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Viewpoint: Diplomatic Game-Changer:

How Recent Maritime-Related Initiatives Have Decisively Improved the Ability to Confront Terrorists/Criminals

Strategic Insights, Volume VIII, Issue 3 (August 2009)

by Brian Wilson

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Introduction

The use of naval assets as an instrument of foreign policy has existed for thousands of years. But a new period has surfaced to increase capability and capacity; strengthen communication, coordination and information sharing; and expand judicial authorities. Such partnering is unfolding in bilateral, regional and international venues with a shared aim of confronting common threats. It's certainly timely: Piracy off the Somali coast has affected virtually every nation on earth, and terrorists have repeatedly exploited the vulnerability of the oceans.

The maritime domain is a unique environment of flag state, port state and coastal state authorities: "The oceans, much of which are global commons under no State's jurisdiction, offer all nations, even landlocked States, a network of sea-lanes or highways that is of enormous importance to their security and prosperity. They are likewise a source of food, mineral resources, and recreation, and they support commerce among nations. They also act as both a barrier to and a conduit for threats to the security of people everywhere."^[1]

The challenge is daunting: In just the United States, there are more than 350 ports, 10,000 miles of navigable waterways, 110,000 commercial fishing vessels and approximately 70 million recreational boats. Collectively, \$700 billion annually in merchandise moves through U.S. ports and waterways. On a global scale, approximately 80 percent of transnational trade moves by water and two-thirds of the world's surface is comprised of ocean. Operationally, no one nation has the naval assets to patrol this vast expanse. Further, criminal offenses on the high seas frequently involve suspects, victims and witnesses who are nationals of various countries.

The inherent challenges of the oceans will always remain, but recent efforts have harnessed the collective strength of naval forces along with decisive political and judicial commitments. In so doing, they are positioning states to better respond to the myriad threats emanating from both the shore and water. These initiatives may vary in scope, but all reflect a respect for flag state sovereignty, political and legal commitments and inclusion of operational assets.

In the past decade, states created a criminal law treaty proscribing maritime terrorism and WMD transport, enhanced security measures in ports, established a ship tracking system to more effectively respond to maritime threats and collaborated to inspect shipping containers.

Importantly, among other things, these initiatives call on states to exchange information, implement domestic laws and adopt measures to extradite or prosecute, and are anchored by the United Nations Charter and the United Nations Convention on the Law of the Sea. They stand in stark contrast to one of the earlier maritime agreements—the Treaty of Tordesillas of 1494, which divided the world's oceans into two areas, half going to Portugal, the other to Spain.

In 2002, member states at the International Maritime Organization (IMO) developed and implemented the International Ship and Port Facility Security (ISPS) Code. This agreement provided a, "standardized, consistent framework for evaluating risk..." This structure includes, among other things, guidance on assessing ship and port facility security plans and monitoring and controlling people's access to such areas. The Proliferation Security Initiative (PSI) was launched in 2003. PSI does not have a standing organization or infrastructure. Rather, States commit (alone or with others) to share information and disrupt the transfer or transport of WMD, their delivery systems, and related materials. Actions taken as a result of PSI include operational interdictions resulting in the seizure of shipments containing proliferation-related cargo.

The Container Security Initiative (CSI) program sought to heighten security by collaboratively screening containers. Under CSI, shipping containers that may pose a terrorist risk are inspected in foreign ports before being transported to the United States. In part, CSI employs "intelligence and automated information—pre-screening of cargo, and detection technology, and encourages "smarter, tamper-evident" containers.

Amendments to an international criminal law treaty, the Suppression of Unlawful Acts (SUA) were approved at the IMO in 2005 (but have not yet entered into force). SUA Amendments provide, for the first time in a treaty, a framework for criminalizing the conduct of those who illicitly ship WMD, transport terrorists, or use a ship as a weapon. They also provide enforcement mechanisms to facilitate non-flag State boarding of vessels suspected of being involved in such illicit activity, and mandate that a State Party either prosecutes or extradites suspected SUA offenders. The 160-plus member-States of the IMO (which includes representatives from the United States, Great Britain, Russia, India, China, Pakistan, Iran and Cuba) met close to 10 times over approximately four years to amend this landmark treaty, modifying it to accommodate varying positions.

