

Confidence and Cooperation in South Asian Waters

8th Symposium

Bangkok, Thailand, June 2011

Introduction

The eighth symposium on confidence and cooperation in South Asian Waters was held in Bangkok between 10 and 12 June, 2011. The symposium was jointly hosted by the University of Ottawa and Dalhousie University, and sponsored by the Near East and South Asia (NESA) Center for Strategic Studies at the National Defense University in Washington, D.C.

The Symposium was attended by retired senior officers from the navies of India and Pakistan, including (in alphabetical order): Rear Admiral Hasan Ansari, Vice Admiral S.C.S. Bangara, Rear Admiral Javed Iftikhar, Admiral T.K. Khan, Admiral J.G. Nadkarni, Commodore P.C.B. Nair, Rear Admiral I.H. Naqvi, Captain Naeem Sarfraz MM, Admiral V.S. Shekhawat, and Rear-Admiral Ravi Vohra. Other participants from Canada and the United States were (in alphabetical order) Dr. Saleem Ali, Mr. David Griffiths, Rear Admiral John Sigler and Ms. Nicole Waintraub.

The three days of discussion addressed the wide range of topics continuing from the previous meeting, with a particular focus this year on the environmental aspects of maritime cooperation.

Agreement for Prevention of Incidents at Sea

With the resumption of talks between India and Pakistan, the group is hopeful that progress will now resume toward concluding the pending Agreement on Prevention of Incidents at Sea (INCSEA).

Naval units operate in proximity to each other routinely and navies are instruments of national policy, therefore it should be a political imperative to minimize the risks of uncertainty, accident or misunderstanding that could result in unintended consequences. To reduce the risk of inadvertent incidents at sea and conduct operations safely, predictably, and in the manner that the respective governments intend, naval commanders require a technically detailed and carefully staffed mechanism which is well understood and practiced by both parties. One of the most valuable aspects of an INCSEA in comparison to other confidence building measures is the requirement for regular, frank, professional consultations on a non-political technical level. Navy-to-navy consultation not only reduces risk, but also provides insights that can contribute to, and facilitate, government-to-government diplomatic resolution of operational issues.

The group undertook to provide impetus to the concluding of an INCSEA agreement by working with relevant authorities. Participants also agreed to prepare academic and opinion pieces for publication at an opportune moment.

During discussion of the concept, the group also considered whether it might be helpful to study aspects of the service-to-service philosophy which might be useful in the relationship between Pakistan's Maritime Security Agency (MSA) and the Indian Coast Guard (ICG). The group agreed to explore this idea further.

Extension of Continental Shelf Jurisdiction

Both governments have submitted their respective claims to the Technical Commission of the International Seabed Authority. The group will continue to monitor progress. The group is gratified to note that the technical workshops which it organized in both India and Pakistan in August 2005 were instrumental in significantly reducing the costs of claim preparation as well as producing non-competing submissions. The group therefore acknowledged the invaluable contributions of Professors Dawn Russell and Phillip Saunders, then Deans of Dalhousie Law School, and Dr. Galo Carrera, Elected Member of the Legal and Technical Commission of the International Seabed Authority, to the group and to both countries.

Maritime Boundary

Although the joint survey recommended by this group at its 2005 meeting was completed satisfactorily last year, ongoing differences still leave the maritime boundary issue unresolved. The governments have exchanged "non-papers" on the issue but neither contains elements that appear likely to break the impasse. Studies conducted by this project in 2004-2005 showed that the boundary dispute at Sir Creek has no significant impact on an equidistant maritime boundary beyond 4½ nautical miles from shore, which is also the Indian position.¹ However the Pakistani position remains that until the land boundary issue is satisfactorily concluded, the maritime boundary cannot be delineated.

The group therefore notes again that resolution of the maritime boundary dispute is a political rather than a technical issue. Consequently, the group's attention will be directed toward identifying mutually beneficial arrangements to reduce friction over such issues as fishing, undersea hydrocarbons and marine environmental concerns, without prejudice to national positions on boundary delimitation.

