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Maritime Search and Rescue and Disaster Relief in the Indo-Pacific: The Need for "National Will"

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ABSTRACT

Human safety in the maritime and littoral domain of the Indo-Pacific region is fast emerging as an issue of concern for the regional countries. The paper attempts to examine the existing provisions and practices of the regional maritime forces with regard to maritime Search and Rescue and Humanitarian Assistance/ Disaster Relief, so as to identify voids in cooperative responses that may be attributed to either insufficient or absent "national will. It avers that this either due to overriding national security concerns, including sensitivities over national sovereignty, geopolitical considerations, or simply the lack of national policy emphasis. This manifests in the reticence of the countries to meet the obligations of customary international law and even accede to relevant global conventions, and impedes inter-state and regional cooperation for handling irregular migrants at sea and effective coordination of humanitarian relief operations during natural disasters. The paper concludes with some practical policy recommendations.

Introduction

The economic rise of the Indo-Pacific region is leading to increased maritime activities ranging from the harnessing of sea-based resources to transportation, of both goods and people, by sea and air. While this is a positive trend, it has also enhanced the risk to human safety due to maritime (including aeronautical) accidents. The loss of the Malaysian airliner MH-370, and the South Korean *Sewol* ferry disaster, both of which occurred in 2014, are cases in point. These underscore the need for regional countries to enhance the effectiveness of existing mechanisms of maritime search and rescue (M-SAR).

The significance of M-SAR for the region is reinforced by the challenge of increased irregular migration by a goodly press of refugees seeking asylum due to economic causes, or ethnic persecution or local instabilities. Seaborne migration across the Mediterranean Sea – often using overladen and unseaworthy boats – has, of late, become a very serious issue of human safety. This issue is particularly germane within the context of the Indo-Pacific, with a high potential of this becoming aggravated over the coming years, for a variety of reasons which include, amongst others, local instabilities and the adverse effects of climate change leading to sea-level rise.

It is widely believed that climate change induced by human actions is partially or wholly responsible for a number of anomalies in natural phenomena, leading to the

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increasing occurrence of maritime disasters. Such natural disasters at sea severely affect not only economic and subsistence activities in the maritime realm, but also human habitat and economic activity in littoral areas. These furnish good reasons for the growing belief that in the coming years, human safety issues at sea and in the littorals are likely to gain increasing salience in the Indo-Pacific region. This brings to the fore the imperative for effective responses in the form of humanitarian assistance and disaster relief (HADR) and, even more urgently, the attendant salience of M-SAR cooperation amongst the maritime forces of regional countries, backed by their respective national governments.

This paper attempts to examine the existing provisions and practices of maritime forces within the Indo-Pacific, with regard to M-SAR and HADR, so as to identify voids in cooperative responses that may be attributed to either insufficient or absent "national will".

Existing M-SAR Instruments

In the past, several measures aimed at preventing and/or mitigating the adverse impact of maritime and aeronautical incidents have been taken by the international community, largely through agencies of the United Nations (UN) such as the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO); and where such incidents cannot be prevented, these efforts concentrate upon the formulation and execution of effective M-SAR responses, including responses involving cooperation amongst countries operating maritime forces within the region. This has led to a number of legal and guidance instruments, which have been updated and amended from time to time. The primary instruments are enumerated in the table below (Table 1). The key legal instrument is the "International Convention on Maritime Search and Rescue (M-SAR), 1979", which established the international M-SAR system, and entered into force in 1985.[1]

The countries of the Indo-Pacific have been especially proactive in instituting measures that provide regionally coherent M-SAR responses, particularly after the MH-370 incident of 2014. The more contemporary of these responses are tabulated below (Table 2). Soon after the MH-370 incident, the Association of South East Asian Nations Regional Forum (ARF) issued a statement calling upon states to enhance SAR coordination and cooperation.[2] This led to the formulation of an "Asia-Pacific Regional SAR Plan" in 2015. In October 2014, five Indian Ocean Region (IOR) countries signed a memorandum of understanding (MoU) to share information and expertise, and to link their respective SAR systems.[3] In the same year, the Council for Security Cooperation in the Asia-Pacific (CSCAP) established a dedicated Study Group on Harmonisation of Aeronautical and

Table 1. Important International Instruments Relating to Maritime Search and Rescue.

	Instrument	Key Features
1	United Nations Convention on the Law of the Sea (UNCLOS), 1982 Art. 98(2)	To oblige states to save lives at sea, establish M-SAR system and cooperate.
2	Convention for the Safety of Life at Sea (SOLAS), 1974	To ensure ships comply with safety standards/Global Maritime Distress & Safety System (GMDSS)
3	International Convention on Maritime Search and Rescue, 1979	To promulgate an international system for M-SAR.
4	Convention on International Civil Aviation, 1944, Annex 12 (SAR)	To lay down minimum SAR standards, and recommended practices.
5	International Aeronautical and Maritime SAR (IAMSAR) Manual	Formulated by IMO and ICAO to assist states to harmonise maritime and aeronautical SAR.

Table 2. Important Maritime Search and Rescue Measures in the Indo-Pacific.

	Measures	Key Features
1	ARF Statement on Search and Rescue (SAR)	Issued in August 2014. Calls upon states to strengthen coordination and cooperation on maritime and aeronautical SAR.
2	Asia-Pacific Regional SAR Plan	Instituted in September 2015. Developed by Asia-Pacific SAR Task Force.
3	Indian Ocean Rim Association (IORA) Memorandum of Understanding (MoU) on Coordination in SAR in the Indian Ocean Region (IOR)	Signed in October 2014 among five IOR States: Australia, Comoros, Seychelles, Singapore and South Africa.
4	CSCAP Study Group on HAMSAR	Established in 2015. Led to CSCAP Memo No 29 (July 2016).

