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## SUPPRESSION OF PIRACY AND MARITIME TERRORISM

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### A Suitable Role for a Navy?

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On 12 October 2000, two men from an organization aligned with al-Qa'ida loaded a rigid raider (a small boat with glass-reinforced-plastic hull) with explosives and drove it into the side of the guided-missile destroyer USS *Cole* (DDG 67). Seventeen sailors lost their lives. This was a seminal event. It epitomized small war versus “big” war and the threat that small-war tactics could present to “big war” fleets. It was also an echo of the U.S. Navy’s past. As the initial alarm faded, the Navy’s response became largely inward looking and defensive, limited for the most part to the implementation of more robust force-protection measures.

On 11 September 2001, al-Qa'ida operatives hijacked four civilian airliners and prepared to attack targets in the United States. Three of the planes got through. Until the attacks of 9/11 gave it context, most of the wider implications of the attack on the *Cole* were missed or ignored. It was the attacks on New York and Washington that put it back on the agenda and sparked a search for similar scenarios, a search that led ineluctably to concerns about the vulnerability of commercial shipping. From there it was merely a small conceptual hop to piracy and the fear that pirates might be in a position to teach terrorists how to use ships for a variety of purposes, including, most spectacularly, as weapons.<sup>1</sup> Since then the threats of piracy and maritime terrorism have been yoked together.

Is this linkage justified? Does either, separately or together, represent a serious threat to the United States or its allies? It is important to be honest. The *Cole* event was significant, but the criminal, insurgent, and terrorist activity that has taken place on water both before and since has been of little strategic or political importance. There is, however, no guarantee that this benign situation will continue.

Trends in demography and economic growth and the concomitant demand for natural resources suggest that it might change.<sup>2</sup> If this is the case, is the suppression of maritime criminal, insurgent, and terrorist activity a suitable role for the Navy? Is it one to which it can make a worthwhile contribution, or one it should leave to others?

This article will argue that piracy and maritime terrorism are not the main threats about which the Navy and those with interests in maritime security should be concerned.<sup>3</sup> They are instead just two items on a longer list that can be grouped under four headings:

- Criminal/insurgent/terrorist links
- “Migration to the sea”
- Territorial expansion
- Complex maritime conflict.

It will ask whether the Navy is the most appropriate arm of U.S. national power to confront these threats. It will argue that if the service is to confront these challenges effectively, it will need to adjust to ways of warfare that are in many ways closer to those of the nineteenth than the twentieth century, albeit that the complexity of conflict has increased immeasurably.

#### CRIMINAL/INSURGENT/TERRORIST LINKS

Although we are quick to talk of terrorism, the current conflict is being fought not against an abstraction but against specific groups with specific motives, skills, and resources. Most acts of politically inspired violence at sea have been perpetrated by insurgent groups. Some of these have been acts of terrorism, but most have not. Giving these acts the blanket label of “terrorism” serves only to obscure their purpose and their nature.<sup>4</sup> Terrorism is a tactic; an insurgency is an organized movement that is inspired by political, religious, or even quasi-criminal motives and uses war and subversion to overthrow a government and achieve power. Around the world are areas where maritime insurgency and terrorism are both problems.

In addition to political violence there is criminal violence—that is, piracy. Criminally inspired violence at sea is more common than politically inspired violence; nonetheless, piracy is a problem only in certain areas and for certain states. In addition there are areas where piracy *and* insurgency are problems. Even though there are strong grounds for considering piracy and insurgency/terrorism as two aspects of the larger phenomenon of maritime insecurity—“disorder at sea”—it is worth considering their differences before looking at where, if, and how they might come together.

### *Piracy*

Piracy is a crime defined by geography that requires the presence of other factors, such as a permissive political environment, cultural acceptability, and the opportunity for reward, in order to flourish. Since the end of World War II such combinations have occurred in only a relatively few places: around parts of Southeast Asia and in the Bay of Bengal; off East and West Africa; and in a few ports of and off some stretches of coastline around South America. Most of the factors that encourage and sustain piracy are enduring. Although it can spring up in places where it has not been a problem historically—the Indian Ocean coast of Somalia, for example—it is generally the case that unless local or national leaders find reasons and resources to suppress it, piracy can persist in such areas, sometimes for centuries.

