

**Symposium on  
Confidence and Co-operation in South Asian Waters  
Colombo, Sri Lanka  
18-22 July 2004**

**Report**

**INTRODUCTION**

1. As part of its ongoing work on maritime Confidence-building Measures (CBMs) around the world, the Centre for Foreign Policy Studies at Dalhousie University coordinated the fourth annual symposium to explore confidence and cooperation in South Asian waters. The symposium was held in Colombo, Sri Lanka from 18-22 July 2004 and was jointly co-sponsored by the Cooperative Monitoring Center (CMC) at Sandia National Laboratories in the USA, and the Human Security Program of Foreign Affairs Canada. 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 (in alphabetical order): Rear Admiral Hasan Ansari, 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), Admiral V.S. Shekhawat and Rear-Admiral Ravi Vohra. Other participants were from CMC, the Centre for Foreign Policy Studies and Law School at Dalhousie University, and Mr. Galo Carrera, an independent expert in maritime boundary delimitation. The Defence Attaches of India and Pakistan attended some sessions in an observer capacity.

3. Discussions were wide ranging and included: agreements for prevention of incidents at sea; communications links between navies, the law of armed conflict at sea; cooperative Search and Rescue; marine pipelines; sea links between India and Pakistan; transit cargo issues; mutual marine environmental challenges; confidence-building measures; protection of fishermen; maritime boundary issues and port security.

**INCSEA**

4. In 2003, the participants had jointly proposed a draft text of an agreement for the prevention of incidents at sea (INCSEA). It drew upon the many and varied lessons offered by the negotiation and implementation of a number of similar agreements worldwide during the past thirty years. In the opinion of the participants, the resulting document, entitled "*Agreement Between the Republic of India and the Islamic Republic of Pakistan Concerning the Prevention of Incidents On and Over the Sea*", would meet the mandate of paragraph 5 of the MOU to the Lahore Declaration of 21 February 1999, which stated 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.”

5. During the past year the participants have, as promised, shared this notional text with the appropriate maritime, bureaucratic and political levels in their respective countries. Since the first such agreement between the United States and the Soviet Union in 1972, there have been 19 INCSEA and similar agreements negotiated between various countries in the world. Mindful that formal bilateral talks on CBMs are scheduled for the near future, the participants commend to their respective INCSEA negotiators the wealth of lessons that can be drawn from that experience, particularly the 12 agreements between the USSR/Russian and western navies, all of which draw on the original US-USSR Agreement (1972); and the Malaysia-Indonesia “*MALINDO Prevention of Sea Incident Cooperative Guidelines*” (2001).

6. The participants also commend to negotiators the importance of being mindful of the principles that have characterized the most successful of these arrangements, particularly their:

- navy-to-navy nature;
- focus on legitimate, safe, and unambiguous conduct of operations by warships and aircraft while in close proximity;
- simplicity;
- provision for reliable, real-time, on-scene communication; and
- provision for annual formal consultations at Flag level. The key to the success of these annual consultations has been the spirit of frankness, discretion, and cooperation that have characterized the most successful INCSEA arrangements.

## **EXPANDING COMMUNICATIONS LINKS**

7. The participants note that detailed technical discussions will be required if the recent commitment to establishing effective communication links between the two Naval Headquarters is to be more than a diplomatic gesture. Specific issues that need to be addressed include defining: precisely who is responsible for establishing and maintaining these links; procedures to be used; and, perhaps most importantly, what form these links should take. Exchanging information on complex and high-tempo contemporary maritime operations requires graphic, as well as written and verbal, exchange of information. The proposed communication links should, therefore, exploit the full advantages of modern technology and utilize broadband capabilities to make information exchange fast, accurate, and unambiguous.