Maritime SAR (HAMSAR), which was tasked with identifying gaps and making policy recommendations.

The Missing Ingedient: "National Will"

During the CSCAP Study Group meetings on HAMSAR that the author co-chaired for CSCAP-India (along with CSCAP-Malaysia), it was clear that the recommended global and regional measures – meant to standardise M-SAR organisational structures, policies and processes – could go a long way to make M-SAR in the region seamless and effective, but only if they were to be implemented, in both letter and spirit, by the countries of the region. However, it was also clear that none of these measures directly addressed – nor was mandated to address – the crucial aspect of "national will" in terms of M-SAR. It also emerged that this was due to one or more of the following factors: overriding national security concerns, sensitivities over national sovereignty, geopolitical considerations, or simply the lack of national policy emphasis.

For instance, during the HAMSAR Study Group meetings, one single state objected to the Study Group's recommendation to rationalise flight information regions (FIRs) with search and rescue regions (SRRs), which everyone else in the group thought was essential for a more effective coordinated response to aeronautical accidents at sea. The "objecting state" was opposed to the recommendation only because it managed a very large FIR, with consequent geopolitical influence, which it did not want to lose through any review of the existing system.

In the broader context, this paper aims to examine challenges to maritime safety posed by the reticence of the regional countries to collaborate. The paper will recommend a way ahead so as to make regional mechanisms for maritime safety more effective.

The lack of "national will", which manifests itself as impediments to maritime safety cooperation, is examined under the following four broad headings:

- Obligations of customary international law;
- Accession to global conventions;
- Handling irregular migrants at sea;
- Humanitarian assistance and disaster relief.

Obligation under Customary International Law

The obligation of all countries, and vessels flying their flags, to render assistance at sea to persons in distress, irrespective of nationality, stems from customary practice, and the

1914 treaty in response to the 1912 *Titanic* disaster,[4] and is codified in current international laws including Safely of Life at Sea (SOLAS), 1974 and UNCLOS, 1982. Are the captains of warships and merchant vessels – backed by their national governments – fulfilling this obligation today? One cannot be sure, at least when compared to the exemplary standards that appear to have been commonplace only a few short decades ago. The case of the USS *Dubuque* (1988) is illustrative in this regard.

> In June of 1988, two US naval ships – USS *Dubuque* and USNS *Kilauea* – were sailing in the South China Sea, when they encountered a Vietnamese boat "in distress" with about 80 occupants waving a white flag. The *Dubuque*'s captain decided that the boat's seaworthiness would justify rescue of the Vietnamese. The *Dubuque*'s executive officer (XO) lowered the ship's motor-whaler for an assessment, which was that "the Vietnamese boat's small sail could provide adequate propulsion". Hence, since the boat was "seaworthy", the *Dubuque* decided not to rescue the Vietnamese, but provided them food and water and a chart with the inscription in Vietnamese, "go in the direction the sun rises". The captain's reckoning was that the prevailing northeast sea current would help the boat reach the Philippines within a week. But the Vietnamese were rescued 18 days later by a Filipino fisherman off Luzon Bay, with about 30 of the 80 Vietnamese having perished. The boat had followed the direction of the sea current, but the predicted speed was not achieved, possibly due to changed wind conditions. The *Dubuque*'s captain underwent a trial by court martial and was relieved of his command.[5]

The *Dubuque* incident is taught to contemporary seagoing captains of the US Navy as part of a course on ethics. It aptly exemplifies a navy's professional attitude in promptly and effectively censuring erring seagoing personnel – an entirely commendable attitude that navies of today are trying hard to preserve, against a variety of competing national priorities. The same is true with regard to the disposition of commercial vessels. In the latter case, considering the increasing commercial competiveness that is prevalent in the global mercantile shipping industry, there is usually a great deal of financial pressure brought to bear upon masters and owners of merchant ships, and these pressures are sometimes so large as to possibly override humanitarian considerations. On many occasions, masters may ignore migrants at sea, fearing a possible consequent refusal of port entry for the ship. On their part too, flag states and port states alike are not doing enough to ensure that such international obligations are met by ships over which they have been empowered to exercise authority.

Accession to Global Conventions

Many countries are not yet parties to the M-SAR Convention, 1979. Only 109 of the world's 193 UN member states, constituting about 80% of the global shipping fleet, have acceded to the convention.[6] A major proportion of the countries still holding out belong to the Indo-Pacific region. Some of the more evident reasons for this non-accession are examined below.

M-SAR Capacity Deficit

Most countries of the Indo-Pacific region are still at a nascent stage of economic development, with inadequate state capacity even for securing their own vital interests in their respective maritime zones. Following the adoption of the 1979 M-SAR Convention, the

