

Can Legalism Avoid War in the South China Sea?

Written by Timo Kivimäki

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TIMO KIVIMÄKI, JAN 8 2014

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Policy Recommendations:

In order to develop civilized international relations in East Asia, territorial disputes of the South China Sea area should be treated as a legal issue. Claimant states should acknowledge that regional interaction requires regulated practices, not military demonstrations of power or invitations to bullies from outside the region.

Analysis:

During the past three decades, East Asia, including Southeast and Northeast Asia, has become one of the most peaceful regions of the world. If peacefulness is measured by the number of battle deaths per total population, it has become more peaceful than the Americas and Europe. My forthcoming book, *The Long Peace of East Asia* (Farnham: Ashgate, 2014), tries to explain this development and concludes that the role of two orientations is crucial to peace in the region: joint focus on development, and the respect for each other's sovereignty, i.e. the convention that each nation is responsible for their own domestic affairs.

Before these orientations emerged as a social reality at the end of the 1970s, the disregard of developmental needs and the lack of perceived positive interdependence made conflict onset more likely while the willingness to interfere militarily into domestic disputes of other countries made conflicts more intensive. Up to two thirds of battle deaths after the Second World War in East Asia were caused by wars where outsiders intervened militarily into domestic battles, escalating conflicts into wars and making killing more than ten times more effective. After the consolidation of the development-oriented (developmentalist), non-interference regime of ASEAN, and the transformation of China after the Cultural Revolution, there has not been a single conflict (dispute with at least 25 battle deaths) involving military involvement with troops by an East Asian country against a fellow East Asian regime. Consequently, the average annual number of battle deaths in the region has gone down by 95%.

Some of the most explosive remaining East Asian inter-state conflict risks remain in the resource rich waters of the South China Sea. This seems understandable given the formula of the long peace of East Asia. On the one hand, this is an area where states' developmental priorities do not lead to positive interdependence. Since the waters of the South China Sea are seen as a depository of resources that are the bottle neck of the development of many regional powers (especially oil and gas), developmental needs lead to competition rather than cooperation. Unlike in most liberal capitalist regions, where trading nations benefit from each other's capacity to buy and sell, here the success of somebody is everybody else's loss. The more South China Sea oil my neighboring country pumps for its own economy, the less is available for me. Obviously, developmentalism does not pacify the South China Sea region.

Furthermore, in the disputed waters of the South China Sea, no claimant can respect the sovereignty of others in areas it considers to belong to itself. Thus the non-interference norm cannot rescue peace in the disputed waters either.

The two main orientations that are the foundations of East Asian stability are, therefore, unavailable in the South

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China Sea. Nations bargain with each other largely without a common set of rules that elsewhere secure peaceful interaction. In such bargaining bullies are rewarded, as it is up to the wiser to make compromises and rescue peace. Whoever wants peace more will have to make compromises to reach peace while the one who is most determined about one's claims will have the upper hand in the bargain. Claimant nations exaggerate the importance of these largely uninhabited, unlivable areas as essential for their national unity, territorial integrity and security, while at the same time pretend to be insensitive about the risks military demonstrations and appeals to external military help entail. All this is good for partisan bargaining positions, but bad for peace.

Civilized relations and legal regulation of inter-state interaction are a common interest to all littoral states of the South China Sea. Thus legalism that seems to be a trend in the region, can reframe the South China Sea in a way that reduces the pressure to militarize and securitize it. However, reframing the territorial disputes as legal puzzles rather than as matters of national security also transforms the ways in which they are dealt with.

South China Sea disputes have been subjected to the United Nations Convention on the Laws of the Seas (UNCLOS) and the role of UNCLOS-based legal arguments has become more central in the disputes in the South China Sea. The focus of peace effort for the past decade in the region has been on a specific Code of Conduct, a set of norms that recognizes the rule of UNCLOS in the settlement of maritime territorial disputes. The more the disputes become a matter of legal norms, the less benefits could be achieved by means of dangerous military demonstrations, invitation of external military powers and the escalation of military tension. The more the South China Sea becomes a matter of lawyers, the less it becomes a matter of military officers. And since nobody understands lawyers anyway, disputes about territories would not give rise to political passion. Politicians would not win votes by means of belligerent rhetoric if disputes could only be won by lawyers. The region could become more peaceful.

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About the author:

Timo Kivimäki is Professor of International Relations at the University of Bath. Prof. Kivimäki's books include *Paradigms of Peace* (London: Imperial College Press, Forthcoming), *The Long Peace of East Asia* (Farnham: Ashgate, 2014) and *Can Peace Research Make Peace* (Farnham: Ashgate, 2012). The last was shortlisted for the Best Book Prize of the Conflict Research Society. Professor Kivimäki has been a consultant to eleven governments and to several UN and EU organizations. He was President Martti Ahtisaari's (mediators) adviser in the Aceh peace talks, and the initiator of the West Kalimantan peace process, led by Indonesia's Vice President.