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# How the Philippines Could Pave the Way for a Minilateral Arrangement

## Policy Directions for a Philippine-led South China Sea Minilateral Initiative<sup>1</sup>

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### Minilateralism as a Viable Approach

Forming a minilateral arrangement is one of the alternative approaches available in finding a solution to the South China Sea (SCS) disputes. It aims to “have the largest possible impact on solving a specific problem” (Naim 2009),<sup>3</sup> usually ad hoc in form as far as its structure is concerned.

Advocates often tout the flexible nature of the agreement, i.e., member-states are not hampered by formalities and stiff procedures but are given latitude to focus on the mission at hand instead (Stewart 2016). These features make the minilateral arrangement an attractive option for those who plan to address complex issues, like the claimant states to the SCS conflict.

The territorial dispute in the South China Sea is undeniably a contentious issue in the region that requires judicious treading, especially by the claimants. As a claimant, the Philippines has been using various approaches in addressing the situation and in dealing with fellow parties. Although these strategies differ in terms of effectiveness, the

Philippine government has resorted to actions that appear consistent with international law. Its most remarkable approach was the filing and subsequent victory of a legal case against China presented before the Permanent Court of Arbitration (PCA) in 2016.

The Philippine argument relied heavily on the United Nations Convention on the Law of the Sea (UNCLOS) to which China is also a signatory. Other approaches include the filing of diplomatic protests or note verbale by the Department of Foreign Affairs (DFA) and the cautious and unprovocative investigations made regarding the 2019 Reed Bank incident (ABS-CBN News 2019).

Consistent with both national and international laws, the defense and security sector’s efforts demonstrated exercise of restraint. The 2012 tense standoff in Scarborough Shoal and the apparent harassment by the Chinese to block the resupply missions to the BRP Sierra Madre crew demonstrates the Philippine government’s cautious approach.

If the Philippines were to start an initiative to bring together interested parties to address the South

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China Sea dispute, then what factors should be considered?

Firstly, specific objectives and the proposed course of actions to achieve them should be identified. The essence of a minilateral is its specificity; therefore, the points for an agreement must be established precisely at the beginning. In the case of a minilateral on the South China Sea conflict, one objective could be the forming of a task force consisting of representatives from member-states that would oversee and coordinate actions among the concerned parties to prevent untoward incidents, especially those involving China.

Secondly, the membership of the minilateral must be based on the level of interest in the South China Sea and its level of commitment to address the dispute. The Philippines could invite other members of the Association of Southeast Asian Nations (ASEAN) like Vietnam, Indonesia, Malaysia, and Brunei, but other non-ASEAN members could be also considered, given their interests and commitment to the issue. However, this would be tricky since the objectives might be diluted.

Accusations of interference from less friendly states could emerge as well. To address this dilemma, the contribution of members should be increased to determine those governments that have a lukewarm dedication to the initiative. Another way is to be overly specific on the procedures of the minilateral to effectively limit other countries, even friendly ones, from joining the arrangement. These approaches could still backfire though; hence, a careful negotiation among the diplomats of member-states is essential. In any case, it seems that it is still ideal to limit the size of the minilateral to three or four members to retain the organization and its focus.

Lastly, the framers of the initiative should put in place a mechanism that would protect prospective members against retaliatory actions from less friendly states as a reaction to the former's decision to join

the minilateral.<sup>3</sup> Economic arrangements that would introduce more relaxed trade measures between or among members could be set up for this purpose, although this would certainly take time. Despite the ad hoc nature of the minilateral, minilateral framers must be skillful in anticipatory thinking and long-term planning.

### **Crucial Ingredient: Addressing the Issues Between or Among the Members Themselves**

To succeed in the minilateral initiative, it is crucial that member-states coordinate with one another on every major action. Trust would be the most basic currency in this regard. However, given the realities of international relations, thorough coordination might be too ideal to rely too much upon.

At the very least, the member-states could make substantive efforts to mitigate the concerns between or among themselves. It would be logical to address these issues first before trying to address a much larger problem like the South China Sea dispute that demands nothing less than a united position.

Depending on the member-states involved, the time and energy required to address an existing bilateral issue vary. For example, an issue as deep and contentious as the Sabah territory would take a lot from both the Philippines and Malaysia to solve. On the other hand, kidnapping and piracy issues—though equally serious—are relatively easier to address by both the Philippines and Indonesia. Solutions to the latter have been presented already with the establishment of the Indonesia-Malaysia-Philippines (INDOMALPHI) Trilateral Cooperative Agreement (TCA) (Storey 2018). The former, however, is still at an impasse.

Given the relative difficulty of addressing the bilateral issues among the member-states, how do they now proceed?

<sup>3</sup> Jay Batongbacal during a focus group discussion (FGD) held on September 21, 2020. Discussion documentation forthcoming from UP CIDS.

The danger with such an approach is that by pursuing to solve one issue, another issue gets more complicated and, worse, creates more issues. By pressing too much on the other party to solve the existing problem, the objective and the rationale of the minilateral arrangement could be compromised. A country that aims to move forward with the minilateral should tread carefully so as not to “spook” the other country with the issue and prevent it from committing to the minilateral.<sup>4</sup> On the other hand, if the parties involved are too complacent about the existing issues, the minilateral could be jeopardized once implemented. A grouping that lacks chemistry and trust is not only counterproductive but also highly risky.