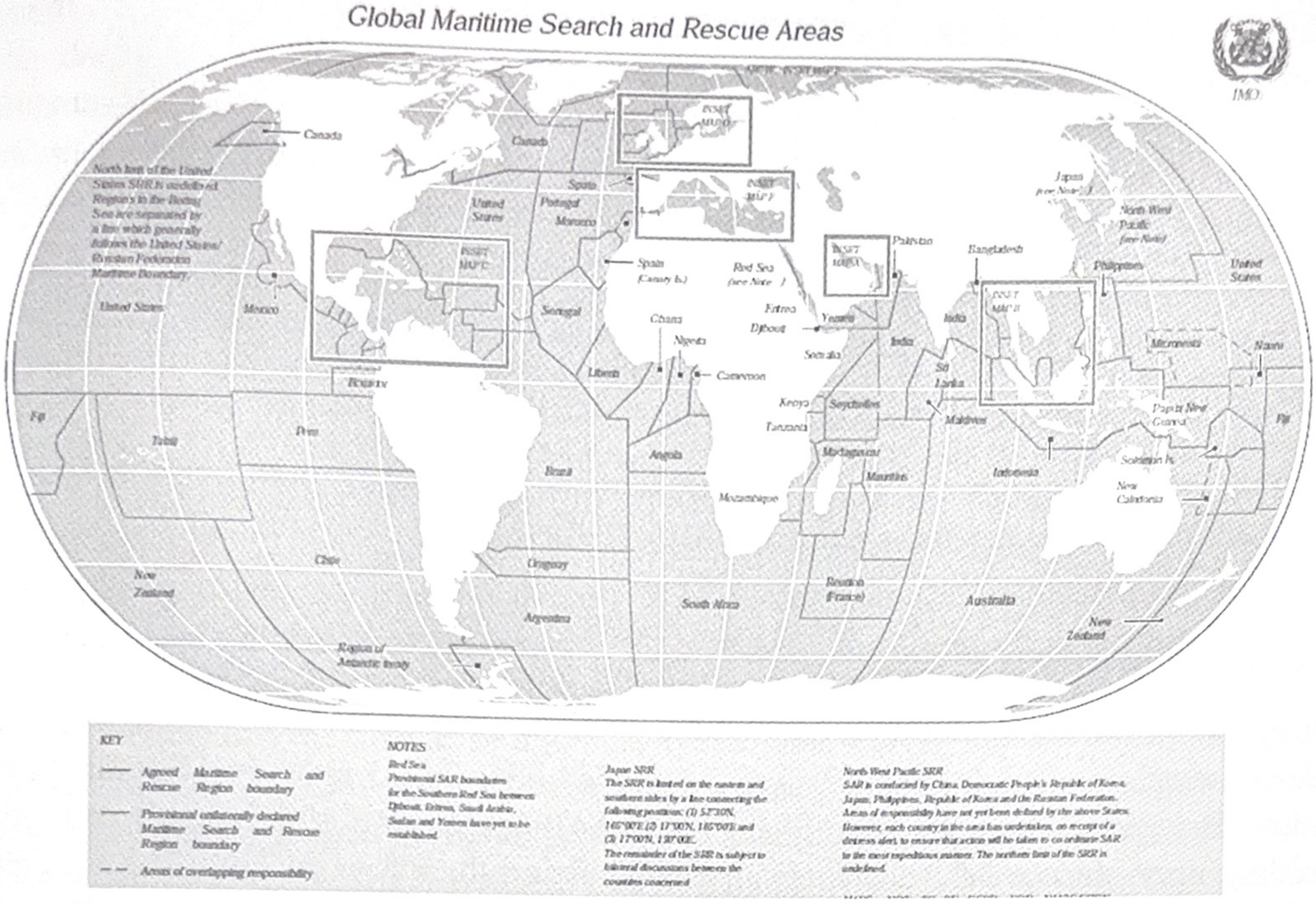

Fig. 1 – Global Maritime Search and Rescue Regions (Source: IMO https://www.reddit.com/r/MapPorn/comments/3zsq06/global_maritime_sar_search_and_rescue_areas/).

IMO's Maritime Safety Committee divided the world's oceans into 13 SAR areas, wherein the countries concerned were allocated specific Search and Rescue Regions (SRRs), and entrusted with meeting the international obligation for SAR in the allocated regions. The approximate limits of these SRRs are depicted in the map below (Figure 1). It may be seen that the areas are large, often extending much beyond the sovereign jurisdiction of the countries concerned, whose M-SAR capacity often falls short of the obligations set out in the convention. The convention also imposed considerable additional obligations on nation states in terms of establishing M-SAR services for their respective SRRs, including setting up of rescue coordination centres (RCCs) and sub-centres that were to be manned on a 24/7 basis. A lack of capacity is often cited as the reason for non-accession to the Convention, but a deeper examination shows this is rarely the foremost real reason.

National Sovereignty

The M-SAR Convention, 1979, requires that "unless otherwise agreed between the States concerned, parties should authorize immediate entry into their territorial sea or territory of rescue units solely for the purpose of SAR".[7] This provision has not been taken well by many countries that exhibit considerable sensitivity with regard to their sovereignty and national security. Although the provision incorporates the qualifying phrase "solely for the purpose of SAR", there are some countries that would not like to be in a possible situation wherein this provision is used as an excuse for major-power navies to enter their sovereign territory or territorial waters. As a reason for non-accession of countries to the M-SAR Convention, 1979, this manifestation of national sensitivities of many

countries of the Indo-Pacific needs to be factored into any formulation of a regional maritime safety mechanism.

To resolve this major stumbling block to regional M-SAR cooperation, the April 2004 agreement between Australia and Indonesia for the co-ordination of SAR represents an exemplary effort. Article 4.2 of the agreement says,

> Given the urgent life saving nature of these operations, all possible assistance will be rendered to enable the SAR mission to be carried out successfully. The normal Diplomatic Clearance process for a Party's aircraft or vessel to enter the air space or Territorial Sea of the other Party will not be required for a search and rescue facility to respond to an incident.[8]

This bilateral agreement is particularly notable considering that when Indonesia entered into the agreement, it was not a party to the M-SAR Convention, 1979.[9]

Handling Migrants at Sea

Irregular migration by sea has a high potential for creating M-SAR contingencies, since vessels used are often unseaworthy and overloaded. This issue has become an important cause for regional countries not ratifying the M-SAR Convention, 1979, and also not prevailing upon their warships or merchant ships flying their flags to fulfil M-SAR obligations. Notably, as per international law, "irregular" migration is not "illegal" migration.[10] Had this distinction not been made explicit, maritime forces could conduct legal proceedings against migrants and penalise them. Further, while there is a clear legal obligation for ships to rescue distressed people at sea, there is no binding international law on how to handle would-be migrants, aboard ships. When a ship rescues foreign migrants at sea, the flag state is under no obligation to grant them refugee status. However, per international law, the country responsible for the SRR in which the migrants were rescued bears the obligation to provide the "place of safety", which would normally be its own port.[11] Hence, the migrants will, at the very least, turn into a liability as "asylum-seekers", even if the flag state does not accord them the status of "refugees".