Piracy is an organized crime. The degree to which it is a threat at any level, from the purely local to the international, depends on the degree to which it is organized effectively. Even at the lowest level of organization, piracy, like street crime or small-scale crime anywhere, can be immensely destructive. If not confronted it can suppress economic activity and distort economic incentives, lower productivity by increasing security and replacement costs, erode confidence in authority, and undermine notions of justice. These effects can be observed along the Straits of Malacca, where gangs of largely Indonesian pirates prey regularly on fishing craft from communities on the Malaysian side of the waterway. One study of such a community, Hulan Melintang, has labeled this predation “sustainable,” in that the cost and physical danger it adds to the fishermen’s lives are never enough to stop them putting to sea completely.<sup>5</sup> In other cases, however, the level of predation has become so acute—against parts of the Nigerian fishing fleet, for example—that lawful economic activity ceases, even if only for a time, and in some areas can be carried out only with great vigilance.<sup>6</sup> The international fishing boats that ply their trade off part of the Somali coast need to be on almost constant alert against attack by local boats; one observer described the situation there as closer to a war than fishing.<sup>7</sup> There are, however, genuine questions as to whether much of the fishing conducted by foreign boats in these waters is legal or, even if legal, should be allowed, given their rapacity.

In areas that are afflicted by piracy, small gangs can harass and board even large ships if the weather and sea conditions are right. In order to capitalize on the vulnerability of these ships and maximize the “take,” gangs need specialized marine equipment, modern arms, and a network capable of disposing of the goods and foreign currency they steal. At the highest level of organization, ships and their cargoes can be stolen to order, a process that demands close coordination between the buyer and the pirate/contractor. Piracy at this level is what it has always been, a business. Its effects therefore spread beyond the scene of the crime. Like all forms of organized criminal behavior—and when piracy reaches

this stage it ceases to be a stand-alone enterprise and becomes a subsidiary to a larger criminal concern—its most worrying effect is corruption, which, as it is argued, “is the main vehicle, and likely the most socially damaging activity, by which criminal gangs achieve their aims.”<sup>8</sup> Another commentator reaches the same conclusion: “Organized crime makes systematic use of corruption,” an effect that has not been emphasized sufficiently.<sup>9</sup> Small-time pirates, however, are not necessarily cut out of these more sophisticated operations; they constitute a pool of skilled labor that pirate-gang masters can call upon when needed.<sup>10</sup>

Therefore, while the highest-profile consequences of piracy are attacks on large vessels carrying cargo to international destinations, the greatest damage either is felt among already-poor local communities or results from the suborning of local and national officials, military leaders, and politicians of weak states. In other words, the number of attacks on international shipping, though it shines a useful light on the problem, is not a true measure of its effect. For example, in the last decade or so there were a number of high-profile attacks on ships transiting the Straits of Malacca. Some of these could have had disastrous consequences if control from the bridge had been lost completely, but the number of incidents as a proportion of the total international traffic using the straits, and in relation to the volume of local traffic, was and remains very small. What the presence of piracy demonstrates wherever it occurs, in this case on the Indonesian side of the strait in particular, is a worrying lack of order: if not reversed or controlled it could allow other forms of maritime-related disorder to take root and grow, but it is difficult to eradicate, because it is an outgrowth of the divisions and corruption that infect host societies more widely.

### *Insurgency and Terrorism*

Some insurgent campaigns have been mounted on the high seas.<sup>11</sup> The majority, however, have taken place on coastal and inland waters, where their success depends on factors very similar to those that encourage and sustain piracy. Consequently, maritime insurgents operate in similar (often the same) areas as pirates and in many cases indulge in piracy on their own account. The principal reason why there have been so few maritime insurgencies is that in very few places around the world has political conflict coincided with favorable maritime geography. The main campaigns have taken place around Sri Lanka, parts of Southeast Asia, and off the Levant; lesser campaigns have occurred around the Arabian Peninsula, Cuba, and Nicaragua. Nigeria has experienced piracy and criminal violence since at least the 1970s. The new wave of violence, while it undoubtedly emerges out of political discontent and has a substantial political dimension, also has a large criminal component. Whether this wave of killings and kidnappings will develop into a major political insurgency is as yet unclear.

