



The 20th ASEAN Summit: Time Is of the Essence

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On April 3, 2012, the 20th Summit of the Association of Southeast Asian Nations (ASEAN) in Phnom Penh, Cambodia convened the heads of government from the ten ASEAN countries for two days of intense discussion regarding regional issues. The summit took place against the backdrop of the historic by-elections in Myanmar and addressed the viability of achieving a single regional market and production base — known as the ASEAN Economic Community (AEC) — by the target year of 2015.

However, attention on the Summit has focused on the sparring between the ASEAN states and China over the South China Sea. Additionally, representatives from Vietnam and the Philippines expressed concern that the close relationship between new ASEAN chair Cambodia and China could compromise efforts to forge an ASEAN consensus on the issue. But while the ASEAN states remain unable to agree on a code of conduct to manage interactions in the South China Sea, Beijing has been quietly improving its force projection capabilities, which could allow it to shrug off future territorial claims by ASEAN states in the South China Sea.

Cambodia's Turn and the Shadow of China

As ASEAN's newest member (it joined in 1999), Cambodia considered its hosting of the 20th ASEAN Summit as a chance to show off its economic progress since 2002,

when it first chaired the Association. For the rest of 2012, Cambodia will host all of ASEAN's major meetings, including the 21st ASEAN Summit from November 18-20, the ASEAN, the ASEAN Plus Three and East Asia Summit Foreign Ministers' Meetings, the ASEAN Regional Forum, and the ASEAN Defense Ministers' Meeting, among others. Cambodia will also represent ASEAN in its external relations.

At the same time, Cambodia could use its turn as chair to slow the process of ASEAN economic integration and give its own economy more time to adjust. Given Cambodia's recent entry into ASEAN, its largely agrarian economy, its lack of skilled labor and the high cost of inputs such as electricity, it may not be as aggressive as previous chair Indonesia in ensuring the achievement of as many targets for integration as possible by 2015. Cambodia also remains embroiled in a dispute with its neighbor and fellow ASEAN member Thailand over the ownership of the Preah Vihear temple complex, a dispute that has at times escalated into skirmishes between both sides' military forces. Previous attempts by Indonesia to mediate the dispute have thus far come to naught, and future flare-ups could hobble ASEAN consensus.

Perhaps the biggest cause for concern about Cambodia's leadership in ASEAN is its relationship with China. China is Cambodia's largest investor, disbursing nearly \$91.7 million in official development assistance for various infrastructure projects in 2010, \$190.5 million in 2011 and another \$147.3 million since the beginning of 2012.¹ In 2009, China's total capital investment in Cambodia came to \$5.6 billion.² This included the \$260 million Kamchay Dam, Cambodia's largest foreign investment project yet, which will be operated by China's state-owned Sinohydro. Significantly, China's aid has been offered without any obligation to undertake domestic political reforms. Cambodia has obliged China in return by steadfastly upholding the "One China" principle, cutting off all forms of diplomatic interaction with Taiwan, deporting Falun Gong members over the protests of the United Nations, and supporting China's 2005 anti-secession law.

Tensions in the South China Sea: A Wedge in the ASEAN Consensus?

The most pressing reason for concern over Cambodia's close relationship with China is the dispute over the South China Sea and access to its unproven but potentially

sizable offshore oil and natural gas reserves. In addition to China, whose famous “nine-dashed line” claim encompasses the entirety of the South China Sea without specifying concrete boundaries, several ASEAN states have also staked claims to various reefs and islands, including Brunei, Indonesia, Malaysia, the Philippines, and Vietnam. Of these, the Philippines and Vietnam have been the most active disputants and both have engaged in confrontations with China over their claims. In 1988, a naval skirmish between Vietnam and China on Johnson Reef in the Spratly Islands killed 70 Vietnamese sailors. As this brief was going to press, the Philippines and China had just ended a six-day standoff on Scarborough Shoal that occurred when the Philippine coast guard attempted to prevent Chinese vessels from fishing in the disputed area. While the standoff ended peacefully, the fishermen were allowed to keep their catch, potentially weakening the Philippines’ claim.

In 2002, ASEAN and China agreed to a non-binding Declaration on the Conduct of Parties in the South China Sea, which stated that all parties would “undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force”³ But an actual code of conduct with specific verifiable rules has proven elusive, despite promising in the Declaration to make one. In July 2011, ASEAN and China agreed to a set of guidelines for the development of a prospective code of conduct, but again, it was non-binding and only an intermediate step.⁴

China, for its part, has been reluctant to allow a code of conduct to materialize because it has preferred to deal with claimants on a bilateral basis rather than with ASEAN as a whole. Just prior to the ASEAN Summit, on March 31, Chinese President Hu Jintao visited Phnom Penh and met with Cambodian Prime Minister Hun Sen. During the meeting, he promised to double bilateral trade between China and Cambodia to \$5 billion over the next five years and also to provide grants and loans in excess of \$70 million. At the same time, Hu indicated that although China supported a code of conduct, he did not want ASEAN to proceed “too fast” on producing one. Hun Sen responded by saying that he opposed any attempt to “internationalize” the South China Sea dispute and that although other ASEAN states might bring up the issue at the Summit, it would not be on the official agenda.⁵ China also indicated that it wanted to be involved in the drafting of a code of conduct, a position supported by Cambodia.