On the other hand, if the state demurs from discharging this obligation, it could lead to serious humanitarian repercussions. This is best represented by the *Budafel* incident of 2007. Although this specific case pertains to the Mediterranean Sea, similar incidents have occurred in the Indo-Pacific region.

In May 2007, midway between Malta and Libya, the Maltese fishing vessel *Budafel* found 27 African migrants – all men – clinging to the vessel's tuna pen. The migrants had sailed off from Libya nine days before, when their boat sank, leaving them holding on to the floats of the tuna net. *Budafel*'s master did not embark the men, who could have overpowered the crew and hijacked his vessel, but he alerted the Maltese authorities. Since the incident occurred in the Libyan SRR, Malta asked Libya to rescue the men, leading to a major diplomatic stand-off. Libya did not respond, since it had been contesting its SRR. One of the men interviewed later said, "Our legs had swollen in the water due to the ropes we had used to tie ourselves to the tuna pen". The migrants continued to cling on to the tuna pen in that pitiable condition for three more days, until an Italian warship rescued them and brought them to an Italian immigration centre. The incident earned Malta unusually harsh criticism from the international community, which felt that Malta should have rescued the migrants, even if the situation had originated in the Libyan SRR.[12]

A similar case, this time in the Indo-Pacific region, was the 2001 *Tampa* incident, wherein seaborne migrants in distress were "ping-ponged" between M-SAR authorities of two or more countries. The Norwegian ship MV *Tampa* rescued 438 Australia-bound Afghan migrants from a sinking Indonesian ferry in the Indonesian SRR. While Canberra refused entry into Australian waters, Jakarta also failed to assume responsibility.[13]

However, the Indo-Pacific region can also be proud of some positive responses to migrant adversities. One amongst these is the Sunda Strait boat disaster of 2012.

The Sunda Strait (between Java and Sumatra) is well known to mariners for its treacherous environs, its sandbanks and very strong tidal flows. On August 29, 2012, an overloaded migrant boat, carrying about 150 people, developed engine failure and began taking in water. The Australian M-SAR authority launched a rescue mission, and alerted its Indonesian counterpart. Although the boat sank quickly, claiming 90 lives, its 55 survivors were handed over by the Australian warship HMAS *Maitland* to the Indonesian rescue vessel *Jakarta 01* in a mid-ocean transfer.

The incident is notable in three ways. First, the concerned Australian minister went on record to state that the transfer of migrants to Indonesia was not ordered by the Australian government, but by the commanders at sea, who were guided by their best judgement. The migrants' desperate need for medical assistance could be best met by disembarking them in the nearest place, which happened to be Indonesia. Of course, it could be assumed that the Commanding Officer of HMAS *Maitland* had the blessings of Canberra.

Second, only 5 days earlier, on August 24, 2012, Indonesia's Permanent Representative to the IMO in London had deposited the instrument of ratification of the SAR Convention, 1979, to the IMO Secretary General.[14]

Third, following the incident, Australia and Indonesia began discussions to build upon the existing SAR agreement of April 2004. In September 2012, the two countries entered into an agreement comprising, *inter alia*, "rapid clearance" protocols, which would give Australian aircraft access to Indonesian airspace (and even refueling facilities in its airfields) to search for migrant boats; an enhanced ship-tracking information-system, which would provide Australia and Indonesia with an accurate near-real-time picture of ships, with the ability to identify merchant vessels capable of rendering M-SAR assistance; and various other provisions to develop Indonesia's M-SAR capacity.[15]

These positive developments notwithstanding, the issue of handling migrants at sea continues to be a serious one for the Indo-Pacific region, even though it has not grown to the dimensions that Europe is facing today in the attempted crossing of the Mediterranean Sea by migrants and asylum-seekers. This is amply clear from the October 2013 incident in the eastern Indian Ocean, wherein the legal responsibility for rescue of seaborne migrants was ping-ponged between Australia and Indonesia.[16] As mentioned earlier, per international law, the state responsible for the M-SAR region in which the migrants were rescued bears the obligation to provide the "place of safety". But given the increasingly severe implications of irregular migration on national security and well-being, countries tend to circumvent prevailing international law.

The practice is amply clear, as the flow chart below (Figure 2) indicates. If a country detects a migrant boat in its own SRR, which intends to land migrants in that country, it is often intercepted and turned back (at times, even towed back into waters beyond the SRR), even though such an action contravenes the fundamental legal principle of "freedom of the seas", besides leaving the migrant boat to an uncertain and often cruel destiny.

