

AUTUMN/WINTER 2006

headmark

No 121

**People
Smuggling**
- a naval challenge

**Can the RAN
Enforce
Australia's
Oceans Policy?**

Sail to Steam
- a change forever

JOURNAL OF THE

Australian Naval Institute



President's Message

This issue of *Headmark* is an important step in the Council's effort to place the Australian Naval Institute on a firm footing in the years ahead. We have been striving to overcome the abiding problems of critical mass and continuity which have affected the ANI for the greater part of its history. The Council is convinced that we must set up organisational structures which are less affected by the inevitable turn over of serving personnel and which recognise that the increasing pace of work in most full time jobs puts great strain on the good will of volunteers.

All this means that we need to rely more upon external services, such as our Business Manager. In this regard, the Council determined that the time has come when the Editorship can no longer be an unpaid position. I would like here to recognise the efforts of Andrew Forbes, who has been a lynchpin of the ANI in his time as Editor and has done a first class job in maintaining the publication rate and, above all, the quality of the Journal. The ANI owes him a great deal.

To provide a new Editor, the Council decided to advertise the position on the basis of the Editor receiving an honorarium for each issue on publication. The stronger financial position which the ANI has achieved in the last few years has allowed us to take this step in the confidence that we have the resources to support it. I am delighted to say – and it will be obvious from this issue – that Tom Lewis, OAM, has agreed to take up the position. A Lieutenant in the RAN, a PhD in strategic studies, and possessing extensive experience as both a writer and as a magazine editor, Tom promises to bring a great deal to *Headmark* and you will be able to see in this issue some of the changes that he has already made. Tom will work with an Editorial Committee chaired by Peter Jones.

The new website is now up and running under the supervision of Geoff Lawes, one of the designers of the site. If you have not registered to go on line as a member, please do so. If you are having any difficulties, feel free to contact Geoff directly at g.lawes@adfa.edu.au.

We have made significant gains in membership and sponsorship over the last six months, but the Council considers it vital to maintain that impetus. A calendar of events is published in this edition. Please put them into your diaries and join us for them. As you will note, we are seeking to add activities outside Canberra. We believe that the mix of informal and formal events will be welcome to the membership and provide some real opportunities to extend and promote debate on matters of professional interest. Above all, the Council feels that we must develop our ability as an Institute to provide real value to our members.

James Goldrick

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AUSTAL

People Smuggling

COMMANDER SIMON GREGG, RAN

Illegal migration by sea to Australia is not a new occurrence, what is new however is the scale, scope and highly sophisticated level of organization in recent arrivals.

Illegal migration by sea to Australia is not a new occurrence, what is new however is the scale, scope and highly sophisticated level of organization in recent arrivals.¹ The first significant influx of illegal immigrants arriving by boat occurred between 1975 and 1980 when more than 2000 Indo-Chinese fled oppressive regimes and internal conflict in Vietnam and Cambodia.² Throughout the early and mid 1990s small numbers of asylum seekers continued to arrive in Australia by boat. However, the recent wave of boat people has provided a very public demonstration of how options for dealing with 'illegal' arrivals are constrained by our obligation under the United Nations 1951 Refugee Convention (RC) and 1982 Law of the Sea Convention (LOSC). In 1999 more than 3700 boat people arrived in Australia, up from 200 the year before.³ This raised the public profile of the issue and ensured the refugee issue remained a matter of parliamentary and public interest within Australia. Events such as the Commonwealth Government's decision to deny permanent residence to East Timorese who were originally admitted on humanitarian grounds in the 1990s, the MV Tampa incident, the demonstrations against mandatory detention and the unanticipated attempts by two boatloads of Vietnamese to reach Australia via Indonesia in late April 2003, testify to the fact that the issue won't go away, despite the success of the Government's multifaceted strategy to deter unauthorized boat arrivals.⁴

The aim of this essay is to assess whether the 1982 LOSC and the 1951 RC are impediments to current efforts by Australia to address the problem of people smuggling into Australia.

To do this, the essay will first look at Australian policy and how it complies with the LOSC, followed by an assessment of Australian compliance with the RC. The emotive government policy of mandatory detention for refugees and illegal immigrants adopted by the Australian Government in 1992 is acknowledged as an outcome resulting from the activity of people smuggling, but will not be addressed in this article.

AUSTRALIAN IMMIGRATION POLICY BACKGROUND

Over the last 50 years Australia has settled approximately 600,000 refugees, with an average intake of 12,000 refugees in the last decade, under its humanitarian migration program; the highest per capita off-shore intake of refugees in the world.⁵ Of which a nominal 2000 are for successful 'onshore'⁶ asylum seekers and 4000 allocated for refugees who have been determined by the United Nations High Commissioner for Refugees (UNHCR) to be in need of resettlement from overseas camps. A further 6000 places are granted to 'humanitarian' and 'special assistance' category; people not deemed 'Convention' refugees but are in situations of hardship and need, and often have links with Australia through family and friends.⁷

During the 12 year period leading up to the arrival of the MV Tampa, approximately 12,000 people⁸ of predominantly Middle-eastern origin, arrived into Australia by boat, although from 1999, the frequency and number of arrivals increased significantly (Figure 1). The majority of these boat people arrived at Australian offshore territories of Christmas Island and Ashmore Islands having paid people smugglers

for a position on unseaworthy fishing vessels or inter-island ferries traveling from Indonesian. On reaching these Australian territories they would be transported by Australian Customs or the Royal Australian Navy (RAN) to the mainland for questioning and processing by Australian Government officials.

The rescue of 436 passengers and crew from the Indonesian vessel, the Palapa, by the Norwegian registered container vessel, MV Tampa, late on 26 August 2001 saw the Australian Government significantly restructure Australia's immigration policy. The restructuring of the policy was to ensure the government had the capacity to manage the movement of people across Australia's borders in an orderly and efficient manner.¹⁰ Simplistically, the radical change in the Australian immigration policy was to combat the people smuggling¹¹ being conducted by Asian and Middle Eastern syndicates across Australian borders by sea. Against the background of high numbers of illegal boat arrivals, the Federal Parliament passed a series of legislative amendments to the 1958 Migration Act that excised the offshore territories of Christmas, Cocos (Keeling), Ashmore and Cartier Islands, in addition to offshore resources and installations like oilrigs, from the migration zone.¹² Provisions for the relocation of unauthorized arrivals at these excised offshore places to a declared safe country such as Nauru or Papua New Guinea to undergo refugee status assessment offshore were also incorporated in these amendments.¹³ At the same time and to complement changes to the Migration Act, legislative amendments to the 1999 Border Protection Act were also passed by parliament. Under these

changes 'vessels may be prevented from arriving in or removed from Australian territorial waters using "reasonable force" if necessary if suspected of carrying "unlawful" immigrants'.¹⁴

To achieve the intercept of the Suspected Illegal Entry Vessels (SIEV) carrying the unlawful immigrants the Australian Government empowered RAN and Australian Customs law enforcement officials, to apprehend the SIEV before they reached the Australian Territorial Sea (TS).¹⁵ This is conducted by RAN vessels intercepting the SIEV just inside the Australian Contiguous Zone (CZ) to identify its nationality and purpose for approaching the Australian TS. If there is indications that the vessel is involved in people smuggling a RAN boarding party will board and detain the vessel prior to sailing it back to the TS from which it came. To date four SIEVs have been returned to Indonesian TS under RAN escort. If the SIEV is unable to be returned to the departure state then the asylum seekers are removed and relocated to a declared safe country such as Nauru or Papua New Guinea to undergo refugee status assessment. At no time are the asylum seekers allowed

Under these changes 'vessels may be prevented from arriving in or removed from Australian territorial waters using "reasonable force" if necessary if suspected of carrying "unlawful" immigrants.'

into the Australian migration zone without the authority of the Australian Government.¹⁶ The legislative amendments that allowed the above actions to be carried out also removed the opportunity for asylum seekers to apply for protection visas, as well as introducing mandatory sentencing for SIEV masters and crews found guilty of people smuggling offences.

