RELEVANCE AND NECESSITY OF CONFIDENCE-BUILDING MEASURES (CBMs) IN THE INDIAN OCEAN REGION (IOR)

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In his enunciation of the rationale underpinning the 2020 edition of the Pathfinder Foundation's "Indian Ocean Security Conference" held in Sri Lanka, the Foundation's Chairman, Ambassador Bernard Goonetilleke, stated, *The Indian Ocean is a common heritage of the global community, and as in the past, its sea lanes will continue to provide accessibility to regional as well as extra-regional states.... What is needed therefore is an arrangement to maintain 'good order at sea'. Ensuring the ocean is 'open and free' for all, without exception, in keeping with the Convention on the Law of the Sea and finding ways and means of addressing any shortcomings in that Convention, through discussion and negotiation, and taking steps for domain awareness are among the solutions to the problem."*[1]

Following through on the ambassador's comment, this paper presents an approach that seeks to identify and analyse the necessity and relevance of maritime "Confidence Building Measures" [CBMs] in the Indian Ocean, which could lead to the desired end-result of predictable maritime behaviour founded upon a mutuality of trust, and the "good order" that arises therefrom. It first provides a broad overview of the types and forms of CBMs and, thereafter, contextualises these to the maritime geography of the Indian Ocean, before focussing upon the question of whether fresh rules and norms governing the conduct of maritime entities — especially military maritime entities — are needed or whether the *"arrangement to maintain 'good order at sea'"* that Ambassador Goonetilleke referred-to is already in place, requiring only adherence.

The United Nations defines "military" CBMs as *"planned procedures to prevent hostilities, to avert escalation, to reduce military tension, and to build mutual trust between countries."*[2] However, even within the ambit of military measures, a more comprehensive definition is offered by the well-known former Director of the Norwegian Institute of International Affairs, Dr Johan Jørgen Holst, who describes confidence-building measures as *"arrangements designed to enhance such assurance of mind and belief in the trustworthiness of States and the facts they create."*[3] It should not, however, be concluded that merely because CBMs are preponderant within the military domain, they are confined solely to this domain. In the broader context of contemporary **'holistic'** security, one increasingly encounters non-military CBMs as well. Within this broader context, there is, indeed, much to be gained from the "OSCE Guide on Non-military Confidence-Building Measures" of 2012. It describes CBMs far more expansively, stating that *"non-military confidence building measures are actions or processes undertaken in all phases of the conflict cycle and across the three dimensions of security in political, economic, environmental, social or cultural fields with the aim of increasing*

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[1] Bernard Goonetilleke, Opening Remarks, "Indian Ocean Security Conference - 2020", Report of the Conference, 10-12 November 2020, p 14. https://pathfinderfoundation.lk/images/pdf/PFIOSC-Doc-for_REPRINT-10122020.pdf

[2] United Nations Office for Disarmament Affairs. https://www.un.org/disarmament/cbms/

[3] Johan Jørgen Holst, "Confidence-building Measures: A Conceptual Framework". https://doi.org/10.1080/00396338308442072

transparency and the level of trust and confidence between two or more conflicting parties to prevent inter-State and/or intra-State conflicts from emerging, or (re-) escalating and to pave the way for lasting conflict settlement."[4] It goes on to dilate upon political CBMs, economic CBMs, environmental CBMs, societal CBMs, and cultural CBMs, averring, quite correctly, that all of these are *"...tools to lower tensions and make it less likely that a conflict might break out, escalate or re-emerge through a lack of information, misunderstanding, mistake or misreading of the actions of a potential adversary. They are also means to foster trust and bridge dividing lines between potential antagonists and an essential element of building sustainable peace. CBMs can help to repair the distorted communication between adversaries and to increase confidence among the parties that current and future commitments will be honoured. CBMs will, by themselves, not solve a conflict. But they can modify relations and behaviour and thereby the context in which the conflict resolution process takes place. Thus, they should be understood as an investment in the broader objective of peace rather than as objectives in themselves."*[5]

- **Political CBMs.**
  Political CBMs are particularly important in addressing trust-deficits. Their criticality remains unabated even in the absence of an overt inter-State armed conflict, as long as a trust-deficit is evident or is perceived to be evident by at least one State-party. The effectiveness of political CBMs, far more than other types of non-military ones, is almost entirely dependent upon *"negotiated actions".*[6] Both words — "negotiated" and "actions" — are important. While it is possible for confidence to be engendered solely through dialogue, the risks of misinterpretation and misunderstanding are ubiquitous ones, which are greatly exacerbated by apprehensions that one or both sides is/are using words (dialogue) to intentionally mislead the other. Of course, actions, too, like words, can indeed, be misconstrued or misinterpreted — particularly in an atmosphere that is already vitiated or one that is actively hostile. *"Yet because actions require greater effort than words, they are generally more credible and useful in helping conflict parties read each other's intentions."*[7] In situations where conflict is absent but a trust-deficit is deemed by one or another State-party to exist, political CBMs must be adopted as the leading approach. Other types of CBMs — economic, environmental, societal, cultural, and even military — can certainly supplement political CBMs but cannot supplant them.

