

Confidence and Cooperation in South Asian Waters

9th Symposium

Colombo, Sri Lanka, July 2012

Introduction

The ninth symposium on Confidence and Cooperation in South Asian Waters was held in Colombo between 16 and 18 July, 2012. The symposium was hosted jointly by Dalhousie University and the University of Ottawa, 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, 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, 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) Ms. Marie-Claude Alarie, Mr. David Griffiths and Prof. Tyler Rauert.

Marine Piracy

Because both India and Pakistan have large numbers of seafarers serving in both national and foreign-flagged ships exposed to piracy, the group had agreed at its 2011 meeting to explore means for bringing together stakeholders from the maritime industry in both countries to discuss mutual interests and exchange lessons learned. The result was a three-day international conference entitled *The Human Face of Marine Piracy: Consequences and Policy Options* held in Karachi between 29 February and 2 March 2012. The event was organized and hosted by the Fazaldad Human Rights Institute (FHRI) in cooperation with Dalhousie University's Marine Piracy Project (DMPP), sponsored by the NESAs Center and held at the National Centre for Maritime Policy Research on the Karachi campus of Bahria University. The group was represented by Mr. Sarfraz who, as Chairman of FHRI, chaired the conference, VAdm Bangara and Mr. Griffiths who gave presentations, and Adm Khan, RAdm Ansari and RAdm Naqvi as participants.

The conference focused on the welfare of seafarers and their families threatened or affected by marine piracy, particularly in the Indian Ocean. While governments and the industry tend to focus on ships and their cargo, the human impact on the crews and their families is too often overlooked. The outcomes of the conference will be detailed in the forthcoming Proceedings but three new psychosocial initiatives are of particular note.

- Programs are being put in place in both Pakistan and India to provide training to seafarers on what to do if taken hostage by pirates, psychological support to families whose income-earners are in captivity, and post-capture debriefing and post-traumatic stress disorder (PTSD) counselling for hostages when they are released. In India this will be under the auspices of the recently approved Trauma Centre under the aegis of the Director General Shipping and Indian National Shipowners Association. In Pakistan it is being coordinated by the Director General Ports and Shipping.

- Personal insurance schemes for individual seafarers to provide financial support to families, particularly when unscrupulous shipowners fail to meet their legal and moral obligations.
- Practical and material support to the families of hijacked seafarers, both during and after captivity.

Members of the group will continue to support these initiatives, particularly the sharing of experience and expertise between the trauma centres and others in both countries providing support programs to seafarers and their families. In addition, representatives of the group will continue their partnership with the DMPP comprehensive, multi-year, international, interdisciplinary, policy-focused study of contemporary maritime piracy worldwide.

Detained Fishermen

Although the working relationship and communication between the Indian Coast Guard (ICG) and Pakistan's Maritime Security Agency (MSA) are now well established, the humanitarian and economic situation of fishermen arrested in the vicinity of the disputed maritime boundary remains unsatisfactory. Rather than being released expeditiously in accordance with Article 73 of the UN Convention on the Law of the Sea, crews are being detained on the basis of inappropriate criminal charges and are ineligible for bail. This has no basis in national or international law. Respective authorities may wish to consider an approach which would detain the boats but not the crews in accordance with the letter and spirit of Article 73 rather than being brought ashore. Representatives of the group will, therefore, meet with senior leadership of both the MSA and ICG to continue exploring the prospects of a bottom-up approach to establishing holistic, humane and legally sound policies, protocols and procedures governing the entire process, from arrest to repatriation. In addition, representatives of the group will invite selected scholars to prepare background papers as a policy making resource providing an authoritative history of the issue to date and current situation.

Incidents at Sea

The 1991 "Agreement Between India and Pakistan on the Advance Notice of Military Exercises" established some norms for naval ships and aircraft operating in proximity under certain circumstances. To address the issue more comprehensively, in 1999 the two countries concluded a Memorandum of Understanding appended to the "Lahore Declaration" committing them to "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." As more than a decade has passed since the two governments made that commitment, conclusion of an agreement is long overdue.

With its first meeting in 2001, this group began an in-depth study of the incidents at sea (INCSEA) issue. In 2003 this resulted in a proposed notional text that was provided to the respective naval authorities. At present, discussion of this issue is ongoing at the official level but the agreement has not yet been concluded, although doing so appears to be within reach. Meanwhile, the 2011 incident involving PNS *Babur* and INS *Godavari* has underlined the importance of having a maritime safety agreement in place, not only for tactical-level safety at sea but also because of the value of mandated periodic technical consultations between operational naval flag officers. Consequently, the group took this opportunity to review the theory, practice and experience of INCSEA and

INCSEA-like arrangements worldwide. They concluded that the most successful agreements elsewhere have met the following criteria.

