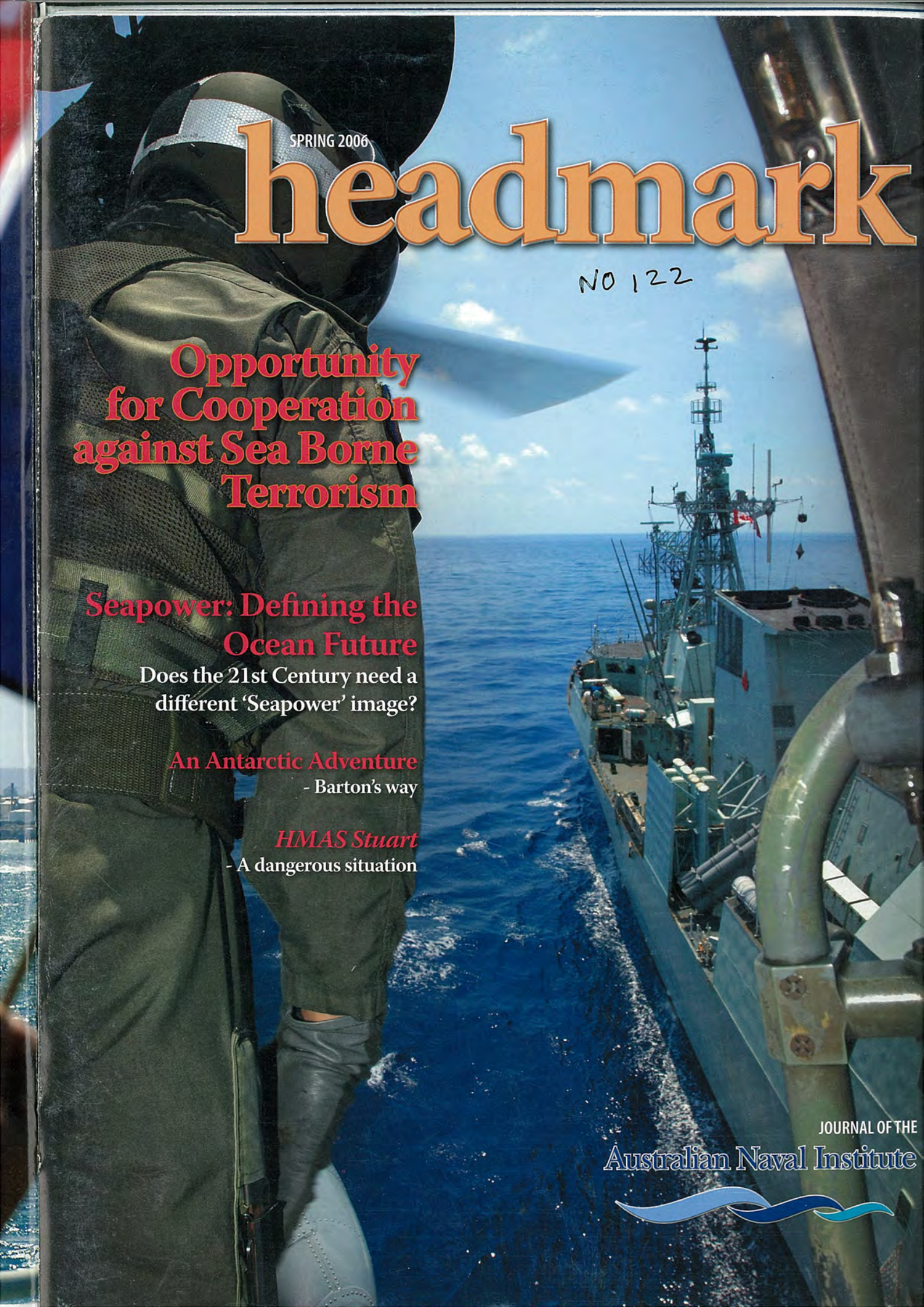




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NO 122

Opportunity for Cooperation against Sea Borne Terrorism

Seapower: Defining the Ocean Future

Does the 21st Century need a
different 'Seapower' image?

An Antarctic Adventure

- Barton's way

HMAS Stuart

- A dangerous situation

JOURNAL OF THE
Australian Naval Institute





President's Message

The Australian Naval Institute has made real progress in the past six months. The new format of Headmark has been very well received by the great majority of members and the subject of a lot of favourable comment from readers outside the ANI. Another innovation which has been well received is the program of ANI social events – although we could not make the numbers in Darwin, both Canberra and Sydney were real successes and we are looking forward to the reception planned for Western Australia on 25 November. This will coincide with the harbour period of a major fleet activity, so we are hoping for a good turn out from serving personnel.

The half day Engineering and Logistics Seminar at ADFA on 18 July was extremely interesting, with some great presentations and some very forthright discussion. I am very grateful to all the speakers that day and I am hoping that the written versions of their speeches will appear in Headmark.

Both recruiting and sponsorship have also achieved a lot of ground. There is no doubt that there is a direct connection between them and the scale and quality of our

activities and our journal. We have increased active membership by some 10% in the last year and, since the last edition of Headmark, I have been delighted to welcome onboard EDS and Kellogg, Brown and Root as major sponsors. The resources that we derive from a larger membership and a stronger sponsorship program have allowed us, amongst other activities, to extend to full colour printing of Headmark.

As I write, we are looking forward to the Vernon Parker Oration on 23 August, with John Rothwell, AO, of Austal Ships as our speaker. The dinner at the ADFA Officers' Mess is always good value and I hope to see you at both events.

Our future program is currently under discussion, but we hope to stage at least one major seminar in Sydney before the end of the year.

Best wishes

James Goldrick

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Front page photograph: Leading Seaman Aircrew Jarrod Nieuwendaal watches on as HMAS Manoora's Sea King (shark 20) takes off from HMCS Vancouver after dropping off some supplies.

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AUSTAL

Opportunity for Cooperation against Sea Borne Terrorism

BY COMMANDER MA RAZZAK



"Around 75% of the world's population lives within 300nm of the sea, and around 80% of industrial capacity is located within 100nm of the coast."

"Around 75% of the world's population lives within 300nm of the sea, and around 80% of industrial capacity is located within 100nm of the coast."¹ "... 90 percent (by volume) of the world's traded goods and commodities are moved by sea, and 30 percent of the world's oil and gas production is located offshore."² "Coast is a geographic term for the point where the earth's land meets a large expanse of water such as an ocean or sea, a "coastal area" is a broader expanse. It often extends outward into the sea for at least twelve miles, and inward on land for as many as twenty or thirty miles."³ Maritime security in theories and practices was to protect the coast and resources there of to promote nations' economic and political prosperity against military aggression and saboteurs in low intensity conflict. Emergence of neo-unconventional war⁴ extended the concept of maritime security beyond coastal areas encompassing the total maritime domain, leading to the adoption of ISPS (International Ship and Port Facility Security) Code at the backdrop of peoples' concern about the world-wide escalation of terrorism in all its forms.

The ISPS Code aims to ensure maritime security by preventing hijacking or seizure of ship or of persons on board, smuggling of weapons or equipment, including

weapons of mass destruction (WMD) through three-tier security control over three categories of maritime transports⁵ and port facilities. The ISPS Code with its focus on internal security measures on board and at port facilities became binding in July 2004. It requires all nations and agencies associated with international maritime commerce to have "vetted and approved security plans and procedures to ensure confidence that adequate and proportionate maritime security measures are in place." Yet, the question remains, will the "vetted and approved security plans and procedures" ensure total protection against threats posed by international terrorism? Perhaps no. The scepticism has four reasons – *first*, ITG (International Terrorist Group) or the non-state actor has the possibility to secure access to technology, improvise technology and cruel innovative and inventive potential; *second*- ITG's potential to identify and penetrate through the hole(s) in defined security measure; *third*- weakness in international cooperation. For example, the USA the leading country in neo-unconventional war - is accused of not being very keen to share intelligence on terrorism⁶; and *Fourth*- weakness in global enforcement mechanism, which makes credibility of security systems relative to occurrence.