## **LAW OF ARMED CONFLICT AT SEA**

8. The participants reported that they had followed up on their 2003 discussion concerning the prospects for a co-operative exploration of the implications of the 12 June, 1994 San Remo “*Manual on International Law Applicable to Armed Conflicts at Sea*” on revising the Rules of Engagement of both Navies. Both Naval Headquarters have been briefed on the proposal. Discussions brought out that several other nations are also reviewing their Rules of Engagement and revising their directions to commanders at sea. This led to a suggestion that, although the idea of a bilateral joint workshop to improve mutual understanding of each

side's interpretations would be valuable, consideration might be given to encouraging an international workshop or conference that would draw upon wider experience and thought processes.

## **SEARCH AND RESCUE**

9. Search and Rescue (SAR) at sea is an international responsibility that knows no national maritime boundaries. It is customary that neighbouring countries establish protocols and procedures to render assistance at sea and fulfill their humanitarian obligations. Establishing such a protocol between India and Pakistan should be taken up at the forthcoming talks. Implementation of the protocol will require practical experience and training in joint Search and Rescue operations in the event of an actual emergency. The Indian Coast Guard (ICG) and the Maritime Security Agency of Pakistan (MSA) should be tasked with producing this protocol.

10. Discussion then turned to the usefulness of a SAR workshop and training simulation at the Canadian Coast Guard College. This had been proposed for March 2004 and would have taken advantage of the excellent Rescue Coordination Centre Simulator in exchanging ideas between experts from the Indian Coast Guard and the Maritime Security Agency of Pakistan. In addition, experience of the United States Coast Guard and the Canadian Coast Guard about cooperative Search and Rescue would have been discussed as example of lessons learned. Regrettably a very narrow window of availability for the College's staff and facilities meant that the notice was too short to be practicable and, because the period was near the end of everyone's fiscal year, the project posed financial challenges. Consequently, the plan had to be cancelled for the time being. The need for such a seminar, however, remains valid. Therefore the group felt that it would be sensible at this stage to wait until the ICG-MSA dialogue on SAR has had a chance to mature before renewing the initiative.

## **PIPELINES**

11. Next, maritime implications of gas pipeline developments in the region were discussed. It was noted that India is one of the world's largest consumers of natural gas, and discussions are taking place on gas pipelines from Iran to India. India is examining the relative merits of three routes: a land route through Pakistan, a coastal sea route, and a deepwater route. The coastal option would be costlier than an overland route, but would provide a degree of freedom from political constraints. It would still require cooperation between the two countries because it would pass through Pakistan's Exclusive Economic Zone. The deepwater option would be more autonomous, but would be twice the cost of the coastal option because of the complexity and prodigious technical challenges that it would pose. Pakistan is also considering a gas pipeline from Iran for its own use and could incorporate capacity for Indian requirements if the decisions are made early enough. It is understood that Pakistan has guaranteed security of a landline to India. Whatever option is chosen, the pipeline issue is a graphic example of how cooperation on technical issues offers promise for mutual benefit, as long as decisions are not postponed for too long.

## **SEA LINKS**

12. India and Pakistan have agreed to re-establish the maritime ferry service between Mumbai and Karachi. The participants endorse this move because there would not only be economic benefit, but also benefits of increasing confidence through people-to-people contacts. The operators and the private sector should assess the economic viability of the sea link. Indeed, several private agencies have already expressed an interest in the project, a fact that verifies the economic viability of the project. In order to implement this proposal, however, there are three practical steps that need to be taken by both governments. First, appropriate gazette notification must authorize and facilitate the service. Second, the primary role of the two governments should be to provide an enabling environment for efficient private sector operation. This means that the service should be open to ferries operating under any reputable flag. Third, the governments need to provide and improve appropriate customs and immigration facilities in Karachi and Mumbai to facilitate the process of arrival and departure so that it can be managed efficiently and with minimum inconvenience.

## **TRANSIT CARGO**

13. Trade is the engine that will drive and sustain the peace process forward. The 1975 *“Protocol on Resumption of Shipping Services”* was intended to re-open maritime trade between the two countries within one month. In fact, the practical effect has been to impede trade for almost thirty years. The document is counterproductive (particularly, for example, Articles 4, 5, 7 and 9). It is to the advantage of both countries to revise the Protocol in its entirety to make it into an enabling, rather than inhibiting policy document, as is the current effect. In the interim, the articles mentioned above should be abrogated.

