

# Confidence and Cooperation in South Asian Waters

## 12th Symposium

### *Bangkok, Thailand, October 2015*

#### **Introduction**

The twelfth symposium on Confidence and Cooperation in South Asian Waters (CCSAW) was held in Bangkok between 28 and 30 October, 2015. The session was hosted jointly by the University of Ottawa and Dalhousie University, and sponsored by the Near East and South Asia (NESAS) Center for Strategic Studies at the National Defense University in Washington, D.C.

The meeting was attended by retired senior officers from the navies of India and Pakistan (in alphabetical order): Rear Admiral Hasan Ansari, Rear Admiral Javed Iftikhar, Admiral T.K. Khan, Admiral Arun Prakash, Vice Admiral B.R. Rao, Admiral Asif Sandila, Captain Naeem Sarfraz (MM), Admiral V.S. Shekhawat, and Rear-Admiral Ravi Vohra, along with Mr. David Griffiths from Dalhousie University and Ms. Nicole Waintraub from the University of Ottawa.

#### **Sir Creek and the Maritime Boundary**

The group was informed about preliminary work undertaken by Phillip Saunders, QC, Professor of Law at Dalhousie University, in response to a request by the group in 2014. After reviewing national positions perceptions and interpretations of factors affecting delimitation of the maritime and Sir Creek boundaries, the group reached three conclusions.

1. **Academic Analysis.** The independent scholarly study could make a helpful contribution to reaching agreement with an authoritative analysis of relevant aspects of the two bodies of law governing boundary delimitation, along with an explanation of technical considerations. The study's value would be enhanced by including discussion of options for dispute resolution. The author will be asked to lay out the facts as he sees them, from which the CCSAW group can then draw its own conclusions on what best to recommend to respective national authorities.
2. **Cooperative Management.** While resolution of the boundary issues may not happen any time soon, effective management of the area is essential, particularly facilitation and regulation of the local traditional fishery. The existing cooperation at sea between the Indian Coast Guard (ICG) and Pakistan Maritime Security Agency (PMSA) is noteworthy and should serve as sound basis for continued improvement in management of safety, security, traditional local economic activity and health of the coastal environment.
3. **Joint Surveys.** It has been almost ten years since the joint survey of Sir Creek showed how the Creek meanders across the Green Line drawn a century ago on the 1914 Resolution Map. It established a mutually acceptable basis upon which both governments could deliberate. Although the joint survey was a significant step, it was only accurate at that particular point in time because the path of the Creek continues to shift, with the unpredictability of future change exacerbated by the uncertainties of climate change. Consequently, the group recommends that both governments conduct an updating joint survey next year to chart where the Creek now flows a decade later, with further periodic updates conducted thereafter at intervals deemed appropriate by the respective hydrographers and cartographers.

## Nuclear Weapons at Sea

Earlier in the year, the University of Ottawa's Nuclear Dialogue requested that the CCSAW group offer its assessment of a recently published monograph about deployment of nuclear weapons at sea (Iskander Rehman. *Murky Waters: Naval nuclear dynamics in the Indian Ocean*. Washington, DC: Carnegie Endowment for International Peace, 2015). Pakistani members of the group took serious objection to some content and conclusions of this paper. Nevertheless, the group continued with general discussion of the issue, reaching the following conclusions.

1. **Hotlines.** The group reiterates its recommendations from previous meetings regarding the importance of hotlines between operational authorities. The nuclear factor also imposes a vital requirement for a reliable and resilient hotline arrangement at the highest political level.
2. **Dialogue.** The introduction of seaborne nuclear weapons into the strategic, operational and tactical equation demands a high degree of sophisticated understanding of deterrence theory, distinctions (or lack of distinctions) between tactical and strategic use, and the practical implications of the deployment of these weapons at sea. It also demands clarity about each other's nuclear strategies, policies and safeguards. This can best be accomplished by dialogue. An example of how this was accomplished during the Cold War was a high-level "Strategic Dialogue" that met regularly, exchanged views and served as an avenue for clarification of issues of concern. This could be a useful template for India and Pakistan to consider.
3. **Lessons of Experience.** The experience of nuclear weapons at sea during the Cold War offers many valuable lessons applicable to this situation. The group will encourage an initiative to bring experts on Cold War naval experience together with appropriate participants from Pakistan and India.
4. **Further Work.** Another valuable contribution to deeper understanding of the issues would be for the Ottawa Dialogue to convene a small working group of maritime strategic experts from both sides. The CCSAW group would support such an initiative if requested.