While the public profile of illegal boat arrivals has been raised over the last two years it must be placed in context within the international perspective. The problem faced by Australia, which is geographically protected as an island, is minor compared to some European countries. For example, in 1993 Germany received nearly 500,000 claims for asylum and UNHCR 1998 estimates of world refugee numbers were approximately 11.5 million, within a 'population of concern' of approximately 22 million. The continued pressure on countries to accept refugees or asylum seekers is due to the increased conflict and political instability and the breakdown of borders following the end of the Cold War, and growing population of young people in Third World

countries with limited employment prospects. Discrepancies in income and life opportunities between wealthy and poorer countries have increased, as have awareness of these discrepancies and ability to move, through revolutions in global communications and travel.¹⁷ Over the last decade the majority of illegal immigrants arrive legally in Australia on tourist, student or other short-term visas and either overstay their visas, or apply for refugee status.¹⁸ However, it has been the asylum seekers arriving by boat that have received the most publicity and government focus. In order to ascertain the legitimacy of the Australian Governments actions through the legislative amendments it is necessary to examine them in respect to compliance with the LOSC and RC.

AUSTRALIAN POLICY THROUGH THE EYES OF THE LOSC

The LOSC attempts to balance the political, economic and strategic interests of states. This is achieved through the creation of maritime zones of jurisdiction. These zones of jurisdiction define the powers of the coastal states over foreign



MV Tampa (Courtesy Wilhelmsen)

People Smuggling

vessels and nationals and the rights of foreign states in the zones under the jurisdiction of coastal states. LOSC provides the basic legal framework that regulates all maritime sector activities, including: navigation, military activities, the utilisation of the resources of the sea, the preservation of the marine environment and relations among states in so far as marine sector activities are concerned. For the purposes of immigration control associated with people smuggling, four key zones are applicable: the Territorial Sea, the Contiguous Zone, the Exclusive Economic Zone (EEZ) and the High Sea

Article 2 of the LOSC states that *the sovereignty of a coastal state extends, beyond its land territory and internal waters and ... to an adjacent belt of sea, described as the territorial sea*. Beyond the baselines, states may claim a 'territorial sea' with a breadth of up to 12 miles over which they exercise sovereignty.²⁰ In Australia, such sovereignty is asserted via the Seas and Submerged Lands Act 1973.²¹ The LOSC then goes on to identify one restriction on a coastal state's sovereignty in the TS is the right of innocent passage by ships of all states,²² and that this passage shall be 'continuous and expeditious'.²³ LOSC Article 19 defines passage as innocent 'so long as it is not prejudicial to the peace, good order or security of the coastal state'.²⁴ The article further articulates that passage shall be considered to be prejudicial to the peace if a vessel engages in 'the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal state'.²⁵ Article 21 and 25 respectively give the coastal state the right to adopt rules and regulations 'to prevent infringement of its customs, fiscal, immigration or sanitary laws'. These

rules and regulations require 'due publicity' and foreign ships exercising innocent passage to 'comply with all such rules and regulations',²⁶ and to '... take the necessary steps in its TS to prevent passage, which is not innocent'.²⁷

Clearly from the above LOSC provisions, Australia is within its rights to enforce the legislation amendments to the immigration laws against people smugglers and asylum seekers within the Australian TS. Any vessel that transports unauthorised persons to the landmass of another country must pass through the TS, and is therefore in contravention of the LOSC. Additionally, Australia as a coastal state is permitted to take necessary steps to prevent non innocent passage within its TS.

Adjacent to the TS is the CZ which can extend to a maximum 24 miles from the baselines. In the CZ, the coastal state may exercise control necessary to 'prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea' and to 'punish infringement of the above laws and regulations committed within its territory or territorial sea'.²⁸ Noting that the government guidance for the RAN and Customs vessels is to intercept SIEV within the Australian CZ before entering the TS,²⁹ strict interpretation of this provision would indicate Australia's compliance with the LOSC. Australia, as a coastal state, through its sovereign rights has the right to exercise control over its CZ to prevent infringements of its immigration laws by a foreign vessel.

Beyond the CZ is the EEZ and High Seas. Part V and VII of the LOSC details the rights and responsibilities associated with the EEZ and High Sea respectively. For the EEZ, these are based around 'sovereign rights for the purpose of exploring and exploiting,

conserving and managing the natural resources ...and with regard to other activities for the economic exploitation and exploration of the zone'.³⁰ Articles 87 through 90 Part VII goes on to provide for freedom of navigation on the high seas, the requirement to use the high seas for peaceful purposes and the fact that no state can claim sovereignty over any part of the high seas.

It is within this realm of the LOSC that the current government policy to return intercepted SIEV to the TS of the original departure state may be called into question. Current interception and boarding operations of SIEV are conducted within the Australian CZ and hence compliant to the LOSC provisions. However, the current preferred option for a SIEV identified as being engaged in people smuggling is to conduct a 'return operation'. This operation involves the escort of the vessel back to the TS of the departed coastal state such as Indonesia, with an embarked Navy/Army transit security element (TSE). Once the SIEV crew has been briefed on the SIEV navigation position and their instructions to return to the nearest port the TSE disembark and the RAN vessel returns to the Australian CZ/TS. This action by the RAN boarding party and TSE could arguably be seen as interfering with the vessel's freedom of navigation on the high seas under Article 87 of the LOSC.³¹

However, Australia's actions could also be justified by interpretation of Article 98 of the law of the sea which requires that 'every state shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, or the crew ... to render assistance to any person found at sea in danger of being lost or to rescue of persons in distress'.³² It could be argued that Australia's position to

have highly trained boarding party personnel trained in mariner and navigation skills embarked in the SIEV within the EEZ and high seas is within the provisions of LOSC pertaining to a duty to render assistance. SIEV III became lost south west of Ashmore Islands within the Australian EEZ due to minimal navigation aids onboard (one magnetic compass) and was unable to safely navigate without embarkation of HMAS *Warramunga's* boarding party.³³

