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Navies and Security in the Global Commons

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This paper examines the adequacy of navies in policing the 'commons' in an increasingly globalised maritime environment. It argues that navies are inherently disadvantaged in securing the globalised maritime environment, primarily on account of the seemingly irreconcilable contradiction between their necessarily Westphalian character and the globalised nature of the oceans. While this does not appreciably impact their primary role as protectors of sovereignty in state-on-state conflict, it considerably affects their secondary role of maritime policing. The paper goes on to examine the manner in which navies have transacted practically with the challenges posed by maritime globalisation.

Globalization has altered the dynamics . . . We have to respond to that.
- President-elect George W. Bush 16 January 2001[1]

Consider this scenario. A UK warship on patrol at an undisclosed location hears an SOS from a Chinese freighter – it is being attacked by pirates. The warship responds, making full steam towards the freighter's last known location, a mere hour away. En route, the man-of-war is informed by its headquarters that the Chinese vessel might be carrying critical nuclear components. It is necessary, then, to take measures

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to prevent the nuclear cargo from falling into the hands of the pirates, as they have known links with terrorist organisations.

By the time the British warship arrives at the scene, the Chinese merchantman is firmly under pirate control and making best speed towards the nearby pirate haven. A boarding operation is immediately considered. The warship has the wherewithal, and the nature of cargo justifies its intent; but international law forbids it from undertaking such an operation without Chinese consent.

The diplomatic wheels are turned expeditiously as the United States – the terrorist organisation's sworn enemy – adds urgency to the British request for permission to board the Chinese vessel. Two US warships in the vicinity are additionally diverted to aid the Royal Navy ship. Permission to board is granted by the Chinese, but reluctantly and after much convincing. This delay proves to be critical. The pirated ship has entered the territorial waters of its home base. The men-of-war are now forbidden by a different set of rules from carrying out any naval operation against the pirates. These rules privilege only the sovereign state with the right to conduct naval action in its territorial waters. But in this case, the sovereign state has neither the ability nor the will to conduct such an operation. This leaves the warships – with their vastly superior firepower – no option but to watch helplessly as the pirates take their dangerous loot ashore.

This fictitious, yet plausible, scenario is representative of some of the ''changed dynamics'' brought about by globalisation, that President George W. Bush was alluding to when he made the above appeal – six months before 9/11 – for a measured response to it. Unfortunately, the devastating attacks on the Twin Towers metamorphosed this appeal for deliberate action into the pandemonium of the ''War on Terror''. As a result, many of the aspects of globalisation stay insufficiently examined and responded to. One such area is the adequacy of navies to police maritime globalisation.

This paper argues that navies are inherently disadvantaged in securing the globalised maritime environment. The reason for this is the irreconcilable contradiction between their necessarily Westphalian character and the globalised nature of the oceans. While this does not appreciably impact their primary role as protectors of sovereignty in state-on-state conflict, it considerably affects their secondary role of maritime policing.

The Westphalian–globalisation conundrum faced by navies manifests itself in two major ways: first, it prevents the formulation of laws robust enough to empower navies; and second, it prohibits them from cooperating in the manner needed to effectively police the maritime common. With the world dependant on globalisation and globalisation itself dependant on the maritime environment, this is a situation that is hardly affordable. It is, therefore, contended that for the purpose of maritime policing, there exists a pressing need to replace state-based navies with a seagoing force that is unrestrained by sovereign issues.

There is an urgency for deliberation on the ability of navies to secure the oceans. This stems from the critical dependence of the world's economy on the maritime highway. If globalisation is about interconnectedness, maritime globalisation is about translating this interconnectedness into tangible effect. This is because the open oceans are still the prime medium for thoughts and financial flows transmitted along today's information network to be translated into products that are sold or consumed. 90% of world trade, when measured by weight and volume, is transported by sea.[2] But this in itself is not new; trade has been conducted over sea since time immemorial. What has changed since then, however, is the magnitude and character of this seaborne trade; and this has happened most significantly over the past 30 years.

Maritime trade has evolved in two distinct ways: it has grown at an unprecedented scale, and it has globalised in the manner it functions. The unprecedented growth is apparent from the 2005 International Maritime Organisation (IMO) background paper which stated that: ''over the last four decades, total seaborne trade estimates have more than quadrupled''.[3] More astonishing than this increase in volume of maritime trade is the manner in which it has globalised. Merchant ships that were traditionally identifiable in terms of national fleets are no longer open to such a method of classification.