Cambodia's apparent deference to China has been disconcerting to some of the other ASEAN states. During the Summit, the Philippines and Vietnam expressed strong reservations about allowing China to participate in the drafting process, insisting that ASEAN should come up with its own draft before negotiating with China. Philippine Foreign Minister Albert del Rosario was quoted as saying that there was "big disagreement" during the Summit over whether to allow China in.⁶

In response to suggestions that Cambodia was bowing to China's wishes, Hun Sen startled observers with a lengthy tirade against what he called "crazy analysts" and "stupid philosophers" during a press conference at the end of the Summit. "Cambodia," he declared, "is not going to be bought by anyone."⁷ With respect to the South China Sea, Hun Sen declared, "There is no hindrance from China to work with ASEAN to solve the South China Sea issue. It cannot be solved with an outside country and Cambodia will resist any attempt by such a nation as well."⁸ Given Cambodia's support of China's involvement in the drafting of the code of conduct, the "outside country" was likely a thinly veiled reference to the United States. Washington angered Beijing with its calls for a peaceful settlement to the South China Sea dispute and its heightened naval cooperation with the Philippines (with whom it is allied) and Vietnam. Such rhetorical bluster on behalf of the state chairing ASEAN did little to assuage concerns that Phnom Penh was following Beijing's lead.

The Summit ended with little to show on the South China Sea front, except for vague promises to continue pursuing a code of conduct, but time is not on the side of the ASEAN claimants. As China's energy needs grow, the South China Sea will become an increasingly important strategic asset to Beijing for supporting economic growth and, by extension, political stability. In other words, China's commitment to pursuing its claims is only going to become more urgent as time goes on. Moreover, China's air and naval capabilities today significantly outstrip those from a decade ago, and it has officially announced that it will deploy its first aircraft carrier—refitted from a Soviet-era vessel—sometime this year, with some estimates suggesting a date of August 1, the anniversary of the founding of the People's Liberation Army. China may well believe that the longer it can stall for time, the more favorable its position will be when it negotiates with the ASEAN states. In this context, Hu Jintao's request to Hun Sen that ASEAN not move "too quickly" on a code of conduct takes on additional meaning.

By presenting its ASEAN rivals with a *fait accompli* in the form of superior naval capabilities, China could render it much more difficult for them to enforce their claims, but the ASEAN states—especially the Philippines and Vietnam—are unlikely to stand idly by. A Chinese aircraft carrier in the South China Sea would likely prompt the ASEAN states to call on the United States as a balancer, which could dangerously escalate tensions. China has already expressed its displeasure with American naval exercises with the Philippines and Vietnam and the United States recently announced its intent to station 2,500 marines in Darwin, Australia. Considering this, China’s military strategists might be tempted to move quickly to consolidate its position in the South China Sea. But such a move would also be regarded with even greater alarm by the ASEAN states and other regional powers and could spark a race to shore up territorial claims with military assets, favoring offensive action over caution and generating an environment ripe for full-blown conflict.

This worst-case scenario ought to be sufficient reason for all sides to commit to a code of conduct that would lend some predictability to fluid and fast-paced incidents. The ASEAN claimants’ bargaining position vis-à-vis China would be stronger if the Association could agree on a common strategy. While this would not offset China’s military advantage, it would make it more difficult for China to play individual member states against one another by forging a unified ASEAN position and remove one obstacle to establishing a code of conduct. But ASEAN’s norm of decision-making by consensus means that a single member state can torpedo a collective policy stance. For now, it appears that by insisting on being part of the drafting process of the code of conduct, China has succeeded in driving a wedge into the ASEAN consensus and paralyzing the body.

Myanmar Comes in from the Cold

Another major topic at the Summit was Myanmar’s April 1 by-election, which saw pro-democracy leader Aung San Suu Kyi and her party, the National League for Democracy (NLD), running for seats in the parliament for the first time since 1990, when the ruling military junta overturned the NLD’s electoral victory and placed Suu Kyi under arrest. The 2008 Constitution, which was widely regarded as illegitimate—particularly since the referendum took place immediately following

the devastation of Cyclone Nargis — established a presidential system with a bicameral legislature. Elections in 2010, which the NLD boycotted, formally ended the rule of the military junta (in name, if not in fact) and brought to power the military-backed Union Solidarity and Development Party (USDP) with Thein Sein as president.

