

GROWING TENSION IN SOUTH CHINA SEA-CAUSES AND CURES

Dr S.D.PRADHAN

The recent escalation in tension in South China Sea has indicated the need for objectively looking at the causes of dispute and the recent developments both negative and positive with a view to suggest measures to diffuse the situation, which according to some security experts has the potentials to escalate into an armed conflict and to help the involved nations to find a permanent solution.

Causes

The dispute stems from the fact that there are overlapping claims of sovereignty by several nations over islands in the South China Sea. The regional energy security and national concerns make the situation more complex. While China claims the entire area, other nations like Taiwan, Vietnam, Philippines, Malaysia and Brunei also claim parts of the area. While Indonesia is not a party to the dispute in the Spratly Islands, China's U-shaped line cuts through Indonesian claimed waters to the north of Natuna and the line of demarcation between Vietnam and Indonesia has yet to be finalized.

The South China Sea is strategically important. It is one of the world's most important trade routes. The littoral states provide good markets for the products of developed nations. Therefore the nations, which are outside the region, desire freedom of navigation for carrying out trading operations. In addition, it has significant oil and gas reserves. US Geological Survey projects that this region could contain nearly twice of China's known reserves of oil and plenty of gas. Therefore, the littoral states desire to have their share of the area. Notwithstanding the involved nations have in the past made efforts to resolve the issue peacefully and agreed to adhere to the Declaration of the Conduct of Parties in South China Sea, 2002 (DOC) based on the norms of International Law as well as attempts to advance to the Code of Conduct on the East Sea (COC), the tension has significantly grown recently.

The following incidents, which have contributed to the rising tension, deserve attention-

- In February 2011, a confrontation between two Chinese vessels and a Philippines oil exploratory ship owned by Forum Energy occurred. Democrat Senator and Head of the US Senate Foreign Relations Subcommittee for East Asia, Jim Webb stated that the Chinese vessels tried to smash the Philippines ship, which China denied.
- In May 2011, Chinese planes were reported over islets, atolls and reefs, which are claimed by Philippines, Vietnam, Malaysia and Brunei besides China. This was seen by the involved parties as an attempt by China to assert its claim resulting in raising the level of tension.
- On 26th May and again on 9th June, 2011 Chinese patrol boats cut the cables on Vietnamese exploration ships, which were conducting seismic research about 120 nautical miles off Vietnam's central coast. These actions were clearly in violation of the 2002 Declaration of the Conduct of Parties between China and ASEAN.
- In the third week of July, 2011 an Indian ship INS Airavat, which was on a friendly visit to Vietnamese port of NhaTrang was asked by a Chinese ship to move out of "the Chinese Waters" when the Indian Ship was moving up-coast to Haiphong. This was seen as the Chinese attempt to assert its sovereignty in the Vietnamese area.
- In September, 2011 China objected oil and gas exploration in two Vietnamese blocks by India's ONGC Videsh Ltd (OVL). China in a demarche to India stated that unless its permission was taken for exploration in Blocks 127 and 128, OVL's activities would be illegal. While India replied that the Chinese objections had no legal basis as these blocks belong to Vietnam, this incident was seen as yet another attempt by China to challenge Vietnam's sovereignty in the area and sending a signal to all other countries that China would not allow them to take any decision without its approval for the exploration in these areas.

In the above context, the deeper causes of the growing tension between the Chinese and its neighbours need to be analysed. For this reason it is necessary to look at two other areas which involve China and its other neighbours. One

of the other areas is East China Sea which is witnessing tension between China and Japan. The other area is Sino-Indian border, which is witnessing increasing tension. The incidents causing tension recently in these areas are described in the subsequent paragraphs.

The dispute in East China Sea stems from the conflicting claims over Senkaku/Diaoyu Islands and natural gas field called Okinawa/Yihu, which is said to have 17.5 trillion cubic feet gas as well as substantial amount of oil. The conflict on location of median between the two countries has made the issue more complex. While Japan holds the view that the median between the two countries should mark the boundary of their Exclusive Economic Zones (EEZs), China insists that boundary should be defined by Chinese continental-shelf extending its EEZ beyond the median line. In addition, the Chinese drilling in Chunxio field- an undisputed area, is also causing tension as Japan feels that it could drain gas on Japan's side through honey comb of sea-bed rocks. The following incidents have raised the tension in the East China Sea-

- In 2008, two Chinese Maritime Surveillance boats entered and stayed in Japan's territorial waters for more than nine hours.
- On the 7th September, 2010 two Japanese Coast Guard patrol boats collided with a Chinese fishing boat while carrying out the law enforcement activities in the Senkaku islands.
- On 24th August, 2011 about one month after ARF Conference, two patrol boats of the Chinese Fishery Administration entered into Japan's territorial waters. This was the first incident after 2008, when Chinese government vessels entered into Japan's area.