Although we are living in an era when some terrorist groups are prepared to embrace annihilation as a legitimate objective, the age-old hunt for publicity, the “propaganda of the deed,” remains the primary objective of any terrorist group. In a world of mass, global communication, maritime terrorism need not, unlike piracy, be defined by geography. That it has been so defined, however, is due to the fact that (with the exception of al-Qa‘ida) the groups that have employed it so far have been, like most insurgent groups, geographically specific. Furthermore, few maritime targets have propaganda value, and the groups interested in using the sea have not yet found a cost-effective way of generating desired effects from those that do. Even the Liberation Tigers of Tamil Eelam (LTTE), fighting for an independent Tamil homeland on Sri Lanka and drawing much support from the Tamil “diaspora” around the world, have not undertaken terrorist acts outside home waters.

Al-Qa‘ida has done most to shrug off the shackles of geography but has succeeded only up to a point: its three successful or near-successful attacks have taken place around what it would regard as its heartland, the Arabian Peninsula. Other al-Qa‘ida attacks around that peninsula, including an elaborate plan to attack U.S. warships in the Strait of Hormuz using a combination of small, fast attack craft and a mother ship laden with explosives, have been disrupted, as were an attempted attack on American and British naval vessels in the Strait of Gibraltar in 2002 and a plan to attack U.S. warships in Singapore, also in 2002. The latter was to have been carried out with the assistance of the local al-Qa‘ida affiliate, Jemaah Islamiyah.

On land, al-Qa‘ida’s ideal targets mix iconic status with a high casualty potential. There are few iconic targets at sea; the main ones are warships, and since the *Cole* attack in 2000, all navies have taken additional precautions that, while far from perfect, are probably sufficient to make any repetition harder to accomplish. Passenger ferries and cruise ships would make excellent mass-casualty targets, and a very small number of cruise ships combine this quality with iconic status. Cruise ships, although not constructed to naval standards, are extraordinarily robust, with many watertight subdivisions, and are hard to sink. That, though, hardly matters if the objective is mass panic (probably resulting in large numbers of accidental deaths and injuries) and vivid media images of bomb-blackened hulls and petrified Westerners. The concerns of the insurance market are reflected in a recent RAND study pointing out that such an attack, if even minimally successful, would give rise to substantial claims and have a potentially catastrophic economic effect on the cruise industry.<sup>12</sup>

Al-Qa‘ida recognizes the importance of economic targets, although its attacks so far have been limited to oil-related installations. The first was on the *Limburg*, a very large crude-oil carrier, partially loaded, in 2002. This attack

hardly affected the world energy market, but it is important to note that it took place at a time of slack demand and that a similar attack (or more worryingly, multiple attacks) carried out when the market is tight might have more serious repercussions. The second attack, on the al-Basra oil terminal off Iraq, would have affected oil prices and, in addition, undermined confidence in U.S. military competence had it been successful; in fact the raiders came perilously close to reaching their objective, but they were foiled, albeit at the cost of three American lives. However, a strategy of economic dislocation focusing solely on maritime targets would be neither easy nor necessarily fruitful. It would require coordination, persistence, and probably a sophisticated understanding of market dynamics. It would also demand resources, and these are what almost all terrorist groups lack, certainly those that cannot call on state support.

These are probably among the factors that have led al-Qa'ida to concentrate on land-based economic targets in preference to those at sea. The one worthwhile example that demonstrates what could possibly be achieved using maritime targets alone was the mining of Nicaragua's harbors in the mid-1980s by "Contra" groups. This precisely targeted campaign, timed to coincide with the main export season, was designed to limit the country's vital foreign earnings, but it depended on covert American assistance for its success.

Coastal raiding is such a well established naval method that it is perhaps surprising terrorists have not used it more frequently. The Philippine Abu Sayyaf Group (ASG) has grabbed hostages from beach resorts on two occasions (each of which yielded a substantial profit), and the LTTE has carried out or attempted raids on Sri Lankan harbors, but no group has carried out pure *terror* raids on the beaches, hotels, resorts, or shopping malls that populate the coasts of many developed states or of Western vacation destinations.