## Incidents at Sea

A draft agreement on prevention of incidents at sea has been at the official level for some time, however progress is slow because of the present political atmosphere. Nonetheless, naval ships and aircraft continue to operate in proximity to one another and the imperative to avoid incidents and resolve misunderstandings remains. The group reiterates its 2014 recommendation of including ICG and PMSA into the incidents at sea agreement. Meanwhile, the group will continue to remain current on progress elsewhere in the world; particularly developments within the Western Pacific Naval Symposium and bilateral China-United States arrangements as they play out in the volatile South China Sea.

## Marine Piracy

The level of piracy off Somalia has reduced considerably since 2011 when the group first began to address the impact on Pakistani and Indian seafarers. Despite continuing incidents of piracy elsewhere, the maritime commerce community's interest in the human face of piracy has dwindled; one example being that plans to make affordable individual hijack insurance available to South Asian seafarers have not come to full fruition. Nonetheless, the conceptual groundwork has been laid and matters such as psycho-social support for hijacked mariners and their

families are being better managed. The group will maintain its watchful interest in the human dimension of the effects of marine piracy.

## **Detention of Fishermen**

The problem of fishermen being detained in the vicinity of the un-delimited maritime boundary continues, although slow but significant progress is being made in better managing the issue. As noted earlier, the commendable level of cooperation between the Pakistan Maritime Security Agency (PMSA) and Indian Coast Guard (ICG) is improving the situation, although at a broader interdepartmental level more needs to be done.

At the July BRICS/Shanghai Cooperation Organization (SCO) Heads of State Council meeting in Ufa, Russia, the two Prime Ministers met on the sidelines and released a Joint Statement of five steps to be taken by both sides. The third of these stated: "Decision for release of fishermen in each other's custody, along with their boats, within a period of 15 days." That political commitment is encouraging, but much work remains to be done to implement it at the working level. To that end, the group offers the following recommendations.

1. **Arrest.** The decision to arrest fishing vessels at sea rests with the PMSA and ICG. National policy, and direction to commanders, should be that the default response is turning vessels back; arresting them only if there are compelling reasons to do so. In that case, if possible, only the minimum necessary crew required to bring the boat into the port of detention should be held, the remainder being returned to their home nation, ideally aboard another fishing boat.
2. **Charges.** Once in port, arrested fishermen are transferred to police custody for charging and detention. National policy and direction to police should be that unless there are compelling and legitimate reasons to do otherwise, charges extraneous to illegal fishing should not be laid and detainees should be released promptly as required by the UN Convention on the Law of the Sea (UNCLOS) Article 73 and as agreed by the two Prime Ministers at Ufa.
3. **Identification.** Possession of a valid identity card should be sufficient to establish the identity of arrested individuals, which should facilitate expeditious confirmation by consular authorities. Procedures also need to be put in place for expeditious release of those without cards.
4. **Detention.** Fishermen's unions and other private sector interests have been doing commendable work to improve the conditions of detention. Nonetheless, humane treatment of apprehended foreign fishermen is a national responsibility.
5. **Repatriation.** Presently, fishermen are being repatriated through the land boundary at Wagah. This would appear to be neither efficient nor cost effective since there is now regular direct cargo service between Karachi and Mumbai. National authorities and commercial shipping interests should explore such arrangements to their mutual potential benefit.
6. **Root Causes.** As the group noted in 2014, fishermen fish for economic reasons, therefore economic solutions to preventing the problem should be explored. Ideally, appropriate products should be able to reach appropriate markets to everyone's benefit. Trade, economics and fisheries experts in both countries should explore options creatively such as those now in place in Europe. This will remain on the CCSAW agenda for the coming years.

## Health of the Marine Environment

Neither fish nor pollutants respect political boundaries, including those within the ecological region comprising the Indus Delta and Gulf of Kutch, arguably extending as far as Karachi and Mumbai. Consequently, both countries have a vital common interest in managing that marine and coastal area as a single ecosystem. Aside from the economic and environmental health advantages, such cooperation could lay the groundwork and set the tone for wider cooperation. The group noted the wide range of relevant international and regional agreements such as UN conventions on Law of the Sea, Biodiversity, and Wetlands (the “Ramsar Convention”). It also noted the variety of relevant organizations and mechanisms. The outcome of the discussion is as follows.

***Bilateral Information Sharing.*** Effective management must be evidence-based, which means having reliable data and accurate, comprehensive information. Both countries have excellent National Institutes of Oceanography, as well as a wide range of experts in such matters as fisheries science and marine pollution. Sharing environmental and ecological data is a non-political, economically and scientifically valuable activity which is normal practice between most neighbouring countries. The respective scientific and technical communities need to share non-sensitive data and information, being duly authorized and encouraged to do so by political leadership at the national and state level.