Detained Fishermen

The welfare of detained fishermen remains a matter of humanitarian and economic concern. Although the group's early work resulted in the encouraging release of almost 600 fishermen in 2003, eight years later arrests still continue. The situation has improved somewhat, subsequent to the October 2005 Memorandum of Understanding which prompted the establishment of more effective communication and cooperation between the ICG and MSA. It also prompted improved procedures, resulting in a reduction in the average time that most detainees remain in custody. Nonetheless, the enforcement policies remain primarily reactive and punitive, rather than preventive. They punish

¹ Saunders, P., G. Carrera, J.D. Betsill, K. Menke, T. Budge, K. Murphy. *South Asia Maritime Boundary Options Visualization and Analysis*. Albuquerque: Sandia National Laboratories, 2004)

crews more than the owners ashore. The financial and human cost of present policies remains unnecessarily high.

Matters could improve by conforming to Article 73 of the UN Convention on the Law of the Sea, releasing crews expeditiously while retaining the boats in order to penalize the owners. However detaining a large number of boats over a long period can create its own environmental and administrative challenges that need to be addressed. Existing legal procedures regarding individuals are counterproductive from a humanitarian perspective and warrant review, particularly the practice of charging arrested individuals with non-bailable offenses. The time required to detain crews while confirming their nationalities is also an impediment to early repatriation. The group noted that existing enforcement resources are inadequate and need to be enhanced.

Members of the group will continue to advocate mutually beneficial changes in policy and procedures regarding fishing compliance and enforcement. The group also noted that 21 November 2011 is World Fisheries Day. This provides an opportunity to acknowledge progress which the two governments have made, while highlighting work that still needs to be done to further improve policy and procedures to the benefit of both fishing communities and the enforcement agencies of both countries. One option for doing this is through the media on or prior to that day. The group noted that the World Forum of Fisher Peoples secretariat is now located in Karachi and will remain there for the next three years.

Law of Armed Conflict and Rules of Engagement

In 2005 the group had been briefed by one of the authors of the *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* and subsequently encouraged its general use in their countries. In 2010 the group noted that the contents of the manual are being taught at their respective institutions and concluded that no further research on this issue was needed. Nonetheless, rules of engagement continue to evolve and the group noted that authorities should be made aware of a new document titled *Rules of Engagement Handbook*, which provides a reference “designed so that it can be used by any nation or group of nations without reference to security caveats or restrictions” and “reflects best practice from nations across the globe”.²

Marine Search and Rescue

Cooperation in marine Search and Rescue (SAR) is generally good between the MSA and ICG, although improved standard operating procedures for the identification, treatment and repatriation of rescued seafarers need to be put in place.

SAR is an internationally obligated activity that can also provide useful opportunities for other interaction at sea. Opportunities should therefore be sought to arrange or participate

² Cole, Alan, et al. *Rules of Engagement Handbook*. International Institute of Humanitarian Law, 2009. Available online at: <www.usnwc.edu/getattachment/7b0d0f70-bb07-48f2-af0a-7474e92d0bb0/San-Remo-ROE-Handbook>

in simple SAR exercises whenever naval units or government ships of both countries are scheduled to be operating in the same vicinity, for example warships on piracy patrol.

Submarine SAR is a national obligation that offers another opportunity for international cooperation. It would therefore be helpful for submarine operating navies of the region to consult on the potential for mutual assistance. This could include consideration of resources available from the private sector, especially technology resident in the offshore oil and gas industry.

Emergency Management

To prevent emergencies from necessarily becoming disasters in coastal communities, both governments could benefit from conducting prior consultation and planning for mutual aid in the event of a crisis. Resources for responding to major events are often scarce, therefore coordinated emergency preparedness and mitigation programs could result in savings for both parties. As the group noted at its last meeting, this should be done between the respective national disaster management authorities, however the ICG and MSA are responsible for marine aspects and should therefore also coordinate their emergency preparedness activities. Marine disasters on the high seas may also have environmental impact, which provides yet another opportunity and obligation for maritime cooperation.

Environmental Peace-Building

Dr. Saleem Ali, founding director of the Institute for Environmental Diplomacy and Security at the University of Vermont, led a discussion on the prospects for environmental peace-building initiatives, particularly through establishing “peace parks” or trans-boundary protected areas. There are more than 170 of these around the world. Not only do some straddle areas of territorial dispute, but several have contributed directly to conflict resolution; for example the declaration by Ecuador and Peru of national parks on either side of a disputed border area creating the conditions for an ultimate resolution.

