued in Phnom Penh, it might have mentioned the EPEG. Without it, we can only speculate about the fate of China's proposal.

Beijing's attempt to control half the EPEG shows a toughening of China's line over time. In 2005 an ASEAN-China Eminent Persons Group was established to review ASEAN-China relations and suggest improvements under the one-country-one-seat rule: 10 Southeast Asians sat at the table with one Chinese. If the EPEG meets with China occupying a third of its 15 seats, its deliberations will be more amenable to Beijing's control, especially if splits among the ASEAN states further weaken their majority.

Already widespread in the literature on state behavior is the idea that a "resource curse" bedevils the political economies of countries that are rich in oil and gas but poor in governance. Could there be an "amplitude curse" that inclines the world's most populous country to throw its unmatched weight around? How much of China's "soft power deficit" in the eyes of Southeast Asians is a function of its authoritarian regime? Will democratization, if it occurs, make China more collegial? Or will it magnify the curse by making it harder for China's presently insulated elite to limit the impact of nationalism on foreign policy?

Whatever the answers to these questions, two things are clear: Beijing feels entitled to the SCS, and that sense of entitlement limits its ability to project soft power. Consider Beijing's ongoing characterization of its claim as "indisputable." Is there no one in the foreign ministry who recognizes how laughable this is? Four ASEAN states are disputing it, not to mention its disapproval by others. Manila has suggested separating those parts of the SCS that are "disputed" from those that are not. Perhaps Beijing thinks that in describing as "indisputable" its claim to most of the entire sea, it is simply protecting its position. But in the realm of soft power, where words matter, China's insistence on indisputability undermines its case.

The deadlock in Phnom Penh may delay a code of conduct for the SCS. But it may also speed the unwillingness of at least some ASEAN states to kowtow to their giant neighbor, while strengthening their incentive to cooperate prudently with outsiders, including the US, for the sake of their own national and regional independence. In the meantime, it behooves the four ASEAN claimants to make sure that they too, being very much part of the problem, are part of its solution.

PacNet commentaries and responses represent the views of the respective authors. Alternative viewpoints are always welcomed.