

**Report-EIAS Briefing Seminar
Maritime Security in the South China Sea**

19th September, 2011
EIAS, Brussels

The issue of the conflicting claims in the South China Sea has been for many years one of the hottest disputes in the East Asian region, as it involves several East and South-East Asian countries claiming their alleged rights in the area. Recently, tensions among the claimant states have risen due to several incidents that occurred during the first half of 2011, where China was accused both by the Philippines (in March) and by Vietnam (in June) of harassing their oil and gas exploration efforts in what these two countries consider to be areas under their jurisdiction. To achieve a better understanding of the regional context and the factors behind these recent incidents, the European Institute for Asian Studies organized a Briefing Seminar, on 19th September, on ‘Maritime Security in the South China Sea’. This was the fourth event dedicated to the issue of Maritime Security in Asian Waters that the Institute has organised in the last two years as part of a cycle of Roundtable Seminars.*

In order to discuss the issue of Maritime Security in the South China Sea, EIAS invited H.E. Mr. Enrique A. Manalo, Ambassador Extraordinary and Plenipotentiary of the Republic of the Philippines to the Kingdom of Belgium and Grand Duchy of Luxembourg and the Mission of the Philippines to the European Union, H.E. Mr. Arif Havas Oegroseno, Ambassador Extraordinary and Plenipotentiary of the Republic of Indonesia to the Kingdom of Belgium, Grand Duchy of Luxembourg and to the European Union, H.E. Mr. Sanh Chau Pham, Ambassador Extraordinary and Plenipotentiary of the Socialist Republic of Vietnam in the Kingdom of Belgium, Luxembourg and the European Communities and the current Chairman of ASEAN Brussels Community (ABC), Mr. David Fouquet, Senior Associate of the European Institute for Asian Studies, and Mr. Tran Duy Hai, Vice President of the National Border Committee, Ministry of Foreign Affairs of the Socialist Republic of Vietnam. The meeting was chaired by the EIAS Vice Chairman, Dick Gupwell.

The South China Sea is a semi-enclosed sea that encompasses an area of 3,500,000 square kilometres stretching from the Straits of Singapore and Malacca to the Straits of Taiwan. The South China Sea is located to the south of Mainland China and the island of Taiwan, to the west of the Philippines, to the north-west of Sabah and Sarawak (East Malaysia) and Brunei, to the north of Indonesia, to the north-east of the Malay Peninsula (West Malaysia) and Singapore, and to the east of Vietnam. Within the South China Sea, the most significant features are the Paracel Islands, comprising more than 30 islets, sandbanks and reefs, in the north, and the Spratly Islands, with more than 750 such features, in the south. The importance of the area results mainly from its strategic position, with one-third of the world’s shipping transiting through its waters, from its potentially significant oil and gas reserves beneath its seabed and from its important fishing grounds. The territorial disputes in the South China Sea involve China and Taiwan, on the one hand, and five of the ten member countries of the Association of South-East Asian Nations (ASEAN), namely, the Philippines, Vietnam, Indonesia, Malaysia and Brunei Darussalam, on the other. The Spratly and Paracel archipelagos, two groups of uninhabited features (except for a few military personnel), are subject to a series of complex territorial disputes involving the surrounding countries. The interests of the countries claiming sovereignty over the islands include fishing rights, the exploitation of crude oil and natural gas and the strategic control of the South China Sea.

The competing territorial claims over the South China Sea are regarded as one of Asia's potentially most dangerous points of conflict. Both the People's Republic of China (PRC) on mainland China and the Republic of China (ROC) on Taiwan claim almost the entire area as their own, which claims overlap with virtually every other country in the region. However, it is as yet unclear whether the Chinese claims include only the islands and other features (including many sandbanks, which are under water even at high tide) or the surrounding sea and its undersea resources as well. Competing claims include:

- Indonesia, China and Taiwan over waters north-east of the Natuna Islands (situated north-west of Indonesian Borneo);
- The Philippines, China and Taiwan over the Malampaya and Camago gas fields (situated north of the Philippines island of Palawan).
- The Philippines, China and Taiwan over Scarborough Shoal (situated west of the Philippines island of Luzon).
- Vietnam, China and Taiwan over waters west of the Spratly Islands. Some or all of the islands themselves are also disputed between Vietnam, China, Taiwan, Brunei, Malaysia, and the Philippines. Of the many features in the Spratly islands, the Philippines claims 52, Malaysia 11 and Brunei only two (Louisa Bank and Rifleman Bank).
- The Paracel Islands are disputed between China, Taiwan and Vietnam.