Pending settlement of the Sir Creek dispute, consideration may be given to declaring the surrounding area as a “wetland of significance”. This would provide positive environmental impact to both countries and, in addition, serve as a confidence building measure. The group agreed to maintain contact with international experts and to advocate and encourage this initiative.

Marine Environmental Protection

The group reviewed the problem of illegal tank flushing by ships in transit across the Arabian Sea. Issues of cooperation in detection, response and prosecution were beyond the scope of this meeting, but it was agreed that one issue which needs particular attention is the requirement to make tank cleaning while in harbor mandatory, as well as making facilities available in all ports so that this can be done. The group agreed to research the matter further and make this a major agenda item for its next meeting, with the aim of contributing to future awareness of the problem in both countries.

Maritime Trade

Prompted and encouraged by the quiet work of participants over a three year period, the governments initiated discussions on a bilateral *Maritime Shipping Agreement* which was signed in 2006. Since then progress has occurred and more cargo is moving freely between Indian, Pakistan and other ports.

Port Security

To address how enhancing port security could enhance regional maritime trade, in 2004 the group received a briefing on the Megaports Initiative by a U.S. expert and invited him to make subsequent presentations in both India and Pakistan. The Container Security Initiative (CSI), Megaports program and Secure Freight Initiative have now been implemented in the region with generally satisfactory results. The group will continue to monitor the issue.

Project History

Plans to work on a paper outlining the group's achievements and methods had been planned for 2010, however other priorities prevented its completion. As part of their academic work, the Canadian facilitators will aim to work in consultation with the group during the coming year to produce such a record. At the same time, the group's web page will be revised, upgraded and expanded to add more detail and provide useful links to researchers, without prejudicing the discretion and privacy that is part of the group's work ethos and has resulted in measurable achievements over the years.³

Pipelines

Commodore Nair briefed the group on remarkable developments in the deepwater offshore natural gas industry, particularly in the Indian Ocean region. For technical reasons it is more economical to transport natural gas by pipeline than by liquefaction, shipping by tanker and regassification at the destination. In case of inordinate delays in the planned overland pipeline through Pakistan from Iran to India, an alternate shallow water sea route could be considered. Although it would be more expensive to construct than the overland route, it would be shorter, less vulnerable to disruption, and easier to service and repair.

Maritime Piracy

Pakistan and India both have large numbers of seafarers in foreign-flagged ships exposed to piracy. Indeed, Somali pirates are currently holding a ship hostage that includes five Indian and four Pakistanis in the crew, along with one Sri Lankan and eleven Egyptians. Despite the substantial international naval anti-piracy effort off Somalia, the capabilities, boldness and operating range of the pirates has been increasing. The group noted that although there are many meetings, conferences and initiatives devoted to maritime

³ http://centreforforeignpolicystudies.dal.ca/events/marsec_CCSAW.php

piracy, most of the effort focuses on the tactical and operation challenges of patrol, response and prosecution, although most acknowledge that the ultimate strategic solutions must be implemented ashore. Members of the group were therefore invited to consider participating, either collectively or individually, in a Dalhousie University project undertaking a comprehensive, multi-year, interdisciplinary, international examination of contemporary maritime piracy worldwide to determine the true costs and effects that piracy has on seafarers, coastal states and communities where piracy has become a major industry. In addition, the group explored means for bringing together stakeholders from the maritime industry in both countries to discuss mutual interests and exchange lessons learned, and agreed that an approach should be made to an organization such as the Indian Maritime Foundation.

Discussion Arising

As noted earlier, submarine rescue presents an opportunity to enhance cooperation and confidence building. The group agreed to explore the prospects of a regional conference of navies which operate submarines in the Indian Ocean, possibly to include industrial participation.

Discussion on SAR also led to a discussion about other possible benign confidence and cooperation building activities. For example, sail training vessels could conduct port visits.

The group identified a need for better access to the extensive reference material that it has accumulated and generated over the past decade. Over the next year, digital copies will be compiled and paper files digitized. As part of the upgrading of the webpage, publicly available material can be included as PDF files accessed by hyperlink. Sensitive material will be kept separately.

Concluding Discussion

On this, the ten year anniversary of the group, discussion of a wide range of topics suggested that the time has come to expand beyond the current bilateral emphasis to broader regional aspects of confidence and cooperation at sea, while retaining its focus on the maritime relationship between India and Pakistan.