Another argument that the government has used on this issue is that of acquiescence.³⁴ The Indonesian Government was informed by the Australian Government of its intentions to return the SIEV to their TS prior to each of the four return operations.³⁵ At no stage did or has the Indonesian Government disapproved of these actions. The argument for this action by the Australian Government may also be seen to have been strengthened by the precedence set by other coastal states conducting similar return operations. The United States, Italy and Malaysia have all conducted similar return operations of asylum seekers within the last decade. It can be argued that there is no evidence in

Australia's actions could also be justified by interpretation of Article 98 of the law of the sea which requires that 'every state shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, or the crew ... to render assistance to any person found at sea in danger of being lost or to rescue of persons in distress'

International Law that this is illegal but there is also nothing to say it is not.³⁶

As stated earlier the Australian Government's policy for the embarkation of military personnel onboard the SIEV in the EEZ and on the high seas is a very contentious issue. One that is only provided for through the tenuous interpretation of Article 98 under the LOSC, acquiescence and the precedence set by other coastal states in International Law. However, to further assess the Australian government's hard line immigration policy against people smugglers and boat people it is necessary to now interpret it against the RC.

AUSTRALIAN POLICY THROUGH THE EYES OF THE RC

The RC agreed in 1951 and entered into force in April 1951 was originally conceived to deal with the large number of people displaced as a result of World War II. The 1967 Protocol to the convention was introduced to cater for the new refugee situation and removed the requirement of the conditions leading to a refugee situation having to result from events prior to 1 January 1951. The RC,

together with its 1967 Protocol, sets out the obligations upon state parties when dealing with refugees arriving in their territory. This includes agreed standards of care and the safeguarding of refugee rights. Australia acceded to the Refugee Convention on 22 January 1954 and the 1967 Protocol on 13 December 1973.³⁷ Article 1 of the RC defines a refugee as a person who; *... owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence ... is unable or, owing to such fear, is unwilling to return to it.*³⁸

Determining the refugee status of a person requires an objective assessment of that person in accordance with RC guidelines and processes. Until such an assessment has been made, a person is not deemed

HMAS *Warramunga* (Chris Sattler)



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The Song Saigon – the first refugee vessel to reach Australia – arrived in Darwin in 1975. (Courtesy Tom Lewis)

to be a refugee under the RC or the 1958 Australian Migration Act. Rather, terms such as 'asylum seeker', 'illegal immigrant' and 'unlawful non-citizen' are used.³⁹

To accurately assess the Australian Government's new immigration laws compliance to Australia's responsibility to the RC it is essential to look at two fundamental provisions of the convention; the provisions of penalties for illegal entry to a country and non-refoulement. These provisions are considered so fundamental that states are not permitted to make reservations against them⁴⁰ and Australia's obligations to them significantly affect its ability to counter people smuggling and illegal immigration. The first of these principles concerns penalties for illegal entry to a country detailed in Article 31:

The contracting states shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened...provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.⁴¹

Australia could be seen by many authorities to be not complying to this provision of the RC due to its current policy of denying entry to Australia and detaining people for processing in a third country (safe country), being perceived as imposing a penalty on the asylum seekers. However, it can also be argued that despite that no

determination on the status of the asylum seeker is made until relocated to a third country, Australia is only ensuring it does not accept refugees that arrive illegally or seen as 'queue jumping' instead of those already deemed genuine by the UNHCR and awaiting the opportunity for settlement in a third country.⁴² It may also be argued that in many cases, applicants have lived and worked in third countries before coming to Australia. Such stopovers en route to Australia undermine claims that applicants are hastily fleeing persecution directly from a territory where their life or freedom was threatened... If an applicant could have obtained effective protection in one or other of those third countries before coming to Australia, Australia has no protection obligations under the RC.⁴³ This was very applicable to many of the asylum seekers embarked in SIEV III, V and VI who had spend up to 12 months in Indonesia.⁴⁴

THE SECOND IS THE PRINCIPLE OF REFOULEMENT DETAILED IN ARTICLE 33:

*No contracting state shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.*⁴⁵

This provision restricts a state that has individuals with refugee status from deporting them to where they might be persecuted, and has the effect of restricting the similar expulsion of any person claiming such status, at least until the claim has been reviewed.⁴⁶ Similarly, as with those commentators and organisations that view Australia's immigration laws as being in conflict with the RC provision of penalties for illegal entry to a country, there are those which believe Australian policy in relation to the refoulment provision breach Article 33 of the RC. The actions of closing borders to entry of asylum seekers, the mandatory detention for processing and the escorting of asylum seeking laden SIEV back to the Indonesian TS is seen to be in strict conflict with the refoulment provision. The vast majority of asylum seekers attempting to enter Australia are from the strife-ridden Middle East (Iraq and Afghanistan)⁴⁷ and have no immediate neighbours in this region. As the Minister for Immigration, Phillip Ruddock stated 'the Australian Government is well aware of its obligation not to refoule – we never have, and never will. We are equally aware that our international obligations do not give people any right to demand residence in Australia'.⁴⁸ The Australian Government has adopted the position that there is no chance of their lives being in danger, either by being returned to Indonesia, or by being held in a third country, such as Nauru or Papua New Guinea, as part of the 'Pacific solution'.⁴⁹ To date this assessment rings true with no documented evidence that any asylum seeker has been threatened or placed in danger when returned to Indonesia or relocated to a third country for processing.

People Smuggling

CONCLUSION

Throughout the majority of the last decade Australia was relatively protected by its physical remoteness, its lack of land borders and its strictly controlled visa regime. However with access to Northern Hemisphere countries increasingly restricted, improvements in communication and travel, and the emergence of a profitable international people smuggling industry, Australia has become a more attractive and accessible destination.

Since the MV *Tampa* incident the Australian Government has introduced a far more stringent approach to the treatment of these arrivals through amendments to the immigration legislation. The so-called 'Pacific Solution', the excising of offshore territories and installations from the migration zone and the prevention by RAN and Australian Customs units, of illegal entry vessels entering the CZ, remains controversial to many organisations, both domestic and internationally, on the grounds of ethical and moral behavior. However, two years after the MV *Tampa* incident and international disapproval of Australia's actions appear to have faded with the greater concern for border protection in the wake of the 11 September terrorist attack, it remains evident, that only through the study of the LOSC and RC can it be determined if the Australian Government's action remain legal in the international legal framework.