### *Robbery, Kidnapping, and Logistics*

Terrorists and insurgents have therefore been largely unsuccessful in their attacks on maritime targets. Certainly when measured against the criteria that matter to them—numbers of casualties and psychologically effective publicity—they have largely failed. Where they have been more successful is in robbing maritime and coastal targets and capturing hostages for ransom—acting, in other words, like pirates. Three groups—Abu Sayyaf, the Acehenese separatist group Gerakan Aceh Merdeka (GAM), and politico-criminal gangs operating in the Niger Delta—have successfully taken hostages from beaches, ships, or offshore oil installations and exchanged them for ransom. The actions of ASG and GAM in particular have drawn the piracy label.

Insurgents and terrorists have also used the sea successfully for logistical purposes. It is worth remembering that around 90 percent of the world's trade

moves by ship. While terrorists and insurgents are likely to move a smaller proportion of their material requirements by ship, that proportion, because of circumstances specific to each group, could still be substantial, perhaps 50 percent. Hezbollah and some of the other anti-Israeli groups move large quantities of arms into Lebanon and Gaza by sea, al-Qa'ida and its affiliates are known to have moved bomb materials by sea prior to both the East African and Bali attacks, and the LTTE, GAM, and the various Philippine groups all operate in what are essentially maritime theaters. More generally, many terrorist and insurgent groups today do not live off the local population in the same way as their forebears did (and as described by Mao Zedong). Particularly if they originate from outside an operational area, they tend to be wealthier than the indigenous population and look to external supply for the money and often sophisticated weapons they employ.

In many cases large consignments can be moved more discreetly by sea. On land, vehicles can be subjected to inspection relatively easily. In coastal waters, however, insurgents can hide among a multiplicity of small craft and fishing boats—a problem that confronts the Israeli air force and navy off the coast of Gaza, for example, as it seeks to isolate arms smugglers from ordinary fishermen. Outside territorial waters there are fewer ships, but international law can shield cargo from inspection. Unless a sea area is subject to a United Nations Security Council resolution that permits such an action, a boat or ship can be boarded only with flag-state consent unless it is of questionable nationality or is suspected of slaving, piracy, or that most heinous of international maritime crimes, illegal broadcasting.<sup>13</sup> Of course, ships are boarded with the consent of their masters, but, depending upon the provisions of his own national legislation, not every master can give a boarding party permission to search; any search or seizure carried out on the basis of such consent is illegal. Such acts can yield valuable intelligence, but the advantage might be short-lived; they can provoke retaliatory harassment and international opprobrium. If a search is conducted on the basis of inaccurate information and nothing is found, the only results will be acute embarrassment, a claim for compensation, and a further erosion of international goodwill. The alternative is the “if you don't like it sue me” position, which if carried out mid-ocean would almost certainly be acceded to but is manifestly illegal and almost inevitably involves the use or threat of force. The bottom line in most cases where boarding is refused is that “you can look but not touch.”

#### *The Proliferation Security Initiative*

What the case of the North Korean cargo vessel *So San* in 2002 demonstrated, however, is that even a boarding party that has forced itself on board, looked, touched, and found a suspicious cargo—in this case Scud missiles—cannot

confiscate it if buyer and seller are able to demonstrate that their transaction was legal.<sup>14</sup> It was this case that spurred the George W. Bush administration to instigate the Proliferation Security Initiative (PSI).<sup>15</sup> This program seeks to bring together like-minded states prepared to open their own flag vessels to inspection and to interdict vessels with suspicious cargoes once they enter their territorial waters. The United States has also used its leverage with the major “open register” (that is, flag of convenience) states, such as Panama and Liberia, to sign workable ship-boarding agreements.<sup>16</sup> Previously it had virtually forced the closure of the Tongan register on the suspicion that it might be holding the registration of several ships of which al-Qa‘ida was the beneficial owner. (The suspicion in this case appears to have been erroneous but understandable, given the often extensive measures even legitimate owners use to hide their beneficial interests in order to evade tax or other legislated obligations.) The aim of the ship-boarding agreements with the open-register states is to restrict the space in which rogue shippers can hide.

Large gaps, of course, remain. Around half of the world’s vessels are flagged in states that are not PSI signatories.<sup>17</sup> Also, most open-register states have not signed, including some, like Cambodia, Saint Vincent, and the Grenadines, that have long been suspected of less than rigorous procedures. At the same time there are closed-register states, such as Iran and North Korea, that are not amenable to either pressure or persuasion; another closed-register nation, China, though sympathetic to U.S. proliferation concerns, is not persuaded of the scheme’s legality.