In recent years several incidents occurred at the Sino-Indian border rising tension between the two countries despite India having several agreements with China to settle boundary as well as other issues peacefully. These include Agreement on Maintenance of Peace and Tranquillity along the Line of Actual Control of 1993, Agreement on Confidence Building Measures in Military Field of 1996, and Declaration on Principles for Relations of People's Republic of

China and Republic of India in 2003. Despite the above agreements, the following incidents took place generating tension-

- In 2009, China objected to the visits of Indian President and Indian P M to the Indian state of Arunachal Pradesh.
- In 2010, China opposed the Asian Development Bank Project in India's Arunachal Pradesh stating that China considers it as a "disputed" area.
- In 2010 China began to issue stapled visas to Indians belonging to J&K State.
- In August 2010, China denied visa to Lt. Gen. B.S Jaswal, Commander, Northern Command, on the ground that he was based in J&K. The lack of diplomatic sensitivity was stark since the Lt. Gen Jaswal was invited by the PLA.
- In August 2011, the Chinese troops were reported to have entered into Indian Territory and dismantled 17 old army bunkers in Chumar division of Nyoma sector about 300 kilometres from Leh.
- In the summer of 2011 the Chinese soldiers came into the Indian Territory in the Northern Sikkim in the Finger Area at least a couple of times.
- Chinese troops numbering between 3000-4000 are stationed in Pakistan Occupied Kashmir.

An analysis of the developments in the three areas allows us to see the problem in the wider perspective. The common factor in all the three regions is that the disputes involve China and its neighbours. The basic cause of rising tensions in recent times is seen as China's increasing aggressive posture by its neighbours. The security experts in China's neighbouring countries point out that China's assertiveness has now become aggressive. They perceive that China is redefining its land and maritime borders to project its growing power. They also see that China's has adopted aggressive posture towards its neighbours to establish its hegemony over them. They also point out that China does not take seriously the agreements signed with its neighbours for resolving the issues through negotiations. They see that the Chinese attempts to project

its growing power as China's peaceful rise that is not aimed against any country as a ploy to obfuscate its ulterior motive of strengthening itself without arousing the suspicions of its neighbours. The recent White Paper of China has again emphasised the peaceful rise of China but neighbours are in no mood to accept it. Other countries assess that the Chinese military capabilities are not merely aimed at developing defensive capabilities but in fact have enabled China to have 'threat capabilities'.

China on the other hand considers all the disputed areas as belonging to it. This is most visible in South China Sea. The moot point is why China has adopted such a posture, which is seen by its neighbours as aggressive. This dimension needs deep analysis before measures can be suggested for diffusing the situation that has arisen in South China Sea. China's growing aggressiveness stems from the following factors-

- China's growing confidence in the economic field. Internationally China feels that it has maintained high growth rates despite the global recession. This enables China to spend substantial amount for building defence capabilities.
- Chinese defence budget has been witnessing double digit increases in the last two decades. In actual terms, the Chinese officially declared defence budget increased substantially from about US \$ 17 bn in 2001 to more than US \$ 91 bn in 2011. The actual expenditure is estimated to be more than two to two and a half times of the official budget. It may be pointed out that Chinese official budget does not include value of arms from Russia, funds from Central and Local Governments for defence mobilization, preparations, conscription and demobilization, expenses on civilian run defence industrial sectors which conduct military related research and development, the value of food produced and consumed by PLA units and income from PLA's business ventures. In 2010, Japan's foreign Minister had expressed concern at China's very high military spending.
- China's high confidence in its military capabilities as a result of relentless efforts to modernize its armed forces since it began giving emphasis on four modernization programme. The recent statement of

Liang Guanglie, the Chinese Defence Minister that “China is preparing for military conflict in every strategic direction and that China would speed up military modernization and development of equipment”, assumes a serious dimension when viewed in the backdrop of the Chinese efforts to enlarge its missile stockpile as well as develop sophisticated missiles equipped with highly advanced guidance systems. In the last ten years, its short range missile units have increased more than seven times indicating the number of missiles added in the Chinese store since the year 2000. Its long range missiles have impressive range though the number has not increased much in the last two years. China is also replacing its liquid fuel missiles with solid propellant missiles. There has been 30% increase in cruise missiles in the last year. Keeping these developments in the calculus, the US 2010 Quadrennial Defence Review Report noted, “China is developing and fielding large number of advanced weapons, increasingly capable long range defence systems, electronic warfare and computer network attack capabilities, advanced fighter aircraft and counter space system”. China’s growth of missile stockpile is viewed by its neighbours as well as Western countries as a threat to the balance of power in the region.