The LOSC allows Australia to exercise total sovereignty over its internal waters and TS and sovereign rights over its CZ in order to protect the infringement of immigration laws. Through the implementation of the new immigration policy and Australia exercising its sovereign rights against asylum seekers breaching Australian immigration laws and circumventing

the formal approved application process for entering the country, the government has not breached the LOSC. The questionable issue of the use of Australian military personnel as a TSE onboard SIEV for transit back to Indonesia on the high seas can be argued in terms of assisting with the preservation of life at sea, the acquiescence of Indonesia and the precedence set by other coastal states in the International legal environment. While the issue of asylum seekers is emotive within Australia and sound moral arguments can be made against the Australian policy, strict interpretation of the RC indicates that the Australian Government does not breach this convention. In order for refugee privileges to be granted under the convention an asylum seeker must first go through a UNHCR accredited process that confirms their situation and identifies them as a legitimate refugee. The Australia Government has implemented a process where by the classification process is to occur outside Australia in a third approved country. To date the Australian Government has weathered the storm of protest and criticism about its multifaceted 'Pacific Solution' strategy. But although many believe the Australian Government has not acted ethically or in the spirit of International Law and conventions, it is clear that the LOSC and the RC provide no significant impediment to Australia's stance on people smuggling. ✎

(Endnotes)

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⁴ Dr Barry York, *Australia and Refugees, 1901-220 Annotated Chronology Based on Official Sources: Summary*, Parliament of Australia Chronology 2, Online, 2002-03, p. 3. <http://www.aph.gov.au/library/pubs/chron/2002-03/03chr02.htm>, viewed 10 August 2003.

⁵ Millbank, *The Problem with the 1951 Refugee Convention*, p. 9.

⁶ Onshore asylum seekers are those personnel who apply for refugee status after having legally entered the Australian Migration Zone. See Millbank, *Boat People, Illegal Migration and Asylum Seekers*.

⁷ *ibid*, p. 6.

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¹⁴ Based on Government approved Rules of Engagement for Operation *Relex*.

¹⁵ Ken Buileigh, "Australia's War Against People Smuggling", *Journal of the Australian Naval Institute*, No. 108, Autumn 2003.

¹⁶ Based on Australian Government instructions for the conduct of Operation *Relex* to RAN units and implementation of these instructions by author during Operations *Relex* and *Relex (II)*.

¹⁷ Millbank, *Boat People, Illegal Migration and Asylum Seekers*.

¹⁸ Australian Immigration Fact Sheet 74, *Unauthorised Arrivals by Air and Sea*.

¹⁹ Martin Tsamenyi, *The Evolution of International Ocean Policy* presentation to ACSC Navy Single Service, Australian

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²⁰ Division for Ocean Affairs and the Law of the Sea, *The United Nations Convention on the Law of the Sea of 10 December 1982*, United Nations, New York, 1997, Article 2.

²¹ R.D. Lumb, "Australian Coastal Jurisdiction", in K.D. Ryan, ed *International Law in Australia*, 2nd Edition, The Law Book Company Ltd, Sydney, 1984, p. 374.

²² *The United Nations Convention on the Law of the Sea*, Article 17.

²³ *ibid* Article 18.

²⁴ *ibid* Article 19 (1).

²⁵ *ibid* Article 19 (2g).

²⁶ *ibid* Article 21.

²⁷ *ibid* Article 25.

²⁸ *ibid* Article 33.

²⁹ Standard intercept procedures being used by RAN and Customs vessels in Operations *Relex* and *Relex (II)* and conducted by the author.

³⁰ *The United Nations Convention on the Law of the Sea*, Article 56.

³¹ Authors experience as Boarding Officer during Operation *Relex* and conduct of return operations for SIEV V and VI.

³² *The United Nations Convention on the Law of the Sea*, Article 98.

³³ Authors experience as Boarding Officer on SIEV III.

³⁴ Stuart Kaye, Australian Regulatory and Policy Framework presentation to ACSC Navy Single Service, Australian Defence College, Weston Creek, 28 August 03.

³⁵ Authors experience as Boarding Officer during Operation *Relex* and conduct of return operations for SIEV V and VI.

³⁶ Kaye, Australian Regulatory and Policy Framework presentation.

³⁷ Millbank, *The Detention of Boat People*, Parliament of Australia Current Issues Brief 8 Online, 2000-01, p. 7. <http://www.apph.gov.au/library/pubs/CIB/2000-01/01cib08.htm>, viewed 18 August 2003.

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³⁹ Australian Immigration Fact Sheet 81, *Australia's Excised Offshore Places*.

⁴⁰ *United Nations Convention Relating to the Status of Refugee*, Article 42.

⁴¹ *ibid*, Article 31.

⁴² Millbank, *The Problem with the 1951 Refugee Convention*.

⁴³ Gary Klintworth, "People smuggling and Australia's security", *Asia-Pacific Defence Reporter*, Vol. 28, No. 3, March-April 2002, pp. 52-53.

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⁴⁵ *United Nations Convention Relating to the Status of Refugee*, Article 33.

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⁴⁸ Ruddock, "The Immigration Policies of the Commonwealth Government", p. 14.

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Can the RAN enforce Australia's Oceans Policy?

Commander Simon Bateman, RAN

A state that thinks of itself as a small power is self-confessedly dependent on external help even to protect its own territory. A state that knows itself to be a superpower, however massive its strategic preoccupations has at least the knowledge that militarily it can protect its interests unaided. But for the medium power, nothing is absolute.¹

On 4 September 2001 the Royal Australian Navy (RAN) attracted world wide attention when 354 asylum seekers were embarked from the *MV Tampa* into *HMAS Manoora* for their eventual transfer to an immigrant processing facility in Nauru. At precisely the same point in time the *Anzac*-class

frigate *HMAS Anzac* was conducting Maritime Interdiction Operations in the Northern Arabian Gulf as part of the sanctions against Iraq, and coincident with both these events, *HMAS Adelaide* was visiting Singapore prior to her involvement in Exercise *Stardex 2001*. This snapshot in time provides a perfect example of the dimensions that a modern navy must now work within and what will probably be expected of it in the future.

The *Australian Maritime Doctrine* presents these dimensions as the span of maritime operations,² which Booth describes as the constabulary, military, and diplomatic roles.³ The multitude of tasks that result from these dimensions can be quite daunting for a

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Navy representing a country classified as a medium maritime power.⁴ The RAN's ability to conduct all these roles successfully, especially concurrently, is significantly limited both economically and geographically. Historically, the total Defence budget has been limited to approximately 2% of Gross Domestic Product (GDP). Combine this with a potential surveillance and enforcement area of 14.8 million square kilometres and the result is a challenging responsibility. To achieve it a medium maritime power and its Navy must be 'brave as lions and cunning as foxes' because they do have some ability, some potential, and they have to choose how best to deploy it in their interest.⁵ These interests are becoming more specific

Australian Fisheries and Customs officers speak to the master of a suspected illegal fishing boat
(Courtesy Australian Customs)





Customs vessel ARNHEM BAY – one of the Bay-class fleet (Chris Sattler)

as Australia realises the importance of her biologically diverse marine domain. The interests were recognised with the publication of *Australia's Ocean Policy Volumes 1 & 2* (AOP) in 1998. Volume 2 of this document outlines the Australian Defence Forces (ADF) responsibilities for surveillance and enforcement.

The aim of this essay is to assess whether the RAN, as a Navy representing a medium maritime power, has the capacity and capability to meet its enforcement roles as outlined in AOP. Any possible changes to policy and/or capability, which would allow the RAN to perform successfully as a medium navy in these roles, will then be identified.