### *Blurring the Gray Area*

Criminals and terrorists are not finding common cause, but they are finding reasons to cross the species barrier, whether based on the sea or on the land. The first reason is that both insurgents and terrorists are prepared to do business with criminals who have specific goods or skills they need, such as forged documents, or services that can expedite their operations, such as smuggling networks that can infiltrate operatives into specific destinations. Terrorists are known, for example, to have used the human smuggling networks that move people across the Mediterranean and into Western Europe.

The second reason is that they are acting like criminals in their own right.<sup>18</sup> Running an insurgency or terrorist operation requires hard cash.<sup>19</sup> It was common in the past for mature or senescent groups to turn to crime. More recent experience indicates two different trends. The first is acts of terrorist violence by small bands of individuals who, while they might share an ideology with an established group, have little or no direct connection to it, sometimes as a matter of choice. Lacking resources, they have had to resort to robbery or other crimes,

such as drug dealing, in order to buy what they need, as the German Baader-Meinhof gang did in the 1970s. The second trend has affected established groups. Historically, insurgents and terrorists have depended to a large extent on the support of sympathetic states, but as this has been reduced—although by no means eliminated, as the strong Iranian support for Hezbollah, Palestinian Islamic Jihad, and Hamas clearly shows—such groups have turned to a variety of other income sources, of which criminal activity is one. Terrorist involvement in drug crime, for example, is well known. A Congressional Research Service report lists four reasons why criminals and terrorists might cooperate: to create chaos and instability in source and transit countries; to encourage a climate where corruption is acceptable and intimidation is unopposed; to provide cover and a common infrastructure for their joint and separate activities; and most important of all, for money.<sup>20</sup> The narcoterrorist phenomenon, as epitomized by FARC in Colombia, is merely the most obvious example of insurgent criminal behavior as groups including al-Qa'ida have become involved in a wide range of illegal enterprises, including arms trading, dealing in counterfeit goods, money laundering, and migrant smuggling. In other cases, of which the LTTE is the prime example, insurgent/terrorists have sold their services to criminals. In the LTTE's case, what they have sold has been access to their shipping network.

The range of criminal activity at sea is already large and appears to be growing. Maritime illegal activity includes arms smuggling, drug smuggling, people smuggling, toxic waste dumping, illegal fishing, and, of course, piracy. Insurgents, terrorists, and criminals are, nonetheless, wary of each other: insurgents and terrorists distrust criminals' traditionally poor operational security; criminals have traditionally been unwilling to court the additional law enforcement attention attracted by association with groups that practice politically motivated violence.<sup>21</sup> When it comes to piracy itself, there is no worthwhile evidence, despite the speculation, of any cooperation between pirates and insurgent/terrorists. Even in the absence of a connection, however, criminal activity can serve the aims of terrorists and insurgents simply by masking what they do. Furthermore, the nature of criminal organization appears to be changing. Although disciplined, hierarchical, mafia-type organizations continue to flourish, more nonhierarchical groups are beginning to appear. They mirror the network structure of many terrorist or insurgent organizations. Decision making occurs on a more distributed basis, often by gang members who have less reluctance than is traditionally the case to associate with terrorists or who might, in some cases, share their aspirations and their contempt for established authority.

Several factors have influenced the growth of transnational organized crime: porous borders; the migration of ethnic groups who, once they have settled in

developed countries illegally, become vulnerable to exploitation; access to more efficient money-transfer mechanisms; and better communication. Although it is difficult to identify one that has particular application to the sea, they all revolve around movement—the movement of commodities, such as arms and drugs, and the movement of people.<sup>22</sup> The principal medium for movement was, and remains, the sea. This increasing ease of movement has been attributed to the somewhat weightless notion of “globalization,” but there are also other trends, which, while far from criminal in themselves, suggest that the level of criminal activity at sea is likely to grow still further.