At the backdrop of concern for maritime security attributed to terrorism beyond borders this paper attempts to explore opportunities for cooperation. Any action is supposedly objective oriented, therefore, the paper first ponder the probable objectives that the ITG might aim to achieve. Then it looks into the options that an ITG might employ to break the security barriers. To identify the scope of opportunities for cooperation, the

paper also examines vicious actions that violated security barriers at sea in different time and space.

Before assessing ITG's objectives, let's identify what an ITG is unlikely to achieve from the sea or at sea. Understandably one cannot succeed in occupying extraterritorial land or coast and also cannot change governments. These may have debatable prospect only with internal and/or external politico-military input. In the absence of input, the terrorist attack in Male in 1987 did not succeed in toppling the government. Rather, external support helped to stabilize the situation. A terrorist group also cannot succeed in controlling the sea, shipping lanes or choke points in its classical sense. They also cannot occupy a harbour or port facility. In the middle of negative prospects, they may, however, succeed in hijacking a ship or stationary platform - destroy it or use vessels to transport military material, explosives, WMD material, etc. They may attack naval targets to undermine the credibility of the state. To achieve perceived objectives an ITG will explore suitability of space, means and methods to perpetrate terror at sea.

Sparsely populated coast and desolate oceanic expanse remain beyond public scrutiny. Ships in the narrow waterways or off shore are reachable with small boats. Busy waterways provide terrorist vessels/boats the background to merge and hide in the traffic density and fjords. Access to ports and port facilities can be obtained. **Commercial transports at sea are soft targets and prone to attack, hijacking and destruction.** A ship's slow speed that provides ample reaction time to security forces is likely to make hijacking less preferred option. But ships carrying hazardous cargo,

military hardware or cruising ships are likely to remain in the ITG's hit list. The hijacking of *Achille Lauro* in 1985 off Egypt, rocket propelled grenade attack against *Seabourn Spirit* off Somalia in November 2005 and the disappearance of *Limassol*⁷ in May 1997 with Sri Lanka Government's 32,000 rounds of mortar shells on board are examples. A suicidal bang instead of grenade attack in future would complicate matter. In *Limassol's* case, LTTE used the mortar shells in their fight against the Sri Lanka Government Forces. An ITG may also pursue destroying a hijacked floating bomb like ships laden with liquid petroleum, explosive, toxic or polluting cargo, nuclear waste, nuclear fuel, military platforms etc in the waters of a target country or in a place of opportunity.

Examination of ST's (Sea Tiger)⁸ operational profile reveals that innovative employment of small assets like high speed low profile boats in *layered wolf pack tactics* or *encirclement ambush* can pose grave danger to high value ships or military platforms in the narrow waters where the space is packed into a smaller spatial area, reaction time is less and manoeuvring space is limited. In *layered wolf pack tactics* clusters of low profile very high-speed suicidal boats taking the cover of fishing ground in the Palk Strait suddenly and simultaneously approached SLN craft patrolling in the area from multi directions (figure 1). A number of SLN craft including DOVRA Class FAC sank in such tactics. To seize two Sri Lanka Navy patrol craft, 10-12 Sea Tiger boats made an encirclement ambush on 22 December 2005 at Talaimanar 250 km northwest of Colombo. On 7 January 2006, a suicide boat laden with explosives banged a Sri Lanka Navy patrol craft after it left Trincomali Harbour sinking the vessel and killing 15 sailors. Tactics alike could also be suitable for employment in the

Commercial transports at sea are soft targets and prone to attack, hijacking and destruction

waters studded with fjords and islands like the Baltic Sea, the Aegean Sea, Indonesian Archipelagic waters, the Persian Gulf or in the density of ships at anchorages, the entrances of the Suez Canal, for example.

One group may pick up the tactics that another group applied in the near or distant past. In 1995 SLN Command Ship *Edithare* sank in a suicide attack at Kantasanturai harbour in northern naval area. Then in October 2000 *USS Cole* and French oil tanker *Limburg* in October 2002 fell victim to similar type of attack off Yemen. The attack left *USS Cole* with 17 service men dead, 39 injured and undisclosed financial losses.

Aircraft at landing and take off are most vulnerable to attack from the surface. In the late 1990s one Sri Lanka Air Force transport plane crashed into the sea shortly after take off from Colombo airport. In this incident ST was suspected to have attacked the plane from off-shore using shoulder-launched missiles. The suspicion sounds probable. After the attack it was possible to drop the weapons into the sea and divert boat(s) to begin fishing like ordinary fishing boats.

Not too many mines are necessary to put a blockage into the narrow strategic shipping lanes and channels. There are good numbers of important straits, which are less than 24 nautical miles wide. There are also long channels, which lead ships from the sea to port facilities. Narrow and busy waterways are vulnerable to floating

stray mines, innovations, and attack from improvised unmanned surface or aerial vehicles. Unavoidable high traffic density in the narrow waterways is a permanent weakness. The Straits of Gibraltar is "considered particularly vulnerable because the Straits are extremely narrow and some 3000 commercial shipments pass through every day."⁹ NATO NAVSOUTH Commander, Vice Admiral Ferdinando Sanfelice di Monteforte described the situation, "The Straits of Gibraltar is an extremely busy area. A terrorist boat is like a needle in the haystack."¹⁰ International waterways are increasingly becoming busy (and risky due to expansion of terrorism without borders).

Increasing rate of piracy invokes the scourge of maritime security in another form. Pirates are motivated for material gains. On the other hand, international terrorist elements are motivated by ideological or political vengeance without frontier, making terrorism an international concern. In this philosophical contradiction, **money is a common need to terrorist and pirates**. Pecuniary need is a common interest for cooperation between Organized Pirate Gang (OPG) and ITG to share intelligence on shipping, exchanging modus operandi, weapon smuggling etc.

Possibilities have limitations too.¹¹ Sea terrorism is also subjected to certain limitations. These are oceanographic features, presence of security forces,

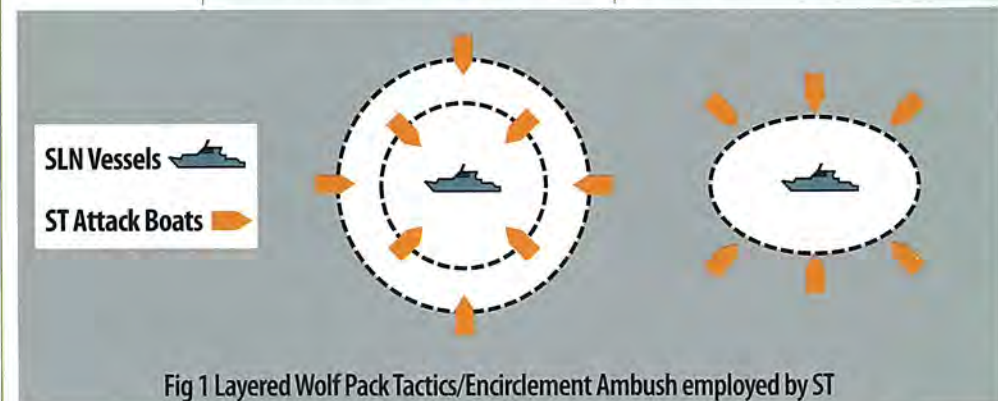


Fig 1 Layered Wolf Pack Tactics/Encirclement Ambush employed by ST

Opportunity for Cooperation against Sea Borne Terrorism

targets at sea are not stationary (except oil platforms) and are not easily accessible like those ashore, and background to merge or hide is not readily available like those on land. Land is friendly to mankind while the sea has been unfriendly to hostilities. Perhaps, such limitations make difference in the frequency of terrorist attacks on land and at sea. In the last couple of years, land-based terrorist attacks around the world has been quite high. Frequency of terrorist attacks at sea, except piratical acts, has been quite low. But this in no way suggests that ITGs cannot or will not increase frequency of terror acts at sea and that they would not employ innovation to surprise nations. It is seemingly a matter to orchestrate at an uncertain point of time.