The main reason for this is the penchant of ship owners to register their vessels in foreign countries. These ''flags of convenience''[4] allow them to evade domestic laws that mandate payment of higher taxes for the maintenance of ships, and bigger salaries to the crew. As a result, over the past 36 years there has been a 281% increase in the world's tonnage of ships that are foreign flagged.[5]

This rapid growth and globalisation of merchant shipping has two security implications. These could be broadly classified as threats ''to'' maritime globalisation

and threats ''from'' maritime globalisation. Threats ''to'' would cover those actions that directly impact merchant vessels and the free flow of trade, and would include: piracy, terrorist attacks on ships, and regional disruptions.

Threats ''from'' could be classified as those that use merchant ships as a vehicle to achieve objectives ashore. These would include: smuggling of drugs, arms and people; vessel-borne improvised explosive devices (IEDs); and, proliferation of chemical, biological, radiological, nuclear and high-explosive weapons. Most of these threats have manifested themselves in one form or the other over the past 30 years, some more alarmingly than others. But as maritime trade evolves, these threats hold the potential for far more far-reaching consequences.

This is especially disquieting when viewed in the context of the fact that its protectors, the world's navies, seem to have hardly transformed; neither in structure nor character. For example, the US Navy presently boasts a force of ships lesser in number and type to that it had in 1982.[6] While these ships have undoubtedly evolved technologically, there is no readily apparent change in their disposition or role that reflects the need to watch over the increasingly large and globalised merchant fleet. The US Navy still seems to be predisposed towards its primary role of high-end war-fighting. This is, to a large extent, mirrored across the navies of the world; giving cause for a close examination of navies' ability and inclination to secure the maritime world.

Concepts in Contradiction

The 1648 Treaty of Westphalia is generally accepted as the moment of the development of the concept of sovereignty (or Westphalianism).[7] The concept prescribed by it roughly endures to this day. ''It assumes that the high politics of war and military rivalry dominate the international agenda, and that states will subordinate other objectives to those priorities''.[8] This concept is realist in nature and has been challenged by the more recent, liberal notion of ''globalisation''. Globalisation champions ''the de-territorialisation of economic and political affairs, the ascendance of highly mobile, transnational forms of capital, and the growth of global forms of governance''.[9] Thus while, on the one hand, sovereignty calls for inclusiveness, globalisation, on the other, proposes openness and interdependence.

While both concepts have co-existed for some time, the contradictions between the two have manifested themselves most intensely in the recent past. The realist template of sovereignty, which was the basis of the creation of the United Nations at the end of the Second World War, was carried to stratospheric heights in the Cold War by the amorality of potential "omnicide".[10] The breakup of the Soviet Union, however, decreased the threat of state-on-state conflict. This led to reduced pre-occupation with security and created space for growth through globalisation's "market-oriented constitutionalism".[11]

The feeling of universal well-being fostered by this atmosphere of inter-state security and economic progress was ruptured a decade later by the 9/11 attacks on the World Trade Centre and the Pentagon. These attacks demonstrated the manner in which globalisation could be used as much as a weapon against state sovereignty as a tool for economic progress. This resulted in a resurgence of the need for the state to secure its boundaries to outside threats. But this renewed Westphalian tendency to look inwards was simultaneously contradicted by the equally emphatic realisation that for the state to prosper in the 21st century, it needed to embrace globalisation in all its inherent openness. The post-9/11 period has, thus, been characterised by an equal yet conflicting emphasis on globalisation for prosperity and sovereignty as a means for security.

This inconsonance has complicated the task of militaries in more ways than one. First, globalisation contradicts the fundamental *modus operandi* of the armed forces. Militaries are all about the protection of sovereignty, which "involves the drawing and defending of boundaries, not the crossing of them, except by force".[12] Second, globalisation adds complexity to traditional military tasks.