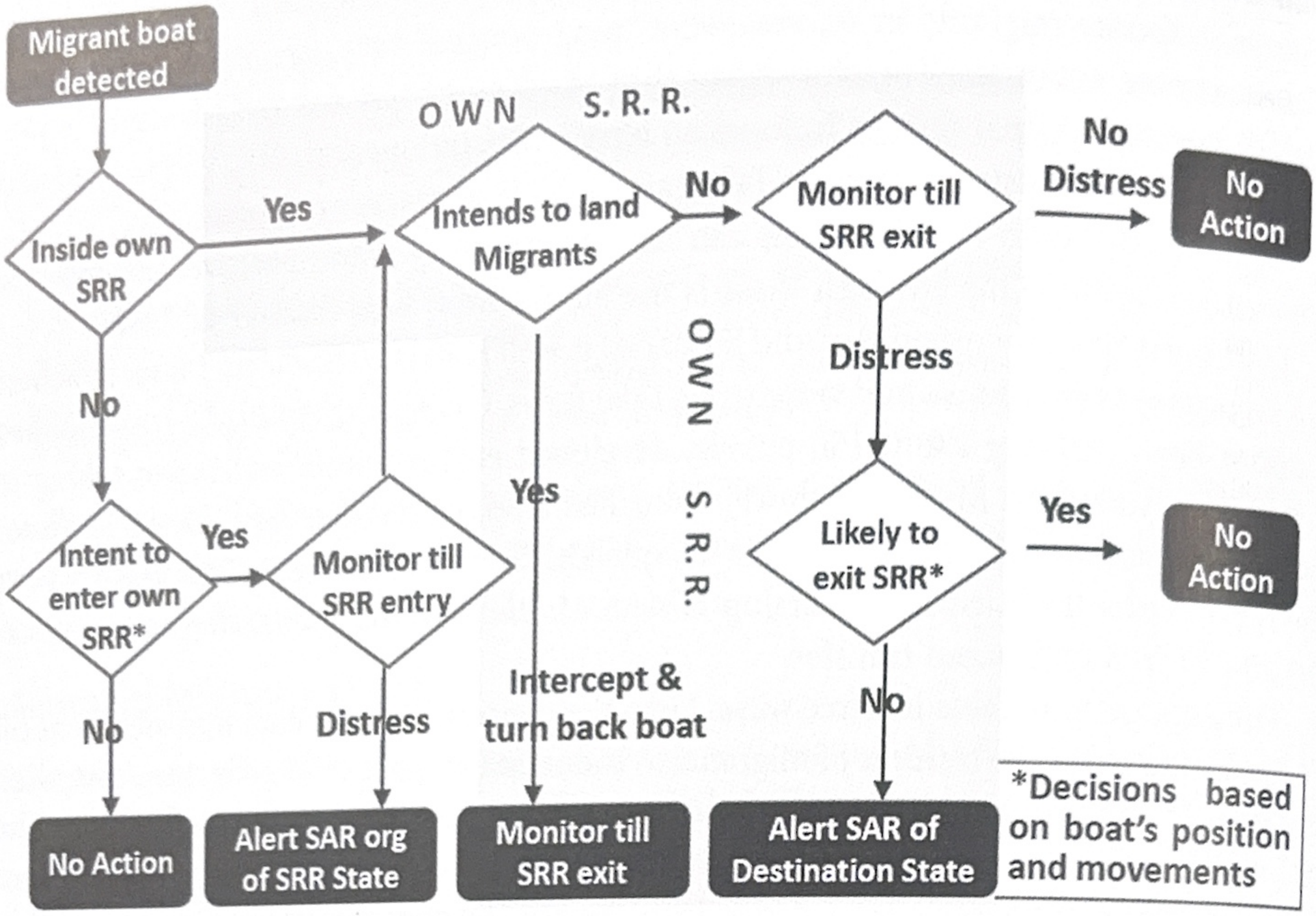

Fig. 2. Handing Migrant Cases at Sea: Likely Decision-making Matrix of Indo-Pacific Maritime Forces (Source: Author's Elaboration).

On the other hand, if the country assesses that a migrant boat (even one that is in distress) that is in that country's SRR is destined for another country, it waits for the boat to enter the destination state's SRR, and even if the distress is so serious as to render the boat immobile or if it has actually capsized, it simply alerts the destination state to coordinate an SAR mission, citing its own lack of capacity, thereby shifting the moral and legal obligation of handling the migrants to the assessed destination state.

Humanitarian Assistance and Disaster Relief

Responses to HADR differ from that of M-SAR in terms of the former's more widespread scale and geographical scope, directed not only at sea, but also from the sea to the littoral. In terms of the crucial aspect of "national will", however, the cooperative responses under M-SAR and HADR would be broadly similar. Even in case of HADR, cooperative responses would be guided and often constrained by geopolitical considerations and national security considerations. In addition, there would be challenges specific to HADR.

Global Legal Instruments

As compared to M-SAR, the international legal regime for HADR is underdeveloped. The international instruments relating to HADR are enumerated in Table 3 below.

Most of these instruments are legally non-binding resolutions, declarations or guidelines, with the only legally binding convention being the Tampere Convention of 1998. There exists no international legal instrument that comprehensively governs HADR in terms of laying down a legal obligation for states, or regulating the conduct of HADR operations. The only document (though legally non-binding) that summarises the provisions

Table 3. Salient International Legal Instruments Relating to HADR.

	International Instrument	Year
1.	Declaration of Principles for International Humanitarian Relief to the Civilian Population in Disaster Situations[24]	1969
2.	Recommendation of the *Customs Co-ordination Council*[25] to Expedite the Forwarding of Relief Consignments in the Event of Disasters[26]	1970
3.	Resolution on Measures to Expedite International Relief[27]	1977
4.	UN General Assembly Resolution 46/182 on Strengthening of the Coordination of Humanitarian Emergency Assistance of the UN	1991
5.	Yokohama Strategy for a Safer World: Guidelines for Natural Disaster Prevention, Preparedness and Mitigation, and Plan of Action[28]	1994
6.	Tampere Convention on Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations[29]	1998
7.	UN General Assembly Resolution 57/150 on Strengthening the Effectiveness and Coordination of International Urban Search and Rescue Assistance	2002
8.	Hyogo Framework for Action[30]	2005
9.	Revised Oslo Guidelines on the Use of Foreign Military and Civil Defence Assets in Disaster Relief[31]	2007

of all existing international instruments is the Revised Oslo International Disaster Response Law (IDRL) Guidelines of 2007, which was originally released in 1994 as a result of the Conference held at Oslo, Norway.

