A post-non-claimant South China Sea policy

The diplomatic fiasco at the ASEAN-China foreign ministers’ meeting this week, mainly over Beijing’s handling of the South China Sea issue, made it clear how Indonesia’s leadership was sorely missed. It further shows that as power politics shape and shift the strategic landscape, Jakarta’s strategic autonomy and rule-based order – underpinned by the 1982 UN Convention on the Law of the Sea (UNCLOS) and the ASEAN community – are increasingly in tatters. Furthermore, Beijing’s puncturing of our maritime governance space around the Natuna Islands in recent years reveals the limits of Jakarta’s “non-claimant” position in the South China Sea.

The Foreign Ministry has religiously held this position since the mid-1990s, creating the diplomatic space for Indonesia to continue developing the resources around the Natunas while downplaying China’s claim and playing an “honest broker” role through the ASEAN-China Code of Conduct (CoC) process. This logic assumes that Beijing is seeking to preserve the status quo, especially pertaining to resource management; it does not dispute Indonesia’s ownership of the Natunas, but considers the waters around them to be historical Chinese fishing grounds. But the increasing frequency and severity of illegal, unregulated and unreported fishing incidents around our waters suggests this assumption is becoming untenable.

The position also assumes that genuine progress will be made through the CoC process and that both China and ASEAN claimants (the Philippines, Vietnam, Brunei and Malaysia) are equally committed to the process, including the full implementation of the principles of the 2002 Declaration of the Code of the Conduct (DoC).

But the developments around the disputed Paracel and Spratly islands in recent years, as well as Manila’s legal action through the Permanent Court of Arbitration, suggest that this assumption is also shaky. If anything, the Kunming fiasco is further proof of how rickety the CoC process can be, when one or two ASEAN members can hold the entire group hostage. Meanwhile, the Indo-Pacific region is moving into strategic flux; economic ties are thriving while strategic trust is floundering among the resident powers – as the competing security networks and ASEAN’s forgotten regional architecture suggest.

Indonesia’s foreign policymakers therefore might want to consider a “post-non-claimant” South China Sea policy with several features. First, abandoning our non-claimant position is not equivalent to staking a claim in the dispute over the Spratlys. Instead, it is about discarding hollow neutrality and forcefully reasserting our maritime boundaries as guaranteed under the 1982 UNCLOS and backed by a set of domestic laws. These include the 2008 law on state boundaries, the 1983 law on the exclusive economic zone (EEZ) and the 2002 government regulation on the geographical coordinates of archipelagic baselines.

These international and domestic laws also guarantee our sovereign rights over the management of hydrocarbon and marine resources around the Natunas. So the fearmongering that abandoning the non-claimant position would mean we cannot continue exploring our resources does not seem warranted.

Second, if we believe that the rules are on our side, then why should we assume discarding the non-claimant position automatically implies that China’s claims are valid under international law, or that the Natuna Islands are in dispute? Even if we implicitly acknowledge China’s claims over parts of the Natunas’ EEZs by such moves, why would we assume our claims are any less valid under UNCLOS, or that we cannot negotiate bilaterally over the EEZ and continental shelf, as we did with Vietnam?

Any bilateral negotiation can only begin when both parties declare their specific claims. By abandoning the non-claimant position, therefore, we would legally force China to declare its specific claims over our waters, as we have been asking them to do since the 1990s. We could demand China produce its claims and end the strategic ambiguity that Beijing prizes.

Third, abandoning the non-claimant position does not imply Indonesia would stop playing its role as an honest broker. If anything, Jakarta standing up for a principled regional order where might does not make right would increase our strategic capital to lead ASEAN and accelerate the glacial speed of the CoC process.

ASEAN centrality is one of the crucial variables in the strategic equation over the South China Sea. Unfortunately, because of the nature of the rotating ASEAN chairmanship, the group’s consensus-based decision-making, the group is increasingly becoming a non-actor. Jakarta should consistently and proactively lead the process, regardless of who the foreign minister or the ASEAN-China country coordinator of the day is.

Abandoning hollow neutrality would signal to the rest of ASEAN that Indonesia too was willing to put its neck on the line and resolve the CoC once and for all. Finally, by forcing Indonesia into direct leadership from the front line, policymakers in Jakarta would also be compelled to get the country’s maritime governance house in order.

The South China Sea should no longer be the sole purview of the Foreign Ministry. Our diplomats need to regularly, consistently and frequently involve other maritime governance stakeholders, including the Navy, fisheries ministry, Maritime Security Board (BAKAMLA) and business community, as well as the local authorities in and near the Natunas.

Ideally, in the absence of an executive national security council, President Joko “Jokowi” Widodo should create a single hub that would help the Office of the Coordinating Political, Legal and Security Affairs Minister bring the different agencies together and provide strategic and day-to-day advice on maritime affairs and security governance.

Leadership in world politics cannot descend into complacency. The President needs to realize that while he may not be interested in foreign policy, to paraphrase Tolstoy, foreign policy will always be interested in him.

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