As guardians of the state, militaries are expected to protect several aspects, especially external, that contribute to its prosperity. This makes the protection of globalisation a mandatory duty that armed forces have to fulfil in tandem with their core function of protecting sovereignty. Third, globalisation has created a new type of enemy. This enemy seems omnipresent and is indistinguishable from friend; he is unaffected by borders and not intimidated by firepower. Finally, globalisation expands the mandate of sovereignty. With citizens and assets spread across the world, "globalization erodes the principle of territoriality, [but] the imperative of national security affirms the salience of homeland jurisdiction".[13] Militaries are thus expected

to extend their protection well beyond the state boundaries they were designed to regard as sacrosanct.

These complications faced by armed forces on land are even greater in the maritime domain. The oceans are populated by merchant ships which, while serving as effective ambassadors of globalisation, beg sovereign protection through the citizenships of their crew and the flags that they fly. Also, while land areas transition almost seamlessly from one sovereign territory to another, the sea comprises vast expanses of non-sovereign spaces bordered by national waters. These aspects have led to the creation of a separate set of laws for the conduct of activities at sea – laws that are, in turn, dogged by several of the above dilemmas.

Restrictions of International Maritime Law

The rules for the conduct of ships at sea are elaborated in the United Nations Convention on the Law of the Sea III (referred to hereinafter as UNCLOS). The need for these rules was proposed in 1967, but they were adopted by the UN General Assembly as a convention only in 1994. The reason for this delay is largely attributed to the consensus-based approach used in the formulation of UNCLOS. Such an approach was considered necessary in order to achieve its widespread acceptance. Some argue, though, that consensus has resulted in the self-defeating dilution of its legal framework. One of the reasons being, that the main enforcers of UNCLOS are warships. This disinclines most nations – especially ones with weaker navies – to write into law the empowerment of warships that are, figuratively speaking, always just a flag-hoist away from turning hostile.

This bias in international law against warships can be seen in the incongruent restrictions imposed on them *by* UNCLOS towards the implementation *of* UNCLOS; both in territorial waters and the high seas. Territorial waters may be loosely described as the zone up to 12 nm from the shore, where the coastal state exercises sovereignty. While this allows the coastal state considerable leeway in implementation of international law, the connotations of sovereignty necessarily entail a lesser degree of freedom of operation for foreign warships.

First, warships may not freely pursue a vessel violating international law into another country's territorial waters. Second, while UNCLOS allows warships a

similar right of ''innocent passage'' through territorial waters as is afforded to merchant ships, it allows the coastal state the right to deny such a passage if it considers its security threatened. Third, warships require diplomatic clearance prior to entering a foreign port, which necessarily lie within territorial waters. Put together, these aspects limit the ability of warships to implement international law off foreign coasts.

The high sea is less restrictive than territorial waters, but is still far from ideal in its empowerment of warships. UNCLOS attributes the rights and conduct of vessels transiting the high sea to their flag state.[14] This supposedly imposes a greater measure of accountability in this relatively ungoverned space; making it easier to preserve law and order within it.[15] The proliferation of vessels flying flags of convenience has, however, diluted this self-policing method of control over the high seas. Flag states of such ships are seldom capable or willing to accept the responsibility required by UNCLOS. The situation is further compounded by the fact that warships flying a flag different to that of an offending merchant vessel are severely restricted by UNCLOS in their ability to act against it.

Therefore, it may be concluded that the rules governing navigation over high seas and territorial waters, as laid out in UNCLOS, insufficiently empower warships in maintaining the good order of the oceans. Moreover, as US Navy Staff Judge Advocate Michael Bahar asserted: ''states may have common threats, but in all likelihood any changes to international law to deal with them that threaten state sovereignty will fail''.[16] It is, thus, unlikely that any strengthening of UNCLOS will take place so long as it is enforced by Westphalian warships. Having, thereby, seen the theoretical and legal contradictions and restrictions facing warships, this essay shall now examine the manner in which navies have transacted practically with the challenges posed by maritime globalisation.

Navies and Globalisation

The first substantial interaction modern day navies had with the convolutions of globalisation was during the Tanker War. This conflict involved the almost indiscriminate attack of tankers in the Persian Gulf by Iran and Iraq. By then, many of the ships that were targeted had already assumed their globalised character. This

was evidenced from the fact that the 463 merchant ships attacked during this period were registered in more than 30 countries, and were manned by sailors of even more diverse nationalities.[17] This conflict is also relevant because this was the most sustained attack on shipping since the Second World War.[18]

The indiscriminate manner in which international shipping was attacked during this conflict brought to the fore three aspects with regard to the protection of globalised merchantmen. First, that sovereign and geopolitical concerns could create inordinate inefficiencies in the response of countries to a crisis that was globalised in nature.