National Sensitivities

Any HADR assistance to an "affected state" by foreign maritime forces of an "assisting state" would involve use of the former's sovereign territory, including the territorial waters and the airspace. This makes HADR responses – including cooperatives ones – even more sensitive than those pertaining to M-SAR.

This sensitivity is usually overbearing upon the affected state. While it has the legal right to decline foreign assistance, the uncertainty of its own capacity to deliver an effective response to its citizens in such dire contingencies always weighs upon its decision. On the other hand, if it accepts the services of an assisting state, it would need to facilitate the deployment of foreign maritime forces on its sovereign territory.[17] The Oslo Guidelines state that "Humanitarian Assistance must be provided with the core principles of Humanity, Impartiality and Neutrality and must also fully respect the sovereignty of states".[18] However, the issue of respecting the sovereignty of the affected state usually remains the foremost challenge to HADR cooperation.

> After Cyclone Nargis hit Myanmar in May 2008, the Indian defence forces were possibly the only foreign forces that the Myanmar government allowed to help in immediate disaster relief, since it was circumspect on the intentions of the US and other western countries. India's Operation *Sahayata* involved delivering dry rations, clothing, generator sets and medicine to the affected areas, including through Indian Air Force aircraft and warships *Rana* and *Kirpan*.[19]

Analysts are of the view that India's typically Asian approach *sans* any geopolitical motivations is the key reason why its role in HADR is a preferred one within the region.[20] In addition, as in the case of the 2008 cyclone-relief operation in Myanmar, New Delhi has always opted for a direct government-to-government "demand-driven" aid, rather than the western approach of "supply-driven" aid. Such an approach is essential because national sensitivities could go beyond issues of sovereignty.

For instance, following India's 2001 Gujarat earthquake, western-dominated international humanitarian organisations supplied beef meals to the Hindu population of the Gujarat province.[21]

HADR Coordination

Another issue is that of coordination among the "affected" and "assisting" states involved in an HADR operation, and their maritime forces. The Indian Ocean Tsunami of December 2004 and the consequent HADR operations present both positive and negative examples.

The coordination among the navies of the four countries participating in the HADR mission was exemplary, which helped the participants to tide over their capacity voids. On the other hand, the entry of international relief goods and equipment into the affected states was not effectively synergised. For example, even a year after the tsunami hit Indonesia, 217 containers of relief aid were still with customs authorities in Tanjung Priok Port (Jakarta), and a further 232 containers and 58 vehicles were in a similar predicament in Belawan Port (Medan). Similarly, more than 100 relief containers were stranded in Colombo Port (Sri Lanka) awaiting inspection and government approval. As a result, many food items had perished before they could be distributed, and items such as tents and body bags outlived their utility.

The lack of coordination during HADR operations could be attributable to various reasons, *inter alia* the absence of a comprehensive international legally binding treaty on HADR, the competing geopolitical interests of the assisting states, or simply the lack of tactical compatibility among the maritime forces/agencies of the assisting states participating in the HADR operation.

The Way Ahead

There is no easy solution to these complex issues of human safety since these are driven by national compulsions. Existing multilateral arrangements are invaluable to mobilise a common regional approach to these issues, but a lowest common denominator approach is not always helpful in achieving consensus, due to a variety of national conditions, approaches and compulsions.

Agreements with Neighbours

Suitable agreements/MoUs between two or three neighbouring countries could resolve many of these issues, and generate the requisite "national will" in cases involving M-SAR and HADR. This is because each country has specific compulsions and conditions which can be addressed more easily among neighbours, for at least two reasons. First, geographical neighbours usually encounter similar maritime challenges, including those relating to human safety; and, second, they have larger stakes in good neighbourly relations. Such MoUs would be premised on a certain "comfort level" of countries with their neighbours, and will thus mitigate national sensitivities to possible vested interests of other countries, especially those of the extra-regional stakeholders.

This leads to a very pertinent question: *Can such agreements be forged between neighbours beset by an adverse security relationship*? While it is true that some neighbours have security issues between them, the human factor should not be underestimated. It is a very powerful one that could well compel the national leadership to take required cooperative action. Take, for instance, Indonesia and Australia, which have shared human insecurities from time to time – ranging from seaborne migrant boat disasters to terrorist attacks in Indonesian cities directly

affecting Australia. These humanitarian adversities have served to override the many "high-end" traditional security issues in the past between the two neighbours.

At another level, take the severely vexed security relations between India and Pakistan. Since the birth of the two as independent countries, most dimensions of neighbourly transactions between the two have remained in a state of paralysis. However, the issue of safety of fishermen compelled the Indian Coast Guard (ICG) and Pakistan's Maritime Security Agency (MSA) to forge an MoU in 2005, which, amongst other features, provides for the establishment of a hotline between the heads of the two agencies.[22] Notably, such agreements could serve as effective "ice-breakers" to melt historical inter-state animosities.

Nature of Agreements

The SAR Convention, 1979, states that "Parties to the Convention are encouraged to enter into SAR agreements with neighbouring States involving the pooling of facilities, establishment of common procedures, training and liaison visits". Accordingly, many countries already have such agreements. However, these would need to go beyond merely what the Convention recommends, maybe even beyond current agreements in force, including those between Australia and Indonesia. For example, while expansive SRRs have been allocated to countries – usually much in excess of their M-SAR capacity – it may not be feasible for the IMO to review this since the SRR areas are based on a ratio of fixed parameters (total ocean area versus the number of coastal states). Nevertheless, this issue could well be resolved by a joint development of M-SAR capacity – and, similarly, the capacity for HADR – amongst neighbouring countries towards achieving 'net safety'. Analogous to the concept of "net security" defined in India's latest Maritime Security Strategy (2015),[23] net safety may be defined as "the state of actual human safety available in a maritime area, upon balancing prevailing threats, inherent risks and rising challenges against the ability to monitor, contain and counter all of these".

