Address by Professor S Jayakumar
Conflict Resolution: The Need for a New International Paradigm
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Let me join other speakers in commending Prime Minister Dato' Sri Najib Tun Razak for his Global Movement of Moderates initiative, and also for giving it life through this Conference.

I first heard Dato' Sri Najib outline his thoughts on this initiative during the 18th ASEAN Summit in Jakarta in May 2011 when I represented Prime Minister Lee Hsien Loong. I gave it my unequivocal support. His concept of a Global Movement of Moderates is brilliantly simple yet crucially relevant in our world today.

As a multi-racial, multi-religious and multi-cultural society, Singapore fully understands and appreciates the need, as stated by Dato' Sri Najib, for the "moderate majority" to "reclaim the centre and seize the moral high ground from extremist voices" and build a more "peaceful, secure and equitable world".

All forms of extremism, whether ethnic, religious or linguistic, have the potential and propensity to incite violence. The promotion of religious understanding and harmony are critical for establishing and maintaining the social balance necessary for a society and country to grow and develop. Singapore, for example, established a Presidential Council for Religious Harmony, under the Maintenance of Religious Harmony Act, in September 2011.

The Global Movement of Moderates will help us to build confidence and bridge the gap that popular discourse imbues in discussion on race and religion, East and West.

I am confident that this Movement will be an invaluable addition and important complement to other initiatives that seek to promote understanding, tolerance and responsibility, such as the United Nations Alliance of Civilisations and Interfaith Dialogue.

This morning, I intend to cover the following areas.

First, I will address interstate conflicts with specific reference to third party international dispute settlement mechanisms. I will refer to positive examples and trends in our region, but also deal with situations where countries are reluctant to refer disputes to international adjudication or arbitration because of the political risks involved. I will also refer to positive developments in ASEAN to resolve disputes.

Next, I will deal with the situation of intrastate conflicts. Here, traditional dispute settlement mechanisms may not be applicable as such intra-state conflicts involve a complex web of social, cultural, political and religious factors as well as a range of non-state actors. Instead, there is a need for a comprehensive approach that blends traditional mechanisms with new approaches that address the root causes as well as their manifestations in conflict. I will also touch on the implementation of decisions in the post-conflict environment, and how non-traditional methods for resolving intra-state conflicts can also be applied to inter-state conflicts.

Finally, I will speak briefly on situations within countries where, even though there is no conflict, there can be simmering issues because of religious, ethnic or linguistic extremism. My view is that in such situations a total societal effort is required to prevent potential conflicts from arising.

RESOLUTION OF INTER-STATE CONFLICTS

Let me begin with conflict resolution and dispute settlement of inter-state conflict. For a whole variety of reasons, disputes and disagreements between countries inevitably arise from time to time. Accordingly, conflict resolution, including the methods and processes involved in facilitating the peaceful resolution of conflicts, has become a key aspect of international relations.

The methods of conflict resolution which have emerged are largely state-centric and shaped by Westphalian notions of sovereignty and non-interference in domestic affairs. The main objective has been to resolve inter-state conflicts so as to protect international order and security.

Third Party International Dispute Settlement

The "traditional" methods include state-to-state negotiations, conciliation, mediation, and facilitation, fact-finding and good offices missions, as well as third-party dispute settlement mechanisms such as arbitration and adjudication, including the International Court of Justice (ICJ), Permanent Court of Arbitration (PCA) and the International Tribunal for the Law of the Sea (ITLOS).

Not every dispute and conflict will have legal overtones or be connected to provisions of agreements. But when they do, and an impasse is reached in the bilateral negotiations, third-party dispute settlement mechanisms can be an amicable way of resolving intractable issues. They allow governments to get on with the cooperative aspects of relations while removing a potential source of friction.

International arbitration or adjudication is, in my view, an ideal way of resolving disputes and resolving conflicts if negotiations do not result in an agreed political solution.

Positive developments in Southeast Asia and ASEAN

Regional countries, including Singapore, Malaysia and Indonesia, have demonstrated an excellent and encouraging trend of relying on third-party dispute mechanisms.

For instance, Malaysia and Singapore and Malaysia and Indonesia referred disputes over Pedra Branca and Sipadan and Ligitan respectively to the ICJ. Malaysia and Singapore also engaged in arbitration by an Arbitral Tribunal established under Annex VII of the UN Convention on the Law of the Sea and adjudication by ITLOS in respect of provisional measures over a land reclamation dispute in 2003.

However, the reality is that many countries are reluctant to refer disputes to adjudication or arbitration because of the political risks. For instance, territorial disputes and disputes over maritime delimitation are highly emotive and sensitive issues, and the prospect of losing territory may be daunting and politically hard to handle.

This may explain why several territorial disputes in Asia, such as between China and Japan over the Diaoyu/Senkaku Islands, or between Japan and Russia over the Kuril Islands, or between Japan and South Korea over a disputed rock/island, remain intractable.

Another example is the overlapping claims in the South China Sea. To date, none of the claimant states have made recourse to legal settlement. Some claimants may even think that they can secure their claims on the ground by de facto control through superior force.