The underlying SUA Convention of 1988 was created in response to the hijacking of the cruise ship *Achille Lauro*, and accompanying murder of one of its passengers, in 1985. At the time, many countries did not have criminal legislation in place for the extradition or prosecution. SUA committed state parties to criminalize the unlawful and intentional seizure of, or control over, a ship by force. SUA further provides that state parties shall either prosecute a violation or extradite the offender. SUA and its 2005 amendments provide states with a framework within which to make real-time decisions to support boarding by other states, which should reduce the ability of criminals/terrorists to exploit seams between jurisdictions. The United Nations Security Council in 2008 suggested that states consider application of the 1988 SUA Convention to facilitate the extradition and prosecution of pirates.

The naval force and international action that is occurring in response to Somali piracy is unprecedented in the maritime domain. A loosely linked armada of warships from Australia, Britain, China, India, Iran, France, Pakistan, Russia and the United States, among others, have deployed to the Horn of Africa to ensure the sea lanes of communication. There is a unity of action off the Somali coast, even if they are not operating under a single, unified chain of command. In addition to four UN Security Council Resolutions in 2008, several working groups are currently developing protocols for strengthened state action against piracy.

Another significant action in the fight against terrorism/criminal action on the high seas is United Nations Security Council Resolution 1540, adopted in 2004, which affirmed, among other things, "that proliferation of nuclear, chemical and biological weapons as well as their means of delivery constitutes a threat to international peace and security."

Long Range Identification and Tracking of Ships (LRIT) was approved by member states at the IMO in 2006. LRIT enables states to identify, monitor, and intercept transnational maritime threats by providing the identity and position of ships off their shores. LRIT and the Automatic Identification System (AIS) are primary systems for collecting and sharing information, consistent with the International Convention for the Safety of Life at Sea (SOLAS). LRIT and AIS complement other sources to secure information, including air surveillance, radar and video cameras.

More broadly, maritime situational awareness serves to simplify the complex maritime security environment by:

1. enhancing transparency in the maritime domain to detect, deter and defeat threats as early and distant from shore/state interests as possible;
2. enabling accurate, dynamic, and confident decisions and responses to the full spectrum of maritime threats; and
3. sustaining the full application of the law to ensure freedom of navigation and the efficient flow of commerce.

Achieving maritime security situational awareness depends, in part, on the ability to monitor activities so that trends can be identified and irregularities differentiated.

While there isn't one action, initiative or treaty that will stop violence in the maritime domain, the ability to effectively pursue, prosecute and punish terrorists/criminals is critical to national security and economic stability. Toward that end, the actions of the past decade have created legal and operational frameworks that combine the collective strength of states' and private industry. These separate but complementary efforts underscore what can be done to confront a common threat.

Further refinement is necessary, including initiatives to pursue authorities to track money (and as appropriate, proscribe the transfer of funds) associated with criminal activity, including piracy. More than \$100 million in ransom payments have gone to pirates in Somalia in the past couple of years, fueling an industry that supports between 1,400 and 2,000 people. If criminals continue to have access to funds, in addition to sanctuary, the most ambitious treaties won't meaningfully affect their operations. Regional collaboration will also be a key factor in better positioning states to confront maritime challenges. The recent actions of leveraging diplomatic, military and legal objectives should be modeled going forward.

About the Author

Brian Wilson is Commanding Officer, Region Legal Service Office Naval District Washington, and previously developed global maritime security policy in the Office of the Under Secretary of Defense for Policy. The views expressed are those of the author and do not reflect the official policy or position of the Navy or the Department of Defense.

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1. Department of Homeland Security, [U.S. National Strategy for Maritime Security](#), Washington, DC, September 2005.