- **Economic CBMs.**
  Where economic CBMs are concerned, apparently firm ground is much more likely to turn out to be quicksand. On the one hand, conventional wisdom holds that *"economic interdependencies foster close and fruitful relationships. States and intra-State actors/communities involved in such relationships seldom risk their economic wellbeing and survival by entering into confrontation."*[8] Regrettably, howsoever seductive, conventional wisdom is seldom a reliable bellwether. There is already significant scholarship — not limited to dyadic (bilateral) inter-State relations

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[4] OSCE Secretariat Conflict Prevention Centre/Operations Service, "OSCE Guide on Non-military Confidence-Building Measures", 2012. https://www.osce.org/files/f/documents/6/0/91082.pdf
[5] *Supra 4,* OSCE Guide on Non-military Confidence-Building Measures
[6] Simon JA Mason and Siegfried Matthias, "Confidence Building Measures (CBMs) in Peace Processes", In: *Managing Peace Processes: Process related Questions. A Handbook for AU Practitioners*, Volume 1, African Union and the Centre for Humanitarian Dialogue, 2013, 57-77. https://peacemediation.ch/wp-content/uploads/2013/07/AU-Handbook_Confidence-Building-Measures-in-Peace-Processes.pdf
[7] *Supra 6*, Mason and Matthias, CBMs in Peace Processes
[8] *Supra 4,* OSCE Guide on Non-military Confidence-Building Measures

alone — that fiercely challenges the notion that economic interdependence amongst nation-states generates peace. For example, Professor Katherine Barbieri, in common with many other influential scholars, offers a stern caveat to governments, strongly emphasising the dangers of any simplistic examination of empirical data in determining the linkages between economic interdependence and security. From the mid-1990s onwards, a number of impressively-researched and increasingly-influential publications show that increased trade interdependence (even where dyadic trade is concerned) leads to an increase in the likelihood that a dyad will fall into a 'Militarised Interstate Dispute' (MID), although this may not escalate into outright conflict. Using an extremely large data-set, with data between 1870-1938 and over 14,000 observations (dyadic years), Barbieri draws the very interesting conclusion that dyadic trade flows have a curvilinear effect on MIDs — more trade leads to more MIDs and that higher economic interdependence, both symmetrical and asymmetrical, leads to more MIDs (even after allowing for contiguity, regime-type, relative-capabilities and alliance-commitments).[9] At the very least, as Emiel Awad emphasises, what is beyond debate is the need for further and more rigorous research *"to get a fundamentally deeper understanding of how economic interdependence affects a state's decision-making. Game Theory (but also other approaches) may be helpful to understand more clearly how economic interdependence affects the likelihood of war"*.[10] However, even at the present stage of research amongst the intellectual elites of the Indian Ocean Region (IOR) and their institutions, it can hardly be contested that economic-ties between nations are deeply affected by the quality of their bilateral diplomatic relations and that economics and politics are inextricably intertwined.[11]

- **Environmental CBMs.**

Environmental CBMs incorporate, *inter alia*, some combination of joint, cooperative, collaborative, or coordinated planning and training to deal effectively with regional or sub-regional natural disasters (and manmade ones as well) such as earthquakes, seaquakes, *tsunamis*, and floods, vulnerabilities to the adverse impacts of climate-change (port-fragility, for instance), oil-spills, etc. The great advantage of environmental CBMs is that they are perceived as shared solution-pathways to common threats. They are usually, (though not always) less impacted by political suspicion and sensitivities. While it is important to avoid the trap of defining CBMs too broadly — to the point where *"they can mean anything and nothing, thereby losing their conceptual clarity"*,[12] CBMs that address trans-national or pan-regional interdependencies and offer concrete incentives for cooperation and collaboration can be effective tools to knitting a neighbourhood, sub-region or a region together.