## **ICG AND MSA COOPERATION ON ENVIRONMENTAL ISSUES**

14. India and Pakistan share a common sea in which pollutants recognize neither national boundary claims nor policy differences. Events during 2003, ranging from the catastrophic break-up of the tanker *“Tasman Spirit”* in August in Karachi harbour to the routine ill effects of the cleaning of tanks in the Arabian Sea and Indian Ocean by transiting ships have aggravated the environmental challenges. The *“Tasman Spirit”* incident was an opportunity lost for prompt and active environmental response cooperation, and the tank cleaning practice is a chronic problem that is compounding with time. Capital expenses for environmental response are high although the frequency of occurrence is relatively low. Cooperation would, therefore, allow both countries to amortize the cost and avoid duplication. The Indian Coast Guard and Maritime Security Agency need jointly to develop and implement environmental disaster management strategies for preparedness, response, recovery and mitigation. A meeting on this topic was scheduled for April 15<sup>th</sup> 2004, but has yet to be held. It should be convened without further delay and the growing goodwill between the two countries be seized as an opportunity to develop and encourage a proactive and dynamic cooperative approach to marine environmental issues and emergencies. The ICG and MSA should therefore work towards an agreement incorporating:

- sharing information on pollution control equipment;
- oil spill contingency planning;

- monitoring and real-time exchange of information on environmental offenders in the open oceans;
- cooperation on investigating offences;
- protocols for joint tasking of complementary capabilities, and respective environmental response equipment and assets; and
- a program for integrated management of environmentally sensitive coastal and marine ecosystems.

## CONFIDENCE BUILDING MEASURES

15. Within the basket of Confidence Building Measures (CBMs) that will be addressed at the forthcoming bilateral meetings, the following maritime CBMs should be addressed.

- **Institutional Exchanges:** It would be particularly useful for hydrographic specialists from the two countries to establish a close working relationship, since a cooperative approach to hydrographic issues of mutual interest would be both cost-effective and beneficial.
- **Ship Visits:** Port calls are a well-established element of the internationally recognized diplomatic role of navies. It would be particularly appropriate for India and Pakistan to use this tool to promote normalization of the relationship. Inaugural visits by training ships would emphasize the peaceful nature of the exchange.

## PROTECTION OF FISHERMEN

16. Since the 2003 meeting, there has been a major release of detained fishermen followed, unfortunately, by another round of re-arrests. As of 24 June there were 29 Indian boats and 178 crew in Pakistani hands, and 16 Pakistani boats with 111 people in India. In an unfortunate incident in June an Indian Navy intercept of a Pakistani fishing boat resulted in three Pakistani deaths. On the positive side, however, the political response to this incident was restrained and prompted a process of dialogue rather than confrontation. Even more encouraging has been the recent commitment by both governments to release the currently detained fishermen and to adopt measures for turning back fishermen rather than arresting them. In addition, the Fishermen's Cooperatives in both India and Pakistan have become active private sector partners in addressing the welfare of their detained counterparts. Cooperatives on both sides are exchanging information directly about numbers and names of people detained. The Pakistan Cooperative has also started to compile a database of vessels and crews to assist authorities. The participants encourage the ICG and MSA to work with their respective Cooperatives to develop an effective cooperative compliance and enforcement regime.

17. The UN Convention on the Law of the Sea (UNCLOS) specifies that if a boat is arrested, the crew should be repatriated promptly. Adherence to this principle and a change in procedures could alleviate much of the existing humanitarian problem when detention of a boat is warranted. At the moment, in both India and Pakistan, the practice has been to detain the entire crew. This requires turning them over to police custody in the disembarkation port which, in turn, activates a ponderous legal process that hinders the prospects of prompt repatriation. Although the Master of the vessel may, indeed, be under suspicion of illegal

activity, inevitably the majority of the detainees are innocent crewmembers who now find themselves enmeshed in a foreign legal system through no fault of their own. The hardship falls, therefore, not on the owners of these vessels who are responsible for directing their movements, but on many innocent subordinate crewmembers.