At the same time, it is in the collective interest of our region to ensure that these festering maritime territorial disputes do not reach an impasse or result in conflict. The episodic escalation of tensions over competing claims is not conducive for the region's peace and stability.

It is reassuring to note that the ASEAN Member States and China have signalled their commitment to settling such disputes peacefully in accordance with international law, especially UNCLOS.

In this regard, ASEAN and China signed a Declaration on the Conduct of Parties in the South China Sea in 2002 (DOC), and agreed on Guidelines for the Implementation of the DOC in July 2011. The DOC is meant to be a confidence-building measure to build trust between the parties and facilitate a conducive environment for the peaceful resolution of disputes.

ASEAN has also begun internal discussions to identify possible elements of a regional Code of Conduct in the South China Sea. But even when we do have a Code of Conduct, there may still be a need for other mechanisms to avoid instability, tensions and conflict should

negotiations reach an impasse, or if there is reluctance to resort to third-party dispute settlement.

An Alternative: Pursuing Joint Development

One option is for the countries concerned to consider joint development – for instance, of hydrocarbon resources found in overlapping claim areas. Joint development agreements have emerged over the past fifty years as a viable means to allow oil exploration and exploitation in disputed areas while preserving the respective claims of the parties. It is also consistent with the UNCLOS concept of a "provisional arrangement of a practical nature" which is without prejudice to the sovereignty disputes or the final determination of the maritime boundaries.[1]

The basic idea is to put aside sovereignty claims and jointly develop hydrocarbon resources. Six ASEAN Member States (Brunei, Cambodia, Indonesia, Malaysia, Thailand, and Vietnam) and three Northeast Asian countries (China, Japan and South Korea) have either officially agreed to negotiate joint development agreements or have been parties to joint development agreements.

The ASEAN Way

In ASEAN, there is a preference for consensus-building and collective cooperation. This is manifested through what has been called the "ASEAN way" of dealing with sensitive issues and managing the inevitable differences between 10 countries characterised by their diversity of race, language, culture, religion, political systems, economic models, social values and beliefs.

ASEAN's principle of decision-making based on consensus, consultation, and of proceeding in a step-by-step manner can in itself be seen as a method of conflict prevention. It has resulted in a good degree of peace, security and stability in our region.

Over time, this process of confidence-building allows countries to compromise on issues of mutual concern and interest. The basic philosophy is to hang together, or be hung separately.

In this regard, ASEAN's approach is a deliberate attempt to avoid sharpening differences and focus on cooperative aspects, particularly for issues which appear intractable in the near term.

Developments on dispute settlement mechanisms within ASEAN

I should mention significant dispute settlement mechanisms in place within ASEAN.

The Treaty of Amity and Cooperation in Southeast Asia (or TAC), which was first signed by the five ASEAN founding members in 1976, provides for a High Council to resolve differences, disputes and conflicts peacefully.

ASEAN has also developed and renewed an enhanced dispute settlement mechanism or EDSM for economic issues.

The ASEAN Charter, adopted by the Leaders in November 2007, fundamentally altered the character of ASEAN by creating a foundation for a more disciplined and rules-based organisation.

An important feature is the inclusion of strong dispute settlement provisions in the Charter.

Aside from the TAC and EDSM, the ASEAN Charter provides for a logical sequence of dispute settlement steps, including consultation, negotiation, mediation, conciliation, the 'good offices' function of the Secretary-General or ASEAN Chair, and arbitration.

These dispute settlement steps were based on the recommendations of the ASEAN Charter Eminent Persons Group (EPG). I was privileged to be a part of the EPG together with old friends and colleagues such as Tun Musa Hitam from Malaysia, the late Ali Alatas from Indonesia, and Fidel Ramos from the Philippines.

In April 2010, ASEAN adopted the Protocol to the ASEAN Charter on Dispute Settlement Mechanisms which will apply to disputes on the interpretation or application of the ASEAN Charter and other ASEAN instruments. I have been told that ASEAN is close to formally adopting additional legal instruments necessary to give effect to the Charter's dispute settlement mechanisms.

The Good Offices Role of the ASEAN Chair

Another positive development is the use of the good offices of the ASEAN Chair during the Thai-Cambodian border dispute in 2011. This is one of the dispute settlement mechanisms referred to in the Charter. It was utilised by Indonesia, and particularly Foreign Minister Marty Natalegawa as ASEAN Chair, in facilitating constructive dialogue between Thailand and Cambodia to create a conducive environment for the peaceful resolution of the dispute.

When tensions flared up between Thailand and Cambodia over the Preah Vihear temple in early February 2011, the issue was raised at

the United Nations Security Council, which essentially tasked ASEAN to resolve the matter.

Foreign Minister Marty played a vital role in his shuttle diplomacy between Phnom Penh and Bangkok, holding a successful Informal ASEAN Foreign Ministers' Meeting on 22 February 2011 and setting the stage for President Susilo Bambang Yudhoyono to convene trilateral meetings with his Thai and Cambodian counterparts on the sidelines of the 18th ASEAN Summit in May 2011.

