Preface

Professor S Jayakumar

The territorial disputes in the South China Sea are a serious cause for concern as they have become major flashpoints for tension and potential conflict in this region. Some or all of the features are claimed by Brunei Darussalam, China, Malaysia, the Philippines, Viet Nam and Taiwan. Many are occupied by the claimants and some have even been fortified. We all know that by their very nature, sovereignty and jurisdictional disputes are complex and take a long time to resolve. The technical and legal questions are complicated enough, but the disputes are further entangled in a web of competing narratives of history and emotive strands of nationalism. Although legal and diplomatic channels exist to resolve territorial and jurisdictional claims, these ancillary elements sometimes define the debate and raise the stakes. As a result, no side can be seen to be backing down or giving in without incurring high political costs. Further, as countries find it difficult if not impossible to concede loss, they are reluctant to refer such disputes to an international court or tribunal. The South China Sea disputes are no different. The complex historical, geographical, political and legal considerations that characterise the South China Sea disputes mean that these disputes are unlikely to be resolved by agreement or by an international court or tribunal.

The question is: what is the alternative? How can we manage the disputes in the South China Sea? Joint development is a practical way forward if we do not want conflict. Joint development agreements have emerged over the past 50 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 1982 UN Convention on the Law of the Sea (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.

In this regard, this volume Beyond Territorial Disputes in the South China Sea: Legal Frameworks for the Joint Development of Hydrocarbon Resources is both timely and important. The editors of the book are all experts in both law of the sea and South China Sea issues. They have
drawn on their considerable knowledge and experience and brought together other highly qualified experts to produce a book which critically examines both the South China Sea disputes and the international legal framework as set out in UNCLOS that governs the disputes. It is within this framework that the book explores the prospects for joint development of hydrocarbon resources as a viable conflict resolution mechanism.

Notably, while other books have also discussed joint development in the South China Sea, this volume takes a different approach and examines existing joint development arrangements in Asia to see if there are ‘lessons learned’ which may be applicable to the South China Sea. This approach has enabled the editors to move beyond a mere theoretical discussion on joint development and focus on the law, policy and practical issues related to joint development. Perhaps most importantly, the last chapter sets out concrete recommendations as to how the claimants and other relevant stakeholders can move forward and have meaningful discussions on joint development.

One of the most important ‘lessons’ highlighted by this volume is that before joint development can be contemplated in the South China Sea, all parties, claimants and non-claimants, big and small States, 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. All parties must comply with international law and UNCLOS, which play an important role in the management and eventual resolution of the disputes. It stands as a peaceful alternative to the use of force, it focuses our minds on common interests, and it provides a ready set of agreed rules and norms to guide our behaviour. A strong Rule of Law is the premise of 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 our region is mired in tension and fearful of potential conflict over territorial claims. Hence, 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, in accordance with international law, including UNCLOS.

I hope this book, and the discussion and debate it aims to generate, will mark a step forward on the long road towards a peaceful resolution.

Professor S Jayakumar, Chairman of the International Advisory Panel and Patron, Centre for International Law