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[9] Katherine Barbieri, "The Liberal Illusion: Does Trade Promote Peace?", University of Michigan Press, 2005 Edition.
See also:
Katherine Barbieri and O Keshk, "Trading Data: Evaluating our Assumptions and Coding Rules", Journal of Conflict Management and Peace Science, Vol 26 (5), 2009
[10] Emiel Awad, "Economic Interdependence, Trade, and War: A Theoretical and Empirical Analysis". Master's Thesis in International Public Management and Public Policy, Erasmus University (Faculty of Social Sciences), Rotterdam, 2013. thesis.eur.nl/pub/15372/Final-Version-29th-of-October-2013.pdf
[11] Vincenzo Bove, Leandro Elia and Petros G Sekeris, "Trade Still Follows the Flag: U.S. Security Strategy and the Value of Bilateral Trade". http://privatewww.essex.ac.uk/~ksg/esrcjsps/Bove.pdf
[12] *Supra 6*, Mason and Matthias, CBMs in Peace Processes

- **Societal CBMs.**

As one moves away from the confines of the Westphalian nation-state and examines the relevance and effectiveness of CBMs amongst collectives or human beings as opposed to nationals or citizens (these are not interchangeable nouns) one encounters sharp increases in the need to retain conceptual coherence on the one hand, and, an equally sharp increase in both, opportunities and challenges, on the other. Dialogues and exchanges between academics, educators (especially if these lead to collaborative or joint production of text books), journalists, and, policy-influencing institutions such as credible thinktanks, offer good examples of potential CBMs. The proactive creation and proliferation of advocacy platforms (conferences, symposia, workshops and seminars) as also joint-research projects such as this very one, can be effectively leveraged to engender and enhance confidence in past and present actions and future intentions of the States represented, thereby reducing such trust-deficits as might exist.

- **Cultural CBMs.**

Cultural CBMs are surprisingly effective but are seldom exploited with same degree of vigour or persistence as are other types. The disappointingly lacklustre progress of India's *Mausam* initiative is an example of a very low realisation of very large potential.[13]

An important consideration is that while bilateral CBMs are the norm, this is not the sole format for their application. Depending upon the context in which they are sought to be used, they could, on the one hand, involve more than two parties and be devised and executed in a multilateral format. On the other hand, they could also be unilateral, wherein a single State-party tries to assuage the insecurities of another (or others) and by virtue of unilateral CBMs, encourages a diversion from a potentially conflictual trajectory to one marked by mutual comity thereby leading to non-confrontational negotiations. Indeed, it is not always appreciated that even in contemporary times, unilateral CBMs have an especially well-established lineage dating to the GRIT strategy (Graduated Reciprocated Initiatives for Tension-Reduction) of the mid-1960s, which had been developed for the US Arms Control and Disarmament Agency. This CBM is based on one of two potentially-conflicting State-parties making one or more unilateral gesture of goodwill and then waiting for the other to respond, without seeking direct reciprocity for each such goodwill gesture. As the process continues, both potentially-conflicting and gridlocked parties could build trust and shore-up mutual confidence to a point where substantial negotiations can be resumed. Transparency and predictability are crucial elements in all CBMs and the absence of either can prove severely detrimental to success. An example of lack of transparency is the explanation offered by a State for the Indian Ocean deployment (specifically in the Arabian Sea) of its nuclear-powered submarines as being an anti-piracy measure.[14] This sort of lack of transparency tends to reduce confidence in the intentions of the State concerned

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[13] Pradeep Chauhan, "Geopolitics, Maritime Connectivity and Cultural Heritage" in: *"Roads, Winds, Spices in the Western Indian Ocean"*, Ed Pragya Pandey and Nutan Kapoor Mahawar, Indian Council for World Affairs (ICWA), (New Delhi, Macmillan Publishers India Private Limited, January 2022), 43-53

[14] Lawrence Chung, "China's nuclear sub mission in Gulf of Aden 'could cause unease among neighbours'" in *South China Morning Post*, 27 April 2015. https://www.scmp.com/news/china/diplomacy-defence/article/1777792/chinese-nuclear-submarine-completes-anti-piracy-mission

and this lack of confidence breeds mistrust that then rapidly spreads to all Indian Ocean naval deployments (not limited to submarines alone) of the State in question.

Of course, the utility and the format will depend upon the prevailing context and perception-management will play a very substantive and substantial role. Within the maritime domain in general and the Indian Ocean in particular, perception management is a common feature of naval deployments and missions in support of a given navy's diplomatic role, especially in terms of humanitarian assistance and disaster relief (HADR). The frequent HADR missions of India's Navy within its maritime neighbourhood — involving, *inter alia*, Sri Lanka, Maldives, Bangladesh, Myanmar, Seychelles, Madagascar, Mauritius, Comoros, etc. — offer telling examples of unilateral CBMs.