***Regional Context.*** Of particular relevance to both countries is the South Asian Seas Action Plan (SASAP), adopted in March 1995 by the South Asian Sea Programme (SASP) of the South Asia Co-operative Environment Programme (SACEP), which acts as the Action Plan secretariat. The Plan focuses on “Integrated Coastal Zone Management (ICZM), oil-spill contingency planning, human resource development and the environmental effects of land-based activities” which are all clearly relevant to Pakistan and India. If bilateral information exchange is difficult to institute, then the respective scientific and technical communities of the two countries should take full advantage of participation in regional and international fora to accomplish the same thing. In any case, cooperative leadership by the two countries to make such regional mechanisms more effective can only be good for everyone.

***Recommendation.*** Based on these discussions the group recommends institution of a project on cooperative environmental monitoring of coastal regions, collecting and sharing coastal ecosystem data and information using technologies that are neither classified nor export restricted. SASAP provides a framework by which the two countries can exchange information and data for mutually beneficial purposes.

## Maritime Safety and Risk Reduction

Both governments have international obligations for effective marine Search and Rescue (SAR), therefore it is incumbent on both to ensure that prompt and effective cooperation can be achieved during a marine emergency. Marine SAR can involve intensive multinational effort, as the search for Malaysian Airlines Flight 370 demonstrates. Although procedures are clearly established on paper all may not go smoothly in practice. Effective on-scene implementation would require close cooperation between national units which may not be achieved without interaction and practice. Consequently, it would be useful for individuals with SAR responsibilities in the naval and paramilitary services of both countries to conduct discussions and tabletop exercises to validate plans, identify potential problems and work out appropriate solutions. At previous meetings the group has discussed prospects for conducting such an event at the Rescue Coordination Centre simulator at the Canadian Coast Guard College, however a simpler, more cost-effective and more readily achievable approach would be a

workshop and tabletop exercise closer to the region. Prospects for facilitation and sponsorship were discussed and will be explored.

## **Confidence Building**

The group was gratified to note that some initiatives of the kind which it has long been advocating are now happening. The following are two encouraging developments.

**Dialogue.** In September 2015 Pakistan hosted the Indian Ocean Naval Symposium (IONS) Working Group and Preparatory Workshop. The goals of IONS make it a suitable forum in which to strengthen bilateral ties. Active involvement of both navies will have significant advantages for both.

**Naval Visits.** India has issued an invitation to Pakistan to participate in the 2016 International Fleet Review in Visakhapatnam, which will coincide with an International Maritime Conference and other events. Participation in this event would provide a good opportunity for enhancement of contact in the maritime sphere. The group continues to note that the presence of sail training ships in both navies offers a particularly good opportunity for engaging the leaders of the future on a frequent basis.

## **Extended Continental Shelf Jurisdiction**

Both countries have successfully submitted their respective claims to the United Nations Commission on the Limits of the Continental Shelf for extended jurisdiction. The matter can, therefore, be removed from the group's agenda, taking the opportunity to note the significant contribution which CCSAW has made to this achievement.

**CCSAW Contribution.** Without some form of coordination in addressing the reality of the undelimited maritime boundary, the two countries ran the risk of incompatible submissions to the Commission. Beginning in 2004, members of the CCSAW group sensitized authorities in both countries to the impending deadlines for submission. Then, in 2005, the group organized seminars in both countries advocating coordination on the extension claim without prejudice to resolution of the boundary location. Not only did this result in compatible claims to which neither side raised objection, but also saved both countries considerable money by clarifying the nature of the technical requirements and avoiding dispute.

**Appreciation of Experts.** With this matter satisfactorily concluded, the group records its gratitude to the two experts who advised CCSAW members, conducted the national seminars, and contributed so much to a successful conclusion. Thanks and much credit are due to Mr. Galo Carrera Hurtado, who is a member of the Commission and co-author of UN training manuals for delineation of the outer limits and preparation of submissions, and to Phillip M Saunders, QC, who is Professor of Law at Dalhousie University; Associate Professor at the School for Resource and Environmental Studies, Research Fellow at the Centre for Foreign Policy Studies and member of the Marine and Environmental Law Institute at Dalhousie University. Without their generous support, successful and timely coordination of the two claims would have been more difficult.

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## **Next Meeting**

The next meeting will be planned for the second half of 2016 at a time and place to be determined.