#### “MIGRATION TO THE SEA”

The sea’s resources have of course been exploited for centuries, but that exploitation has now reached unprecedented levels driven by the demand for resources and living space on land. It has spurred what could be described as a migration to the sea, or what one astute observer has described more graphically as a “scramble for the sea,” language chosen quite deliberately to evoke parallels with the colonial “scramble for Africa” in the nineteenth century.<sup>23</sup> This migration or scramble is driven by the need for energy (in the form of oil, gas, or structures that capture wind or tidal power), for minerals, for drinking water distilled from the sea, for waste disposal, and for food (harvested either from increasingly depleted fish stocks or from fish farmed in sheltered waters). It is propelled also by the urge to exploit the world’s maritime ecosphere for tourism and leisure, in some places by the need for space to live, either on reclaimed land or actually on (or perhaps under) the sea, and in others by the *desire* for such space—for example, in South Pacific island lagoons or the “palm” structures extending out from Dubai.<sup>24</sup>

All of these pressures will mean that the sea will become more populated and, consequently, contested.<sup>25</sup> More people means more economic activity. More economic activity means more crime. More crime means more cover for terrorists. More people and more economic activity mean more targets. More goods in transit on fewer but larger ships passing through fewer giant ports and an unchangeable number of narrow choke points will mean that opportunities for successful interdiction by criminals or insurgents will increase.

#### TERRITORIAL EXPANSION

Complicating this picture further is the possibility that this migration will be accompanied by the seaward extension of state territoriality. It is possible to envisage a return to the confused situation that existed prior to the adoption of the UN Convention on the Law of the Sea (UNCLOS), when states claimed various degrees of territorial supervision, up to two hundred miles from their shores

and in some cases beyond. About 40 percent of the world's ocean surface lies within that two-hundred-mile limit.<sup>26</sup> The risk in the case of states that have proved unwilling or unable to discharge their security responsibilities in these maritime zones is that criminal activity and the illegal exploitation of resources will increase and what are effectively criminal and pirate sanctuaries might be created.<sup>27</sup>

The law of the sea developed in a way that is very different from the law of the land, and in a way that was neither obvious nor preordained. As has been pointed out, the current position represents the “triumph of Grotius's thesis of *mare liberum* and its concomitant prohibition on claims of territorial sovereignty. That triumph reflected not only the transitory nature of human activity at sea, but a rational conclusion that the interests of states in unrestricted access to the rest of the world outweighed their interests in restricting the access of others.”<sup>28</sup>

That consensus is under pressure, perhaps most powerfully for environmental reasons, and although UNCLOS, the international treaty that currently enshrines the notion of maritime freedom, is holding for the moment, the pressures exerted for and against that freedom are finely balanced and might well become so great as to fracture it. The expectation historically would have been that the maritime powers would defend maritime freedom. Today, instead, they and the rising economic powers of Asia are ambivalent. The continuing reluctance of the United States, the current maritime hegemon, to sign UNCLOS (rather than merely, as it now does, tacitly observe its provisions), even if only to be in a position to influence what follows, is particularly puzzling and could lead to a disastrous situation where the free movement of trade and shipping is hampered.<sup>29</sup> In the waters of strong states this could take the form of authorized harassment; the proliferation of sophisticated subsurface weaponry is particularly worrying in this regard. It is worth recalling that both the USS *Pueblo* and SS *Mayaguez* incidents were sparked by differences between the United States and coastal states over the width of their territorial waters. The seizures by Iran of British Royal Marines in 2004 and a boarding party of British sailors and marines in 2007, though both clearly planned provocations, were also mounted in disputed waters.<sup>30</sup> In the case of weak states, this hampering could take the form of predation by criminally or politically motivated nonstate actors. All the inhibitions that restrain action against weak states on land could be extended to the sea.

#### *Maritime Disorder and the Threat to Free Movement at Sea*

The potential threats that therefore confront all maritime users and every power that values the freedom of the seas are not piracy or maritime terrorism alone. Those are just two among several that can be viewed collectively as problems of maritime disorder. Participants can move between activities—legal fishermen

can fish illegally, illegal fishermen can be pirates, pirates can be smugglers, smugglers can move weapons and men for terrorists, terrorists can kidnap fishermen for ransom, and so on—and each activity can influence and create opportunities for another, to a point that could spark conflict. The context within which these conflicts will take place is likely to be one of increasing legal confusion and political ambiguity as different states assert different rights over the sea space. These assertions will for the most part fall just short of actual claims of territoriality, at least for the time being, but the sum effect will be a gradual erosion of the modern world's shared understanding that movement on the high sea is free for all.