To perpetrate acts of insecurity, evil groups will require organizational set up and command and control system in some form. Setting up of such organization and making it operationally effective is primarily attributed to a chunk of territory/land or sanctuary in possession for a long time. Another option that the ITG might employ is recruiting volunteers in the territories abutting to strategically important harbours and waterways.

In the terror environment, maritime security meanders in uncertain future. *Ambiguous future characterizes maritime security issues to bear the burden of uncertainty.* The uncertainty is compounded by the shipment of billions of tons of cargo in different modes daily across the world.

To protect growing maritime economic activity, agencies formulate protective security measures contemplating probabilities; terrorists look for the hole(s) in it to perpetrate terror act and the resultant balance between security and insecurity continues to shift. In this imbroglia collective resolve and measures can

*money is a
common need
to terrorist and
pirates*

open up the scope of greater maritime security.

Protecting interests at sea is more complex and difficult task than on land. There is no wizard to claim to have the ability to defend such interests alone against international terrorism. The most challenging task is tackling innovations and suicide attacks. In this entanglement, the most important requirement is the collective effort and states' commitment and cooperation in all its forms and to the fullest extent. Cooperation can range from escorting high value ships in the Vulnerable Sea Areas (VSA) to exchanging intelligence to enhancement of monitoring capability. In 2002 the Indian Navy escorting high value US Navy ships and submarines in the Strait of Malacca is a good example of cooperation.

Coordinated patrolling in the VSA under regional cooperation can be another dimension of cooperation. This will require mutual trust among the littorals in the VSA. Regional or extra regional maritime powers and agencies may lend support to fill in the capability gap either on request or by agreement. Despite increasing incidents of piracy in the Malacca Strait, Deputy Chief of Indonesian Navy said that they would not welcome extra regional countries in anti-piracy patrol in the strait.¹¹ On the other hand Malaysian Deputy Prime Minister and Minister for Defence said that, "... responsibility for security and safety of the Malacca Strait lies with the littoral states; that whatever we do must respect national sovereignty; and that the international community can participate so long as two principles are not undermined."¹² To augment collective effort in counter terrorism, NATO is offering the opportunity of participation in *Operation Active Endeavor* to non-NATO countries that showed interests in the fight against terrorism.¹³

Intelligence on terror plan and

smuggling of prohibitive material is crucial to maritime security drive. Everyone knows that the terrorist elements grow and hide in the neighbourhood but no one is sure - who is he? Where is he? When will he act? How will he act? Therefore, states' cooperation and peoples' participation are critically important to gather operational intelligence, developing databases, and creating profiles of terrorist and terrorism.

Acts of maritime insecurity like sea terrorism, piracy, smuggling of dangerous material originate on land and finds ways to the sea through the coast. Therefore, local knowledge is very vital to ensure maritime security. Integration of coastal population in general and the coastal fishing and trading community in particular in the intelligence gathering process can enrich much needed local knowledge. Besides, a national awareness program may encourage coastal population to be watchful and contribute to countering sea terrorism.

The maritime security effort is complicated by the requirement of speedy shipment of billions of tons of cargo around the world. The need for speed should not compromise protective measures. Likewise, **concern for security should not slow down ocean trade.** A balance between the two is desirable. The security effort may be bungled if PSI (Pre-shipment Inspection) or IU (Inspection at Uploading) is hastily or casually done. PSI and IU are important to maritime security. Therefore, functions of inspecting agencies should be monitored. A certificate from the agencies is likely to be a useful record for future reference.

While we emphasize cooperation among nations, importance of individual effort can not be side lined. Ship carrying high value cargo is prone to saboteur or suicidal attack while at

harbour or at anchorage or steaming in busy and narrow waters. At harbour, ships are exposed to two-pronged attack – from the sea and from the land. Following measures are likely to enhance safety of ships carrying dangerous cargo.

a. Ships, as far as possible, should avoid narrow waterways. Unavoidable passage should be assumed only under escort offered by the transiting state. States may watch the ship following its coast.

b. Passage plan should be kept confidential and disseminated on need to know basis including members of the crew.

c. To prevent repeating *Limassol's* fate, crew identification and vetted reference points should be kept in record.

d. Ships approaching territorial waters may be vetted for genuine crew. Approaching ship may be asked to follow designated approach route and ship's movement monitored. Rerouting of the approach should be done at irregular interval.

e. Allocating exclusive berth at harbour or at anchorage and guard placed on board or escort vessel deployed in near vicinity. One may cynically argue that, it might help a terrorist group to locate the ship easily. The good part is that it would ease surveillance effort and help on board guard and/or escort vessel to spot and identify any approaching boat and have ample reaction time to dispose off suspected boat at sea.

f. Semi enclosed harbours in the VSA may be closed to traffic at night to prevent suicide boat attack.

g. Enforce surveillance around the port and anchorage.

h. Unloading cargo in the shortest possible time.

j. Activities of crew of anchored ships may be monitored.

**concern for
security should
not slow down
ocean trade**

In the course of precautions whenever and wherever an act of maritime insecurity occur, *all*, irrespective of cast, creed, religion and nationality, are affected – directly or indirectly. Maritime insecurity caused by international terrorism is a common problem and concern. We should convert the common concern into common decision to act collectively and resolutely to preserve maritime security. It should be acknowledged that to *eliminate the burden of sea terrorism, combined active endeavour* is imperative. While we fight the elements of sea terrorism, some time should also be spent to find out 'what' has created the evils of international sea terrorism.

Commander Mohammad Abdur Razzak, BN, was commissioned into the Bangladesh Navy on 1 June 1984. He graduated from Defence Services Command and Staff College (DSCSC), Bangladesh and attended Naval War Course in Turkey in 1999-2000 and 2001-2002 respectively. He has had a number of papers published in *Bangladesh Armed Forces Journal*, *Journal of Bangladesh Institute of International and Strategic Studies*, *Mirpur Papers* (Journal of DSCSC), *The Naval Review*, UK and in the USA's *Proceedings*. He was the "Second Honourable Mention" winner in the International Navies Essay Contest 2000 organised by the US Naval Institute. Presently he heads the

School of Logistics and Management, Bangladesh Navy. ✉

(Endnotes)

- ¹ Jane's Navy International, Volume 107, Number 8, October 2002, p. 29.
- ² Admiral Sir Alan West, First Sea Lord and Chief of the Naval Staff, UK, Jane's Navy International Supplement, 2005, p. 23.
- ³ International Military and Defense Encyclopedia, Volume-2, Brassey's (US), Inc. New York, 1993, p. 537.
- ⁴ War on Terror
- ⁵ Passenger ships, including high-speed passenger craft, cargo ships, including high-speed craft of 500 gross tonnage and upward; and mobile offshore drilling units.
- ⁶ B Raman: Promoting Effective Collective Action to Counter Terrorism, Indian Defence Review, Apr-Jun 2004, Vol. 19 (2), p. 10.
- ⁷ *LIMASSOL* was a LTTE (Liberation Tigers of Tamil Elam – fighting for independent Tamil homeland in Sri Lanka) freighter operating in disguise. In May 1997, the Zimbabwe Defense Industry shipped a consignment of 32,000 rounds of mortar shells on board *LIMASSOL* for Sri Lankan Government. Shipment was done without knowing it to be LTTE freighter. USA declared LTTE a terrorist organization
- ⁸ LTTE's guerilla wing at sea.
- ⁹ NATO briefing on *Operation Active Endeavour* April 2004, Internet 16 July 2005.
- ¹⁰ *ibid*.
- ¹¹ BBC World News, 14 July 2005 at 0800 GMT.
- ¹² Interview Dato Sri Mohd Najib Tun Abdul Razak, Malaysian Deputy Prime Minister and Defence Minister; *Jane's Defence Weekly*, Volume 42, Issue 48, 30 November 2005.
- ¹³ NATO briefing, Op. cit.