To achieve these aims, Australia's identity as a medium maritime power must first be established. Hill's concept of a medium maritime power and its associated strategies will then be expanded before outlining the RAN's responsibilities in AOP. An assessment will then be made as to whether the RAN has the capacity and the capability to meet these responsibilities. Finally, recommendations will be made

Australia's identity as a medium maritime power must first be established

as to any possible changes that could be made to policy and/or capability, which would result in the RAN performing more successfully as a medium navy whilst fulfilling its responsibilities outlined in AOP.

AUSTRALIA - A MEDIUM MARITIME POWER

In Rear Admiral Hill's treatise on *Maritime Strategy for Medium Powers* he provided a thorough examination on the factors that determine whether a country is a medium power. He noted:

Superpowers are unlikely to suffer direct challenges to their territory, their political independence or their national welfare. Small powers, on the other hand, are unable to guard their own interests without some form of external support and guarantee. Medium powers fall between these two groups and they are most clearly identified not so much by any inherent characteristics as by their primary security objective.⁶

Is Australia a medium power? National power consists of many elements. It includes a state's: social and political cohesion; economic strength; quality, depth and breadth of relationships; military capability; historic and current absence of disputes; strategic location; quality of international contribution; and its geographical scale and quality. When all these are taken into consideration it is assessed that Australia is a medium power on a world scale. The next question is, does Australia fit into the associated category of a medium maritime power? Once again there are a number of components. These include trade and access, a shipbuilding industry, the exploitation of natural resources and military power at sea.⁷ Given Australia's geography and that it has varying levels of all the above elements it is assessed that Australia is also a medium maritime power.

As a medium power Australia seeks to 'create and keep under national control enough means of power to initiate and sustain coercive actions whose outcome will be the preservation



Three generations of Australian naval patrol boats – the Attack, Fremantle and Armidale classes (Chris Sattler)

of its vital interests.⁸ In policy terms these words could be described as autonomy or self-reliance.⁹ To preserve the vital maritime interests the RAN, as a medium power Navy must have sufficient capabilities¹⁰ with a maritime strategy to support them. Inherent in this approach is joint operations. Medium powers can't afford duplication. A credible capability will increasingly depend on the integration of all the combat services.¹¹ Having established Australia as a medium maritime power and the RAN as a medium navy, Hill's concepts and strategies will now be briefly outlined.

HILLS CONCEPTS AND STRATEGIES

In Hill's *Maritime Strategy for Medium Powers* he highlights a number of concepts and strategies for the medium power navy. The two most fundamental concepts are *levels of conflict* and *reach*. He divides conflict into four levels: normal conditions, low intensity operations, higher level operations

and general war. Reach is described as cutting across all these levels and is the distance from a home base that a navy can carry out operations. As this essay is directly related to the RAN's enforcement responsibilities outlined in AOP, which are essentially peace-time responsibilities, the focus will be on *normal conditions*. Hill defines normal conditions as a state where 'changes in international conditions occur in a controlled way aided by processes of negotiation; no use of force is taking place except at an internationally accepted constabulary level; and threats of force are confined to the normal process of deterrence.'¹² A medium navy's constabulary duties are central to this thesis as 'these are, after all, what most of us in the fighting services are doing, most of the time.'¹³

To fulfil these duties it is necessary to first establish a medium maritime power's *vital interests*. Hill describes these as essentially territorial integrity and political independence.¹⁴ However a medium power will have few resources to spare for the exercise of

Australia has one of the most biologically diverse marine environments in the world.

power beyond what is necessary to safeguard or where possible further these vital interests.¹⁵ With the introduction of the 200-mile Exclusive Economic Zone (EEZ) and the 1982 Law of the Sea Convention (LOSC) the responsibility for maintaining territorial integrity is now quite large for most maritime countries. It requires extensive surveillance, information gathering, and a capability to board and if necessary, detain, all within a framework of municipal law that conforms to international law.¹⁶ For this capability to be a successful part of a medium powers maritime strategy then it must be both *ready* and *effective*.

Hill states that *readiness* is a watchword for all medium powers. This is especially so in the context of constabulary operations, as it does not just address deployed readiness, but in some cases it would take the form of readiness in-being. If it becomes obvious to a potential transgressor that a medium power is ready to enforce its sovereignty and rights, then it may prove to be a deterrent. The same

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can be said for *effectiveness*. If it were apparent that the medium power is materially efficient, well trained and organised, then this also would have a deterrent effect.

The final themes in Hill's strategy are *reach* and *presence*. Reach will relate to a medium powers vital interest. How far does it need to go to protect its interest? This may not just extend to it maritime zones, but could expand to offshore territories or sea lines of communication (SLOC). Integral to reach is sustainability, or how long can reach be maintained. Presence could be considered a corollary to reach in that it is a visible demonstration of a country's ability to prove its reach. Having now briefly examined Hill's concepts for a medium power, specifically in the area of normal conditions and constabulary operations, they will now be put into an Australian context.

As a signatory to the 1982 LOSC Australia has sovereign rights to explore, exploit, conserve and manage the natural resources within its EEZ

pressures the Australian Government released the AOP in 1998. It 'sets in place the framework for integrated and ecosystem-based planning and management for all of Australia's marine jurisdictions'.¹⁷ In the case of Australia these jurisdictional areas are extremely large. As a signatory to the 1982 LOSC Australia has sovereign rights to explore, exploit, conserve and manage the natural resources within its EEZ. It also has rights and responsibilities to the limits of the continental shelf. This is in addition to the sovereignty that it maintains over the contiguous zone and territorial seas.¹⁸ A fundamental aspect of a government policy that encompasses regulation and management are the enforcement measures to be implemented.¹⁹ In the case of the AOP many of these measures lie within the purview of the ADF, and are addressed in three

safeguarding marine jurisdictional areas, controlling maritime approaches and of exercising and protecting Australia's sovereignty and sovereign rights. It also highlights the importance of joint operations between the RAN and the RAAF, and bilateral and multilateral agreements to facilitate operations and patrols in south-east Asia and the south-west Pacific. The Background also lists a range of tasks that the ADF undertakes or contributes to, and are directly relevant in the implementation of the Oceans Policy. These are:

- Preparedness and contingency planning;
- Maritime surveillance and response;
- Fisheries law enforcement;
- Search and rescue;
- Hydrographic services; and
- The Australian Oceanographic Data Centre.²²

⊙ Migration Act 1958	⊙ Petroleum (Submerged Lands) Act 1967
⊙ Fisheries Management Act 1991	⊙ Migration Act 1958
⊙ Customs Act 1901	⊙ Border Protection (Validation and Enforcement powers) Act 2001
⊙ Quarantine Act 1908	⊙ Border Protection Amendment Act 1999
⊙ Environment Protection (Sea Dumping) 1981	⊙ Hazardous Waste (Regulation of Exports and Imports) Act 1989 ²⁹

AUSTRALIA'S OCEAN POLICY - THE RAN'S RESPONSIBILITIES

Australia has one of the most biologically diverse marine environments in the world. Compared to many other countries this environment is in a generally good condition, due in part to Australia's geographical isolation. However, there is increasing pressure being placed on ocean systems. This pressure comes from such areas as, an escalating world demand for fish, expanding mineral and petroleum exploration activities, and tourism and recreation. In an attempt to plan for these increased

sections under the main heading of *Protecting the National Interests*. They are Defence, International, and Surveillance and Enforcement.

