

**Dalhousie Symposium on
Confidence and Co-operation in South Asian Waters
Colombo, Sri Lanka
11 – 15 August 2003**

Report

Introduction

1. As part of its ongoing work to promote maritime Confidence-building Measures (CBMs) in a number of regions around the world the Centre for Foreign Policy Studies at Dalhousie University held the third annual symposium to explore Confidence and Co-operation in South Asian waters. The symposium was held in Colombo, Sri Lanka from 11 – 15 August 2003. The objective was a focussed discussion, at the non-official level, of maritime safety, co-operation and related issues in South Asia.
2. The symposium was attended by retired senior officers from the navies of India and Pakistan, including: Admiral T.K. Khan, Rear Admiral K.R. Menon, Admiral J.G. Nadkarni, Commodore P.C.B. Nair, Rear Admiral I.H. Naqvi, Captain Naeem Sarfraz (MM), and Admiral V.S. Shekhawat. Admiral Fasih Bokhari was also to have participated, but could not at the last minute due to an illness in the family. In addition, research experts from the region, from the Co-operative Monitoring Center (CMC) at Sandia National Laboratories in New Mexico and from the Centre for Foreign Policy Studies and the Marine Environmental Law Programme at Dalhousie University in Canada attended. Of particular note in this respect was the participation of retired Rear Admirals Hasan Ansari and Ravi Vohra, who are Visiting Research Scholars at the CMC. The Defence Attaches of India and Pakistan attended some sessions in an Observer capacity. The symposium was funded by the Cooperative Monitoring Center and by Canada's Department of Foreign Affairs and International Trade.
3. The participants noted that the situation between India and Pakistan has improved considerably since their last meeting in Kuala Lumpur, Malaysia in April-May of 2002. There has also been progress in the maritime sphere, partly as a result of their meetings. In particular, many fishermen imprisoned by each side for violations of the disputed maritime zone have been released. For a time, arrests had been halted. Even though they have resumed recently, far fewer have been arrested than in previous times. The participants expressed their view that such arrests should stop and that ongoing releases should be expedited.
4. Discussions proceeded in the following subject areas: maritime boundaries; continuation of the review of the applicability to the region of a prevention of incidents at sea (INCSEA) Agreement; and the potential for new ideas as to Confidence-building Measures (CBMs) to be explored by the two sides.

Maritime Boundary Issues

5. On the first and second days of the symposium, experts from Dalhousie University's Marine Environmental Law Programme facilitated discussions on the India-Pakistan maritime boundary issue. The wide-ranging presentations and discussions provided a foundation on the relevant legal principles and practices. Of particular note were the case studies showing how the

principles had been applied in several actual cases. The key points made by the Dalhousie legal team throughout these sessions were that:

- there are several ways to delimit a maritime boundary (which can be combined at various stages in the process of settling the boundary);
- the two sides can delimit those portions of the boundary that are possible at a given time and leave others for later;
- the sides can delimit some portion of a maritime boundary from the seaward, thereby de-linking the question from any disputed land boundary (with the extent to which this is possible depending on the specific geographic and political circumstances of the case); and
- experience has shown that it is usually better to settle a boundary by negotiation and agreement than by arbitration.

6. A participant asked whether there is any real pressure to resolve the maritime boundary, noting that there may not be as much oil and gas as had originally been hoped. Others argued that the potential resources make it important to try to resolve this soon, and that the trend in the broader political relationship between India and Pakistan make this a good moment to try.

7. It was suggested that further efforts be made to raise awareness at the official level of the various ways to resolve this issue. To this end, a suggestion was made that each side in the discussion prepare a position paper on its views of various ways to approach the issue which they could share with their governments to stimulate discussion. This was agreed as a priority by both sides. In addition, a computer programme has been prepared by an expert at Dalhousie which can assist in delineating maritime boundaries. The participants agreed that it would be useful to work with this programme as a means of further exploring the issue.

8. It was understood that a hydrographic survey of the area has been carried out by India, with the concurrence of Pakistan. This survey should be authenticated.

9. It was also suggested that a key next step would be to seek to have a positive reference made to the need to resolve this issue (and move forward on other maritime CBM ideas) in the statement of the next India-Pakistan Summit meeting.

10. Some discussion took place on whether it would be possible to de-link the maritime boundary question from the Sir Creek dispute. There was recognition that this is technically possible by drawing much of the boundary from seaward, but some participants suggested that Pakistan prefers to abide by the Rann of Kutch Tribunal award and the Resolution map of 1914.