18. In order to achieve a meaningful fisheries enforcement regime, it would be far more efficient and compassionate to focus on arresting boats while promptly repatriating all bona fide fishermen. The fact that most fishing vessels travel in groups makes this simply and economically possible by seizing all vessels except one, which can be returned to its home port with all subordinate crew who are not under suspicion of any offence. Once the detained vessels reach the port of detention, bond can be posted pending legal proceedings, so that owners have the option of recovering their vessel. It should be noted, however, that the bond should be no higher than the value of the boat; otherwise owners could be tempted to abandon the vessels.

19. An enforcement and compliance regime that is effective and efficient needs to be simple and based on prevention rather than reaction. This can be accomplished through the following steps:

- actively cooperating between the ICG and MSA in conducting coordinated patrols;
- evaluating and procuring inexpensive transponders for licensed fishing vessels that would allow ICG and MSA patrol vessels to identify authorized activity and track non-compliant vessels;
- committing to a policy of arresting only when absolutely necessary and, in such cases, complying with the provisions of UNCLOS by repatriating the crews without delay;
- considering legislation for enforcement by home states, whereby the ICG and MSA intercept non-compliant vessels, report the names and other details of the crew to the vessel's home state, and then direct the vessel to return to home port to be dealt with by its own authorities;
- committing to a joint enforcement strategy that punishes non-compliant owners rather than innocent crews; and
- establishing some form of joint "rules of engagement" to govern the conduct of apprehension.

20. It was suggested that this document be entitled the "*Protection of Fishermen Agreement*" and contain the following provisions.

- Use of deadly force is not authorized for the apprehension of vessels alleged to be in violation of fishing regulations.
- Unless circumstances warrant otherwise, vessels alleged to be fishing on the wrong side of the maritime boundary should be warned and turned back.
- Should detention of boats be deemed necessary, the purpose of the detention will be to enforce fishing compliance by owners, not to punish innocent crewmembers.
- If more than one vessel is intercepted, crewmembers should be placed on one vessel and sent back to their home port to be dealt with by their own national authorities. The arresting vessel will make a detailed report immediately through the appropriate chain of command to its operational headquarters which will, in turn, inform the other nation, by the fastest possible means, the details of both the

arrested vessel and crewmembers, and the crewmembers that were sent back to their home port.

- The detaining nation will, without delay, offer the owner the opportunity to post bond as surety against future fines.

## **MARITIME BOUNDARY AND CONTINENTAL SHELF**

21. Discussion of boundary issues during previous meetings had introduced the concepts of maritime zones and boundary law, and examples of various solutions and dispute resolution options. This session was devoted to three boundary issues. The first was the outer limit of the continental shelf. This had not been examined in previous sessions but is an important element in understanding the full scope of the entire maritime boundary issue. The second was elaboration on the topic of baselines and basepoints. Finally, all of the preceding topics were drawn together into a discussion of their application to the specific case of India and Pakistan, using a series of scenarios prepared for this session through a project funded and coordinated by CMC.

### **Outer Limits of the Continental Shelf**

22. Article 76 of the UN Convention on the Law of the Sea (UNCLOS) permits states to claim limited jurisdiction over certain parts of the continental shelf that extend beyond the 200 nautical mile limit of their Exclusive Economic Zone. To finalize such claims, a submission must be made to the UN Commission on the Limits of the Continental Shelf (CLCS). This process poses a number of challenges to states contemplating a claim, both technically and in terms of time. On the technical side, comprehensive, and potentially very expensive, data gathering and analysis must support the submission. On the time side, there is an absolute deadline – all States Parties to the Convention that intend to make a claim must do so before November 2009.