Each of these sections is divided into three areas: The Challenges, Background and Response. In the Defence section the challenges are to protect Australia's national interests and sovereign rights, and to provide accurate, up-to-date hydrographic, oceanographic, and navigation information within our maritime jurisdictions.²⁰ The Background refers to Australia's Strategic Policy defining the defeat of attacks against Australia's territory as 'our core force structure priority' and is the focus of all Defence activities.²¹ The ADF is given the task of

The Response paragraph expands on these tasks by providing a comprehensive list of activities that the ADF will continue to do in support of the above tasks.

In the Surveillance and Enforcement section the Challenges are to ensure that there is an effective and efficient surveillance capacity for Australia's marine jurisdictions, and that there is effective enforcement of national legislation throughout Australia's marine jurisdictions. The Background addresses the importance of surveillance to identify legal and illegal activities in Australia's vast marine jurisdictions and how it must be coupled with effective enforcement action. It highlights the many agencies

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involved with the national surveillance effort and that the ADF is a major contributor. It states that the ADF also provides the main contribution to fisheries enforcement through its patrol boats in the north and other units in the Southern Ocean. The Background also refers to the other civil enforcement activities conducted by the ADF including low-intensity policing tasks such as interdiction of people and drug smuggling. The Response paragraph expands on Government requirements. These include specific details for the ADF including:

- ensuring the ADF continues to contribute fully to the National Surveillance program managed by Coastwatch; and
- ensuring the ADF contributes fully to fisheries law enforcement activities, particularly in Australia's north and north-west but also within the EEZ of Australia's offshore territories.²³

AUSTRALIA'S OCEAN POLICY VERSUS DEFENCE POLICY

An analysis of these tasks and those associated in the Defence section does highlight some inconsistencies with Australia's current Defence Policy *Defence 2000* (D2000), especially in the area of enforcement. D2000 refers to the role of patrol boats, surveillance aircraft and intelligence capabilities in the monitoring and policing of the maritime approaches, but emphasises that these roles should not detract from the core function of defending Australia from attack. It goes as far to mention that a 'civilian response may be more appropriate' when addressing non-military concerns.²⁴ This is incongruent with AOP which lists fisheries law enforcement as a defence task and includes a statement, 'the Government will ensure the ADF contributes fully to

fisheries law enforcement...'.²⁵ Despite these policy inconsistencies it is still possible to determine whether the RAN has the capacity and capability to fulfil its responsibilities under AOP.

CAPACITY

The majority of the tasks that have been designated to the ADF in the AOP quite obviously affect the RAN more than the other services. The analysis of the relevant sections of the AOP has also identified a number of key terms and concepts that are common to Hill's theories for medium navies. The AOP refers either directly or indirectly to *interests, reach, presence* and *joint operations*, all integral components in a medium powers maritime strategy for *normal conditions*. An assessment will now be made as to whether the RAN, as a medium Navy, has the capacity and the capability to achieve these tasks. One of the fundamental elements of an enforcement capacity is satisfactory legislation. Hill acknowledges this when he says 'Any state desiring an orderly basis for its marine constabulary has to evolve a framework of municipal law within which it can operate.'²⁶ It is also recognised in the AOP, as a response required by Government to 'review and rationalise effort involved in and capacity for surveillance and enforcement, including reviewing legislation relating to enforcement in Australia's marine jurisdictions.'²⁷

The ADF and Customs are the only two Commonwealth agencies that have the capability for enforcement at sea. The Australian Federal Police (AFP) and State Police will at times make use of these assets as well as State Police vessels. Generally the ADF will be used due to the wide range and flexibility of their assets.²⁸ The ADF has enforcement powers under a number of Acts, which usually incorporate provisions for ADF personnel to be

accorded 'authorised persons' status. These Commonwealth Acts include:

Although this would appear to be an adequate framework it can often prove to be unwieldy. A case in point for the RAN would be the training of boarding parties. A large degree of legal training is now required for these parties as they are quite often tasked with a wide range of boardings. This training is required as there may be large legislative differences between simple fishery enforcement boardings under the FMA 1991 and a boarding conducted under the Migration Act 1958.

In addition to these Commonwealth Acts, Australia is party to a number of international agreements that may have an effect on ADF and RAN enforcement tasks. These treaties have been ratified by Australia and include:

- LOSC 1982 Agreement for Management of Straddling Fish Stocks and Highly Migratory Fish Stocks
- Convention for the Conservation and Management of the Highly Migratory Fish stocks in the Western and Central Pacific Ocean
- Convention on the Conservation of Antarctic Marine Living Resources 1980
- Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation
- Convention for the Protection of the Natural Resources and Environment of the South Pacific Region 1986 and Protocol
- Convention for the Prohibition of Fishing Long Driftnets in the South Pacific and Protocols³⁰

With ratification of these treaties Australia declared its *interest*. Not only was it responsible for the regulation and management of its own maritime zones it now could be called to contribute to distant enforcement. This has a significant impact on capability especially when *reach* and *presence*

The majority of the tasks that have been designated to the ADF in the AOP quite obviously affect the RAN more than the other services

is required in such isolated areas as Antarctic waters.

CAPABILITY

Capability is the most important part of the enforcement equation. Without capable vessels and people, enforcement at sea will not occur. As has already been established the RAN is the preferred agency for this activity. Despite the Government fulfilling its AOP requirement and purchasing eight Bay-class patrol boats for Customs, there is still some doubt about their enforcement effectiveness due to their lack of armament. There are many examples where vessels will not stop unless a warship is present to enforce the order.³¹ It has been acknowledged that enforcement is the weak point in the equation. The Deputy Commissioner of the AFP expressed the view in 1998 'that while the surveillance might be adequate, the ability to respond to surveillance, to intercept and detain, to board and search, to enforce laws, and to effect sovereignty is entirely inadequate.'³² This view is agreed. Coastwatch does an excellent job coordinating all the surveillance covering an area measuring 14.8 million square kilometres. However, it can only achieve a re-visit rate of once every 12 days with its available assets,³³ and has very limited response options including 15 RAN Fremantle Class Patrol Boats³⁴ and the eight Bay Class Customs vessels. The RAN undertakes the majority of responses in the north and north west of Australia.³⁵ This reliance on Defence assets for enforcement was also demonstrated during the arrest of the *MV Pong Su*, a vessel suspected of importing drugs into Australia. After State Police attempts to stop the vessel were unsuccessful RAN assistance was sought in the form of a frigate and helicopter. These and other ADF units were used to board the ship and then

hand over jurisdiction to the AFP and Customs.