11. That said, there was agreement that ways should be explored to reduce the impact of the dispute on day-to-day operations; as one participant put it to “make some progress in living together.” The idea of a de-militarized zone at sea in the area was suggested in this context.

12. Another idea suggested was to get legal and other experts from India and Pakistan together with the Dalhousie legal team to explore options of promoting trans-boundary co-operation and joint development, even in areas where the final boundary is not settled, in a non-official, workshop setting. Examples of this were noted, such as the France/Spain; Korea/Japan and Saudi

Arabia/Bahrain cases. It was also noted that, even where a maritime boundary is settled, co-operation is required on an ongoing basis as fisheries enforcement, Search and Rescue co-operation and other endeavours require a co-operative approach.

INCSEA

13. It was recalled that the Centre for Foreign Policy Studies experts had been asked to prepare a notional INCSEA text for discussion at this meeting. They further recalled that paragraph 5 of the MOU to the Lahore Declaration of 21 February 1999 states that:

"The two sides shall conclude an agreement on prevention of incidents at sea in order to ensure safety of navigation by naval vessels, and aircraft belonging to the two sides."

14. The participants then spent a full day reviewing the notional INCSEA and made extensive modifications and changes to it. The results of this discussion are attached to this document.

15. The participants agreed that this text is a good starting point for further discussion of the idea in their respective countries. They further agreed that they will ensure that the notional INCSEA text is shared in their respective countries at the appropriate maritime, bureaucratic and political levels and that further opportunities will be sought to promote the idea. These may include further workshops on the idea in both countries.

16. Furthermore, it was agreed that both sides will seek to have included in the statement of the next India-Pakistan Summit meeting a positive reference to the need to conclude an INCSEA Agreement, as called for in the MOU to the Lahore Declaration.

CMC Project Report

17. The participants then heard a presentation from two regional experts currently resident at CMC who are conducting a project to identify opportunities for maritime confidence-building between India and Pakistan. The project has explored four main areas and seeks to develop practical CBM ideas for each. The four areas are:

- Territorial questions (the maritime boundary and the Sir Creek questions);
- Maritime Trade (shipping links and port security issues);
- Fishermen (a zone of disengagement and the repatriation question); and
- Naval and maritime co-operation (INCSEA, consideration of updates to Rules of Engagement in accordance with the San Remo Manual and greater interaction between the Indian Coast Guard and the Maritime Security Agency of Pakistan).

18. On the **Maritime Boundary and Sir Creek** issues it was noted that both countries are very heavily dependent on maritime trade for their exports, and that the seas off their coasts are amongst the most important shipping lanes in the world. Failure to make progress on the maritime boundary is having a restraining impact on economic development in both countries.

19. It was suggested by the CMC Visiting Scholars that an attempt be made to de-link the maritime boundary issue from the Sir Creek dispute and an example was given how this might be

done using the Technical Aspects of the Law of the Sea (TALOS) section 6.2.5.3. It was further suggested that the Sir Creek could be divided at median outflow point as an interim measure. Using these points, it was then suggested that the two Defence Ministries convene a technical sub-working group to address boundary specifics.

20. While many recognized that these ideas present possibilities for further review, some of the participants from Pakistan reiterated their view that separating the maritime boundary from the Sir Creek dispute will be difficult. It was noted in discussion that Pakistan believes that the Sir Creek dispute had been resolved in various stages, notably the Government of Bombay letter 5543 of 20 September, 1913 and the Resolution map of 1914. Pakistan believed that both of these had been re-validated by the Kutch Tribunal. The Indian participants did not agree with this interpretation.

21. Even if the Sir Creek dispute may not be amenable to solution right now, both the CMC Visiting Scholars and the Dalhousie legal team made proposals for interim CBMs. These included a joint approach to environmental protection and management, possibly to include surveys of the sensitive marine ecosystem of the region and the creation of a marine park. It was noted that the environmental projects could best be done by NGOs acting together with support from CMC and others. Also discussed were the application of remote sensing and Geographic Information Systems and decision support technologies to help monitor the current status and ongoing evolution of the Sir Creek's course. Both of these were seen as practical ideas and the CMC will further develop them.

22. On **Maritime Trade**, it was noted that both countries have suffered economically due to greatly restricted shipping regulations and other impediments to trade. These have not only hurt the two economies, but have held the SAARC region back in terms of its ability to fully participate in the emerging global economy. In this context, it was noted that the 1975 Protocol on Resumption of Shipping Services (and especially clauses 5 and 9) has had a negative impact. The participants agreed that they will raise this issue in their respective countries and press for changes. In particular, they will press for an early meeting of a long-established India-Pakistan Joint Commission that was to have explored opportunities for enhanced shipping between the two countries, but has never actually met.