With the majority of ships transiting the Persian Gulf flying flags of convenience, the seafarers had little option but to direct their entreaties to their home countries and the United Nations (UN). That this had little effect was apparent from the fact that it took three years from the commencement of the Tanker War in 1984 before the first non-regional warship was deployed in a protective role.

The second aspect highlighted by the Tanker War was the inadequacy of warships for global constabulary roles. This was conspicuous in their absence of coordination. Also, the shift in anti-shipping methods by Iran to mine warfare led to greater vulnerability of the thin-hulled warships as compared to the double-hulled tankers. This brought to the fore a critical flaw in the very concept of escorting: the absence of appetite in frontline navies to risk the loss of a high-value symbol-of-prestige warship to protect relatively inexpensive merchant vessels.

Finally, the continued employment of shipping in the war-torn Gulf demonstrated the undeniably cold, calculative nature of the commercial world: its cost–benefit orientation. The increase in insurance rates in the Persian Gulf was weighed against the profits stemming from the high cost of oil and the absence of any legal obligation for a country to offer protection to a ship other than one flying its own flag.[19] This was kept in perspective of the fact that despite the intensity of the war, only about 1% of the 26,000 ship voyages in the Gulf since 1984 were attacked.[20] Shipping companies, thereby, largely continued with their method of sailing ships unescorted, under flags of convenience. Consequently, the maximum number of ships targeted during this battle from any one country was 81, from Liberia, the most popular country of registry.[21]

US Doctrinal Thinking

With such a clear manifestation of the complexities of maritime globalisation, it was surprising that the world's premier navy failed to engage with it doctrinally for more than a decade. It was only in 1998 that the US Navy made its first real assessment of the impact of globalisation on the maritime world, when it asked the Institute for National Strategic Studies (INSS) to conduct a major investigation on it.[22] The result of this analysis was published in the form of a book titled *Globalization and Maritime Power*, the contents which have been decisively influential in setting the tone for subsequent US Navy responses to maritime crises.

The book correctly identified the broad significance of globalisation for maritime planning but failed to address more specific issues. More significantly, the book purported a disproportionate bias towards a US solution, as against a global solution, to issues arising from maritime globalisation. The reason for this bias could be that the substance of *Globalization* – as envisaged before 11 September 2001 – may have, to an extent, been subverted by the far reaching and extreme consequences of that day. Also, the book seemed to be a vehicle for justifying the Navy's continued need for an expensive ocean-going fleet. A fleet whose existence it considered jeopardised by what 9/11 brought to light as the ''strong naval power but undefended coast paradox''.[23] Whatever the perceived agenda and shortcomings of this book, its theoretical postulations were put to test almost immediately in the US Naval response to piracy in the Malacca Straits.

Post 1997, following the Asian financial crisis, there was a resurgence of piracy in the Malacca Straits. This led to widespread consternation, as several countries like Japan and Korea were heavily dependent on the free flow of trade through this waterway. The United States, however, considered itself relatively insulated from the effects of this crisis and initially demonstrated a studied indifference towards it.

This changed dramatically after 9/11. Following those historic attacks on the US mainland, its security guarantors perceived the possibility of a nexus between the pirates of Malacca Straits and international terrorists. They consequently declared Southeast Asia as the second front in the war on terror and accordingly attempted to step up US involvement in the area. This was proposed through joint patrolling of the straits with the littorals and the positioning of American troops in the region. This post-9/11 response was in consonance with *Globalization*'s

predisposition towards a US solution for global problems. The littoral powers, however, viewed such measures as an infringement of their sovereignty and vetoed the presence of any foreign troops. Rebuffed, the United States found itself with no option but to reluctantly shift the onus of security of the straits to local initiatives.[24]

