

**Dalhousie Symposium on
Confidence and Co-operation in South Asian Waters
Kuala Lumpur, Malaysia
29 April – 3 May 2002**

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 second annual symposium to explore Confidence and Co-operation in South Asian waters. The symposium was held in Kuala Lumpur, Malaysia from 29 April – 3 May 2002. 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 Fasih Bokhari, Admiral T.K. Khan, Rear Admiral K.R. Menon, Admiral J.G. Nadkarni, Commodore P.C.B. Nair, Rear Admiral I.H. Naqvi, Lt. Commander Naeem Sarfraz, and Admiral V.S. Shekhawat. In addition, research experts from the region, from the Co-operative Monitoring Center 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. Officials from the Pakistan Navy and the Indian Ministry of Defence attended in an Observer capacity. The symposium was funded by the Co-operative 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 deteriorated since their first meeting in Lumut, Malaysia in January of 2001. That said, there has been some progress in the maritime sphere, notably as a result of their first meeting. 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 releases should be resumed as soon as possible.

4. Discussions proceeded in the following subject areas: continuation of the review of the applicability to the region of a prevention of incidents at sea (INCSEA) arrangement; the detention of each side's fishermen; maritime boundaries; and the potential application of technology to enhance the prospects for confidence-building and security between the two sides.

INCSEA

5. The participants 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."

6. Unfortunately, political events have prevented movement towards such an agreement. The participants therefore renewed their examination of the application of the concept to the region. After a brief review of their discussions of last year, the participants examined four different examples of existing INCSEA agreements to see if any of them hold potential lessons for South Asia. These were: the “classic” INCSEA (in this case, the Canada-USSR Agreement of 1989); the Greece-Turkey MOU and Guidelines of 1983; the US-China Agreement of 1998; and the Malaysia-Indonesia Co-operative Guidelines of 2001. After considerable discussion, it was agreed that no single existing model can simply be applied unchanged to South Asia. Rather, ideas and concepts from each can be combined with entirely new thinking to assist India and Pakistan in achieving a document most suited to their needs.

7. That said, there was general agreement that the Malaysia-Indonesia model is a particularly attractive starting point. The participants noted that this model makes creative and explicit provision for its application to the operation of their ships in disputed waters (included disputed territorial waters) without prejudice to either side’s claim. It also incorporates all government vessels (Coast Guard, Fisheries Patrol, etc.). Its operative procedures and consultation provisions, though just as stringent as the “classic” model, are accomplished in a less operationally cumbersome manner. Finally, the Malaysia-Indonesia model assumes a more co-operative approach generally than do the others.

8. The participants recommend to their governments that urgent consideration be given to the negotiation of such an agreement at the earliest possible stage. They further recommend that such a document be entitled in such a way as to stress that it is intended to facilitate safety and co-operation at sea. They believed that such a document should be as broadly applicable as possible, including to the operation of Government vessels in disputed waters, without prejudice to either side’s claims. It should further cover the operation of all Government vessels and should include firm provisions requiring that face-to-face consultations be undertaken between the maritime communities on an annual basis, or more often as required. Consideration should also be given to establishing procedures which would facilitate the ability of naval operations centres to contact each other in case of emergency or the need to prevent a misunderstanding from getting out of hand.

Detention of Fishermen and Fishing Boats

9. The participants renewed their consideration of this issue by expressing the strong desire that ways be found urgently to ensure the expeditious release of fishermen imprisoned for accusations of having encroached on each other’s claims. They noted that this is an obligation on each state under international law (Article 73 of the UN Convention on the Law of the Sea), and unanimously took the view that it is essential to release and repatriate fishermen caught under these circumstances. In all such cases, the operative principle must be that the boat may be detained, but the crew is released, while the vessel is held pending a resolution of the case. Alternatively, the owner of the boat could be given a chance to post bond, pending a hearing on the case.

10. The participants felt that high-level political efforts must be made to explore creative ways of resolving this dispute. For example, they noted that the fishermen’s union in each country could be deputised to act on behalf of those from the other side who had been imprisoned and to

arrange for counsel, thereby giving these individuals some voice. Such issues as the costs of repatriation and the fact that small boat owners may not be able to post bond will have to be addressed, of course. But the participants strongly believe that ways must be found around these issues and that their existence must not be an impediment to each side's fulfillment of its obligations under international law that fishermen accused of fishing in the other country's zone should not languish in prison. They finally recalled that the Prime Ministers of India and Pakistan had agreed on the need to ensure expeditious repatriation, but further noted that a mechanism to ensure continuous repatriation has not yet been established.

Maritime Boundary Issues

11. On the second and third days of the symposium, experts from Dalhousie University's Marine Environmental Law Programme conducted a series of discussions and a simulation on maritime boundary issues. The wide-ranging presentations and discussions provided a firm foundation in 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 regional participants formed mixed teams and engaged in a simulated negotiation of a boundary case.