23. The CLCS has an unusual status, being neither a court nor a purely advisory body. The Commission examines state submissions and makes recommendations to the state on the validity of its claim. Ultimate responsibility for proclaiming jurisdiction belongs to the state, but UNCLOS requires that such claims comply with the recommendations of the Commission. Notwithstanding this the Commission's mandate is structured on a non-adversarial approach. In other words it will, if requested, assist states in preparing their submissions and provide scientific and technical advice.

24. It should be noted that this process delineates an outer limit of jurisdiction and does not deal with boundary issues between states. The outer limits of the continental shelves of the two states are unrelated to the issues of land or maritime boundaries between the states, and in this case are not likely to be significantly affected by the location of baselines or basepoints. Indeed, it is in the mutual interest of adjoining states to coordinate their submissions to the Commission because that maximizes the prospects of both parties gaining maximum seaward extension of their respective claims. To encourage such cooperation, the Commission has indicated its readiness to accept joint submission by states with a view to promoting regional cooperation.

25. Another advantage of cooperation between adjoining states is financial. The outer limits of the extended shelf are defined by four rules; two of which are formulae and two of which are constraints. The outer limit may be defined by measuring from the foot of the continental slope, either to a point where the sediment thickness is 1% of the distance from the slope or to a point 60 nautical miles beyond. These extensions are constrained, however, by either a line drawn 350 nautical miles from the baselines or 100 nautical miles from the 2,500 metre isobath.

26. Determining the result involves many elaborate, and potentially expensive, scientific and technical challenges, including the following examples:

- detailed bathymetric data-gathering to determine the location of the foot of the slope and 2,500-meter isobath;
- a requirement for the more costly seismic survey or physical boring if the 1% formula is to be used;
- resolution of such issues as differing geodetic definitions of baselines, quality of data sources, bathymetric models etc.
- resolution of the analytical complexities that can make it very difficult to determine such things as the precise location of the foot of the slope, or the impact of submarine elevations, submarine and oceanic ridges etc.

27. Because of these complexities, a state risks incurring a significant and inefficient increase in cost if it does not have a well-developed strategy to focus appropriate resources in appropriate locations. Because this claim for a seaward extension of jurisdiction is independent of the location of the maritime boundary between adjoining states, there is a convergence of interests between them to save money and effort by cooperating in data collection, analysis and preparation of submissions. Using consistent and compatible data, without prejudice to boundary claims, can increase their chances of successfully maximizing their respective jurisdictions to seaward. There is no benefit in competing and much to be gained by cooperation.

28. In the specific case of India and Pakistan, both countries have a common interest in defining the outer limits of their continental shelves under the provisions of the Convention on the Law of the Sea and the CLCS Guidelines. Both can benefit financially from cooperation in cost-effective gathering of consistent data, and strengthen the legal and technical basis of their submissions to the Commission. With time a factor, since 2009 is a final deadline for submission, with the issue being independent of either the Sir Creek or maritime boundary issues, and with each country having a vested interest in seeing the other succeed, both Foreign Offices should give serious consideration to cooperating to the extent possible in the preparation of their submissions, especially since both have already agreed to coordinate responses to issues where there is a commonality of interest.

### **South Asia Maritime Boundary Options**

29. Mr. Carrera, Prof. Saunders and Dr. Betsill introduced the participants to a draft of “*South Asia Maritime Boundary Options Visualization and Analysis*” (SAMBOVA), a study developed for this workshop through CMC. It is a package of scenarios intended to review the India–Pakistan situation with respect to relevant factors and possible outcomes of a delimitation of the maritime boundary between them. It posits various scenarios based on



criteria and methodologies identified in state practice and international jurisprudence. It includes an assessment of the impact of the land boundary on delimitation of a maritime boundary. The authors emphasize that it is not intended to endorse any particular result or scenario, is not a complete list of options, does involve a number of assumptions and is based on publicly available information.

30. It should also be noted that the study utilized available approximations for Points 1 and K, representing the respective land boundary claims in Sir Creek. Any further work or finalization of results should be based on official coordinates, which were not available to the study team.