### *“Defense of Trade”*

From at least the end of the seventeenth century, defense of “trade” was a mission central to a navy's purpose. Mahan, even though he is known more widely as the champion of fleet-on-fleet combat, recognized both that the free movement of trade was a vital sinew of national power and that the trading system upon which that power depended was far from secure. In his words, the sea was “the great highway.” He would have concurred with Sir Walter Raleigh that “whosoever commands the sea commands trade; whosoever commands the trade of the world commands the riches of the world, and consequently the world itself.” Even Ralph Peters, a strategic commentator with a famously “up and at 'em” view of military power, has suggested that the Navy, by focusing on neutralizing opposing naval forces and projecting expeditionary power, has overlooked its decisive role, “the ability to protect our maritime trade while interdicting that of the enemy.”<sup>31</sup> For, despite the focus on instant communication, rapid travel, and global capital flows, all of which appear to be unrelated to the manufacture and distribution of physical goods, globalization is fundamentally about trade, the physical movement of weighty goods and commodities. Despite this, the very phrase “defense of trade” sounds archaic and the suggestion dated. Yet any navy that has lost sight of its economic mission to protect the seaborne commerce of its own country or the trading system to which its country belongs has become detached from its roots and reality.<sup>32</sup>

Countering threats to free navigation, even when they come from irregular opponents such as pirates and terrorists, is a “defense of trade” task. However, “defense of trade,” with its blunt clarity, has been replaced by a term altogether more vague: maritime security. The terminological change is nonetheless justified, because the challenge has indeed become more diverse and more complex. The conflicts that will arise under the new rubric are unlikely to follow the patterns of twentieth-century naval engagement. As with the conflicts that are likely to accompany the “migration to the sea,” the chances are that they will mimic the

changing patterns of irregular war that have been the predominant form of land warfare for the last fifty years.

### COMPLEX MARITIME CONFLICT

Seaward migration will mean that the human and informational terrain of coastal waters will become crowded. The conflicts there will be fought among confusing numbers of people, not all of whom will be engaged; the majority of participants, in fact, will be the partially engaged, the previously engaged, and the unengaged. David Kilcullen, a perceptive observer of the wars that land forces have found themselves fighting in just these circumstances, has urged ground commanders to think in terms of “mission space,” in which “battle spaces” erupt as part of what he has called “complex irregular warfare”:

Armed forces today must deal with many adversaries beyond their traditional opponents, the regular armed forces of nation states. These include insurgents, terrorists, organized criminals and many other actual and potential adversaries. This creates a multilateral and ambiguous environment, leading to vastly increased complexity. Instead of a traditional “bilateral” construct—two opposing sides—armed forces now find themselves in a conflict “ecosystem” that includes numerous armed or unarmed actors capable of posing a serious threat to mission success, but against whom the application of military force is at best problematic. Thus, while in a previous era of warfare armed forces sought to capture and control territory (a “terrain-centric approach”) or to destroy in battle the main forces of the enemy (an “enemy-centric approach”) they must now seek to dominate the entire environment, including a variety of disparate threat elements, and other challenges which are the result of conflict such as humanitarian and reconstruction tasks.<sup>33</sup>

Kilcullen has two important foci here. The first is the challenges of urban conflict; his comments, however, are just as relevant for the topographically and hydrographically complex terrain of coastal waters and the adjacent land. The trends that are driving seaward migration mean that in many parts of the world these regions will develop into increasingly complex zones of conflict; and that conflict will bear the hallmarks of complex irregular warfare. The second is that technologically advanced “naval and air platforms with networked information capability to generate precision strike” is part of an approach that has not proven to be particularly workable in the face of irregular threats.<sup>34</sup>

### WHAT IS THE NAVY FOR?

What is a modern navy? It is a service in search of a role. With a diverse range of competitors that might need to be confronted and allies who might need to be supported, the U.S. Navy has an embarrassment of choices. Many of these choices, moreover, are potential rather than immediate. They call for investment

and preparation now for contingencies that might be realized only in years or decades.