The joint development of capacity for undertaking M-SAR and HADR operations could be achieved through a host of measures, including the transfer of maritime assets and sharing of technology, supplemented by the real-time sharing of information on maritime humanitarian missions in progress and resources available. Such an exchange of information may not always be feasible in a multilateral format, due to national security considerations.

The aspect of irregular migration could also be mitigated through joint efforts to forge agreements with source countries for the repatriation of migrants rescued at sea; and, where this is not feasible, for the equitable sharing of the responsibility to settle such migrants.

To begin with, these agreements could be merely confidence-building measures amongst the M-SAR and HADR authorities of geographical neighbours. As and when the requisite political trust and functional effectiveness are achieved, these agreements could be converted into legally binding treaties that are duly incorporated in enabling national M-SAR and HADR legislation, and promulgated through the IMO. The aim would be to have a regional web of such MoUs within the Indo-Pacific region. Eventually, such agreements could be forged with extra-regional stakeholders as well.

Conclusion

Maritime safety essentially deals with human security, which transcends national boundaries. Hence, geopolitics ought not to be driving national policies for maritime safety.

Unfortunately, however, geopolitical considerations, political differences, territorial disputes and security concerns often play a role, causing a reduced national policy emphasis on M-SAR and HADR. This leads to countries not acceding to global conventions or even the norms of customary international law, and not being responsive to multilateral arrangements. These trends do not augur well for regional cooperation.

Although evolving multilateral regional institutions would continue to be invaluable, suitable bilateral or trilateral M-SAR and HADR MoUs between neighbouring countries could be more effective to close the gaps in the practical application of extant international law.

Such MoUs could also be signed between neighbouring countries that have a "difficult" security relationship, and would be valuable "ice-breakers". Eventually, such MoUs could complement cooperative arrangements within regional multilateral organisations so as to ensure human safety at sea, particularly in the Indo-Pacific maritime expanse.

Notes

1. International Convention on Maritime Search and Rescue, 1979 (Entry into force: 22 June 1985), at http://www.imo.org/en/About/conventions/listofconventions/pages/international-convention-on-maritime-search-and-rescue-(sar).aspx, accessed (March 13, 2017).
2. "The ASEAN Regional Forum Statement on Strengthening Coordination and Cooperation on Maritime and Aeronautical Search and Rescue", Ministry of Foreign Affairs, The People"s Republic of China, August 11, 2014, http://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/t1181700.shtml (accessed April 12, 2017).
3. IORA Press Conference, Australian Foreign Minister Julie Bishop, 9 October 2014, Government of Australia, http://foreignminister.gov.au/transcripts/Pages/2014/jb_tr_141009a.aspx (accessed March 13, 2017).
4. The *Titanic* sank on her maiden voyage in the North Atlantic in April 1912. More than 1500 passengers and crew died. In response to the proposal made by the United Kingdom, 13 countries participated in the conference that led to the adoption of the International Convention of the Safety of Life at Sea in January 1914.
5. John H. Cushman Jr, "Skipper Accused Of Abandoning Asian Refugees", *The New York Times*, August 24, 1988, http://www.nytimes.com/1988/08/24/world/skipper-accused-of-abandoning-asian-refugees.html (accessed April 12, 2017); and the author's discussions with US Navy officers.
6. "Status of Multilateral Conventions and Instruments" (as of April 21, 2017), International Maritime Organisation (IMO), http://www.imo.org/en/About/Conventions/StatusOfConventions/Documents/Status%20-%202017.pdf (accessed April 25, 2017).
7. "International Convention on Maritime Search and Rescue (SAR), 1979", IMO website, http://www.imo.org/en/About/conventions/listofconventions/pages/international-convention-on-maritime-search-and-rescue-(sar).aspx (accessed March 6, 2017).
8. "Arrangement for the Co-ordination of Search and Rescue Services Concluded between the Government of Australia and the Government of Indonesia, IMO SAR.6/Circ.22", April 13, 2004, http://www.imo.org/blast/blastDataHelper.asp?data_id=9310&filename=22.pdf (accessed April 25, 2017).
9. Indonesia ratified the M-SAR Convention only in August 2012: "Indonesia Ratifies Several IMO Instruments", IMO Briefing 33, August 28, 2012, http://www.imo.org/en/MediaCentre/PressBriefings/Pages/33-indonesiaratifies.aspx#.WAuH6Pl97IU (accessed March 6, 2017).
10. According to UNHCR Guidelines, "Every person has the right to seek and enjoy in other countries asylum from persecution, serious human rights violations and other serious harm. Seeking asylum is not, therefore, an unlawful act … ", UNHCR Guidelines on Detention of Asylum Seekers, p. 12, http://www.unhcr.org/505b10ee9.html (accessed

March 6, 2017), adopted from Article 14 of Universal Declaration of Human Rights, 1948 (UDHR).

