



RAPPORTEUR'S REPORT

SEMINAR ON
**HUMAN SAFETY
AND SECURITY AT SEA**

5 OCTOBER 2018
IDSA, NEW DELHI

JOINTLY ORGANISED BY
NATIONAL MARITIME FOUNDATION (NMF)
INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC)



INAUGURAL SESSION

WELCOME REMARKS



Vice Admiral Pradeep Chauhan
Director, NMF

Vice Admiral Chauhan provided an overview of issues concerning conflict, the Laws of Armed Conflict and related humanitarian aspects:

- The difference between *Jus ad Bellum* and *Jus in Bello*;
- The confusion caused by the use of terms Laws of Armed Conflict (LoAC) and International Humanitarian Law (IHL), when in fact they are the same;
- The non-universal coverage of the Additional Protocols to the Geneva Conventions; and
- The increasing ratio of civilian to combatant casualties.

INAUGURAL ADDRESS



Yves Heller
Deputy Head of Regional Delegation, ICRC
New Delhi

Yves Heller touched upon the following:

- The universal acceptance of the four Geneva Conventions and the limited acceptance of the Additional Protocols;
- The historical status of the concept of freedom of navigation on the high seas; and
- The challenges faced in the contemporary world where power dynamics are in a state of constant flux.

KEYNOTE ADDRESS



Vice Admiral G Ashok Kumar
Deputy Chief of Naval Staff, Indian Navy

Vice Admiral Kumar focused on the following:

- The definition of human security as the freedom from fear and want;
- The distinct yet complementary nature of IHL and International Human Rights Law (IHRL), wherein protection of life and human dignity has been identified as one major common factor;
- The Indian Navy's ability to safeguard human security while respecting IHL and IHRL is supported by mission-based deployments, enhancement of maritime domain awareness through White Shipping Agreements, the establishment of an international fusion centre and the initiation of a pilot project for satellite-based tracking of Indian fishermen; and
- The challenges posed by natural disasters and Humanitarian Assistance and Disaster Relief (HADR) and the validation of Indian concepts in relation to HADR in tabletop exercises conducted at the recent Indian Ocean Naval Symposium (IONS) working group.



Participants attend a presentation at the panel discussion

WORKING SESSION

ARMED CONFLICT & LAWS OF ARMED CONFLICT AT SEA



Bruno Demeyere (via Skype)
Legal Advisor, ICRC

Bruno Demeyere began by stating that only facts on the ground can determine whether LoAC can be applicable or not. Emphasising that the element of scale is unnecessary, he stated that any use of force between States triggers an international armed conflict (IAC). In a non-international armed conflict (NIAC) by contrast, there needs to be protracted armed violence

between governmental authorities and organised armed groups.

He explained that an international armed conflict is triggered not only by armed forces of a State, but can be triggered by any State organ, empowered to act on behalf of the State. The use of force as part of maritime law enforcement does not trigger an armed conflict but this need not be the case always. In the case where the use of force at sea is motivated by something other than a State's authority to enforce a regulatory regime, armed conflict can be triggered.

Demeyere provided an overview of the law of naval warfare from the 1856 Paris Declaration to the 1994 San Remo Manual on International Law Applicable to Armed Conflicts at Sea. He briefly explained the various declarations, manuals, conventions and protocols that broadly deal with three areas of law. These include IHL dealing with the conduct of hostilities at sea and protecting those not participating in hostilities; prize law; and the law of maritime neutrality. While discussing the inherent problems in the application of the 19th & 20th Century laws to 21st Century conflicts, he mentioned unmanned maritime systems and issues regarding their status as ships or warships. Concluding, he addressed some of the contentious provisions of the Second Geneva

Convention, including legal provisions vis-à-vis the dead, the status of sunken warships and Article 18, which discusses the search for casualties after an engagement.

MARITIME SEARCH AND RESCUE AND HUMANITARIAN ASSISTANCE AND DISASTER RELIEF



Commandant Suresh Kurup
OIC, Maritime Rescue Coordination Centre
Mumbai, Indian Coast Guard

Commandant Kurup began by describing the journey from the first 'Safety of Life at Sea'

(SOLAS) Convention in 1914 to its present iteration of 1974. He provided a detailed overview of the Search and Rescue (SAR) Convention, 1979, and explained how SAR regions were defined, how the rescue coordination centers (RCCs) were set up and the process of the creation of SAR units. He further stated that the aim of the SAR Convention was to encourage individual nations to provide SAR cover in their territorial and adjacent seas by establishing standard operating procedure (SOP) and cooperative mechanisms with neighbouring nations. He also covered the working methodology of the Global Maritime Distress and Safety System (GMDSS), the International Aeronautical and Maritime Search and Rescue Manual (IAMSAR) and the Satellite Aided SAR System (SASAR).