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People Smuggling

COMMANDER STEPHANIE MOLES, RAN

Captain Rinnan intended to head for Indonesia but was persuaded by the asylum seekers, mostly Afghanis, to proceed to Australia

It has been two years since Arne Rinnan, the captain of the Norwegian registered MV *Tampa*, rescued 436 asylum seekers² from the stricken vessel *Palapa*. Captain Rinnan intended to head for Indonesia but was persuaded by the asylum seekers, mostly Afghanis, to proceed to Australia. The *Tampa* sailed for Christmas Island, the nearest Australian territory, where a stand off with the Australian Government³ ensued for several days.⁴ The government would not allow Captain Rinnan to land the asylum seekers or even enter territorial waters. This hardline approach toward asylum seekers onboard *Tampa* drew world condemnation and thrust illegal immigration and people smuggling⁵ issues into the spotlight.

Illegal immigration, in particular unauthorised arrivals by boat, poses a challenge in terms of border control for the government.⁶ Any solution needs to represent national interests while at the same time ensuring Australia, as a good global citizen, meets obligations to the international community. These obligations are cast in international law which is basically a system of rules and principles that aim to govern relations between sovereign states. International law is one of the key factors which a responsible government should consider before deciding on a course of action.⁷

This article aims to assess whether the 1982 *United Nations Convention on the Law of the Sea* (UNCLOS) and the 1951 *Convention Relating to the Status of Refugees*⁸ impacts on extant government policy concerning illegal immigration. Firstly a background on illegal immigration is provided to place the problem in both an international and national context. The subsequent development of Australia's policies to deal with this challenge is presented

to highlight the firm approach taken by the government. The article then examines relevant rules of law with respect to recent events to establish if Australia's policies and domestic law are consistent with international law. Finally, the article assesses the extent to which international obligations have been upheld or, on the other hand, Australia's national interest has prevailed at the cost of good global citizenship.

BACKGROUND

There has been growing international concern since the late 1990s, particularly in Western democratic countries, over the frequency with which asylum seekers use people smuggler services in order to immigrate illegally. Indeed, according to the International Organisation for Migration (IOM), people smuggling has emerged as a successful global industry involving the illegal movement of around four million people illegally for USD 7-10 billion per year.⁹

The people smuggling network has, over the years, become more sophisticated. Many countries feel that their national sovereignty has been compromised by the escalating numbers of asylum seekers attempting to gain entry across their borders. This concern has grown particularly since September 11 and the Bali bombings. A climate of suspicion and vulnerability has developed. Countries want control over who enters their territory - a task made more difficult when the numbers of asylum seekers grow and the people smugglers become more organised. The United Nations High Commission for Refugees (UNHCR) states that poverty, economic disparities, labour market opportunities, limited scope for legal migration and conflict will continue to motivate people to use

people smugglers in the future.¹⁰ Indeed the pressure from illegal immigration is expected to increase over the next 25 years - the only real solution being the long term aim of improving living standards, political stability and democratic institutions in countries of origin.¹¹ Hence people smuggling in the short to medium term will continue as a global problem that requires the coordinated efforts of governments around the world to resolve. Examples of recent regional and international efforts to address this problem include two Regional Ministerial Conferences on People Smuggling¹² and the signing of 'The People Smuggling Protocol' by 95 countries in December 2001.¹³

Australia's current level of concern with regard to this problem is encapsulated by Philip Ruddock's comment that *people smuggling must first be recognised for what it is: a profitable and direct attack on a state's sovereign right to determine who may enter and remain in its territory*.¹⁴ Government concern developed incrementally after 1975 in response to the first unauthorised boat arrivals. Concern has intensified since 1999 due to a significant increase in illegal immigrant numbers. There were 8316 illegal immigrant arrivals by boat between July 1999 and June 2001 compared to 4114 in the preceding ten years. This represented more than a 100% increase in numbers with a corresponding shift in the nationality of illegal immigrants from Asian to Middle Eastern.¹⁵

AUSTRALIA'S POLICY RESPONSE

The government maintains that current illegal immigration policies are consistent with obligations under international law and asserts that Australia, as a sovereign country, can decide who can and who cannot enter

and stay in its territory.¹⁶ Various *Migration Act 1958* amendments and other related legislation provide convenient signposts to track the government's policy development with respect to illegal immigration.

The *Migration Act 1989* reduced discretion by departmental officers and tightened control of the immigration program by the introduction of mandatory deportation of illegal entrants. The *Migration Reform Act 1992* introduced mandatory detention for all unlawful non-citizens while status determination processes were conducted.¹⁷ In 1999 further amendments of the *Migration Act* created provisions for people smuggling offences and a three year temporary protection visa for unauthorised arrivals in lieu of a permanent protection visa.¹⁸ Border protection legislation was also passed in 1999 which gave the Australian Defence Forces substantial new powers exercisable without a warrant.¹⁹ In 2001, as a result of the *Tampa* incident, six Acts were passed that had significant effects on illegal immigration.²⁰ These effects included retrospective validation of border protection measures taken with *Tampa*, wider enforcement powers under the *Customs and Migration Acts*, the excision of offshore territories from the migration zone for the purpose of visa applications, a new protection, humanitarian and refugee visa regime, partially codified refugee assessment criteria, mandatory sentencing for people smugglers and a privative clause²¹ relating to judicial review of migration decisions.²² The new 2001 legislation provided the framework for the 'Pacific Solution' where asylum seekers are housed and processed at Papua New Guinea or Nauru but paid for by Australia.

The legislative responses between 1989 and 2000 illustrate that

government's stance had toughened against illegal immigration with an emphasis on detecting, escorting and detaining asylum seekers. In 2001 the policy shifted to prevention and deterrence.²³ The government's new policy did not allow unauthorised arrivals to land on Australian territory in an uncontrolled manner for the purpose of claiming refugee status.²⁴ This policy was effectively implemented by a change in Navy operations from Operation *Cranberry*, a reactive posture, to Operation *Relex*, a forward deterrence posture.²⁵

In concert with these legislative changes the government also implemented a number of strategies over the last five years to combat illegal immigration. In 1999 the Prime Minister established a coastal Surveillance Task Force which recommended a number of actions to strengthen coastal surveillance procedures. These included improved Navy, Coastwatch and Customs capabilities, harsher penalties for people smugglers and international efforts aimed at source and transit countries.²⁶ A second task force formed - the Unauthorised Arrivals in Australia - which looked at issues of international cooperation to combat irregular migration and people smuggling.²⁷ At the same time the government prides itself on its 'managed' immigration policy where 12 000 refugees are provided with residence in Australia each year. The government states that this figure is threatened each time unauthorised arrivals reach our shores making it even more determined to defeat people smuggling and the perceived abuse of Australia's refugee determination processes.²⁸

APPLICABLE RULES OF LAW

Australia is constrained in its actions against unauthorised boat arrivals that breach domestic immigration law by

two key international conventions - UNCLOS and the Refugee Convention.²⁹ There are also other rules of law appropriate for consideration in the analysis of illegal immigration issues such as the Vienna Convention on the Law of Treaties (VCLT) 1969, the International Convention on Maritime Search and Rescue (ICMSR) 1979, Australia's *Migration Act 1958* and the *Acts Interpretation Act (AIA) 1901*.