The sole superpower of the world found itself similarly powerless in preventing the transfer of Scud missile warheads from North Korea to Yemen. In December 2002 the United States requested the Spanish Navy to intercept the merchant vessel *So San* in the Mediterranean. This vessel was found to be carrying the said warheads to Yemen. The United States was, however, bound by international law from confiscating the cargo and had to let the *So San* proceed on its planned route. This reiterated the shortcomings in ''going it alone'', and was one of the triggers to create the Proliferation Security Initiative, ''a multilateral intelligence-sharing project incorporating co-operative actions . . . to improve the odds of interdicting the transfer of weapons of mass destruction''.[25] The call for cooperative action gained additional impetus with the realisation that merchant shipping itself was as susceptible to terrorist action as the mainland. The terrorist attacks on the oil tanker *Linburg* in the Gulf of Aden in 2002 led to the adoption of the International Ship and Port Facility Security (ISPS) code by the IMO in 2004.[26] This code facilitated the implementation by international law of ''a comprehensive set of measures to enhance the security of ships and port facilities''.[27]

Collectively, piracy in the Malacca Straits, and the *So San* and *Linburg* incidents made three aspects of the globalising sea clear to US maritime strategists. First, they reiterated the previously perceived ease with which the open access of the ocean could be misused to facilitate attacks against the homeland. Second, they highlighted the inability of the United States to unilaterally protect itself from globalised threats emanating from the sea. Third, they brought out the inadequacies of international law in dealing with such threats. This solicited a subtle shift away from the ''US-secured international maritime system'' approach espoused in *Globalization*; to an approach articulated in the *National Strategy for Maritime Security* of September 2005. This document acknowledged the fact that ''success in securing the maritime domain will not come from the United States acting alone but through a powerful coalition of nations maintaining a strong, united, international front''.[28]

While this was a step in the right direction, this essay suggests that US maritime thinking came closest to acknowledging the importance of, and the complications in,

protecting maritime globalisation only a few months later. Towards the end of 2005, Admiral Mike Mullen, the then Chief of Naval Operations (CNO), proposed the extraordinary concept of the, ''1,000-Ship Navy''. This concept was exceptional in that it called for cooperation between navies on a scale previously unheard of. In his proposal, Mullen recommended securing of the global commons through selfless policing by a 1000-ship navy in which, ''ships of many nations would routinely operate with one another on a voluntary and elective basis and without any one state being in charge''.[29] He called not for a single treaty but for several regional and multinational initiatives like the Malacca Straits Initiatives and the Proliferation Security Initiative, all working independently yet in concert towards a common goal. Mullen's proposal was a perceptible shift away from the US superciliousness in *Globalization and Maritime Power*. It was possibly the boldest attempt at reconciling the contradictions of Westphalianism with globalisation.

The concept was, however, idealistic in nature. It depended almost completely on the understanding, cooperation and good intent of the participating navies. It did not suggest any kind of framework, arguing that the 1000-ship navy would be ''self organizing with no alliances and no treaties''.[30] In this manner, it ambiguously attempted to balance the call for voluntary participation by navies in their national interests against the need for the formation of a security regime that was transnational in nature.[31] By doing so, it almost tried to diminish through omission the complications inimical to maritime sovereignty. Not surprisingly, this proved to be its undoing. This was predicted somewhat prophetically in the responses elicited from the chiefs of navies of 25 countries to this proposition. While most were supportive of the idea, their replies were peppered with caution and doubt. The overriding concerns were those of legality and sovereignty. These were articulated explicitly by the chiefs of navies of Australia, Canada, Denmark, France, Ghana, India, Italy, New Zealand and Peru, and implicitly by many others.[32] The stage was, thus, set for what was arguably the first truly global naval initiative to ''founder on the rocks and shoals of national sensitivities''.[33]And founder it did, in three diverse ways: through a manifestation of sovereign complexities in the Malacca Straits Initiatives; through a demonstration of the need for robust legal frameworks in the Proliferation Security Initiative; and, through the very significant omission of this concept in the subsequent US Naval strategy document.

The Malacca Straits Initiatives brought to the fore the ease with which regional cooperation could be made ineffective by financial considerations and territorial apprehensions. As previously mentioned, the Malacca littorals – Malaysia, Singapore and Indonesia – had cited sovereign concerns to refuse direct involvement by external powers in resolving piracy in the straits. At the same time, Malaysia and Indonesia failed to see the cost–benefit advantage being accrued by them in deploying anti-piracy assets. They contended that the bulk of financing of the operation needed to be done by the major beneficiaries of international trade through the straits. They stayed dismayed that international users did not match their extensive usage of the straits with proportionate contributions towards its security.[34] This disappointment was reflected in their conduct of security.