RECOMMENDATIONS FOR A MEDIUM NAVY

This reliance on the ADF, and more specifically the RAN, has obvious ramifications when it comes to capability development. Although this reliance is acknowledged in the AOP, it does not receive the same level of recognition in D2000, which incorporates the Defence Capability Plan, or 'shopping list'. It is accepted that these constabulary roles should not detract from the ADF's core function of defending Australia from armed attack³⁶ but if such a reliance is going to be placed on them in AOP then they should at least get more emphasis in Defence's primary policy document. If the RAN is to be as 'brave as a lion and as cunning as a fox' and be able to provide *reach* and *presence* along Australia's extensive coastline and distant offshore territories then there is probably a requirement for a larger class of offshore patrol vessel. To take this argument further there may even be a requirement for an ice-breaking capability as fish stocks diminish and fishermen illegally venture into the Antarctic territories. There are other areas where Australia could be a little more 'cunning' especially in the areas of maritime strategy and legislation.

This paper agrees with the recommendation of the Joint Standing Committee of Foreign Affairs, Defence and Trade inquiry into Australia's Maritime Strategy, which states that a new Defence White Paper should incorporate explicit reference to the AOP.³⁷ This would remove the disconnect that occurs between the current documents and provide a clearer explanation of Government requirements for the ADF in its constabulary role. As for legislation, it

is recommended that the Government continue with its review required by the AOP. There would certainly be utility in overarching legislation, which would simplify the enforcement capacity of the ADF.

CONCLUSION

This paper has identified that a modern navy now has a diverse number of roles. These have been encapsulated in Booths triad of military, diplomatic and constabulary dimensions. The tasks that fall out of these dimensions are substantial, especially for a medium navy. It was established that the RAN fell into this category given Australia's status as a medium maritime power. To be a successful medium navy Hill posits that the navy needs to be as 'brave as lions and as cunning as foxes' while creating and keeping under national control enough means of power to initiate and sustain coercive actions whose outcome will be the preservation of its vital interests. In the context of constabulary operations under *normal conditions* these interests were determined to be those outlined in the AOP.

The AOP designates a number of substantial enforcement tasks especially in the area of fisheries to the ADF, or more specifically the RAN. The RAN fulfils these tasks despite them receiving minimal exposure in D2000. As a medium navy the RAN should be able to provide *reach* and *presence* to the areas of *vital interest*. Not only does Australia have significant areas of interest contained within its extensive maritime zones but they have also been extended to distant waters with Australia being party to a number of international agreements. To provide *reach* and *presence* to these areas requires a substantial capability that Australia does not currently have.

To improve this situation a number

*Without
capable vessels
and people,
enforcement at
sea will not occur*

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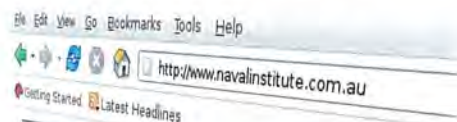
of recommendations were made regarding policy, capacity and capability. Firstly, it is recommended that the requirements for the ADF outlined in AOP be incorporated into future defence policy. Secondly, a review of the existing legislation should occur so as to streamline the current unwieldy process. Thirdly, it was recommended that if the RAN is to fulfil its AOP enforcement tasks then it would require larger and more numerous patrol craft. If all these recommendations could be achieved then it is believed that the RAN would have the right balance and be able to perform more successfully as a medium navy. ✎

(Endnotes)

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- ² Royal Australian Navy, *Australian Maritime Doctrine*, Canberra, 2000, p. 57.
- ³ K Booth, *Navies and Foreign Policy*, Croom Helm, London, 1977, p. 16.
- ⁴ RADM J.R. Hill (Rtd) *Maritime Strategy for Medium Powers*, Croom Helm, London, 1986, p. 24. Hill describes Australia as a medium maritime power.
- ⁵ RADM J.R. Hill (Rtd) 'Maritime Strategy for Medium Powers' *Journal of the Australian Naval Institute*, Vol 14(2), May 1988, p. 37.
- ⁶ CDRE J.V.P. Goldrick 'The Medium Power Navy in the 21st Century' *Journal of the Australian Naval Institute*, 2001, p. 21.
- ⁷ Hill, *Maritime Strategy for Medium Powers*, pp. 30-34.
- ⁸ *ibid*, p. 21.
- ⁹ RADM J.R. Hill (Rtd) *Medium Power Strategy Revisited*, Sea Power Centre Working Paper No. 3, Canberra, March 2000, p. 3.
- ¹⁰ Goldrick, *op cit*, p. 21.
- ¹¹ *ibid*, p. 26.
- ¹² Hill, *Maritime Strategy for Medium Powers*, p. 88.
- ¹³ Hill, *Medium Power Strategy Revisited*, p. 7.
- ¹⁴ Hill, *Maritime Strategy for Medium Powers*, p. 37.
- ¹⁵ Hill, *Maritime Strategy for Medium Powers*, p. 3.
- ¹⁶ *ibid*, p. 8.
- ¹⁷ Environment Australia, *Australia's Ocean Policy Volume 1*, Canberra, 1998, p. 2.
- ¹⁸ LOSC Art

- ¹⁹ B Snushall, B *The Enforcement Aspects of Australia's Oceans Policy*, Sea Power Centre Australia Working Paper No 14, Canberra, 2003, p. 2.
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- ²¹ *loc cit*
- ²² *loc cit*
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- ²⁴ Department of Defence, *Defence 2000. Our Future Defence Force*, Canberra, 2000, paras 2.15-2.20
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- ²⁷ AOP Vol 2, *op cit*, p. 44.
- ²⁸ Snushall, *op cit*, p. 8.
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- ³⁰ *ibid*, p. 14.
- ³¹ *ibid*, p. 13.
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- ³⁴ To be replaced by the Armidale Class Patrol Boats which will be multi-crewed and will provide 3200 patrol days a year.
- ³⁵ Joint Committee of Public Accounts and Audit Report 384, Canberra, 2001, p. 129.
- ³⁶ *Defence 2000*, p. 13.
- ³⁷ Joint Standing Committee of Foreign Affairs, Defence and Trade Inquiry, *Australian Maritime Strategy*, Canberra, 2004, p. xviii.

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The relevance of classical naval strategists to the RAN in the 21st century

Lieutenant Commander Katherine Richards, RAN

Medium powers are said to lie between the self-sufficient and the insufficient. Super powers are self-sufficient. They are states with a stake in peace and freedom everywhere and the power to protect them. They have been likened to strategic monoliths – possessing the economic muscle, diplomatic clout and military might to defend their interests with their own resources. Small powers are insufficient. They lack the necessary resources to defend even their most vital interests such as territorial integrity and political independence.¹ Occupying the middle ground in the strategic hierarchy of nation states are the medium powers.

Despite their diversity and differences, Rear Admiral Hill suggests a common characteristic of medium powers is their aspiration for autonomy. He states that a medium power seeks to 'create and keep under national control enough means of power to initiate and sustain coercive actions whose outcome will be the preservation of its vital interests.'²

A medium maritime power is one that aims to use the sea to enhance its autonomy and preserve its vital interests.³ The navy of a medium maritime power seeks to employ sufficient naval capabilities to achieve this end.⁴ How a medium power navy uses the sea to meet its objectives is the domain of maritime strategy.