Moreover, valuable resources would be wasted in an ill-designed minilateral arrangement. Addressing the “elephant in the room” is certainly difficult, but it could provide dividends if settled as far as the minilateral initiative and regional security are concerned.

One way to resolve the given issues is to explore initial or “feeler” meetings and identify the existing problems that may arise during the process of creating a minilateral arrangement. Non-committal discussions may serve as the initial step in setting up a minilateral because it would loosen prospective member-states on certain matters. The objective is to identify these matters from the beginning and see which ones could be addressed at the moment before proceeding to the more complicated ones.

The idea of picking the “low-hanging fruits” first, i.e. issues that are relatively easier to address, is a customary practice of the ASEAN as seen in its approach to developing the South China Sea Code of Conduct framework with China and the Rohingya crisis (Baviera 2018; Septiari 2019). However, reaching for these “low-hanging fruits” must be purposive and transitory as it must eventually lead to addressing more difficult problems. These initial discussions then must be more pragmatic than ambitious.

Of course, more contentious issues like the Sabah territory between the Philippines and Malaysia could not be settled in just a few meetings. The gravity of this particular issue is vast, and perhaps its solution lies in a confluence of factors that are not yet present in both countries at the moment. In any case, the governments of the two countries should apply practices that would prevent this issue from disrupting the efforts that are being done on other fronts, such as in the SCS. One way to do this is to observe sobriety in public forums like social media, especially by senior officials. Fanning the people’s tendencies for misguided nationalism through political manipulation, misinformation, and agitation should be avoided since these moves can complicate matters. Experience tells us that a series of subtle discussions between the two governments could be more rewarding.

However, the remaining challenge is to encourage the Malaysian and Philippine governments to be open to discussions first. For Kuala Lumpur, the Sabah dispute is a non-issue and non-negotiable; it rejects any attempt by Manila or by any interested party to raise the matter to the International Court of Justice (ICJ) (The Star Online 2008). Malaysian politicians also see the previous attempts made by Filipino politicians as self-serving, since raising the Sabah dispute to express nationalism supports the latter’s electoral objectives (Abdullah 2020). Certainly, the Sabah dispute is not an issue that can be solved in the next few years, but the countries involved should not let this situation be an obstacle in their quest for regional security and development.

### **Way Forward: Finding a Common Ground Among the Member-States**

If the two countries have successfully managed the bilateral issues without disrupting the initiative, even temporarily, the next concern would be how to proceed with the minilateral arrangement with all the prospective member-states looking at a singular

<sup>4</sup> Rommel Jude G. Ong during a FGD held September 21, 2020. Discussion documentation forthcoming from UP CIDS.

direction. Anything short of this objective could render such an effort practically worthless.

The scope of the minilateral arrangement must also be agreed upon given the reservations that member-states naturally have when issues of sovereignty and autonomy are mentioned.

Outlining what is allowed and what is not under the minilateral arrangement is necessary. For example, questions like these will surely be raised:

- Are naval agreements acceptable between or among the members of this minilateral?
- Can operations between or among military forces, including those that are coordinated, be allowed even without signing a formal agreement like a treaty?

Therefore, the initiator and the prospective member-states must have already considered the possible responses to those questions. Existing minilateral arrangements in the region, particularly the INDOMALPHI-TCA and the Malacca Straits Patrol, could be instructive in this matter.

The Philippines can start the momentum by forming a national task force that will be responsible for organizing and/or coordinating with all relevant government agencies towards this end. The next step would be conducting initial discussions with prospective member-states to discuss the possibility of forming a minilateral arrangement. These efforts would require funding; thus, the task force's objectives must be clear-cut to justify its formation to Congress. Coordination with various Philippine government agencies and the crafting of a well-designed proposal, apart from an enormous amount of political will, are needed for its success.

Regarding the initial discussions, Philippine representatives should be able to express direction and clarity in the government's proposal and must have cultivated excellent relationships with prospective member-states. Ideally, these relationships have been built years before the minilateral arrangement through formal and informal agreements, confidence-building measures, and other constructive engagements.

## Conclusion

A minilateral initiative to address the SCS issue could have the potential to overcome the impasse that has troubled the region in recent years. Its objective is to gather countries that have an evident interest in the SCS disputes and simplify the discussions in formulating a working and practical solution. However, this is easier said than done since all prospective member-states should find the specifications of this minilateral grouping acceptable and feasible. This would be a tall order because they have to consider their respective interests while managing any unresolved issues with other member-states. Apart from this, the influence and pressure that may come from external parties, particularly the major powers, cannot possibly be ignored. The scope, objective, and operational considerations of the minilateral arrangement, especially its funding source, must be clarified at the onset.

As one of the claimants to parts of the South China Sea, the Philippines could initiate the pursuit and realization of this minilateral arrangement. However, the government should be careful in pushing its agenda lest the negotiations turn sour from the beginning and the initiative will simply crumble. In addition, it should view itself as a responsible member and not as the principal actor once the minilateral ball starts rolling.

Careful balancing of national interests combined with tactful negotiation is key to the success of the minilateral arrangement. The diplomatic corps plays a vital role then in this effort. Focusing on those tasks that are relatively easy to accomplish could set the tone and be instrumental in addressing the more complicated issues. Therefore, the minilateral initiative should be pragmatic, i.e., it must be aware of the things that it can accomplish and cannot do at the moment.

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