11. "Guidelines on the Treatment of Persons Rescued at Sea, Resolution MSC. 167(78)", IMO, 20 May 2004, http://www.refworld.org/docid/432acb464.html (accessed April 25, 2017).
12. Consiglio Italiano per i Rifugiati (CIR), *CIR Report Regarding Recent Search and Rescue Operations in the Mediterranean*, June 1, 2007, http://www.europarl.europa.eu/hearings/20070703/libe/cir_report_en.pdf (accessed February 27, 2017); "UN Rebuke as Governments Squabble over Immigrants Found Clinging to Tuna Nets", *The Guardian*, May 29, 2007, http://www.guardian.co.uk/libya/story/0,,2090156,00.html (accessed February 27, 2017); and "Tuna Pen Migrants Relive Ordeal in Documentary", *The Independent*, August 26, 2007, http://www.independent.com.mt/articles/2007-08-26/news/tuna-pen-migrants-relive-ordeal-in-documentary-178364/ (accessed February 27, 2017).
13. Jessica E. Tauman, "Rescued at Sea, but Nowhere to Go: The Cloudy Legal Waters of the *Tampa* Crisis", *Pacific Rim Law & Policy Journal Association*, 11, no. 2 (2002): 461–96.
14. "Indonesia Ratifies IMO Protocols, Reminded of Others", IMO Press Release, *Marine Link*, August 29, 2012, http://www.marinelink.com/news/indonesia-protocols347277 (accessed February 27, 2017).
15. "Australia, Indonesia Reach Search and Rescue Deal", *Radio Australia*, September 5, 2012, http://www.radioaustralia.net.au/international/2012-09-04/australia-indonesia-reach-search-and-rescue-deal/1010776 (accessed March 13, 2017); and "Strengthening Australia–Indonesia Search and RCoordination", Australian Ministerial Press Release, September 4, 2012, http://anthonyalbanese.com.au/strengthening-australia-indonesia-search-and-rescue-coordination (accessed March 13, 2017).
16. "Confusion over Australia–Indonesia Rescue Responsibilities", *SBS World News Australia Radio*, October 4, 2013, http://sievx.com/articles/OSB/20130927Sinking/20131004SBSWorldNews.html (accessed April 25, 2017).
17. The affected state would request/provide its consent for this after having considered comparable civilian alternatives. Prior to any such deployment, terms and conditions (including such issues as the duration of deployment, whether they must be unarmed or may be armed, the use of their national uniforms, and mechanisms for cooperation with civilian actors) are to be agreed by the two states.
18. Oslo Guidelines, Rev. 1.1, November 2007, p.8 http://www.refworld.org/pdfid/47da87822.pdf (accessed December 11, 2017)
19. "Operation *Sahayata* to Help Myanmar", *The Hindu*, May 8, 2008, http://www.thehindu.com/todays-paper/tp-national/lsquoOperation-Sahayatarsquo-to-help-Myanmar/article15218662.ece (accessed February 27, 2017); and Richard Weitz, "Cyclone Nargis Exacerbated ASEAN's Myanmar Dilemma", World Politics Review, June 30, 2008, http://www.worldpoliticsreview.com/articles/2360/cyclone-nargis-exacerbated-aseans-myanmar-dilemma (accessed February 27, 2017).
20. Sarabjeet Singh Parmar, "Humanitarian Assistance and Disaster Relief (HADR) in India's National Strategy", *Journal of Defence Studies*, 6, no. 1 (January 2012): 91–101, http://www.idsa.in/system/files/jds_6_1_SarabjeetParmar.pdf (accessed April 25, 2017).
21. Claudia Meier and C.S.R. Murthy, "India's Growing Involvement in Humanitarian Assistance", *Global Public Policy Institute* (GPPi), Research Paper 13, March 2011, p. 8, http://www.gppi.net/fileadmin/media/pub/2011/meier-murthy_2011_indiagrowing-involvement-humanitarian-assistance_gppi.pdf (accessed March 13, 2017).
22. "Extension of MOU between Indian Coast Guard and Pakistan Maritime Security Agency", Press Release, Ministry of External Affairs (MEA), Government of India, February 26, 2016, http://mea.gov.in/press-releases.htm?dtl/26426/Extension+of+MOU+between+Indian+Coast+Guard+and+Pakistan+Maritime+Security+Agency (accessed March 13, 2017).
23. *Ensuring Secure Seas: Indian Maritime Security Strategy*, Integrated Headquarters, Ministry of Defence (Navy), October 2015, p. 80 https://www.indiannavy.nic.in/sites/default/files/Indian_Maritime_Security_Strategy_Document_25Jan16.pdf (accessed December 11, 2017).

24. Adopted at the XXI[st] International Conference of the Red Cross, Istanbul, Resolution XXVI, September 1969. Endorsed by UNGA Resolutions 46/182 (1991) and 57/150 (2002).
25. Predecessor to the World Customs Organization.
26. The recommendations make a specific call on the affected states to waive any otherwise-applicable duties or taxes on relief goods.
27. Resolution VI of the 23[rd] International Conference of Red Cross & Red Crescent Movement, 1977. It recommends that potential affected states take advance measures to authorize recognised relief agency personnel to have access to all available telex, cable, wire, telephone and radio facilities for their internal and external communications, as required.
28. Adopted at the UN Conference on Natural Disaster Reduction, Yokohama (Japan), May 1994.
29. Multilateral treaty relating to communications equipment for disaster assistance, particularly transporting radio equipment across international boundaries by radio amateurs. Adopted at the 1[st] Intergovernmental Conference on Emergency Telecommunications (ICET-98) in Tampere (Finland), and entered into force in 2005. The treaty has been ratified by India.
30. Adopted at the UN Conference on Disaster Reduction, Hyogo (Japan), January 2005. It focused on disaster risk reduction and preparedness, including through anticipatory national legislation.
31. "Oslo Guidelines, Rev. 1.1, November 2007, http://www.refworld.org/pdfid/47da87822.pdf (accessed April 25, 2017). On November 30, 2007, the guidelines were unanimously adopted by the state parties to the Geneva Conventions and the International Red Cross & Red Crescent Movement. In 2008, the UN General Assembly adopted three resolutions (Res. 63/139, 63/141 and 63/137) encouraging states to make use of them. The Oslo Guidelines are meant to assist governments to become better prepared for the common legal problems in international HADR response operations.

Notes on contributor

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