In April 2011, Cambodia also applied to the ICJ for an interpretation of its 1962 Judgment on the sovereignty of the Preah Vihear Temple and for provisional measures. On 18 July 2011, the ICJ issued its decision regarding provisional measures and ordered both parties to refrain from taking any action to aggravate the situation and to "continue the co-operation which they have entered into within ASEAN". Both Thailand and Cambodia have also expressed their commitment to implement the July 2011 provisional rulings of the ICJ, and to continue their bilateral negotiations towards a mutually-agreeable and sustainable resolution.

This combination and complementarities between international, regional and bilateral conflict resolution mechanisms and approaches is in itself reflective of a new paradigm in conflict resolution.

NEW CHALLENGES: THE RISE OF INTRASTATE CONFLICT

Thus far, I have spoken primarily about conflict resolution and dispute settlement between states. However, we are seeing an increase in conflict between groups within countries, or rising intrastate conflict. Such ethnic, religious, cultural and resource-driven conflicts

have emerged as a major contemporary threat to international peace and security.

The Peace Research Institute of Oslo has estimated that since 1945, there have been 1,776 conflicts of which 1,540 or close to 87% were internal conflicts.

Traditional methods of conflict resolution may not be the best options available to resolve intrastate conflicts, which can involve a complex web of social, cultural, political and religious factors as well as a range of non-state actors.

Instead, new conflict resolution mechanisms may be required. These should complement the sequential, step-by-step approach used for interstate conflict by taking on a more complete, embracing and comprehensive approach that seeks to address causes as well as their manifestations in conflict.

Such mechanisms could include preventive diplomacy, dialogue and confidence-building measures, and non-official or Track II diplomacy.

An effective and recent example was the role played by former President of Finland Martti Ahtisaari, and the Conflict Management Institute, in brokering the successful peace negotiations between the Free Aceh Movement and Indonesian Government in 2005. This, however, would not have been possible without the strong political will displayed by President Susilo Bambang Yudhoyono. It finally put to rest a dispute which began in the 1970s.

The post-conflict environment

Even if there has been the resolution of a conflict, there will almost inevitably be a need for mechanisms to monitor, observe and ensure the implementation and enforcement of decisions, and to inculcate a culture of compliance focused on the implementation of decisions, timelines and action plans.

There are a range of instruments currently available to do this. As the appointment of the Truth and Reconciliation Commission in South Africa showed, a decision on which instruments are used, and how they are applied, will ultimately be a political judgement by the stakeholders involved. This could require a trade-off being made between justice and reconciliation, based on individual circumstances and situations.

Applying intrastate mechanisms to interstate conflict

New mechanisms for intrastate conflict could also be readily applicable to manage potential conflicts between states, especially if such conflicts could potentially pose a threat to regional and international peace and stability.

For instance, I understand that at the 18th ASEAN Regional Forum (ARF) in July 2011, the ARF Foreign Ministers adopted a workplan which will move the ARF from its current focus on promoting confidence-building measures to developing preventive diplomacy mechanisms. As part of this effort, the ARF is also considering greater involvement of its Track II processes.

DEFUSING DOMESTIC RACE, RELIGIOUS OR LINGUISTIC TENSIONS

Let me conclude by touching on an area which may fall short of conflict per se, but nonetheless involves the latent tensions and misunderstandings which can, if mismanaged, result in instability and violence.

We sometimes see mischievous or troublemaking elements seeking to exploit differences in race, language or religion, and create cleavages in society for their own self-interest. These elements and their views often gain popularity and mindshare, or even general acceptance, due to the acquiescence or silence of the moderate majority.

When such situations arise, whose responsibility is it to respond?

I believe that a total societal effort, involving all key sectors, is required.

Governments obviously have a key role; they cannot be idle when faced with such mischievous elements, and must act to nip them in the bud before they gain traction. Governments play an essential role in drafting, promulgating and enacting laws that circumscribe the ability of extremist elements to wreak havoc, as well as in ensuring that these laws are enforced in a non-discriminatory matter.

The various communities and their leaders must have the courage to speak, to challenge and denounce extremism, while setting an example to urge others to similarly give such ideas short shift.

Finally, individuals, non-government organisations and the media all can and should play a critical role in fostering discussion and creating alternative discourse against dissension and extremism.

This total societal effort is all the more important in today's world, where technology is changing the way ideas are spread and how people interact with one another. Technology, for all its benefits, also privileges extreme views and elements who can voice their views while hiding behind the cloak of anonymity.

The internet is the most obvious example of a new tool troublemakers can use to reach a wide audience while disguising or protecting their own identities.

Fundamentally, a robust and comprehensive response is required. The whole of society must work together to provide leadership and unity, face down voices of extremism, and ensure that peace, stability and prosperity continue to prevail.

Any new paradigm for conflict resolution must take into account all these responsibilities and mechanisms, at the international, regional and national levels. Thank you.

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[1] Keynote Address by Professor S Jayakumar at Centre for International Law Conference on Joint Development and the South China Sea on 16 June 2011, available online at: <http://cil.nus.edu.sg/programmes-and-activities/past-events-old/international-conference-international-conference-on-joint-development-and-the-south-china-sea/ >