Commandant Kurup highlighted that while 46,887 people were saved at sea between September 1982 and December 2016, the key issue was of false alarms, which accounts for 96 per cent of distress calls. He spoke of the search and rescue region allocated to India, the Indian SAR Region (ISRR), and explained the role of the Indian Coast Guard, the lead agency for such operations. He concluded by highlighting India's role in enhancing the capacities and capabilities of her neighbours



Participants attend a presentation at the panel discussion

and Indian technological innovations, such as the low cost beacon and the distress alert transmitter, which contribute to enhancing India's SAR capabilities.

PIRACY



Captain Ashvin Arvind
Director Naval Operations, Integrated HQ,
Ministry of Defence (Navy)

Captain Arvind recounted his experiences with the Indian anti-piracy cell in the Gulf of Aden. He spoke about the many challenges faced by the Indian Navy including problems due to the absence of rules of engagement and SoP. He explained the genesis of Operation Island Watch, which resulted in the arrest of over 120 pirates.

He explained that though piracy was declining in the Arabian Sea, there was a noticeable global upsurge in other maritime crimes. He stated that the deployment of naval assets in the vicinity of the Gulf of Aden would not lead to a lasting solution unless the primary causes, which are land based, are addressed. He emphasised that these primary causes are lack of education, unavailability of jobs and other socio-economic issues and hence, the threat of resurgence of piracy remains. Captain Arvind highlighted the anti-piracy efforts of the Indian Navy and the recently adopted methodology of mission-based deployment of naval ships to enable a constant presence, facilitating prompt response to ships under attack. He noted that all violent activities against shipping in the region cannot be considered an act of piracy and gave the example of Houthi rebels who hoisted flags of hostile nations due to the ongoing civil war in Yemen.

SAFETY OF SEAFARERS



Deputy Inspector General SK
Verghese
Indian Coast Guard, Senior Fellow, NMF

DIG Verghese began by highlighting that 80 percent of global trade by volume is through sea route which means that the global economy is closely linked to maritime trade. This, he said, has resulted in an increase in maritime traffic, which has heightened the concern for the safety of seafarers. He elaborated on the four major areas of concern which need to be addressed to ensure sustainable global maritime trade in the region:

- safety of vessels;
- SAR;
- safety from natural disasters like cyclones and tsunamis; and
- environmental safety.

While discussing safety of vessels, he highlighted that the sinking of the Titanic resulted in the birth of the International Convention for the SOLAS. He stated that the Convention defines the minimum requirements or standards that need to be adhered to, especially during routine inspection and repair. However, adherence to these standards has resulted in shipping stakeholders pointing out the duplicity of effort and associated costs. This, he stated, has led to the emergence of the Voluntary IMO Member State Audit (VIMSA) Scheme. After due deliberation and time, the triple (I) Code by the International Maritime Organisation (IMO) was established and is currently in force. He explained that this code encompasses all aspects of maritime safety, which are required to be implemented by all IMO member nations.

He explained that though the aspect of vessel safety addressed merchant vessels, the same was not the case for fishing vessels. The first attempt to address the issue of safety of fishing vessels



Group photograph of the participants

came with the Torremolinos International Convention for Safety of Fishing Vessels of 1977. However, the Convention could not be brought into force due to the lack of participation by contracting nations. Although the aspect of safety for fishing vessels was partially addressed by the Protocol for Safety of Fishing Vessels, 1993, there is a long way to go before complete safety is achieved. As a conclusion, he remarked on the development of the SAR Convention and the Indian SAR initiative which ensure safety of seafarers from natural calamities like cyclones and tsunamis.

MARITIME CRIMES



Michael Odgers Co-Manager (Australia), The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime

Michael Odgers spoke in detail about the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crimes, established in 2002, to tackle the problem of mass

migration in Australia. He explained that the Bali process was a forum that focused on mediation and dialogue-based engagements with the victims of transnational crime. He elaborated on the topics that the Bali Process seeks to address:

- trafficking in persons;
- smuggling of migrants; and
- refugee protection.

Odgers explained how the Bali Process engages in information sharing and pooling of technology with the member nations and other contributors and pointed out the gaps in the Law of the Sea Convention (UNCLOS) with respect to addressing irregular movements by sea. Concluding, he addressed the importance of information exchange and suggested steps that could be taken to address the issue.