In seeking to the desired mutuality of trust, and the "good order" that arises therefrom, it is evident that the geographical spread across which this to be referenced will play a very significant role. The larger the geographical spread, and the greater the number of State actors (and non-State ones, too) contained within this geographical spread, the greater will be the complexities encountered.

Like any ocean, the Indian Ocean, too, includes its fringing seas. As such, its area of 73.6 million square kilometres[15] may well be comparatively lesser than that of the Pacific and the Atlantic oceans, but it is, in absolute terms, quite formidable. It is separated from the Atlantic Ocean by the meridian of 20° East (south of Africa) and from the Pacific Ocean by the meridian of 147° East. The northernmost extent of the Indian Ocean is the Persian Gulf, at the approximate latitude of 30° North. Extending down to Antarctica at its southernmost reaches, it is practically walled off on three sides by land. The Arabian Peninsula and the east coast of Africa define its western wall. Myanmar, Thailand, Malaysia, Indonesia, Timor-Leste, and, the north-west coast of Australia, define the eastern wall. The southern part of Asia forms a roof over its northern extent.[16] The great peninsular landmass of India, jutting out for over a thousand miles, characterises the Indian Ocean, gives it its name, and distinguishes it from the Pacific and the Atlantic, which lie from north to south like great highways without any roof. The waters of the Indian Ocean lap the shores of as many as 38 nation-States (as shown in **Table 1**) with vastly varying territorial boundaries and limits:

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[15] NASA Sea-viewing Wide Field-of-view Sensor (SeaWiFS) Project.
https://seawifs.gsfc.nasa.gov/OCEAN_PLANET/HTML/oceanography_geography_Indian.html
[16] International Hydrographic Organisation (IHO), Special Publication 23, 3rd Edition, 1953.
https://epic.awi.de/29772/1/IHO1953a.pdf
Note: In the year 2000, a draft version included the Southern Ocean south of 60° South, but this draft has not been formally adopted.

Table 1: IOR Littoral States							
West Asian Littoral		**East African Littoral**		**South Asian Littoral**		**South-East Asian & Australian Littoral**	
1	Bahrain	1	Comoros	1	Bangladesh	1	Australia
2	Iran	2	Djibouti	2	India	2	Indonesia
3	Iraq	3	Egypt	3	Maldives	3	Malaysia
4	Israel	4	Eritrea	4	Pakistan	4	Myanmar
5	Jordan	5	France	5	Seychelles	5	Singapore
6	Kuwait	6	Kenya	6	Sri Lanka	6	Thailand
7	Oman	7	Madagascar			7	Timor Leste
8	Qatar	8	Mauritius				
9	Saudi Arabia	9	Mozambique				
10	UAE	10	Somalia				
11	Yemen	11	South Africa				
		12	Sudan				
		13	Tanzania				
		14	UK				

Amongst the above-listed State-actors are some that have deep-seated and violent political conflictual histories that not only impact almost every sphere of their bilateral engagement, but also strain impact the sub-regional fabric of this major maritime sub-division of the Indo-Pacific, namely, the Indian Ocean. India and Pakistan are, perhaps, the principal exemplars of such hostility-driven States that *"have no confidence in each other* [and] *will often not even talk together, let alone enter serious negotiations or joint problem-solving"*[17] However, a lack of confidence and inadequate trust could be evidenced in several other State-led engagement processes as well, even without the States concerned having experienced State-on-State geopolitical violence or conflict. In a few such cases, the normal course of diplomacy could be significantly hindered or may even be halted. In several such cases, *"Confidence Building Measures (CBMs) can be an effective tool for preparing and deepening peace negotiations and mediation."*[18] However, just as it is self-limiting to believe that CBMs are only relevant in the military domain, it is equally imprudent to consider them to be a panacea for all geopolitical ills or an alternative to the normal applications of diplomacy. Indeed, *"the usefulness of CBMs is often overestimated and this calls for a careful consideration of their limitations."*[19]

Almost all contemporary discussions on means and methods of preventing dangerous (or unsafe) incidents at sea involving, either partially or wholly, naval vessels, are rooted in the "1972 Agreement for the Prevention of Incidents On and Over the High Seas" (INCSEA).[20]

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[17] Simon JA Mason and Siegfried Matthias, "Confidence Building Measures (CBMs) in Peace Processes", In: *Managing Peace Processes: Process related Questions. A Handbook for AU Practitioners*, Volume 1, African Union and the Centre for Humanitarian Dialogue, 2013, 57-77. https://peacemediation.ch/wp-content/uploads/2013/07/AU-Handbook_Confidence-Building-Measures-in-Peace-Processes.pdf
[18] *Supra* 7, CBMs in Peace Processes...A Handbook for AU Practitioners
[19] *Supra* 7, CBMs in Peace Processes...A Handbook for AU Practitioners
[20] Dale Ton, "INCSEA and the Persistence of Dangerous Intercepts", National Security Law Brief, American University, 20 March 2018. https://nationalsecuritylawbrief.com/2018/03/20/incsea-and-the-persistence-of-dangerous-intercepts