The government's ability to effectively deal with people smuggling depends to a large extent on its powers in the various maritime zones of jurisdiction articulated by UNCLOS. Firstly two maritime zones under sovereignty are applicable in Australia's case - internal waters and the territorial sea. Article 8 states that the waters on the landward side of the territorial sea form part of the internal waters. Articles 2 and 3 establish state sovereignty over the territorial sea, out to a limit not exceeding 12 nautical miles. Combining articles 2 and 8 enables inference that internal waters are the same as land territory for jurisdictional purposes. A state's sovereignty over its territory is absolute and complete but is still limited by international obligations under customary international law and treaty obligations.³⁰ A limiting factor to a state's sovereignty in the territorial sea is found under Article 17 where ships of all states enjoy the right of innocent passage. Article 19, however, stipulates that a passage is no longer innocent if it prejudices the peace, good order or security of the state. In particular a passage is deemed prejudicial if the ship unloads any person contrary to the immigration laws of the coastal state or is involved in any activity that does not have a direct bearing on the passage. Article 25 gives the state jurisdiction to take the necessary steps in its territorial sea to prevent passage which is not innocent. Article 33 establishes the

The Migration Reform Act 1992 introduced mandatory detention for all unlawful non-citizens while status determination processes were conducted

contiguous zone 24 nautical miles from the baseline of the territorial sea where a state may exercise the control necessary to prevent infringement of its immigration laws within its territory or territorial seas. Article 98 details a ship's duty to render assistance to any person found at sea in danger of being lost or to rescue people in distress if informed of their need for assistance. Additionally under Article 98 (2) every coastal state shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service.³¹

The Refugee Convention entered into force on 22 April 1954 and represents a consolidation of previous international instruments relating to refugees. It provides comprehensive codification of refugees' rights and lays down basic minimum standards for the treatment of refugees. The scope of the Convention was limited to persons who became refugees as a result of events occurring before 1 January 1951. As time passed and new refugee situations emerged, international feeling was that refugee provisions needed to be widened. Accordingly, on 4 October 1967 the Protocol relating to the Status of Refugees came into force. This protocol applies the substantive provisions of the Refugee Convention to all refugees regardless of the date. Recently the Refugee Convention has come under criticism for being out of touch with today's reality that people smugglers abuse the protection regime offered for refugees. This has resulted in Western countries being more restrictive in their interpretation of the convention. Erika Feller, UNHCR's Director of International Protection, asserts that a restrictive reading of the Refugee Convention is not the appropriate reaction. The basis of the convention is timeless.³² Two articles are considered so fundamental by the Office of the

UNHCR that no reservations may be made to them.³³ The first is Article 1 which 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it.³⁴

The second is the principle of non-refoulement articulated by Article 33, according to which a refugee cannot be expelled or returned by a state in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened.³⁵ Article 31 covers refugees unlawfully in the country of refuge who may not have penalties imposed upon them on account of their illegal entry as long as they present themselves without delay to the authorities.³⁶

The VCLT has been described as the most important piece of work undertaken by the International Law Commission.³⁷ This convention entered into force on 27 January 1980 and is a comprehensive code of rules governing the law of treaties.³⁸ Three provisions are pertinent³⁹: Article 27 regarding a state's internal law and observance of treaties⁴⁰, Article 29 on the territorial scope of treaties⁴¹ and Article 31 on the general rule of interpretation⁴².

The ICMSR is aimed at developing an international search and rescue (SAR) plan so that no matter where an accident occurs, the rescue of persons in distress at sea will be coordinated by a SAR organisation.⁴³ There are two relevant articles⁴⁴: Article 2.1.9 where a state shall take urgent steps to provide the most appropriate assistance

available and Article 2.1.10 where assistance shall be provided regardless of nationality or circumstance.⁴⁵

As previously described, the government has enacted domestic legislation to address illegal immigration issues. In particular the *Migration Act 1958* is complex legislation that specifies requirements to be met by those who wish to enter and remain in Australia. It is through the *Migration Act* that Australia articulates its obligations under international law. Section 5 of the *Migration Act* defines the migration zone. Basically the migration zone is made up of the land area, starting at the low water mark, of all the states and territories of Australia.⁴⁶ Port precincts are also included in the migration zone.⁴⁷

Interpretation legislation, such as AIA, plays a fundamental role in promoting desirable features in drafting legislation. These features include brevity and consistency between different pieces of legislation.⁴⁸ The relevant article is under Section 15B concerning application of Acts in the coastal sea. Every Act shall be taken to have effect in the coastal sea as if it were a part of Australia. The coastal sea is defined as the territorial sea of Australia.⁴⁹

APPLICATION OF RULES OF LAW

To understand the impact of international law on Australian policies, it is useful to apply relevant rules of law to recent events - the *Tampa* incident and the 'Pacific Solution'. On 29 August 2001 *Tampa* entered Australian territorial waters without authorisation and intended to land its passengers due to the Captain's concern for his ability to care for them onboard. Was Australia under obligation to accept these passengers? Article 98 places the duty to render assistance on the master of the ship not the nearest coastal state.

Basically the migration zone is made up of the land area, starting at the low water mark, of all the states and territories of Australia

Australia is only required to operate a SAR service under Article 98. However under the ICMSR Articles 2.1.9 and 2.1.10, states must provide the most appropriate assistance available after receiving information that a person is in distress at sea, no matter what the circumstance. The *Palapa* sank within the Indonesian SAR area of responsibility. This was recognised by Captain Rinnan when he intended to return the passengers to Indonesia but was persuaded to go to Australia.⁵⁰ This raises the question of whether rescued persons are able to select their destination. This proposition seems unreasonable as the master of the ship together with the SAR organisation would decide the best destination taking a number of factors into account. The *Tampa* passengers did however select their destination and Australia provided extensive humanitarian aid to the ship at anchor. Therefore, Australia met the obligation to render assistance.

The *Tampa* was stopped in the territorial sea and boarded by the Special Air Service. Government took the position that the passengers could not be landed at Christmas Island. The boarding of *Tampa* is an issue that is covered by UNCLOS under a number of articles. The ship was in territorial waters under Australian sovereignty (Articles 2 and 3) and if not in innocent passage (Articles 17 and 19) Australia was entitled to take the necessary steps to prevent the passage (Article 25). These necessary steps would include boarding in order to stop the *Tampa* from entering internal waters. The *Tampa* was not in 'innocent passage' as it intended to land its passengers, which was in contravention of Australia's immigration regulations. Thus Australia was well within its rights to board the ship and ask the Captain to leave territorial waters.

The *Tampa* remained in territorial

waters and on 1 September 2001 the government announced that *Tampa's* passengers would be moved onboard HMAS Manoora and taken to Nauru for processing of asylum claims.⁵¹ What precisely was the status of the passengers? The government was well aware that the original vessel *Palapa* was being used by people smugglers to facilitate the arrival of asylum seekers in Australia. This partly explains the reticence to accept passengers off *Tampa* because in reality the government wished to deal with this incident for what it really was - illegal immigration not a duty to render assistance. From an illegal immigration perspective, the government was focused on denying *Tampa* entry into the migration zone which in this case was the port precinct of Christmas Island. Entry into the migration zone is the definitive point where Australia acknowledges international obligations under the Refugee Convention. If entry is achieved, the asylum seeker can access the protection visa regime offered under the *Migration Act*. The outer limit of the migration zone is the mean low water mark which effectively means a person must be standing on land or be in the port before they can claim asylum. This situation has greatly reduced the area available to asylum seekers within which they can activate their claim.

