

# Managing disputes in South China Sea

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This article is based on an address by **Professor S. Jayakumar** last Saturday at a conference organised by the South China Sea Institute of Xiamen University in Xiamen, China, on the theme "Blue South China Sea, Green Joint Development".

JOINT development of the disputed South China Sea areas is a good objective, but we must be realistic. A conducive climate of trust and confidence is a fundamental pre-condition before the parties can agree on the need for joint development, let alone how and where to carry out joint development.

Recent events have, however, betrayed a profound lack of trust and confidence among the parties. Efforts are needed to create trust and confidence among all parties, establishing the right conditions for cooperation, including possible opportunities for joint development.

This starts with managing the disputes within certain agreed frameworks.

## Framework for managing disputes

FIRST, disputes should be managed in accordance with the accepted principles of international law, including the 1982 United Nations Convention on the Law of the Sea (Unclos).

It is the rules and principles of general international law on the acquisition and loss of territory that determine which state has the better claim to sovereignty over disputed territory.

Once sovereignty has been determined in accordance with general international law, the consequent maritime claims will have to be dealt with in accordance with Unclos.

For example, Unclos has provisions governing what maritime zones states are entitled to claim from land territory, including islands. It also has provisions concerning low-tide elevations, reefs, artificial islands, installations and structures. These provisions are relevant in the South China Sea.

It is important to ensure scrupulous compliance with the Unclos regime so as not to undermine the multilateral legal framework that the world community had worked so hard to establish.

Second, greater clarity is needed on the nature and extent of the various claims in the South China Sea.

While the claimant states have agreed, in principle, to renounce the use of force to resolve disputes in the South China Sea, there has been almost no agreement on how to work towards a resolution.

One reason is that parties have not even been able to grapple with the nature of the claims. While it is admittedly a complex and sensitive matter, it is important that steps are taken to identify the nature of the claims, in accordance with international law, before we can countenance how to resolve them peacefully, such as starting to identify possible areas for joint development.

Third, while the claims are being resolved, the parties should continue with the full and effective implementation of the Declaration on the Conduct of Parties in the South China Sea (DOC), both in spirit and in letter.

The DOC expresses the parties' desire to peacefully resolve their disputes and claims, and all parties should abide by the spirit of exercising restraint and peaceful resolution.

Fourth, it is important to start formal discussions on a code of conduct as soon as possible. The code will be a critical step in laying down rules of engagement and forging mutually acceptable norms of behaviour in the South China Sea.

## **My perspective**

MY PERSPECTIVE is that of an international lawyer and a former minister from a very small country. Singapore is not a claimant state and takes no sides on the merits of the various claims in the South China Sea. We do, however, have certain critical interests at stake.

First, as a small country, we have a strong interest in ensuring that all claims are settled peacefully and in accordance with international law, including Unclos.

In our relations with other countries, we have put this policy into practice. A notable example is our settling of the Pedra Branca territorial dispute with Malaysia by referring it to the International Court of Justice.

Second, trade is three times our gross domestic product. We therefore have a fundamental interest in maintaining freedom of navigation, especially along our sea lanes of communication such as the South China Sea. Ships of many nations use the South China Sea and would likely share this concern.

Third, we have an interest in ensuring that Asean remains united and credible. A cohesive Asean is the foundation of continued peace and stability in South-east Asia, which Singapore's security depends on. Asean must also stay united to be able to exercise influence on the international stage. If Asean is weakened, the security and influence of Asean states will be diminished.

By their nature, the territorial disputes in the South China Sea are complex and involve dynamics that are specific to this region. However, there is no fixed path forward.

As Deng Xiaoping said, we have to cross the river by feeling the stones beneath our feet. At the Track II level, we can start by studying the various models of joint development. There will be no ready answers, but we can start exploring models that could work for the region.

Perhaps claimant parties can even consider starting a small development zone on an experimental basis. But if we do not move because of political pressure or inertia and if we let the disputes fester, the collective costs for all of us will be much higher.

Before joint development can be contemplated, all parties, claimants and non-claimants, states big and small, need to exercise self-restraint to lower temperatures and create a conducive environment to explore ways to manage and hopefully even solve the disputes in the South China Sea.

Territorial disputes will remain a key political and diplomatic challenge in Asia. We should also be realistic and accept that the South China Sea issue will not, and indeed cannot, be solved overnight.

International law and Unclos, however, play an important role in the management and eventual resolution of disputes. They stand as a peaceful alternative to the use of force, focus our minds on common interests and provide a ready set of agreed rules and norms to guide our behaviour.

A strong rule of law is the premise for a predictable global environment that has allowed states in this region to develop and thrive.

The rest of the world regards Asia as the world's most dynamic growth region. But the rest of the world must also be wondering how Asian nations can achieve their growth potential when there is a possibility of conflict over territorial and maritime claims in the South China Sea, which could affect economic development in the region.

It is in our collective interest to demonstrate that we in Asia are able to manage, if not resolve, our differences in a peaceful and amicable manner and in accordance with international law, including Unclos.

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