Three regional initiatives were undertaken to combat piracy in Malacca. The first was the Trilateral Coordinated Patrol, which involved the coordinated but independent patrolling of their respective territorial waters by Singapore, Malaysia and Indonesia. This did not lead to a measureable reduction in piracy. This was possibly because it had no provision for pursuit into the territorial waters of the participating states; as such an allowance was seen as an infringement of sovereignty. The second initiative, which was more of a supplement to the first one, was the ''Eyes in the Sky'' programme. As per the provisions of this programme, each state donated two planes to patrol the piracy-threatened area. The planes were manned by crew comprising two representatives from each country, but proved to be unsuccessful as well. This was because the participating countries did not have either the capacity to fly the required number of sorties to effectively patrol the area or the will to share sufficient information on the positions of naval ships on patrol. The third and final regional measure initiated to secure the Malacca Straits was the ASEAN-led Regional Cooperation Agreement on Anti-piracy. This too has so far proved to be ineffectual, as two of the three littoral states – Indonesia and Malaysia – have not ratified it.

The second cooperative initiative that faltered while espousing Mullen's principle of voluntary policing without the need for a binding legal framework was the Proliferation Security Initiative (PSI). As per its provisions, member countries were to rely on existing international and regional law to facilitate their anti-proliferation activities. The early years of implementing this initiative quickly revealed its limitations. By operating within the stipulations of UNCLOS, participant states were bound by its provisions, which made it legally unfeasible to board suspect vessels

while in transit. The United States circumvented this somewhat controversially by establishing bilateral arrangements with Panama and Liberia – the two largest shipping registries and members of the PSI – to board suspect vessels flying their flag. This measure was controversial because – while it created greater legal allowance for the implementation of PSI – its provisions, by virtue of being bilateral, did not extend to the other PSI members; thereby, simultaneously strengthening and weakening the initiative. It also contributed to the perception of the initiative being more an American enterprise. It thereby brought to the fore two aspects of maritime policing: first, the necessity for a specific legal framework within which to operate; and second, the necessity for these rules to be implemented without any perceived sovereign intent.

The third, and arguably most significant, setback for Admiral Mullen's proposal was its conspicuous omission in the latest strategy published jointly by the US Navy, Marine Corps and Coast Guard: *A Cooperative Strategy for 21st Century Seapower*.[35] The deliberate oversight in this document of Mullen's 1000-ship concept is perhaps because *Cooperative Strategy* had to reconcile his call for increased openness through international cooperation against the more nationally focussed naval role of state-on-state conflict. This debate was unsurprisingly won by the realist requirements of inter-state warfare, as they clearly constitute the primary reason for existence of a navy and also, more easily justify the substantial capital investment for its maintenance.

By being perceived as "arrogantly hegemonic", this latest strategy document also harks back to the first US Naval dialogue with globalisation, *Globalization and Maritime Power*. The similarity between these publications increases when this perception is juxtaposed with allegations of *Cooperative Strategy* being nothing but a vehicle for justifying the proposal for a force increment from a 278-ship fleet to a 313-ship fleet.[36] The US Navy is unique in having engaged most extensively with the complexity of the international maritime system; and also, in having made the most genuine and discerning attempts to adapt to it. What the repeated imperfections of *Cooperative Strategy* reiterates is the irreconcilable nature of the fundamental contradictions between naval Westphalianism and maritime globalisation; an incongruity that is so deep-rooted that even the most powerful and self-confident sea-going force in the world has been unable to doctrinally adapt itself to it.

Piracy in the Gulf of Aden

The repetitiveness of predicaments that is implicitly perceptible in doctrine is more explicitly noticeable in current day maritime crises. Piracy in the Gulf of Aden, for example, is a present-day crisis that is almost tragic in its imitation of problems that were first identified in the Tanker War and then reiterated in the Malacca Straits. What is made even more alarmingly evident in this crisis is the rapid pace at which the scale of these problems is expanding. Also, international alliances, proffered by Admiral Mullen as the silver bullet to all issues globalised, are exposed as being as inefficient and ineffective.