The INCSEA Agreement was a response by the military leaderships of the USA and the erstwhile-USSR to a series of dangerous and potentially-escalatory incidents that occurred in April of 1968, in the Sea of Japan. Both sides correctly assessed the extreme danger of having an essentially tactical show of naval brinkmanship escalate into a strategic (and possibly nuclear) armed conflict between the two superpowers of that period. The apex levels of the respective military (naval) hierarchies involved themselves personally, lending requisite urgency to the process. The agreement was formally signed, in Moscow, on 25 May 1972, by the Secretary of the Navy (for the United States) and by Admiral Sergei Gorshkov, Commander in Chief of the Soviet Navy (for the USSR).[21]

Three aspects offer immediate and overarching lessons for our own contemporary considerations, although present-day analysts do not always give these the importance that they deserve:

(1) The gravity of the situation was understood by the two powers, each of which was politically mature.

(2) The danger of extremely rapid escalation from a tactical game of 'Chicken', played by carefully-conditioned assertive and aggressive seagoing commanders, to a potential global nuclear conflict was correctly assessed to be very high.

(3) This personal involvement of the highest naval leaders of the two countries signalled not only extreme gravity and extreme urgency, but also that civilian bureaucratic delays and obfuscation would not be brooked.

It is important to note that **none** of these impetuses are available in the Indian Ocean. It would also be worth recalling that the 1972 INCSEA Agreement was applicable only to vessels/platforms/units of the US Navy (wherein the prefix 'USS' — United States Ship — is used), as also to the US Marine Corps, the US Coast Guard, the US Air Force, the US Army, and, government-owned ships of the US Military Sealift Command (MSC). A separate Protocol to the 1972 INCSEA Agreement had to be signed (in 1973) which basically stated that *"Ships and aircraft of the Parties shall not make simulated attacks by aiming guns, missile launchers, torpedo tubes and other weapons at non-military ships of the other Party, nor launch nor drop any objects near non-military ships of the other Party in such a manner as to be hazardous to these ships or to constitute a hazard to Navigation."[22]* This was necessary because the MSC has two distinct categories of vessels within it, either of which may be manned by a hybrid mix of uniformed and civilian personnel (the latter are known as

For the Text of the INCSEA Agreement, see: "Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on the Prevention of Incidents On and Over the High Seas". https://2009-2017.state.gov/t/isn/4791.htm

[21] Vice Admiral WD Crowder, "Chief of Naval Operations OPNAV Instruction 5711.96C", US Department of Defense, Department of the Navy, 10 November 2008

[22] US Department of State, "Protocol to the Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on the Prevention of Incidents on and Over the High Seas Signed May 25, 1972", Wikisource, https://en.wikisource.org/wiki/Protocol_to_the_Agreement_on_the_Prevention_of_Incidents_at_Sea

'Civil Service Mariners' [CIVMARs]) or an all-civilian crew. The first category of ships of the MSC consists of US **government-owned** ships. These are US naval auxiliaries and are (quite confusingly for the lay person) given the prefix USNS, an acronym for 'US Naval Ship'. The second category comprises vessels that are simply chartered from trade.[23] While USNS vessels have distinctive and unique blue-and-gold bands on their funnels, the chartered ones are indistinguishable from other merchant vessels.[24] All this is germane to the Indian Ocean because the US Navy — with its ships comprising a mix of warships (with the prefix "USS") and naval auxiliaries (with the prefix "USNS") — routinely operates in this ocean, as do British warships. The latter, too, are a mix of Royal Navy warships with the prefix "HMS" and Royal Fleet Auxiliaries (RFA). The crew of RFA ships are seagoing civilians who, although they have merchant marine insignia and ranks, are employed by the UK Ministry of Defence. Now, when such vessels operate in the EEZ of IOR States, there is some ambiguity as whether or not they ought to be considered warships in the classical sense and whether declarations that had been made by resident States while ratifying the 1982 UNCLOS (Bangladesh, France, India, and Pakistan, are examples of such States) include the activities of ships of the US MSC or British RFAs. This would be an apt case for the introduction of CBMs even though there are no conflictual confrontations between any of the resident IOR-States (other than, perhaps, Iran, Iraq, and Yemen) and the USA or the UK.