Over the past year, the Thein Sein government has implemented a wide range of political reforms with surprising alacrity, lifting restrictions on press freedoms, allowing the organization of labor unions, releasing political prisoners and suspending the construction of the controversial Myitsone Dam on the Ayeyarwady River, which China had been building with Myanmar's support. ASEAN rewarded the reforms by allowing Myanmar to chair the Association in 2014. In November, U.S. Secretary of State Hillary Clinton became the first Secretary of State in over half a century to visit Myanmar and suggested that the United States might be willing to lift sanctions if reforms continue. As this issue brief was going to press, Australia had just announced that it would lift travel bans and financial sanctions on more than 200 Burmese officials, though it would maintain sanctions on senior military officers and “people of human rights interest”.⁹

The April 1 by-elections were widely regarded by international observers and pro-democracy activists alike as an important test of the government's commitment to reforms. Election monitors from ASEAN as well as the United States, Canada, Japan and the European Union were on hand, though some complained that they had been invited far too late in the campaign to provide thorough coverage.¹⁰ Suu Kyi also claimed that NLD candidates had been harassed and intimidated by supporters of the ruling party.¹¹ Overall, though, the elections were peaceful and the NLD won 43 of the 44 seats it contested (37 in the 440-seat lower house, 4 in the upper house and 2 in the regional chambers). While a major symbolic victory, the NLD still occupies a tiny minority in the 664-seat legislature, where 25 percent of the seats are reserved for the army and the USDP occupies most of the rest. Clearly, Aung San Suu Kyi and the NLD enjoy a tremendous amount of popular goodwill, but it remains to be seen how much of that will translate into actual legislative influence.

For ASEAN, Myanmar's reforms have no doubt been cause for sighs of relief and perhaps feelings of vindication that the Association's quiet coaxing of Myanmar has yielded positive results. At the ASEAN Summit, member states praised the elections

and unanimously agreed to call for all sanctions against Myanmar to be dropped, beginning with the European Union. Nevertheless, individual policymakers have expressed reservations that a wholesale end to sanctions might be premature given the ongoing conflicts with ethnic minorities in northern Myanmar and the continued detention of numerous political prisoners. For its part, the United States has relaxed travel bans on some senior Burmese officials, some restrictions on investment and financial services, and agreed to establish an office of the United States Agency for International Development (USAID) in response to the elections.¹²

Such graduated reciprocity is wise as it may boost the legitimacy of Naypyitaw's reformists and help convince any skeptical hard-liners to support continued political liberalization, while simultaneously giving reformists an incentive to maintain progress. If Myanmar begins to show signs of stalling or backsliding on its reforms, it will reflect badly on the grouping, particularly as Myanmar prepares to assume the chair in 2014. This compressed timeframe might also work to Thein Sein's advantage as a way to get other political leaders on board with accelerated domestic reforms, but even the most optimistic analysis must concede that Myanmar's domestic reforms have a very long way to go.

Finally, it is worth briefly mentioning what Myanmar's reforms might mean in the context of the Obama Administration's "pivot to Asia". Myanmar, which enjoys close but complicated relations with China, appears to be seeking a more equidistant relationship by embracing reforms and improving relations with the United States. Nevertheless, Washington should be careful of getting too close to Naypyitaw so as to maintain the flexibility to respond (or not) to any possible China-Myanmar confrontations.¹³

The ASEAN Economic Community: Now Comes the Hard Part

The South China Sea and Myanmar took center stage at the Summit, but though it received less attention, the ASEAN Economic Community remains a central concern for the Association as the 2015 deadline for implementation approaches. The goal of the AEC is to establish a single market and production base in which finished and intermediate goods can be transported freely within ASEAN, trade in services is unrestricted, capital movement is more liberalized, and the movement of skilled

labor is unimpeded.

Thus far, ASEAN has reduced tariffs for most goods among the ASEAN-6, with 99.65% of intra-ASEAN tariff lines included in the Common Effective Preferential Tariff list eliminated as of January 1, 2010. ASEAN's newest members—Cambodia, the Lao PDR, Myanmar and Vietnam—have also made significant progress, with 98.86% of their included tariff lines at the 0-5 percent level.¹⁴ But the remaining obstacles are also the most challenging. These include liberalization of trade in services, the liberalization of capital investment, and the removal of barriers to the free movement of skilled labor. Most of the obstacles to these goals are domestic-level non-tariff barriers and their removal is often highly sensitive due to the potentially jarring effects it might have on employment. In a surprisingly candid statement in June 2011, ASEAN Secretary-General Dr. Surin Pitsuwan declared that the 2015 deadline “is just a target date. It is not an end-date. A lot of work needs to be done.”¹⁵