- Changes in the Chinese nuclear doctrine are seen by its neighbours as a serious threat of the use of nuclear weapons. In the last few years, it has become clear that China has no intention to follow the doctrine of “No First Use” (NFU) of nuclear weapons at least in the neighbouring regions. The first indication of this change was noted in 2001 when at a high level meeting, the PLA suggested that China should use nuclear weapons to protect its territorial integrity and also in the situation of nuclear powers attacking non-nuclear states. The advocates of this change argued that such a situation would deter the US from interfering with China’s military operations in Taiwan, if they take place in future. In 2006, Maj.Gen. Zhu Chengdu, Dean of the officially sponsored and influential Institute of International and Strategic Studies pointed out that China would have no choice but to respond with nuclear weapons in case the US attacked the Chinese territory with conventional weapons. Later, China began to develop tactical

nuclear weapons suggesting a change in the doctrine of NFU. The security experts analyze that tactical nuclear weapons are incompatible with the Chinese declared NFU doctrine.

- Chinese growing naval capabilities have also contributed in raising the level of Chinese assertiveness. In August, 2010 Pentagon's Report on Military and Security Development involving People's Republic of China observed that the first boat of a small category of new Jin class (Type 094) sea launched ballistic missile submarine appeared ready and could be building another four such submarines while noting slow development of sea based nuclear missile. Another report pointed out that China had produced a new missile called JL-3, though some experts have doubted this report. Chinese deployment of Anti- Ship Ballistic Missiles has also been noted with concern by its neighbours. In addition, China has also operationalized its air-craft carrier- Varyag.
- Strengthening of Chinese air capability is also a cause for concern. China has produced a stealth fighter. China had stunned the military observers in January 2010 when its stealth fighter took off on a flight test on the day Roberts Gates, the then US Secretary of States met Hu Jintao, the Chinese President in Beijing.
- China's perception that an opportunity has arisen to increase its influence world-wide as the world balance of power shifts from the West to the East along with the emergence of multi-polar world.
- Chinese suspicions on US strategy towards Taiwan and the Chinese perception that the control over the entire South China Sea is essential for its security.
- Chinese differences with US and Russia and seeing its neighbours as their allies.

China's growing military power has coincided with a more aggressive diplomatic tone and activities. Since 2010, this is evident in spats with Japan and other South East Asian Countries over the disputed islands, with Washington over trade, the Yuan currency and human rights and this year's activities in South China Sea. In South China Sea, Chinese strategy is guided by

the realization of the strategic importance of this region for trade, fisheries, minerals and hydrocarbons and desires to have complete control over the region. Security experts point out that South China Sea dispute is driven by China's insatiable thirst for oil. *The recent comment in the Global Times (25th October, 2011) –State run Chinese newspaper-that countries like Vietnam, Philippines and South Korea should not take China's mild diplomatic stance for granted and "if these countries do not change their ways with China, they will need to be prepared for sound of cannons" would be seen as China's aggressive stance by these countries.*

Recent Positive Developments

Notwithstanding the above incidents that have generated tensions, some positive developments have also taken place, which are as follows-

- An agreement was reached at the ASEAN- China Foreign Ministers' meeting on July 21, 2011 at Bali for the implementation of the Declaration of Conduct of Parties in South China Sea. Guidelines for the implementation were finalised. It was proposed that an action programme would be pursued for the implementation of the Joint Declaration on ASEAN-China Strategic Partnership for Peace and Prosperity for the period of 2011-15. It was also agreed that the differences would be resolved peacefully through friendly negotiations on the basis of international law, particularly 1982 Convention the Law of Sea, adhere to the DOC and advance to the Code of Conduct on the East Sea.
- ASEAN Foreign Ministers agreed to set up a working group to discuss the drafting of a Code of Conduct of Parties (COC) in the South China Sea. This decision was reached at the informal ASEAN Ministerial Meeting on the side-lines of the 66th Session of the UNGA in New York on September 24, 2011.
- The President of Philippines visited China and an agreement was signed in the beginning of September, 2011. By this agreement both sides reiterated their commitment to address the maritime dispute through peaceful dialogue, to maintain regional peace, security, stability and an environment conducive to economic progress.