31. The SAMBOVA analysis comprises five parts:

- **Relevant Coasts:** Not likely to be a major factor in this case.
- **Equidistance Scenarios:** The equidistance method has had a prominent role, both in state practice and in the jurisprudence. If equidistance is used, the land boundary points in dispute at Sir Creek have no impact on the rigorous equidistance boundary beyond a point approximately 4.5 nautical miles from shore.
- **Impact of Straight Baselines:** The straight baseline running up to the vicinity of Sir Creek that Pakistan has declared may have a significant impact on the course of the nearshore equidistant boundary.
- **Perpendicular and Bisector Scenarios:** Another method of delimitation is to draw seaward lines perpendicular to the general lines of a coast, or bisecting the angle at which two coasts meet. SAMBOVA provides a number of scenarios that illustrate that choice of the lines along the coast can influence the line far seaward.
- **Sector Approaches:** It has been common, especially in litigated boundaries, to employ more than one method to different sectors of the maritime boundary. SAMBOVA provides a number of examples, which tend to give results that are generally similar to the equidistance line.

32. The conclusions that arise from the SAMBOVA scenarios are as follows.

- Most boundary scenarios constructed by reference to geographic configurations (whether actual or generalized) tend to vary only slightly from an equidistant boundary.
- The land boundary dispute at Sir Creek has no impact on an equidistant boundary beyond 4.5 nautical miles from shore.
- The impact of Pakistan's claimed straight baseline, if fully applied in a delimitation, is more significant.
- The *outer limits* of the continental shelves that both countries are entitled to claim under Article 76 of UNCLOS are not affected by land or maritime boundary issues, nor are they likely to be significantly affected by the location of basepoints or baselines along the coast.

33. A final point that has been repeated throughout this and previous sessions, is that cross-boundary cooperation does not require final delimitation of the maritime boundary. Mechanisms ranging from buffer zones to joint development zones are available to the parties if they wish to establish a stable and cooperative relationship at sea. Delimitation of the maritime boundary is not, therefore, time constrained. On the other hand, cooperation on submitting individual or joint submissions to the Commission on the Limits of the

Continental Shelf is a matter of some urgency, because there is a considerable amount of detailed and potentially expensive work to do before the deadline expires in November 2009.

## **PORT SECURITY**

34. The group was able to take advantage of the presence in Colombo of Dr. Charles Massey from Sandia National Laboratories who briefed participants on the Megaports Initiative, a subject of interest to both India and Pakistan. Smuggling of weapons-useable nuclear material is an ongoing reality and a mutual concern for all states. The aim of the Megaports Initiative is to provide major ports with sophisticated drive-past radiation detection equipment that can screen cargoes thoroughly without imposing undue delays on the flow of traffic. In essence, the United States provides the equipment, training and maintenance and the host country operates the system. The effectiveness of this network of bilateral arrangements could be further enhanced by regional cooperation in which sharing of information would increase security both regionally and globally. Recognizing the value of participating in the Megaports Initiative, the participants proposed to investigate the prospects for a future visit by Dr. Massey to both India and Pakistan.

## **WRAP-UP AND WAY AHEAD**

35. Participants will exchange periodic progress reports no later than end-October and end-January by e-mail, and plan to meet again within one year. The Dalhousie and CMC teams will explore funding and other logistic issues in the meantime.

36. Participants will initiate the process for the following:

- Workshops on the methodology for determination of the outer limits of the Continental Shelf and Maritime Boundary issues in New Delhi and Islamabad, at a time to be determined (Dr. David Betsill, Regional Security and Multilateral Affairs at CMC, Mr. David Griffiths, Centre for Foreign Policy Studies, Mr. Galo Carrera, member of the UN Commission on the Limits of the Continental Shelf, and Prof. Phillip Saunders, Maritime and Environmental Law Programme at Dalhousie University Law School)
- Visits by Dr. Charles Massey, Manager of the International Borders and Maritime Security Program at Sandia, to India and Pakistan to discuss the Megaports Initiative.

37. The regional participants expressed their thanks to the Cooperative Monitoring Center and the Human Security Fund of Foreign Affairs Canada for their generous financial support.