The territorial disputes between the claimants have become more intense due to several incidents, which occurred in the area of the South China Sea in the first half of 2011. Furthermore, the Philippines' Government has decided to rename this maritime region the *West Philippines Sea* and, accordingly, has increased its diplomatic efforts to promote the new name. Also, under its new baseline law, signed by President Arroyo in March 2009, the Philippines has redefined its territorial claims to comply with the 1982 United Nations Convention on the Law of the Sea (UNCLOS), using both articles 47 (regarding archipelagos) and 121 (regarding islands) of the Convention. Being based on international law, the Philippines considers its claims to have legitimacy, as it is a rule-based approach and the only legitimate way to solve the diverging claims in the area. On the other hand, China's claims, which are based on a Chinese map issued by the Kuomintang government of China during the 1940s, have recently been renewed in the PRC's map showing China's claims to the South China Sea in its entirety shown within "9 dashes"(see map). This is not seen as conforming to UNCLOS.

On 19th July 2011, during their 44th meeting in Bali, the ASEAN Foreign Ministers expressed "serious concern" over the recent incidents in the South China Sea and stressed the importance of the Declaration on the Conduct of Parties in the South China Sea, signed between the Governments of the Member States of ASEAN and the Government of the People's Republic of China, in 2002, to ensure the peaceful resolution of disputes in accordance with international law, including UNCLOS. However, when the ASEAN Foreign Ministers met their Chinese counterpart, Yang Jie Chi, four days later, unanimous agreement was reached to adopt Guidelines to implement the 2002 Declaration. These Guidelines constitute a landmark document, as it is the first multilateral document on the conduct of the parties in the area. The next step needed to solve the deadlock in the disputes between all parties is to develop confidence building measures and new channels for political dialogue and cooperation.

The Philippines has taken several initiatives to help resolve the territorial disputes in the South China Sea. During his recent visit to China (August 31st-September 1st), the new President of the Philippines, Benigno Simeon Cojuangco Aquino, raised the issue of these disputes with his host, President Hu Jintao. Both sides agreed to strategic cooperation for peace and stability in the area and agreed not to allow issues to harm friendship, cooperation and trade between the two countries. President Aquino presented a proposal for a cooperative framework for managing maritime disputes that would supplement the code of conduct. Under this proposal, it is suggested that disputed areas should be differentiated from undisputed areas. This would enable the latter to be developed according to national law, while disputed areas should be de-militarized and made open to joint development. However, while most disputes were bilateral and should be resolved bilaterally, the overall problem of the South China Sea was multilateral in nature and, therefore, bilateral discussions had to be accompanied by multilateral discussions and based on the ASEAN-China code of conduct and its Guidelines, as well as on UNCLOS.

One of the problems limiting the effectiveness of UNCLOS, however, is that it does not cover conflicts over claims relating to the sovereignty over particular territories or maritime features. According to the principles of international law, "land owns the sea". Thus, maritime boundaries are determined in the first place according to which country owns the adjacent land. Where there is a dispute over the sovereignty of a particular territory, this cannot be resolved according to UNCLOS but only on the basis of customary international law and adjudicated by the International Court of Justice in The Hague. Thus, with maritime disputes, discussions to determine the sovereignty of the land should be undertaken between claimants before invoking UNCLOS. Moreover, a bilateral approach should be followed to resolve such a dispute, since it offers the most effective way to achieve consensus. This has been the course taken in bilateral disputes between Indonesia and Malaysia and between Malaysia and Singapore. At any event, the management of such conflicts is best undertaken peacefully.

Another element that should be taken into consideration is the naming of seas. According to the rules of the International Hydrographic Organization (IHO), which is based in Monaco, there are procedures on how to name the seas. Such names are important in terms of the freedom and safety of navigation. It is not easy to change the name of seas, as it involves a lengthy process of negotiations. It is also important to note that the name of a sea does not imply ownership of the sea**.

The adoption of the Guidelines in July led to the creation of three committees dealing with marine and environmental research, the safety of navigation, and search and rescue operations and combating international crime. Cooperation in these fields will assist with confidence building and the last category is important as pirates, having been removed from the Malacca Straits, have been moving into the South China Sea. Peace and economic development in the region requires that all parties work together and progress on settling disputes would also be helped if all the claimants were to clarify both their claims and the details of the legal entitlements on which these claims are based. Moreover, the ASEAN members as a whole have to work together to deepen their cooperation to reduce tensions among the claimant states.

While Vietnam enjoys good relations with its ASEAN partners, as well as a strategic relationship with China and while relations between ASEAN as a whole and China remain good, with the aim of building a Partnership by 2015, disputes over the South China Sea are an important source of conflict, including for Vietnam.

Among these disputes between China and Vietnam are:

- Bilateral disputes involving the limits of a claimant's continental shelf and those which are related to islands;
- The Paracel Islands, claimed only by China (and Taiwan) and Vietnam.
- The Spratly Islands, claimed by China (and Taiwan) and four ASEAN countries, including Vietnam;
- China's claim presented to the UN General Assembly in 2009 and based on the "9 dotted lines", which accounts for 80 percent of all of the South China Sea.