In the Indian Ocean, the India-Pakistan relationship might, at a superficial level, appear to mirror at least some elements of the US-Soviet one, giving rise to a feeling that the US-Soviet/Russia INCSEA Agreement can be extrapolated and some variant of the Agreement applied here, as advocated by Professor Monish Tourangbam (albeit in the Sino-Indian context rather than the India-Pakistan one).[25] Clearly, the seductiveness of replicating a perceived 'successful' model and applying it to a contemporary context is substantial. Indeed, this is the very sentiment that underpinned the conclusion of the India-Pakistan Confidence Building Measures between the navies of the two countries, as far back as 06 April 1991.[26] Although this seminal document is rarely studied or cited in India, its relevance can hardly be overstated, if for no other reason than that it failed. However, in its failure lie important lessons on the limitations that must be placed on one's expectations in extrapolating the INCSEA Agreement as a maritime CBM. Quite apart from its major thrust on providing for advance notice of major exercises so as to preclude exercise-preparations from being mistaken for preparations for an actual armed conflict, this 1991 Agreement contained important preventive elements at a more tactical level involving the two navies, as witness the following extract:

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[23] US Military Sealift Command Website, https://sealiftcommand.com/about-msc
[24] OPNAV Instruction 5711.96C
[25] Monish Tourangbam, "Avoiding Incidents at Sea between India and China", The Stimson Center, (Research, Asia), Washington DC, 26 April 2018, https://www.stimson.org/2018/avoiding-incidents-sea-between-india-and-china/
[26] Rear Admiral Ravi Vohra and Rear Admiral Hasan Ansari, "Confidence Building Measures at Sea: Opportunities for India and Pakistan", (Appendix A), Cooperative Monitoring Center Occasional Paper/33, Sandia National Laboratories, December 2003, https://www.sandia.gov/cooperative-monitoring-center/_assets/documents/sand2004-0102.pdf

"10. The Naval ships and submarines belonging to the other country are not to close less than three Nautical Miles (NMs) from each other so as to avoid any accident while operating in international waters.

11. Combat aircraft including fighter, bomber reconnaissance, jet military trainer and armed helicopter aircraft will not fly within ten kms of each other's airspace, including the Air Defence Identification Zones (ADIZ), except when such aircraft are operating form Jammu, Pathankot, Amritsar and Suratgarh air bases on the Indian side, as well as Pasrur, Lahore, Vehari and Rahimyar Khan air bases on the Pakistan side, in which case they will maintain a distance of five kms from each other's airspace. Unarmed transport and logistics aircraft including unarmed helicopters and Air Observation Post (AOP) aircraft will be permitted to operate up to 1000 meters from each other's airspace including the ADIZ.

12. Aircraft of either country will refrain from buzzing surface units and platforms of the other country in international waters."

There were several eminently predictable reasons why this local variant of the 1972 INCSEA Agreement was never going to work. It is just that the seductiveness of replicating its perceived success was so great as to blind the concerned protagonists was not extrapolatable to the India-Pakistan framework. In 1991, neither country was a declared nuclear power (even though India had conducted a successful nuclear test in 1974), nor was, by any stretch of imagination, a superpower. The prevailing assessment was that a bilateral military would be unlikely to involve other countries of even the Indian Ocean alone, far less the world as a whole. Finally, the CBM-document of 1991 was signed not by the two apex-level military leaders but, instead, by two very senior and experienced diplomats — the Foreign Secretary of each country. This might seem adequate in a normal case, but within a military as politically powerful as that of Pakistan, the sheer weight of a document signed by the senior-most military officer far exceeds that of a civilian bureaucrat, no matter how important-sounding his title. Moreover, the agreement was subject to ratification — a process that is convoluted enough in both countries and one that was almost impossible to attain in the supercharged atmosphere of the period in which Pakistani interference in the Indian State of Jammu and Kashmir had reached a decadal peak. In any case, Pakistan's Navy chose to ignore the provisions altogether and regular and dangerous 'buzzing' of Indian warships by Pakistani Air Force aircraft has continued apace. For example:

"... in August 1995, Pakistan Navy (PN) Alouettes flew dangerously low over an Indian Navy (IN) ship participating in the International Fleet Review in the port of Tanjung Priok, Indonesia. In 1996, there was a near collision between a PN Alouette helicopter and an IN Sea King helicopter shadowing the PN's annual SEA SPARK exercise in the Arabian Sea. The downing of the Pakistani Naval Atlantique by the Indian Air Force on August 12, 1999, is perhaps ... the most disastrous of these incidents..." [27]