23. The participants observed that some interests will resist freer trade links, claiming that long-protected industries will suffer. The participants agreed that these are not convincing arguments, stating that main reason these industries are in trouble is their inefficiency and that they will have to be opened up anyway as the new World Trade Organization rules come into effect. They also believed that new economic opportunities created by freer trade between the two countries would more than compensate for any dislocations.

24. Discussion then turned to the question of enhancing port security as an aspect of enhancing maritime trade. It was noted that the US Department of Homeland Security is pressing all maritime countries to greatly enhance their port security measures and that its requirements will become the new standard for those who wish to trade with the US. Opportunities were recognized for a co-operative approach to this issue, which would assist both countries to meet the new US standards and also facilitate their own trade relations. CMC noted that it has extensive expertise in these areas and offered to develop a project to help the two sides co-operatively approach this issue. This was agreed.

25. On the **Fisheries** issue it was agreed that the resource is greatly under-developed but will not reach its full potential without co-operation. The immediate priority must be to resolve the question of arrested fishermen languishing in prison and to develop a regime to manage to fisheries in the disputed area. Various means were explored to hasten the release and repatriation process. All of the participants from the region agreed that they will continue to use their personal influence to further press this cause. Two of the participants noted that they are exploring how an influential NGO might play a role in assisting. CMC noted that the development of a data-base on who has been arrested and where their cases stand may help to expedite release and repatriation. This was agreed and CMC will explore the development of a co-operative joint project.

26. On the question of developing a “Zone of Disengagement”, it was suggested by the CMC experts that one should be developed where arrests would not be made. It was further agreed that some means must be found to let fishermen know that they are in this area, and give them warning when they are approaching its limits. CMC noted that it has developed inexpensive hand-held systems which use GPS technology to help inspectors plot their exact position and which give warning when they may be straying into areas they are not allowed. It was agreed that technical options should be further explored for their potential applicability to this case. CMC will explore the development of a co-operative pilot project in this respect and the participants will assist.

27. On increased **Naval and Maritime Co-operation** further support was expressed for the speedy negotiation and adoption of an INCSEA Agreement. Attention then turned to the need for revision of the existing Laws of Naval Warfare, with a suggestion being made that a co-operative effort to explore the implications of the 12 June, 1994 San Remo *Manual on International Law Applicable to Armed Conflicts at Sea* might assist both Navies in revising their Rules of Engagement. The participants expressed great interest in learning more about this idea and further materials will be sent to them for review. It was noted that a Canadian lawyer was a contributor to the San Remo discussions and will soon join the Centre for Foreign Policy Studies. It may be possible for him to come to a future workshop and this idea was welcomed by all.

28. Ideas were then discussed concerning greater co-operation between the Indian Coast Guard and the Maritime Security Agency of Pakistan. It was agreed that co-operation in such fields as Search and Rescue, Fisheries Protection and Marine Environmental Protection and management would be very good areas for initial exploration. After discussion it was agreed that ideas for workshops and other meetings on these areas, at an appropriate level, will be explored and that the participants will encourage such ideas when they return to their respective countries. It was agreed that such workshops might usefully be co-hosted by the Canadian and US Coast Guards.

Wrap Up and Way Ahead

29. The regional participants re-iterated that the process they have initiated must continue. With respect to each of the subjects they had examined at this symposium, the participants agreed that, in addition to the actions identified throughout this report, their next steps will be as follows.

30. The attached Action Plan will serve as a concise checklist for implementation of the ideas agreed at this Workshop. CMC will provide a more detailed Action Plan for those items that it

will be taking the lead on.

31. The participants will be in touch electronically to update each other on actions they have taken under the Action Plan. This will be done at least quarterly.

32. As a broad point, the regional participants will use every opportunity to encourage serving officers from their respective establishments to participate in future workshop as Observers.

33. It was agreed that another meeting will be held within one year, with the Dalhousie and CMC teams to explore funding and other logistical issues in the meantime.

34. The regional participants thanked the experts for their substantive and logistical efforts and expressed their appreciation to CMC and Canada's Department of Foreign Affairs and International Trade for their financial support.