- *Mutual National Interest.* Neither side benefits from damage, injury or death. More importantly, neither side benefits from a misunderstanding or misjudgment at sea leading to an unwanted political crisis or events contrary to a government's policy intent.
- *Operational Focus.* Effective agreements are technical documents, not diplomatic instruments. Consequently, political authorities benefit from giving their operational experts the "political space" needed to use best professional judgment in addressing the mutual interest in safe, unambiguous operations at sea.
- *Simplicity.* Complex arrangements are not only difficult to disseminate, teach and implement, but can also fail to achieve their objectives in the fluid, fast-moving environment of maritime operations and impede the subsequent process of productive consultation.
- *Privacy and Discretion.* Successful INCSEA and INCSEA-like arrangements are politically approved but negotiated and implemented by technical experts of the two navies. This means that incidents can be addressed as a professional issue rather than condemned as a treaty violation. Furthermore, a non-political focus on privately discussed safety issues avoids either side having to posture in public, therefore diplomatic crises need not prevent dialogue.
- *Professional Openness.* Because successful agreements are negotiated and implemented by professional mariners and aviators, discussions can be professional, frank and focused on practical measures to ensure that maritime operations are conducted safely.
- *Preparation.* If incidents do occur, details are provided well in advance of consultations so that surprises are avoided and both sides have time to investigate. Some matters can be resolved before formal consultation.
- *Informal Interaction.* Experience has shown that cultivating a cordial atmosphere and including tours or social events in consultation agendas does much to foster the effectiveness of discussion and the addressing of issues.
- *Verifiability and Accountability.* A well-crafted agreement provides a means of holding commanders at sea accountable for their actions, knowing that whatever happens at sea may later be discussed frankly and openly by senior officers from both countries.

Representatives of the group will discuss these insights with appropriate authorities and offer whatever support that its members may be able to contribute. Both sides have much to gain by implementing a mechanism to enhance the safety of naval operations and reduce the risk of accidents and misunderstandings at sea resulting in political issues.

Communication

A number of discussions during this year's symposium turned to the issue of communication between the navies. Although increased face-to-face interaction is the desirable long term outcome, the immediate need is for a "hotline" between the headquarters of the two navies for timely and effective communication. Such a capability is simple and inexpensive to achieve and would do much to resolve a variety of issues. Representatives of the group will discuss and encourage this step with the appropriate authorities.

Maritime Safety

While international norms for maritime search and rescue (SAR) are well established, there could be better cooperation between India and Pakistan, especially since SAR is a universal, non-political, humanitarian obligation. In many parts of the world SAR exercises between maritime forces have been a means of improving confidence and cooperation, therefore representatives of the group will discuss prospects for such exercises between the two countries with appropriate national authorities. Initially such events may be most appropriate at the MSA/ICG level, with the lessons learned being applied to future naval SAR exercises when the time is right. In the longer term, members of the group will also explore the feasibility and prospects for a regional conference on underwater emergency response involving naval submarines as well as commercial submersibles.

Sir Creek and the Maritime Boundary

The situation has not changed since the group met last year. Although the joint survey recommended by this group at its 2005 meeting was completed satisfactorily earlier, 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. The group undertook to continue monitoring progress and offering assistance if and when appropriate.

Extension of Continental Shelf Jurisdiction

With the respective claims of both governments submitted to the Technical Commission of the International Seabed Authority the group continues to monitor progress.

Maritime Trade

The group noted that the variety and volume of maritime trade between India and Pakistan, particularly between Karachi and Mumbai, have increased markedly since the amendments to the Maritime Shipping Agreement of 2006. The group will continue to monitor this issue however no further action is anticipated in the immediate future.

The Marine Environment

Marine pollution is a mutual problem and the issues of oil spills, illegal tank flushing and similar events could be better addressed cooperatively. Noting that the IGG and MSA are already communicating on pollution matters, members of the group undertook to study the issues and to compare the relevant national legislative and policy documents at the next meeting. In addition, an appropriate expert in addressing marine pollution issues will be sought to serve as a resource and perhaps facilitator of the discussions.

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)

Members of the group will also explore the prospects for a regional results-based workshop on management of marine pollution, perhaps building on the model of this year's piracy conference.

Confidence Building Steps

In exploring potential initiatives to improve confidence and cooperation at sea between the two countries the group noted that reciprocal and coordinated port visits to Mumbai and Karachi by the respective sail training ships would be a simple, effective and attractive option. Representatives of the group will make that suggestion to appropriate authorities.

Project Web Page and History

The group reviewed proposed enhancements to its web page² and agreed that it should include links to reports from each meeting and other documents relevant to its work. Additional pictures and other enhancements will be added. Although in earlier meetings plans had been discussed to compile a scholarly paper recording the history of the group and its work, that may not be possible in the coming year because of conflicting priorities and workload among the Canadian academics. The idea will be carried forward to the next meeting.

Acknowledgement

At the last moment Commodore Nair was unable to attend this year's meeting for personal reasons. The group unanimously extends its warmest wishes to him and his wife and looks forward to meeting again next time.

Next Meeting

The next meeting will be planned for the Spring of 2013. The venue is to be determined.

² http://centreforforeignpolicystudies.dal.ca/events/marsec_CCSAW.php