12. It must be understood that the objective of these sessions was not to discuss the India-Pakistan maritime boundary dispute *per se*. Rather, the objective was to explore the concept of maritime boundary dispute resolution with a view to gaining insights that may be applicable to any future attempt to address the India-Pakistan situation. The lectures, discussions and the simulation provided many insights into how maritime boundary disputes have been resolved. The key points made by the presenters were:

- there are no mandatory methods of maritime boundary delimitation – states and arbitration mechanisms have used a wide variety of approaches and methods, with particular emphasis having been given to geographical issues, tempered where necessary by historical, economic and social considerations;
- arbitrated solutions to particularly difficult disputes tend to feature novel aspects, departing from the bulk of settlements achieved through negotiation (arbitration panels have tended to try to find ways to “split the difference” to the extent possible so as to ensure that each side would respect the outcome - as a corollary, participants noted that most states which have resorted to arbitration found afterwards they had less control over the process once the panel had started its work than they thought they would at the beginning); and
- boundary-making in particularly difficult cases is often a multi-stage process, which begins with interim measures to co-operatively exploit and even manage resources as a way to begin a process leading to resolution of the dispute once the political circumstances have evolved – a wide range of options and experiences for the co-operative management of areas and resources were examined, such as “buffer zones” for fishing and joint management of resource development schemes, all without prejudice to the eventual final arrangement.

13. The participants believed that their discussions on the boundary issue demonstrated the need for India and Pakistan to urgently begin to explore non-prejudicial ways to jointly manage their overlapping maritime claims so that safety can be enhanced and the resources can be responsibly exploited to the benefit of both their peoples. The participants expressed the hope that their governments will begin this process without delay. They also believe that further discussion and

exploration of these ideas at the Track Two level can play a very positive role in developing ideas and options for future official talks on these sensitive subjects.

Co-operative Technical Approaches

14. The representatives from Sandia then made a series of presentations outlining a variety of experiences and studies on how technologies have been used to assist and promote co-operation and dispute resolution between states. The presentations stressed the fact that technology is not a substitute for the political will to tackle tough diplomatic issues, but that it can act as a powerful aid in cases where states have decided to do so.

15. Drawing on a wide variety of examples from many parts of the world, the presentations demonstrated that a huge variety of technical approaches can be brought to bear on the task of providing each side with a high degree of assurance that agreements are being upheld. Moreover, these approaches are not limited to traditional arms control or military confidence-building. Some of the greatest successes in building confidence between former adversaries have been achieved in the fields of developing co-operative approaches to such problems as trans-boundary environmental issues, or ways to enhance trade and commerce in a situation where security concerns are still very real. The key seems to be to find issues in which both parties have a stake in an improvement in the situation, and where they can work together to realise benefit.

16. Another point made by the Sandia team is that the technologies involved are usually not excessively sophisticated, expensive or complex. Rather, the most effective technologies for this type of work seem to be found in the creative application of existing and readily available capabilities. It was noted that systems must be resilient and readily deployed without a great deal of ongoing service or supervision and that the parties must have a high degree of confidence that they will work. A final point made by the Sandia team was that the most effective way to move forward in this area is for the regional parties to design for themselves technical regimes which are most applicable and effective as it is the regional parties who are most aware of the political constraints within which these regimes must operate. To this end, Sandia has a long history of hosting joint teams from various regions, including South Asia, to do studies of various co-operative monitoring ideas and technologies and to implement experiments and demonstrations which provide experience with the design, implementation and operation of such systems.

Next Steps

17. The regional participants expressed a strongly held view 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 their next steps will be as follows.

18. For INCSEA the regional participants agreed that they will work towards a representative draft of what such an agreement between their two countries might look like. An initial draft will be prepared for comment in advance of discussion at the next meeting. The two sides also agreed that they will work to lay the ground for consideration of this idea at the official level by talking to their governments and by writing articles to raise the level of public awareness. They

will make every effort to have articles by each side published in the papers of the other.

19. For the issue of detained fishermen, the regional participants agreed that they will, as a matter of urgency, approach their respective governments and fishermen's unions to urge them to adopt the policy that the names of detained fishermen should be released to the other side as soon as possible and that procedures be established for immediate release and repatriation. One idea to be pursued is that the fisherman's unions on each side should be persuaded to act on behalf of their colleagues in each country, on a reciprocal basis. The two sides will also explore whether there are other NGOs that may have an interest in this subject and could be persuaded to join in these discussions.

20. For the maritime boundary issue, the regional participants agreed that it is not practical for them to try to delimit it. However, an effort could be made in advance of, and at, their next meeting to identify what the disputed area is and to discuss the idea of creating a buffer zone within that area in which either side may fish without fear of arrest.

21. The regional participants will work with CMC to explore the possibility of developing technical aids to marking the disputed maritime area. They will also work with CMC to explore the possibility of improving communication links between the Coast Guard of India and the Maritime Security Agency of Pakistan. Finally, on the issue of co-operative monitoring, the regional participants agreed that they will work with CMC to explore projects aimed at tracking vessel traffic in the vicinity of the disputed maritime boundary to prevent incursions.

22. To aid the discussions of all these ideas, the Dalhousie team will act as a virtual "Secretariat" to support this process by email so that drafts, articles and ideas can be exchanged between the two sides between meetings.

Conclusion

23. In addition to the subjects outlined in this Report, the participants engaged in exploratory discussions of other areas for maritime co-operation, such as Search and Rescue co-operation and various ideas on the joint protection of the maritime environment. They agreed that these ideas will be more fully developed in future meetings of this group.

24. The regional participants believe that this meeting has been a most useful and productive one. They expressed their appreciation to the facilitators and sponsors for their support to the process and their determination to continue.