The issue of scale is best elucidated in relation to economics. Piracy off Somalia gained worldwide prominence in 2005, when there were 35 attacks on merchant vessels. From then on, it has grown far beyond any predictions, with 219 attacks in 2010. This has been matched by a proportionate rise in ransoms demanded for ships and their crews, from an average of $150,000 per ship in 2005 to $5.4 million in 2010.[37]

The other aspect made evident in the Gulf of Aden is the inefficiencies of international naval alliances. As an example, ships operating under NATO have to revert to national command in order to arrest pirates. This means that during the most critical phase of operations, ships in company routinely function under incongruent national Rules of Engagement, leading to complications in coordination and command.[38] Another illustration of absence of coordination is the dissimilar criteria of response applied by Americans – purported equal partners in the Coalition Maritime Force – to incidents of piracy involving US nationals. They have on two occasions taken independent action to rescue US hostages from pirates. Factors such as these cast doubt on the ability of any cooperative arrangement between navies to be completely unbiased and equal.

Having thus examined the manner in which navies (in particular the US Navy) have engaged with globalisation over the past 30 years, this essay proposes three key conclusions. First, navies by virtue of their Westphalian character are fundamentally disadvantaged in ensuring security of the international maritime system. Their sovereign disposition prevents them from cooperating effectively, and it impedes the creation of international law to sufficiently empower them. Second, maritime globalisation along with its attendant problems is growing at an unprecedented

rate and with it is growing the world's dependence on it. Third, commerce, which is the biggest driver of the international maritime system, is unlikely to be overly concerned or slowed down by the system's humanitarian consequences. This is assumed to be the area of responsibility of states. Put together, these factors represent an unprecedented urgency for the development of a credible method to tackle issues arising from maritime globalisation.

Private Military and Security Companies

One possible replacement for navies in their constabulary role is private military and security companies (PMSCs). The proponents of privatisation have expounded PMSCs' flexibility of response, adaptability, absence of bureaucracy, and value for money amongst reasons validating their acceptance. Their detractors, on the other hand, emphatically emphasise shortcomings such as their moral illegitimacy, and absence of constitutionalism, transparency and public consent.[39] Thus implying that by their very existence, PMSCs undermine the structure of the state.

First, PMSCs may be directly employed by ship owners for the protection of their vessels at sea. This could take the form of hiring small teams of armed men to sail onboard ships, or through the provision of armed escort ships. This would arguably result in a capitalist approach to security wherein the onus would be on the shipping company to determine the extent of protection to be provided.

This could have two outcomes: first, less financially solvent merchant companies could resort to ''acceptable risk'' as an alternative to physical security; and second, value of cargo could gain primacy over crew safety in determination of expenditure on protection. Additionally, the usage of private armed personnel to protect ships is fraught with legal restraints. Most of these stem from the non-recognition of individuals or companies as entities by international law.

Second, the PMSCs could be employed by the state to augment maritime security. This would offset some of the above disadvantages. First, by affording equal protection to all its ships, the state could make certain that the degree of protection is not prejudiced by the cargo. Second, the state could expand the charter of PMSCs to include countering of other threats such as maritime terrorism. But such an employment of PMSCs would be as restricted by the limitations imposed by international law as the previous alternative. However, the main drawback in the

employment of PMSCs by states is that these private companies would then be subject to similar sovereign responsibility and constraints that hampered state-run navies in the first place.

Third, PMSCs could be employed by the United Nations for the protection of merchant shipping. This would eliminate or ameliorate most of the drawbacks of the above two approaches. An unbiased worldwide approach would counter the predicament posed by flags of convenience by taking all merchant ships, irrespective of flag, under this protective umbrella. Wider aspects of maritime security like terrorism and smuggling could also be included in the terms of employment of such PMSCs. Furthermore, states would be able to demonstrate greater responsibility towards their sea-going citizens through their direct linkage with the UN. Thereby, sovereignty would perhaps become less of an obstacle in inter-state cooperation towards maritime security. But most importantly, international law could possibly be made more acquiescent through the creation of a legal framework specifically designed to facilitate the operation of such UN PMSCs.