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[27] Commander Rajesh Pendharkar, "The Lahore Declaration and Beyond: Maritime Confidence-Building Measures in South Asia", Occasional Paper No. 51, The Henry L Stimson Center, Washington DC, February 2003, https://www.stimson.org/wp-content/files/file-attachments/MaritimeCBMs.PDF

There is little evidence even in more contemporary times, that the 1991 CBMs are even marginally effective beyond the mere provision-of-notice of major exercises. In July of 2011, for instance, there was a major incident involving an Indian and a Pakistani warship (the INS *Godavari* and the PNS *Babur*), both of which were engaged in what ought to have been a cooperative escort of a merchant vessel (the MV *Suez*) through a piracy-prone area, manoeuvring so aggressively as to end-up physically grazing and damaging each other.[28]

It is important to note that outside of the significantly-vitiated India-Pakistan relationship, the Indian Ocean region has been largely law-abiding, with warships or other maritime-security vessels adhering to established international conventions that govern unplanned or unexpected encounters at sea. Taken in aggregate, these conventions, rules, regulations, and traditional courtesies, cover the entire gamut of ship/vessel-based maritime intercourse, and constitute what is called a "rules-based order" at sea. While the 1982 Convention on the Law of the Sea (UNCLOS)[29] is, arguably, the best known of these conventions, and while an overwhelming number of IOR States have, indeed, signed and ratified this convention,[30] the 1982 UNCLOS is not the sole determinant of predictable and lawful behaviour of seagoing entities. For instance, the 1988 SUA Convention (Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation)[31] and the 1988 SUA Protocol (Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf),[32] relating to maritime safety of ships and offshore platforms from hijacking, terrorism, etc., address some gaps in the 1982 UNCLOS. Of even greater relevance to this approach-paper are the determinants of 'day-to-day' predictability and lawful behaviour at sea. These are quite comprehensively covered by the International Maritime Organisation (IMO). Not every enthusiastic proponent of CBMs in the maritime reaches of the Indian Ocean appears to appreciate that the IMO, as a body of human representatives of nation-States and multinational entities, draws its legal strength from the 1948 IMO Convention (which came into force in 1958) and is a full-fledged international convention in its own right that was *"prepared and opened for signature and acceptance by the United Nations Maritime Conference convened by the Secretary-General of the United Nations pursuant to Economic and Social Council resolution 35 (IV)".*[33] It has been ratified by all littoral States of the IOR. The IMO (as a body, drawing its legal authority from the IMO Convention) has successfully sponsored a number of seminal conventions, rules and procedures, which put together, regulate the behaviour of all seagoing maritime entities. A major one is the 1972 Convention (and its subsequent updates) on the International Regulations

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[28] "India, Pakistan in War of Words as Warships Collide", The Economic Times E-Paper, 19 June 2011, https://economictimes.indiatimes.com/news/politics-and-nation/india-pakistan-in-war-of-words-as-warships-collide/articleshow/8909179.cms

[29] UN Office of Legal Affairs: Division for Ocean Affairs and the Law of the Sea, "United Nations Convention on the Law of the Sea", 10 December 1982, https://www.un.org/depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm

[30] *Amongst 38 littoral resident States of the IOR, Eritrea, Iran, Israel, and UAE are yet to ratify the 1982 UNCLOS.*

[31] Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, www.un.org/en/sc/ctc/docs/conventions/Conv8.pdf

[32] Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 1988, www.un.org/en/sc/ctc/docs/conventions/Conv9.pdf

[33] International Maritime Organization, "IMO in the United Nations: Convention on the International Maritime Organization Geneva, 6 March 1948", https://www.imo.org/en/KnowledgeCentre/Pages/IMOinUN-default.aspx

for Preventing Collisions at Sea (COLREGS)[34] also known as the "Rules of the Road" (ROR). This, too, is a full-fledged international convention and has been ratified by all littoral States of the Indian Ocean. The COLREGS Convention stipulates mandatory rules that govern patterns of movement, speed, and behaviour required for watercraft of all kinds so as to prevent close-quarter and other dangerous situations from arising. It includes the display of shapes and lights and the generation of specific sound signals that signal the purpose and intentions of vessels in varying conditions of visibility (including vessels that are not in sight on one another). Likewise, the International Telecommunication Union (ITU) is the United Nations specialised agency for information and communication technologies (ICTs).[35] *"The legal framework of ITU comprises the basic instruments of the Union, which have treaty status and are binding on ITU Member States"[36]* The ITU's Radio Regulations and their associated "Rules of Procedure", *inter alia*, specify radio-frequencies that are to be used — including those for unplanned encounters of ships (including warships and naval auxiliaries). In the event that one or more vessels that are encountering one another are without radio communication, the communication-processes and procedures to be employed are mandated by the IMO's "International Code of Signals".[37] Linguistic incompatibility amongst vessels at sea is addressed by mandatory adherence to the IMO's "Standard Communication Phrases (SCP)".[38] Behaviour of ships at sea is further regulated by the mandatory provisions of the "Safety of Life at Sea" (SOLAS) Convention, 1974[39] (updated to 2020 and which, too, has been ratified by all littoral States of the Indian Ocean), and, the "International Convention for the Prevention of Pollution from Ships, 1973" (MARPOL).[40] Even where 'hostile intent' is concerned, the provisions of the "San Remo Handbook on Rules of Engagement" (Article 4.4 of Appendix 4 to Annex A) provide adequate guidelines in respect of seagoing vessels.[41]