While all parties have made efforts to ease tensions in the region, relations between Vietnam and China were severely strained by two incidents in June involving interference with Vietnamese oil exploration vessels by Chinese vessels well within Vietnam's 200 nautical miles Exclusive Economic Zone (EEZ), one off Da Nang, the other off Ho Chi Minh Ville (the former Saigon). In addition, Vietnam is seriously upset by China's "9 dashes" map and its related territorial claims, which may have a huge affect on the freedom of navigation in the South China Sea. Thus, while Vietnam vigorously protested the actions of the Chinese vessels, China accused Vietnam of conducting unlawful oil and gas surveys. These incidents raised tensions among the rival claimant states because China is the major power in the region and, as such, they affect all countries around the South China Sea. Moreover, the recent completion and sea trials of China's first aircraft carrier are another development of potential concern to her ASEAN neighbours. Vietnam, like the Philippines, sent a senior envoy to China to diffuse these tensions, which was an encouraging sign.

One of the solutions to these disputes is clearly to identify the issues. Indonesia and the Philippines have explicitly stated how to address the disputes and are supported by Vietnam. There are three main points. First, disputes must be settled in a peaceful manner and there should be no use of force. Second, the criteria for any negotiations should be based on international law – the UN Charter, customary international law and UNCLOS (especially in relation to EEZs) – as well as on the Guidelines agreed between ASEAN and China. Third, the approaches to be followed should be selected according to the characteristics of each dispute. Where the disputes involve two parties, a bilateral approach should be applied between the two countries involved and without any third country involvement. However, when issues of multilateral importance are tackled, all the parties should get involved and a bilateral approach should be avoided. To address peace, stability, and sustainable development, the whole region and all maritime powers should participate. However, all approaches must be based on international law and joint development projects should be limited to areas outside the EEZs of countries in the region.

With regard to the European Union's position on the South China Sea, while those of the United States and India, for example, were understood in ASEAN, the EU was seen as not having a position. Although European vessels (and other ships carrying goods to and from the EU) form an important part of the maritime traffic on the South China Sea, the EU has no direct involvement or territorial stake in the area. However, due to the significant level of trade that is dependent on the freedom of navigation in, and stability around, the South China Sea, the EU has an interest in the area, which, therefore, it must defend. At the same time, the EU is unwilling to maintain any significant military forces in the region, compared, for example, to the United States, and arms supplies and joint military manoeuvres with parties to the disputes might be a complicating factor and send the wrong signals. On the other hand, large EU-based energy companies are involved both in exploration and drilling for oil and gas in the region and it is important that due diligence is taken in ascertaining the territorial ownership of potential oil and gas fields. The EU, by implication, therefore, pursues a 'soft' policy.

Nevertheless, the EU does have a position on the South China Sea, which it has explained at various meetings, such as at the ASEAN Regional Forum. The EU stresses the need for a peaceful solution to the disputes, a unified approach, support for the ASEAN-China code of conduct, and a clarification of claims. The EU has also offered to share its own experiences with regard to maritime disputes, fishing rights, and so on. These positions might be better understood, however, if they were made more forcefully and consistently by the EU being represented at a very senior level at meetings with ASEAN.

There are three levels of contribution, which the EU could make to help settle these disputes peacefully. The first is to show a greater ‘interest’. The second is to ‘speak out’ when violations of international law occur. The third is ‘sharing experiences’ with its ASEAN partners, as well as with China.

The issue of maritime security is a source of concern not only for the countries surrounding the South China Sea but also for the rest of the world, as it is linked to the freedom and safety of navigation. Vietnam, along with the other ASEAN member states, believes that, at multilateral level, third party involvement is needed and the potentially best third party to take part in the settlement of the South China Sea disputes could be the EU. ASEAN is a gathering together of relatively small countries in terms of bargaining power. Therefore, to deal with a great power like China, another big power should step in to help settle the disputes neutrally and peacefully and European ‘soft power’ has the potential to do this.

Notes:

* Reports on the other Maritime Security Seminars - “[Asia’s Maritime Dilemma: The South and East China Seas](#)”, held on 17th November 2010, “[The Indian Ocean: Strategic Arena for the 21st Century](#)”, held on 29th November 2010, and “[Maritime Security in the Straits of Malacca](#)”, held on 1st March 2011, as well as of a further Seminar on “[Europe’s Position towards the Dynamics of Security in Asia: Arms Race versus Arms Embargo](#)”, held on 25th May.

** It is worth noting that the Philippines is not alone in using a different name to denote the South China Sea. The Vietnamese refer to it as the East Sea and the Chinese simply as the South Sea.