On the other hand the provisions under Article 2 of UNCLOS clearly say that sovereignty of a coastal state extends beyond its land territory to the territorial sea. It seems, therefore, that the *Migration Act* does not accord with Article 2 because the migration zone should actually include the territorial sea. In support of this position, the AIA states that every Act shall be taken to have effect in the coastal sea as if it were a part of Australia, and the coastal sea is defined as the Australian territorial sea. Thus it could be said

The Tampa was stopped in the territorial sea and boarded by the Special Air Service

that an asylum seeker is 'in Australia' when a vessel enters the territorial sea. The asylum seekers onboard *Tampa* should therefore have been taken ashore at Christmas Island for status determination processes. In addition, the legislation that excised territories (Christmas, Cocos and Ashmore Islands) from Australia's migration zone for the purpose of denying visa application rights contravenes UNCLOS by attempting to limit sovereignty for particular purposes such as immigration. Applying the VCLT provides further insight into the shortcomings of domestic legislation. Obligations under the Refugee Convention begin as soon as asylum seekers enter the Australian territory, including in the territorial sea off Christmas Island. The government cannot abrogate its responsibilities on account of its internal laws.

The transfer of asylum seekers to Nauru and the 'Pacific Solution' raise further issues. Was Australia competent to craft domestic laws to authorise the implementation of status determination processes offshore in another country? The legalistic answer appears to be 'yes'. Obligations under the Refugee Convention were still met by Australia because the refugee definition was applied offshore during the status determination process. Once a refugee had been 'approved' the government would take resettlement action. For example, as of October 2002 1495 people on Manus and Nauru sought refugee status determination. Of these 701 have been approved and 200 refugees have been allowed into Australia. Others have been sent to New Zealand and Sweden.⁵² As well, obligations for non-refoulement were met during the *Tampa* affair and the 'Pacific Solution'. The government did not send prospective refugees back to the place of persecution. Instead asylum seekers were turned

Illegal immigration poses a serious challenge for the government in light of the heightened security-conscious environment of today's world

away from Australia only to countries where formal service agreements to host processing centres were in place. These centres, paid for by Australia, are managed by the IOM until refugee status is determined.⁵³ Finally the obligation under Article 31 not to penalise refugees unlawfully in the country of refuge requires discussion because detention of asylum seekers could be seen as a penalty. Detention centres have come under intense human rights criticism, particularly for poor living conditions and children behind bars. Detention has been strongly asserted as a violation of the Refugee Convention.⁵⁴ On closer examination of Article 31 (2) however, necessary restrictions on the movement of refugees are permitted until their status in the country is regularised. It is reasonable therefore that until an asylum seeker has their status determined as a refugee, Australia can restrict movement or detain asylum seekers in order to facilitate the identification process. Restriction of movement has been translated in the *Migration Act* as mandatory detention and while this wording is unfortunately harsh, it is consistent with the Refugee Convention.

CONCLUSION

Illegal immigration poses a serious challenge for the government in light of the heightened security-conscious environment of today's world. People smuggling is seen as a threat to national sovereignty and has been identified in international forums as a significant problem. Numbers of asylum seekers over the next 25 years are expected to increase due to world economic disparities and continued conflict. They will continue to utilise people smugglers in their search for a better life with the only long term solution being an improvement in

living standards, political stability and democratic institutions in countries where asylum seekers originate.

Any approach adopted by the government to address illegal immigration must accord with international obligations so that Australia can maintain its record as a good global citizen. The government has an unashamedly tough approach to asylum seekers. The current policy of prevent and deter came into force in 2001 whereby no unauthorised arrivals would be allowed to land on Australian territory in an uncontrolled manner. Domestic legislation was enacted to set the framework for the government's 'Pacific Solution' which authorises offshore processing of asylum seekers in a different country.

My assessment is that the international obligations of UNCLOS and the Refugee Convention do and must significantly impact on extant government policies. However, although the government's policy approach to illegal immigration has been legitimised in the *Migration Act*, I believe that the basis of this domestic legislation is flawed and at odds with international law. In particular the migration zone defined in the *Migration Act* has effectively retracted jurisdiction from the territorial sea – but only with respect to immigration. This is inconsistent with UNCLOS and ultimately reduces the opportunity of an asylum seeker to establish a claim under the Refugee Convention. So, no matter how the government complies with international obligations in certain areas, a balance between UNCLOS, the Refugee Convention and the *Migration Act* – which is supposed to implement this international standard – has not been achieved. This could damage Australia's reputation, if it hasn't already, as a good global citizen. 🌐

(Endnotes)

¹ CMDR Stephanie Moles joined the RAN in 1986 and graduated from ADFA in 1988 with a BSc. In 1989 she completed the Supply Officers' Application Course in HMAS CERBERUS and for the next three years was posted to the submarine base, HMAS PLATYPUS in various junior supply officer positions. From 1993-94 she joined HMAS NEWCASTLE as the Deputy Supply Officer and was a member of the commissioning crew. In 1995 she posted to the Combat Data Systems Centre in Canberra, followed by two years at ADFA as a Divisional Officer. Promoted to LCDR in 1998, she was posted in charge of NAVALLOW Services within Manager Configuration, Certification and Allowances. During this time she also studied externally and was awarded a MBA from the Southern Cross University in 1999. In 2000 she was awarded her Supply Charge qualification and joined HMAS ADELAIDE as the Supply Officer. On completion she returned to Canberra in 2002 to the Directorate of Navy Capability, Performance and Plans in Navy Headquarters before proceeding on the Australian Command and Staff Course. She was promoted to Commander in 2003.

² Asylum seekers are people who seek asylum. Asylum is generally regarded to mean the protection provided by a country to refugees on its territory; Department of Foreign Affairs, 1996-2003, *People on the Move – Facts at a Glance*, Viewed 21 August 2003 at <http://www.dfat.gov.au/illegal_immigration/people_on_the_move_definitions.html>, p 1.

³ Hereafter referred to as 'the government'.

⁴ Kaye, S. 'Tampering with Border Protection: The Legal and Policy Implications of the Voyage of the MV Tampa' in *Protecting Australia's Maritime Borders: The MV Tampa and Beyond*, Martin Tsamenyi & Chris Rahman, (eds), Centre for Maritime Policy, University of Wollongong, 2002, pp59-60.

⁵ People Smuggling is procuring the illegal entry of a person into a state of which the person is not a national or permanent resident, in order to obtain a financial or other material gains. Defined in Article 3 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, UN Convention against Transnational Organised Crime; Department of Foreign Affairs, 1996-2003, op cit, p 1.

⁶ Millbank, A., 1999, 'Boat People, Illegal Migration and Asylum Seekers: in Perspective', *Current Issues Brief 13 1999-2000*, Department of the Parliamentary Library 14 December 1999, Viewed 20 August 2003 at <<http://www.aph.gov.au/library/pubs/cib/1999-2000/2000cib13.htm>>

⁷ Dixon, M., 1990, *Textbook on International Law*, Blackstone Press Ltd, London, p 2.

⁸ Hereafter referred to as 'the Refugee Convention'.

⁹ Department of Immigration and Multicultural Affairs, 2002, *People Smuggling-Australia's Experience and Policy responses – A background paper*, viewed 21 August 2003, <<http://www.minister.immi>

gov.au/borders/detention/peoplesmugg.htm>, p 3.

¹⁰ UNHCR World News, 2002, *Common Agreement Reached on People Smuggling*, Viewed 22 August 2001 at <<http://www.unhcr.ch/cgi-bin/tenis/vtx/home/+AwWBmepVX-swwwwwZwwwwwWhFqnN>>, p 1.