Alluring as it may seem, the employment of PMSCs by the UN for law enforcement is easier discussed than executed. While private companies have been employed extensively by the UN in peacekeeping operations, they have been used mainly for logistics, personnel security and advice.[40] The use of PMSCs for peace enforcement has been much less. Any employment for such purpose in the future is considered ''most controversial'',[41] and would be tolerable only in ''supreme humanitarian emergencies''.[42] The main reasons for this aversion of the UN to PMSCs are a lack of legitimacy and accountability It is, thus, highly unlikely that this option will be exercised by the UN anytime in the near future.

The second suggestion for policing the maritime commons – proffered by the former Chief of the Indian Navy, Admiral (Retired) Arun Prakash – is the establishment of a UN maritime force along the lines of peacekeeping forces being employed on land.[43] As per this, the UN's charter of securing universal justice and development, ideally positions it to bridge the gap between globalisation and sovereignty.

A UN maritime force, while better positioned than single-nation navies and semi-global multinational alliances, would still fall short of being an acceptable solution to the ills of globalisation. This postulation is arrived upon on the basis of three broad deductions. First, as has been often seen in peacekeeping operations, it will be

impossible to prevent the politics of sovereignty from encumbering a UN venture. Second, the employment of such a force by the UN would be necessarily reactive in nature. This would restrict these ships' ability to prevent a crisis from occurring. Finally, such an employment of naval ships by the UN would be plagued by many of the problems that affect land-based peacekeepers.

The third suggestion for policing the maritime commons, put forward in conclusion to this research, is through the establishment of what may be described as an IMO Police Force. This force could be likened to a global coast guard: a fleet of ships to deal with maritime constabulary issues that are transnational in nature. It would be a standing force and not one put together on a case-to-case basis like the UN peacekeeping contingents. It would be manned not by naval personnel from various countries but by volunteers hired the world over. The recruitment model would be similar to that of other UN bodies – the World Health Organization (WHO), for example – without favouritism to any country or region. The vessels comprising this force would not be warships on deputation from member countries, but vessels purchased specifically for this purpose or ships contributed by member nations. They would necessarily be devoid of any national identity, being affiliated only to the IMO. They would be bound in their operations by international law and a framework of rules arrived upon by the IMO member states.

There are several reasons why the IMO has been proposed as the umbrella body. A force operating under the IMO would be able to link itself directly to the welfare of the seafarer, as this is an aspect that lies at the core of the organisation's charter.[44] This would allow the force a greater degree of acceptability than that permitted by the capitalist motivations of PMSCs and the sovereign connotations of the Blue Ensigns. Association with the IMO would also allow the force to draw on the organisations substantial successes in facilitating maritime order. Moreover, through IMO's link with the UN, the force would be able to exploit the credentials of that world body as a largely non-sovereign vehicle of universal peace and justice.

Such a force would also be less affected by some of the complications of globalisation. Flags of convenience, for example, would pose less of a challenge. This is because a global enforcement body would be able to afford equal treatment to all vessels irrespective of such features as country of registry. In fact, by being responsible for both the pre-conditions and the enforcement of maritime safety, the IMO would be better positioned to ensure adherence to its rules.

Another drawback of globalisation that an IMO police force would be able to address is the disenchantment of littorals with having to police waters that are more beneficial to others. This could be achieved by simply assuming responsibility for such waters and then using a cost–benefit formula to appropriately apportion the cost of its maintenance. Moreover, land-locked countries, which so far continue to benefit from maritime trade without any investment in navies, could also be involved at least financially in maritime security.

Conclusion

An assessment of all relevant factors shows that the complications of the Westphalian–globalisation dilemma can best be resolved by interfacing the necessarily recalcitrant states through more acceptable international bodies. The intention of proposing the IMO police force as a solution is to illustrate the theoretical pre-requisite for a body to be acceptable in order to be effective. To this extent, all the solutions discussed here are put forward mainly as triggers to initiate further thought on what should necessarily be a complex process of analysis and research. A process that should commence forthwith, because the increasingly rapid pace of globalisation may soon deprive us of this opportunity for a measured response in the same way that events post-9/11 disallowed the deliberate introspection President Bush had probably hoped to initiate.

Notes

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