So far, the ASEAN economic ministers have negotiated eight packages of concessions in services, with the latest round in 2010. Services are being liberalized on a sub-sectoral basis and under the 2008 Blueprint for an ASEAN Economic Community, a minimum of 20 new sub-sectors must be scheduled for liberalization this year, with another 20 in 2014. For each sub-sector, all restrictions on Cross-Border Supply and Consumption Abroad¹⁶ must be removed, with exceptions made on a case-by-case basis for “bona fide regulatory reasons (such as public safety)”.¹⁷ Additionally, by 2015, ASEAN states must allow for 70% of foreign ASEAN equity ownership in service sectors covered in the various packages of commitments, and restrictions on service providers that want to establish a commercial presence elsewhere in ASEAN are supposed to be progressively removed by 2015.

Movement on allowing foreign nationals to provide services in other ASEAN countries has proceeded more slowly. ASEAN has agreed to a series of Mutual Recognition Arrangements (MRAs) that would allow for professional credentials in certain occupations to be recognized across the ASEAN states, so that, for instance, a dentist who meets the requirements for licensing in the Philippines can be allowed to practice in Malaysia. So far, MRAs have been concluded for engineering, nursing, architectural, accountancy, surveying, medical and dental services. It is important

to note, though, that MRAs do not imply any liberalization of immigration laws; they only provide for the mutual recognition of professional credentials within ASEAN.

Other non-tariff barriers include the establishment of single points for customs clearance in each member state (referred to as “National Single Windows”) and their integration through an electronic “ASEAN Single Window”. The goal is to reduce the expense, visits to multiple offices and often lengthy waits involved in customs clearance to a 30-minute wait. According to the Blueprint for the ASEAN Economic Community, Brunei, Indonesia, Malaysia, the Philippines, Singapore and Thailand were to operationalize their National Single Windows by 2008, with Cambodia, the Lao PDR, Myanmar and Vietnam to follow suit by 2012. As of now, however, only the first six ASEAN countries have developed National Single Windows and are in pilot testing, while the latter four have not yet implemented National Single Windows.

Given the enormous amount of work that remains to be done, the economic disparities among ASEAN countries, and the domestic political obstacles to rapid liberalization, it will be a major challenge for ASEAN to achieve its goal of an AEC by 2015.

The Path Ahead: An Opportunity for Leadership

The 20th ASEAN Summit highlighted more problems than it solved. With respect to the South China Sea, the ASEAN states will find it difficult to maintain negotiating leverage with Beijing unless they can pool their resources and adopt a common diplomatic front. The longer they wait, the more Beijing will be able to use its growing military power to create *faits accomplis* and render ASEAN states’ claims ineffective. Moreover, if conflict does escalate, Vietnam and the Philippines may attempt to involve the United States, which would risk a much larger conflict. A code of conduct is sorely needed to bring predictability and order to a situation in which misperceptions and hot tempers on the ground could lead to larger conflicts.

Myanmar’s reforms and the success of the NLD in the April 1 by-elections are certainly a welcome development, but ASEAN should keep in mind that the reforms,

while significant, should only be a beginning. ASEAN should continue to encourage and pressure Myanmar to seek peace with its ethnic minority rebels, release political prisoners and relax restrictions on basic freedoms.

Finally, progress on the ASEAN Economic Community, while substantial thus far, may begin to slow this year given the emphasis on removing non-tariff barriers and liberalizing services and investment. As ASEAN Chair, Cambodia stands poised to play a crucial role in moving integration along, but as one of ASEAN's least developed countries, it may well find itself torn between its responsibility to promote the AEC and its desire to insulate itself from the inevitable adjustment pains associated with market liberalization.

The 20th ASEAN Summit revealed an ASEAN that was indecisive on key issues. But in all of these issues, especially with respect to the South China Sea, ASEAN needs to step up and seize the opportunity to provide leadership. Time is of the essence.

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16. The General Agreement on Trade in Services (GATS) lists four modes of services trade:
Cross-Border Supply, also known as Mode 1, refers to services delivered from the territory of one member state to the territory of another member state without the supplier being physically located in the consumer's territory.
Consumption Abroad, also known as Mode 2, refers to services supplied in the territory of one member state to a consumer from another member state.
Commercial Presence, or Mode 3, refers to a service supplier from one member state setting up a physical presence in the territory of another member state.
Presence of Natural Persons, or Mode 4, refers to foreign nationals supplying services from one member state to another while based in the territory of the consumer.
17. ASEAN Economic Community Blueprint (2008), A.2.v.

The views expressed herein do not necessarily reflect the views of the Asan Institute for Policy Studies.



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