Q&A SESSION

In response to questions about measures that can be taken to address State aided trafficking and migration, Michael Odgers referred to the relevant United Nations and International Court of Justice mechanisms. In queries posed about India's force protection measures, rules of engagement and anti-piracy deployments in the Gulf of Aden, Captain Arvind stated that actions and responses have to be improved based on lessons learnt, such as using the rules of engagement when addressing threats from non-state armed group. He also said that as India's deployment in the region was standalone and not part of any of the existing multilateral initiatives, naval ships enjoy a higher degree of freedom in responding to piracy.

To the questions on the sustainability of naval deployment for piracy related threats and whether shipping companies should pay to cover naval expenditure, Vice Admiral Chauhan stated that the provision of security for common good cannot be equated to a service provider.

Responding to a question on the threshold required for trigger the applicability of the Geneva Conventions, Demeyere stated that the criterion of protraction and intensity are of salience. A question on the acceptance or non-acceptance of certain provisions when providing HADR, Vice Admiral Chauhan stated that assistance from India is always welcome as India does not insist on any conditions while providing aid.

Demeyere commented that there exists a dissonance between LoAC and IMO's regulations on the issue of rescue obligations. He questioned whether these obligations would be respected during an armed conflict.

In his closing remarks, Vice Admiral Chauhan underscored the need for States to view the safety and security of human life at sea as a common global requirement while keeping national interest in mind.

VALEDICTORY SESSION

Captain (Dr) Gurpreet S Khurana Indian Navy, Executive Director, NMF

On LoAC at Sea, Captain Khurana emphasised that the issue of 'threshold of violence', which qualifies a conflict as a NIAC, is unrelated to IAC. He advised the participating officers that their adherence to international law relating to NIAC needs to be based on an understanding of India's position, which, driven by national security considerations, has not acceded to the Additional Protocol of 1977 to the 1949 Geneva Conventions. These issues are addressed in INBR 1652, Volume 2 (Handbook on the Law of Naval Operations). On IAC, he endorsed the suggestion that naval officers would be better informed by reading the ICRC's updated Commentary on the Second Geneva Convention, which examines the applicability of the law in practical situations during armed conflicts at sea.

On the subject of Maritime SAR, he emphasised the obligation under customary international law to render assistance to people in distress at sea. He recounted the case of USS Dubuque which is currently taught by the US Navy to sea-going Captains as a lesson on ethics. He noted the reticence of countries in the region to accede to the SAR Convention and stated that India too is included in that group. He said that this void could be filled effectively by forging a web of

regional SAR MoUs promoted by the IORA.

On the subject of Piracy, recounting the case of MV Stolt Valor (2008), he recalled how India's anti-piracy deployment in the Gulf of Aden was primarily driven, not by economic rationale or geopolitical reasons but, by humanitarian considerations with regard to the safety of Indian seafarers employed on commercial shipping.

On the subject of other seafarers engaged in maritime activities in the Indian maritime zones, he stated that the government machinery has been revitalised since the Mumbai "terror attack" of November 2008 to counter maritime security threats. With the ongoing progress on the National Maritime Domain Awareness (NMDA) Project, which incorporates the country's fishing community, India's maritime environment is not only more secure, but also safer for seafarers.

Captain Khurana concluded by discussing India's doctrinal and capability voids with respect to the Out of Area (OOA) humanitarian role. He stated that as an aspiring major maritime power in the Indo-Pacific region, India does not possess a hospital ship for undertaking medical missions in the region.

VOTE OF THANKS



Major General Sajiv Jetley Head of Department (Armed & Security Forces), ICRC New Dehi

Major Sajiv Jetley expressed his appreciation to all the participants and speakers, and thanked NMF and the ICRC for their active involvement in the seminar.

RAPPORTEURS

Rajesh Soami Associate Fellow, NMF

Himanil Raina Research Associate, NMF

Suriya Narayanan Research Associate, NMF

WHO WE ARE

The International Committee of the Red Cross (ICRC) is an independent and non-political organisation with a large scope of strictly humanitarian activities which it undertakes through its presence in over 80 countries around the world. It has a universally recognised responsibility to promote International Humanitarian Law (IHL) and to respond to the needs of people affected by situations of humanitarian concern, in particular armed conflict and violence.

Working in partnership with National Red Cross and Red Crescent Societies, local authorities and others, the ICRC provides humanitarian aid and expertise in areas such as: international humanitarian law, emergency response, health and rehabilitative services, water and habitat, livelihood support, humanitarian forensics, detention management and the restoration of family links.

The ICRC has a proven record and long history in Asia and works by engaging with all parties concerned through a unique approach based on confidential dialogue, transparent activities, sharing of expertise and partnerships in order to be able to reach and meet the needs of vulnerable persons.

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