¹¹ Millbank, A, 1999, op cit, p 12.

¹² Two Regional Ministerial Conferences on People Smuggling, Trafficking in Persons and Related Transnational Crime were held in Bali in February 2002 and April 2003 in response to escalating numbers of people attempting to move illegally through the region. 38 ministers representing 36 countries attended and pledged their commitment to enhancing regional cooperation to combat people smuggling. Department of Foreign Affairs and Trade, 2003, *Second Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime*, Bali 29-30 April 2003, Viewed at <http://www.dfat.gov.au/illegal_immigration/bali_conference_0403_bkg_paper.html>, p 1.

¹³ Australia signed the People Smuggling Protocol to the United Nations Convention against Transnational Organised Crime on 22 December 2001. Department Foreign Affairs and Trade, 2001, *Australia Signs UN Protocols to Combat People Smuggling and Illicit Manufacturing of and Trafficking in Firearms*, Media Release, FA188/22 December 2001, Viewed at <http://www.dfat.gov.au/media/release/foreign/2001/fa188_01.html>, p 1.

¹⁴ Ruddock, P, 2001, 'What the United Nations Should Do About People Smuggling' in *United Nations Chronicle online edition*, Viewed 26 August 2003 at <<http://www.un.org/Pubs/chronicle/2001/issue2/0102p34.htm>>, p 1.

¹⁵ Department of Immigration and Multicultural Affairs, 2001, *Background Paper on Unauthorised Arrivals Strategy MPS 131/2001*, Viewed 21 August 2003 at <http://www.minister.immi.gov.au/media_releases/media01/r01131_bgpaper.htm>, p 2.

¹⁶ Department of Immigration and Multicultural Affairs, 2003, *New Measure to Strengthen Border Control*, Viewed 19 August 2003 at <http://www.immi.gov.au/facts/71border_1.htm>, p 1.

¹⁷ York, B, 2003, *Australia and Refugees, 1901-2002 Annotated Chronology Based on Official Sources: Summary*, Department of the Parliamentary Library, Chronology no.2 2002-03, Viewed 20 August 2003 at <<http://www.aph.gov.au/library/pubs/chron/2002-03/03chr02.htm>>, p 10.

¹⁸ Ibid, p 14.

¹⁹ Gately, W., & Moore, C. 'Protecting Australia's Maritime Borders: The Operational Aspects' in *Protecting Australia's Maritime Borders: The MV Tampa and Beyond*, Martin Tsamenyi & Chris Rahman, (eds), Centre for Maritime Policy, University of Wollongong, 2002, p 46.

²⁰ Six Acts passed on 26 September 2001 were: *Migration Amendment (Excision from Migration Zone) Act 2001*, *Migration*

Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001, *Migration Legislation Amendment (Judicial Review) Act 2001*, *Migration Legislation Amendment Act (No 1) 2001*, *Migration Legislation Amendment Act (No 6) 2001*, *Border Protection (Validation and Enforcement of Powers) Act 2001*

²¹ A privative clause operates to give decision makers wider lawful operation for their decisions and thereby reduces the grounds on which the courts can set aside such decisions as being unlawful. Ruddock, P., 2002, 'The Immigration Policies of the Commonwealth Government', in *National Observer*, No. 54, Spring 2002, p 16.

²² York, op cit, p 14-15.

²³ Senate Select on a Certain Maritime Incident, 2002, *A Certain Maritime Incident*, Senate, Parliament of Australia, Viewed 30 August 2003 at <http://www.aph.gov.au/senate/committee/maritime_incident_ctte/report/contents.htm>, pp 13-14.

²⁴ Ibid, p 3.

²⁵ Ibid, p 14.

²⁶ New legislation such as the *Border Protection Legislation Amendment Act 1999* resulted from recommendations made by the Coastal Surveillance Task Force.

²⁷ Department of Immigration and Multicultural Affairs, 2001, op cit, pp2-3.

²⁸ Ruddock, op cit, p 14.

²⁹ Australian Command and Staff College, 2003, *CMP 902 Law of the Sea*, University of Wollongong, Centre for Maritime Policy, p 23.

³⁰ Dixon, op cit, p 79.

³¹ Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs, 1997, 'United Nations Convention on the Law of the Sea' in *the Law of the Sea*, pp 23-57.

³² UNCHR, 2002, 'A Timeless Treaty Under Attack: Reconsidering the Convention', in *The 1951 Refugee Convention*, Viewed 25 August 2003 at <<http://www.unhcr.ch/1951convention/protection-work.html>>, pp1-2.

³³ Office of the United Nations High Commissioner for Refugees, 1996, *Introductory Note, 1951 Convention Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees*, Resolution 2198, Geneva, Viewed 20 August 2003, <<http://www.unhcr.md/artpdf/51conv67prot.pdf>>

³⁴ *1951 Convention relating to the Status of Refugees*, Article 1, Viewed 20 August 2003 at <<http://www.unhcr.md/artpdf/51conv67prot.pdf>>

³⁵ Ibid, Article 33

³⁶ Ibid, Article 31

³⁷ Dixon, op cit, p 206.

³⁸ Maryan Green, N.A., 1987, *International Law Third Edition*, Pitman Publishing, London, p 163.

³⁹ International Law Commission, *Vienna Convention on the Law of Treaties 1969*, Viewed 30 August 2003 at <<http://www.un.org/law/ilc/texttreatfra.htm>>.

⁴⁰ Article 27 on the internal law and observance of treaties states 'A party may not invoke the provisions of its internal law

as justification for its failure to perform a treaty'.

⁴¹ Article 29 on the territorial scope of treaties states '...a treaty is binding upon each party in respect of its entire territory'.

⁴² Article 31 on the general rule of interpretation states that 'A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose'.

⁴³ International Maritime Organisation, *International Convention on Maritime Search and Rescue*, Viewed 3 September 2003 at <www.iom.org/conventions/contents.asp?doc-id=653&topic_id=257#5>

⁴⁴ *International Convention on Maritime Search and Rescue*, 1979, Viewed 3 September 2003 at <www.admiraltylawguide.com/conven/searchrescue1979.html>.

⁴⁵ Article 2.1.9 states that 'on receiving information that a person is in distress at sea in an area within which a Party provides for the overall co-ordination of search and rescue operations, the responsible authorities of that Party shall take urgent steps to provide the most appropriate assistance available'. Article 2.1.10 states that 'Parties shall ensure that assistance be provided to any person in distress at sea. They shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found'.

⁴⁶ *Migration Act 1958*, Viewed 30 August 2003, <<http://scaleplus.law.gov.au/html/pasteact/0/436/0/pa000130.htm>>

⁴⁷ Migration zone means 'the area consisting of the states, the territories, Australian resource installations and Australian sea installations and to avoid doubt includes: a) land that is part of a state or territory at mean low water and b) sea within the limits of both a state or a territory and a port; c) piers, or similar structures, any part of which is connected to such land or to ground under the sea; but does not include sea within the limits of a state or territory but not in a port.

⁴⁸ Attorney-General Department, 1998, *Review of the Commonwealth Act Interpretation Act 1901*, viewed 3 September at <<http://www.law.gov.au/agd/Department/publications/introduction.htm>>

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⁵⁰ Kaye, op cit, p 60.

⁵¹ Hancock, N., 2001, 'Refugee Law - Recent Legislative Developments' *Current Issues Brief 5 2001-02*, Department of the Parliamentary Library, Viewed 21 August 2003 at <<http://www.aph.gov.au/library/pubs/CIB/2001-02cib05.htm>>, p 3.

⁵² Senate Select on a Certain Maritime Incident, op cit, pp 6-7.