- Japan and Philippines signed a security pact at the end of September, 2011. Both the countries agreed to maintain freedom of navigation, unimpeded commerce and compliance with international law and peaceful settlement of dispute for the benefit of their countries and the whole region.
- Japan also hosted ASEAN delegates' meeting at the end of September, 2011 to resolve the maritime disputes. The Vice-Ministerial level meeting focussed on the need to find consensus on the interpretation of maritime laws regarding freedom of navigation. This move was criticized by China.
- China and Vietnam have signed a key pact in mid-October, 2011 to end their maritime disputes. Under the agreement relating to the sea issues, Vietnam and China agreed to follow the 1982 UN Convention on Law of Sea and 2002 DOC while solving disputes through negotiations.
- *The joint communiqué issued during the Vietnamese President's visit to Philippines (26-28 October, 2011) stressed the importance of maintenance of peace, stability, maritime safety and security in the region as well as the need for a rule based approach adhering to international law, especially the 1982 UN Convention on Law of Sea and a multilateral dialogue among the parties concerned. It also emphasised the ASEAN centrality and the essentiality of full implementation of the DOC.*

Cures

The above suggests that alongside the increasing tension because of incidents mentioned earlier, there is a growing feeling that the dispute in South China Sea should be resolved through peaceful and friendly negotiations. It is imperative to see why in the past such efforts failed and the DOC was not implemented either in spirit or in letter. Three causes were responsible for this. First was that China did not want to be constrained by any document. Second, the difference in the approaches between China on the one hand and other involved nations on the other too contributed for non-implementation of DOC. While China wanted bilateral agreements with other

countries to resolve the disputes, other countries supportive of a multilateral agreement. And third, the DOC was seen merely as a document of political intent that was not legally binding. However there is a positive aspect also. Now all countries including China have agreed to the guidelines for the implementation of DOC, which is a welcome move.

However, the move to draft the Code of Conduct (COC) would not be easy. In the agreement only non-controversial issues like marine technological research, rescue and anti-piracy efforts, steps to check environmental degradation etc. have been mentioned but it does not include the core issue of overlapping claims of sovereignty in the South China Sea. How the main issue is to be dealt with remains to be seen. There is no doubt that cooperation amongst China and other countries involved in the disputes would help reducing tension. Several experts have supported this line. Cooperation on non-traditional items without focusing on jurisdictional and sovereignty issues would get an opportunity to talk about the dispute in a non-confrontational and informal basis. But the core issue should not be placed at the back burner if peace and stability in the region is to be maintained.

The following suggestions in this regard merit attention-

- While all the involved parties have accepted the centrality of resolving the issue through peaceful negotiations, now they need to avoid all actions which contribute to the generation of tensions. China as the most important player should pay special attention to this aspect.
- Until the resolution of the issue, all nations involved in the dispute should adhere to the Declaration of Conduct of Parties in the South China Sea (2002) and the Code of Conduct (COC) when it is drafted. While this has been reiterated at Bali in July 2011 and all the parties have agreed to advance to the COC, attempts must be made to make it binding. The concerned nations must be asked to give a firm commitment in this regard. They must give assurances that their Acts, if need be, would be modified. In this context, China's Special Territorial Sea and Contiguous Zone Act that is aimed at legalizing the Chinese claims over Spratly Islands deserve special mention. It must

be clarified that the COC would be applicable to the entire region as its limited applicability would not serve the purpose.

- While the nations would come up with their version of COC, the involved nations must accept certain basic terms with a view to transform the South China Sea issue into a maritime control issue designed to promote peace, friendship and trade. These terms should include prohibition on the use force or threat of force, ensuring no re-occurrence of tension generating incidents, complete ban on sending of ships, aircraft and submarines into the territorial waters of other countries, and non-interference in the exploration and economic activities of other countries.
- Constitute a dispute management mechanism to ensure strict implementation of Code of Conduct. This would ensure that no untoward incident takes place because of miscalculation, adventurous attitude of naval personnel and misinterpretation of any incident. This would provide teeth to the COC.
- All nations have to accept that this dispute involves several nations and therefore it requires a multi-lateral agreement. The centrality of this aspect needs to be understood by all parties.

After the COC has been put in place, efforts must be made to resolve the issue of overlapping claims amongst the parties. The involved parties need to appreciate that the basis of resolution of the disputes has to be pragmatic. At present most of the parties are claiming the areas on the basis of historical factors. Since at different times the disputed areas were under the control of different countries or were used by fishermen of different countries, it is extremely difficult to settle the disputes on the basis of these claims. Therefore, any lasting solution to the dispute cannot be based on historical claims. The resolution can only be based on international law of sea. However the need to modify United Nation's Convention on Law of Sea (UNCLOS) for resolving the South China Sea cannot be underestimated. Certain issues like characteristics of features that would satisfy the conditions of the Article 121, the amount of weight to be given for claims under the definition of this Article and how to deal with the issue of

expanded continental-shelf claims need to be settled. Pragmatism demands that serious efforts to interpret law of sea and modify it to meet the requirements of the South China Sea must be initiated with a view to arrive at the lasting solution to the problem.