ACTION PLAN

Maritime Boundary

- Each side to prepare a position paper on its views of various ways to approach this issue which they could share with their governments to stimulate discussion. **ACTION:** Regional participants.
- Further efforts be made to raise awareness at the official level of the various ways to resolve the maritime boundary issue. **ACTION:** Regional participants.
- A computer program has been prepared by an expert at Dalhousie which can assist in delineating maritime boundaries and which should be explored in the context of this issue. **ACTION:** Griffiths and CMC explore the applicability of this program and make contacts with other participants as appropriate.
- Encourage authentication of existing hydrographic survey. **ACTION:** Regional participants to encourage their governments.
- Seek a positive reference in the statement of the next India-Pakistan Summit to the need for progress on this issue. **ACTION:** Regional participants to encourage their governments.
- Both Defence Ministries be encouraged to convene a technical sub-working group to address boundary specifics. **ACTION:** Regional participants to encourage their governments to consider this. CMC provide information on applicability of modeling and decision support technologies.
- Explore the idea of a de-militarized zone at sea in the disputed area. **ACTION:** Regional participants to encourage their governments to consider this.
- Explore idea of getting legal and other experts from India and Pakistan together with the Dalhousie legal team for a non-official workshop to explore options of promoting trans-boundary co-operation and joint development, even in areas where the final boundary is not settled (examples such as France/Spain; Korea/Japan and Saudi Arabia/Bahrain cases could be studied). **ACTION:** Regional participants to explore whether this is feasible, and Dalhousie team to explore funding and availability of experts.
- In the Sir Creek area, a joint approach to environmental protection and management should be explored, possibly to include surveys of the sensitive marine ecosystem of the region and the creation of a marine park. **ACTION:** CMC to investigate substance and funding issues and regional participants to explore the political feasibility of the idea.
- Exploration of the application of remote sensing and Geographic Information Systems and decision support technologies to help monitor the current status and ongoing evolution of the Sir Creek's course. **ACTION:** CMC.

INCSEA

- Regional participants to ensure that the notional INCSEA text is shared in their respective countries at the appropriate maritime, bureaucratic and political levels and that further opportunities are sought to promote the idea. **ACTION:** Regional participants.
- Regional participants to explore feasibility of further INCSEA workshops on the idea in both countries. **ACTION:** Regional participants, with Canadian experts to explore funding and availability issues if required.
- Regional participants will seek to have included in the statement of the next India-Pakistan Summit meeting a positive reference to the need to conclude an INCSEA Agreement, as called for in the MOU to the Lahore Declaration. **ACTION:** Regional participants.

Maritime Trade

- Regional participants to raise the issue of the 1975 Protocol on Resumption of Shipping Services (and especially clauses 5 and 9) in their respective countries and press for changes. **ACTION:** Regional participants.
- Regional participants to press for an early meeting of a long-established India-Pakistan Joint Commission that was to have explored opportunities for enhanced shipping between the two countries, but has never actually met. **ACTION:** Regional participants.
- On Port Security issues, a co-operative approach to this issue would assist both countries to meet the new international standards and also facilitate their own trade relations. **ACTION:** CMC and the regional participants explore options and develop a draft proposal.

Fisheries Issues

- Participants from the region will continue to use their personal influence to further press the cause of halting arrests of fishing crews and expediting their speedy repatriation where arrests are made. **ACTION:** Regional participants.
- Two of the participants noted that they are exploring how an influential NGO might play a role in assisting detained fishermen. **ACTION:** Sarfraz, Nair and CMC.
- Exploration of the development of a data-base on who has been arrested and where their cases stand which would help to expedite release and repatriation. **ACTION:** CMC in consultation with the regional participants.
- On the “Zone of Disengagement” idea, participants will explore this idea with their respective authorities, while CMC will explore the idea of developing technologies that would assist fishermen in staying within any zone that might be developed. **ACTION:** Regional participants and CMC as appropriate.

Naval and Maritime Co-operation

- Exploration of the application of the San Remo manual to ROEs. **ACTION:** Dalhousie team to provide an expert for further discussion. CMC Visiting Scholars to make further reference material available for the regional participants.
- Both sides will seek to have included in the statement of the next India-Pakistan Summit meeting a positive reference to the need to conclude an INCSEA Agreement, as called for in the MOU to the Lahore Declaration. **ACTION:** Regional participants
- In order to promote interaction between the Indian Coast Guard and the Maritime Security Agency of Pakistan, ideas for workshops and other meetings on issues of mutual interest, at an appropriate level, will be explored and the participants will encourage such ideas when they return to their respective countries. **ACTION:** Regional participants to promote this idea, and Dalhousie and CMC teams explore funding and issues relating to whether such workshops might usefully be co-hosted by the Canadian and US Coast Guards.