⁵³ Ibid, p 6.

⁵⁴ Human Rights Watch, *Background: Refugee Convention Violations*, Human Rights News, Viewed 23 August 2003 at <<http://www.hrw.org/press/2001/12/refconbg1211.htm>>, pp1-2.



'Naval Networks: The Dominance of Communications in Maritime Operations'

THE 2007 'KING-HALL' NAVAL HISTORY CONFERENCE

CALL FOR PAPERS

'Communications dominate war; broadly considered, they are the most important single element in strategy, political or military.'

- Captain A.T. Mahan, USN, 1900.

'The object of naval warfare is the control of communications, and not, as in land warfare, the conquest of territory.'

- Sir Julian Corbett, 1911.

'Sea communication has opened up the whole world, and has played the greatest of all parts in spreading both knowledge and civilisation.'

- Captain W.H.C.S. Thring, CBE, RAN, 1928.

The fifth biennial 'King-Hall' Navy History Conference will be held in Canberra on 26-27 July 2007. The conference will be organised by the Sea Power Centre – Australia with assistance from the School of Humanities and Social Sciences, University of New South Wales at the Australian Defence Force Academy. The King-Hall Conference has become a significant event in the national and international sea power communities for its wide-ranging discussion of topical naval historical and maritime strategic issues. The conference is open to the public, and previous events have attracted a wide range of naval historians, academics and retired and serving military personnel, as well as interested lay people from Australia and overseas.

THEME

The broad theme of the 2007 conference is 'The Dominance of Communications in Maritime Operations'. Its aim is to analyse the influence of communications on the application of sea power in the broadest possible sense. The content will thus deal with both information and transport, and encompass issues ranging from the strategic importance of sea lines of communication through to the tactical use of communications in war and peace.

Maritime historians and strategists have long been conscious of the fundamental links between oceanic communications, naval strength and national achievement. In today's globalised economy the importance of such links is magnified but not always appreciated by policy makers and

outside analysts. Practitioners of sea power have likewise been aware that developments in strategy and tactics are closely related to the prevailing state of communications technology. But although navies are routinely at the forefront of the revolution in information management, seamless interoperability remains an elusive goal, and the extent to which force networking may have changed traditional naval roles remains unclear. By examining how the different elements of maritime communications have evolved and why perceptions have changed, this conference will use the past, not only as a subject of interest in itself, but as a guide to the future conduct of planning and operations.

PROGRAM

Various distinguished speakers from Australia and overseas will appear at the conference. The final program will emerge from the response to this call for papers, but is expected to cover the shifting demands facing both national and combined international sea power, together with case studies of command, control, communications and intelligence taken from the ancient world through to the 21st century. Gathered together, these papers will offer new insights into the future face of maritime strategy, the changing nature of global connections, and the continuing nexus between communications and command at sea.

PROPOSALS

Proposals for papers, providing an initial title and a one-page outline, should be submitted by 31 October 2006 to:

Dr D.M. Stevens
Director of Strategic and Historical Studies

Sea Power Centre – Australia
Department of Defence
CANBERRA ACT 2600

or david.stevens3@defence.gov.au

A decision on proposals will be available in early December 2006. If a proposal is accepted the presenter can expect conference registration, accommodation during the period of the conference, travel within Australia and appropriate meals and incidental expenses to be covered by the conference organisers.

FORMAT OF PRESENTATIONS

Presentations at the conference are expected to last 30-40 minutes followed by time for questions. A draft of the paper must be provided in electronic form at least one week prior to the event. To be eligible for publication final papers must be submitted by September 2007.

PUBLICATION

Selected papers will be published in a collected volume. The format will be similar to previous productions of the Sea Power Centre-Australia including: *The Face of Naval Battle* (Allen & Unwin, 2003); *The Navy and the Nation* (Allen & Unwin, 2005); and *Sea Power Ashore and in the Air* (forthcoming).

MORE INFORMATION

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Seapower: Defining the Ocean Future

MANOJ GUPTA



Does the 21st century navy require a different image of sea power? Sea power, measured in terms of a nation's capacity to extend its military power onto the seas in defiance of rivals and competitors, has traditionally focussed on a combat-ready navy. Sea power today, must also include the other familiar non-combat 'benign diplomatic' and 'constabulary' good order tasks.¹ So what is new or different in the image of sea power? It is likely the notion that sea power is undergoing change stems from the increasing necessity to possess national capabilities for non-combat maritime operations in equal measure if not more than a combat-ready navy.

Nations are not only confronted with a different image of sea power but have to contend with defining the future force structure. Maritime forces need to be combat-ready and operationally capable to meet the critical and varied non-combat requirements, such as, humanitarian assistance, peace operations, disaster relief, environmental and resource protection, drug interdiction, prevention of illegal immigration, and anti-piracy operations. The task of surveillance, monitoring, and control extends beyond maritime borders to the maritime commons. There is increasing realisation amongst nations that it is beyond the capacity of individual navies to accomplish all within the constraints of budgets, manpower, industrial capacity, and national infrastructure. What lends credence to a different image of sea power is the overriding necessity for sea-going nations to build non-combat maritime forces and on top of that collectively wield sea power. So how does a combat-ready 21st century navy adapt sea power to meet

the non-combat global threats to national security across the maritime commons?

CHALLENGES FOR THE FUTURE

Sea power since Mahan has mainly concerned a few nation states involved in one-to-one-combat. In the 21st century, sea power is a strange cocktail of continuity and change – challenges old and new. Given the nature of interstate politics, that still creates anxiety of invasion and war, the military concept remains fundamental to the image of sea power. In the post Cold War era, emerging non-military maritime threats to national prosperity from terrorism, weapons of mass destruction, piracy, illicit trafficking of people, arms, and drugs, over-exploitation of diminishing natural resources, environmental degradation, and natural disasters are all beyond the capacity of individual nations to deal with alone. Moreover, no maritime nation is free from the sometimes catastrophic effects of these events.

NEW OCEAN REGIME

Sea power in the 21st century is described by Geoffrey Till as the use of both military and civil maritime capabilities by a nation in the conduct of naval and commercial operations.² Therefore, it may be said that sea power depends on a nation's outlook towards 'use of the sea (ocean)' and the 'use of (military) power' at sea.

Broadly, fished and navigated for millennia, the 'use of the sea' now involves free passage of trade and access to the ocean wealth, protecting the marine ecosystem from environmental damage, and safeguarding the sovereign and territorial integrity of the nation. These form the trinity of ocean policy

Nations are not only confronted with a different image of sea power but have to contend with defining the future force structure

spheres - economic development, environmental protection, and maritime security - and derive their growing integration from the new ocean regime of the Exclusive Economic Zone (EEZ) under the UN Convention on the Law of the Sea, 1982.

The new ocean regime of the EEZ has altered nation's 'use of power' at sea from Mahan's purely military concept of 'command of the sea' to having the 'power to govern the sea'.³ The focus is now on nations' 'use of power' to safeguard national and in turn international 'use of the sea' within the EEZ and beyond on the high seas. This means two things. First, the military concept of sea power and the high seas regime of 'freedom of the seas' has to be balanced with undertaking good order tasks and the EEZ regime of 'control and regulation'. Second, all maritime nations, including great powers and medium powers, need to individually and/or in concert possess the capacity to exert sea power within the EEZ and the maritime commons beyond. The new ocean regime is one of a 'shared ocean, shared future'⁴ that calls for global ocean governance.

ATTRIBUTES OF SEA POWER

For the future, individual nation's 'power to govern the sea' holds the key to sustaining economic growth, providing protective security, and ensuring clean oceans for the benefit of not just their own people but all mankind. If nations do not develop sea power they not only undermine their own national interests but also global security, and nations will be unable to position themselves