The Royal Australian Navy (RAN) is an example of a medium power navy. Its maritime strategy is centred on a trinity of diplomatic, constabulary and military functions.⁵ Arguably, this strategy has its origins in the concepts of the classical naval strategists, most notably Alfred Thayer Mahan and Sir Julian Corbett.

Mahan has been described as an evangelist of seapower,⁶ a brilliant



Alfred Thayer Mahan

and influential naval theorist,⁷ and is regarded as having laid the foundations of modern naval history.⁸ Corbett has been described as a theorist 'whom no modern student of maritime war can afford to ignore,'⁹ and is credited with providing the Royal Navy of the early 20th century with its strategic doctrine.¹⁰

The aim of this article is to explore the concepts of the classical naval strategists Alfred Thayer Mahan and Sir Julian Corbett and the relevance of their concepts to medium power navies. This article will outline the key concepts of both strategists and examine the arguments surrounding the relevance of their concepts to medium power navies, such as the RAN, in the 21st century.

MAHAN-HIS CONCEPTS AND THEIR RELEVANCE

In 1890 Mahan, a serving United States naval officer and avid historian, published his most influential and celebrated work *The Influence of Sea Power Upon History 1660-1783*. In this book, Mahan sought to demonstrate the effect of sea power upon the course of history and the prosperity of nations.¹¹ The book met with critical international acclaim and established Mahan as the leading naval strategist of the fin de siècle.

In the years that followed its release,

'mastery of the seas had been a determinant of victory in war and of prosperity in peace.'

Mahan published some twenty books and in excess of one hundred and sixty articles covering a wide range of contemporary and historical maritime issues. A common theme throughout his work was that the United States must develop its maritime power in order to achieve strategic greatness.¹² In support of this theme, Mahan proposed a variety of different concepts ranging from grand strategy to issues of fleet tactics. However, a review of his major works indicates that he principally endeavoured to advance ideas in two main areas. Firstly, Mahan sought to define the relationship between sea power and national greatness and secondly, he sought to establish some guiding principles of naval strategy and naval warfare.¹³

On the issue of sea power and national greatness, Mahan argued that a study of history revealed that the 'mastery of the seas had been a determinant of victory in war and of prosperity in peace.'¹⁴ To Mahan, sea power was the key to national greatness. Over the years, numerous commentators have debated the continued relevance of this concept. Needham suggests that today sea power must be balanced with a strong economy, a stable and responsive government, a developed industrial base and a highly capable military force. Sea power is not enough in itself to achieve national greatness.¹⁵ Extending this argument to medium powers, sea power should be considered as simply one of a number of measures that provides a means of protecting vital interests and enhancing autonomy. It is not a strategic planning panacea.

Mahan also proposed that the instruments of war,¹⁶ seaborne commerce and colonies underscored a nation's maritime dominance.¹⁷

The relevance of classical naval strategists to the RAN in the 21st century

Relating these factors to medium powers, Mahan's instruments of war can be considered akin to modern naval capabilities. An effective naval force is clearly a prerequisite for control of the sea. However, beyond this idea the relative utility of seaborne commerce and colonies to a medium power navy requires further analysis.

In the case of seaborne commerce, the issue is not the relationship between a state and its maritime trade, but rather whether this trade is directly dependent upon naval strength for its existence and prosperity. With this in mind, Etzold contends that the traditional interplay of commerce and navies has been overturned as a result of changes in global power politics, from a military/territorial base to an economic/resource base. He maintains that the free use of the sea for commerce and transit is today a matter of convention and usage and not national power and certainly not naval power as it was in Mahan's day. In the 21st century, all powers, regardless of their size are afforded the opportunity to pursue their commercial and strategic interests on the high seas¹⁸.

On first inspection Mahan's concepts on commerce and navies appear somewhat dated when applied to the economic reality in which medium power navies operate. However, for medium power navies perhaps a modern take on Mahan's concepts would be to recognise the benefits of international conventions, which govern sea usage. Arguably, conventions like the United Nations Convention on the Law of the Sea (UNCLOS) serve to assist all states in protecting their vital interests at sea.

In the case of colonies, Gough states that a nation does not have to possess colonies to have naval power and greatness and argues that forms of informal control can be equally as valuable as formal possession.¹⁹ This line of argument is further developed



Sir Julian Corbett

by Bateman who suggests that alliance relationships, port access rights and cooperative approaches to regional security have now replaced the utility that Mahan once saw in colonies.²⁰ In a post-colonial world, perhaps the legacy of Mahan's colonial concepts for medium power navies is that they should seek to foster international engagement and alliance relationships to enhance their autonomy and protect their vital interests. For the RAN, these security objectives are explicit in the Defence 2000 White Paper.²¹

Beyond the macro naval-political dimension, Mahan also presented a variety of different concepts relating to naval strategy and naval warfare. Fundamentally, he considered that the purpose of naval strategy was to secure command of the sea.¹ However, today, the concept of command of the sea is now viewed as largely unrealistic in the face of technological advancements since Mahan's day.²² In particular, technology such as submarines and aircraft mean that it is no longer conceivable to totally control the sea for one's own use or to totally deny it to an enemy. Consequently, command of the sea is now viewed as a relative rather than absolute term²³ and in its place the term sea control² is now more often espoused as the fundamental purpose

of naval strategy. For a medium power navy, sea control must be regarded as essential to mission achievement. With respect to the RAN, Vice Admiral Ritchie has argued that sea control 'is essential to do any military task away from the Australian mainland and even for many tasks that are within Australian territory'.²⁴

Mahan also maintained that the control of maritime commerce, through command of the sea, was the primary function of navies.²⁵ He believed that wars were won by the economic strangulation of the enemy from the sea²⁶ and that the stoppage of commerce compelled peace.²⁷ Today, Mahan's view that a navy exists solely to control maritime commerce appears somewhat myopic. As previously discussed, the traditional dependency between navies and commerce has yielded to the passage of time. Hence, for medium power navies, a broader view of naval functions is warranted in the 21st century when formulating maritime strategy. Rear Admiral Hill recommends such a view should focus on the 'levels of conflict' which cover normal peacetime operations, low level operations, higher level operations and general war.²⁸ This approach has been largely adopted by the RAN, which upholds a trinity of naval roles covering diplomatic, constabulary and military functions in its maritime strategy.²⁹

Beyond the broader realms of strategy, Mahan's war-fighting concepts centred on two key principles. Borrowing heavily from Jomini,³⁰ he proposed that 'concentration was the predominant principle of naval warfare'³¹ and he saw the fleet as an offensive weapon that had to be used aggressively.³² Both these concepts have endured the passage of time and are considered by the RAN as two of the fundamental principles of war.³³

Arguably, these principles led Mahan to develop his thesis of the decisive

Mahan argued that a study of history revealed that the 'mastery of the seas had been a determinant of victory in war and of prosperity in peace'