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[34] International Maritime Organization, "Convention on the International Regulations for Preventing Collisions at Sea, 1972" (COLREGS) https://www.imo.org/en/OurWork/Safety/Pages/Preventing-Collisions.aspx
For full text, see: https://treaties.un.org/doc/publication/unts/volume%201050/volume-1050-i-15824-english.pdf
[35] International Telecommunication Union, "About International Telecommunication Union (ITU)", https://www.itu.int/en/about/Pages/default.aspx
[36] International Telecommunication Union, "Regulatory Publications", https://www.itu.int/pub/R-REG
[37] International Maritime Organization, "International Code of Signals for Visual, Sound, and Radio Communications", https://www.dco.uscg.mil/Portals/9/NMC/pdfs/examinations/01_international_code_of_signals_pub_102_2005_ed.pdf
[38] International Maritime Organization, "Resolution A 918(22)", 29 November 2001, IMO Standard Marine Communication Phrases", https://dokumen.tips/download/link/imo-standard-marine-communication-phrases-a91822
[39] International Maritime Organization, "International Convention for the Safety of Life at Sea, 1974", https://treaties.un.org/doc/publication/unts/volume%201184/volume-1184-i-18961-english.pdf
[40] International Maritime Organization, "International Convention for the Prevention of Pollution from Ships, 1973", https://treaties.un.org/doc/Publication/UNTS/Volume%201340/volume-1340-A-22484-English.pdf
[41] "Guidance on Hostile Intent", Appendix 4 to Annex A, San Remo Handbook on Rules of Engagement, International Institute of Humanitarian Law, San Remo, http://iihl.org/wp-content/uploads/2017/11/ROE-HANDBOOK-ENGLISH.pdf

Conclusion

What all this implies is that the pursuit of some fresh CUES-type of document (CUES is an acronym for "Code for Unplanned Encounters at Sea") is probably unnecessary for the sustenance of "good order at sea". Indian Ocean States ought not, perhaps, to expend undue energy in advocating a Code of Conduct that re-stipulates the existing conventions, treaties, rules and regulations, to which they are already publicly committed as ratifying parties. An undue insistence upon any additional 'signed commitment' or a pledge that promises predictable and lawful 'good behaviour' is unlikely to be more than chasing a chimaera and runs the very real risk of confusing 'activity' with 'accomplishment'. An international code of conduct already exists that transcends any given oceanic space. If a country is set on ignoring it, then concerted international pressure by way of deliberate and concerted social- (rather than economic-) 'ostracization', along with a 'collective' leveraging of extant legal arbitral mechanisms, are probably more likely to produce the desired behavioural change, if for no other reason than the fact that nations, like individuals, simply ***want*** to be liked by their peers.[42]

Insofar as the ongoing Indian Ocean initiatives led by Sri Lanka's Pathfinder Foundation — and fully supported by India's National Maritime Foundation — is concerned, a far more productive and promising approach might well be to jointly prepare a properly cross-indexed "Guide for Seagoing Officers" that acts as a compendium or ready-reckoner, while also providing diplomats and officials ashore with the requisite information with which to engage their counterparts from other littoral-States of the Indian Ocean as well as extra-regional States and collective entities operating within the Indian Ocean. This is not, however, to undervalue in any way the enormous importance of non-military Confidence Building Measures in their several dimensions — political, economic, environmental, societal, and cultural. Indeed, in cases where a trust-deficit is felt to exist even in the absence of a state of confrontation, conflict, or actual hostilities, it is such CBMs, rather than ones aimed at seagoing entities that are likely to produce the most meaningful results.

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[42] Pradeep Chauhan, "Address at the 12th South China Sea International Conference "Maintaining Peace and Cooperation through Times of Turbulance", https://scsc12.dav.edu.vn/