What is so disconcerting is that the conflict the United States (and its allies) is engaged in right now has more in common with the nineteenth than the twentieth century. It is made up of overlapping small wars, each of indeterminate duration against enemies that are illusive, that some analysts have labeled “protean,” and that find shelter in weak states and operate in the anonymous alleyways of third-world cities and the urban sprawl of Western slums.<sup>35</sup> In the equally bitter domestic contest for scarce resources, navies have sought a way to demonstrate their relevance to this conflict. That, however, is not immediately apparent either to the observer who is uninformed about the enduring importance of the sea or to many in the Navy itself who have been brought up in the Mahanian tradition and are concerned that consideration is once again being given to roles it was possible to believe had been left in the wake of the Great White Fleet.

All armed services exist to advance state interests by killing people and breaking things or by threatening to kill people and break things. The paradox, however, is that for all their purposeful brutality, their continuing effectiveness depends on maintaining a delicate balance between morale and materiel. Navies, in particular, are hugely expensive organizations. Because navies are so expensive and take so long to acquire the skills and ships they need, they can often achieve their effect as much by *being* as by fighting. That is, the length of time it takes a navy to become effective means that its very existence can deter a rival. This enduring quality can often be overlooked in time of peace. In the current period of ambivalence, when people appear uncertain as to whether we are at peace or at war and wish to maintain the illusion that such neat categories are still relevant to the world in which they live, this naval myopia appears particularly acute. The consequences of uncertainty are revealed starkly in the fate of the Royal Navy, which, lacking strategic direction and political support since the end of the Cold War, has been reduced to a shadow of its former self by successive governments.<sup>36</sup> The U.S. Navy must look at it and quiver, wondering if similar strategic ignorance might infect its own political paymasters. The question those paymasters are asking, of course, and that the Navy needs to answer, is: What does it exist *for*?

#### *A Traditional Role Restored*

The purpose of this article has not been to answer that question in all its complexity but to direct attention to one aspect of a navy’s purpose, maritime security. The definition of “maritime security” as used by navies (insofar as any definition is agreed) is more restrictive than that understood generally by the wider maritime community of international organizations, law enforcement

agencies, and commercial shippers. Many would argue that “maritime security” is what navies have always done, and this lack of congruence between the two interpretations appears to underlie many of the debates about the Navy’s role in what is, without doubt, a more complex maritime environment. Furthermore, its re-introduction at a time when navies have been debating their futures has not been entirely welcome, because all three of its constituent tasks from a naval perspective—defense of trade, homeland defense, and maritime irregular warfare—demand more ships. In particular, they demand relatively unsophisticated ships. This runs counter to the acquisition policy pursued by all major navies over the past fifty years, an ever-shrinking number of higher-quality platforms, a policy driven by an enemy, the Soviet Union, whose approach to warfare followed a similar trajectory. Many current and several potential future opponents have decided, however, that, for the time being at least, this is not a race they wish to enter and that they will instead fight what the British army general Rupert Smith has called “war among the people.”<sup>37</sup>

Major navies have a very real dilemma: unsophisticated ships asked to fight a sophisticated enemy are likely to be sunk. Expeditionary warfare against a capable opponent, which is what navies have focused on fighting since 1990, demands a sophisticated fleet with a full range of capabilities. The argument that these ships can be used for lesser tasks is not really sustainable. First and foremost, there are not enough of them; secondly, they are simply too expensive to be risked in low-intensity tasks, where much of their highly destructive weaponry would be inappropriate; and lastly, their crews, if they are to remain effective against sophisticated enemies, need to train continuously for the war they are intended to fight.

Nonetheless, as Clausewitz pointed out, war is a chameleon and enemies are not static. Even potential adversaries who current assessments suggest will fight conventionally are unlikely to attack Western navies at their strongest point or on the terms those navies prefer. The risk Western naval forces run is of being prepared for and focused on high-technology warfare they might never have to fight while leaving themselves underprepared and ill equipped for a form of warfare that they probably will, including the “long war” against salafist, Islamist extremism, characterized by sovereignty concerns, political and legal ambiguity, the criticality of intelligence, and the savagery of small-unit action, all played out on the big screen of the wider information war.<sup>38</sup> They are, in other words, likely to encounter more frequently and in more places Rupert Smith’s “war among the people.” As has been suggested, “The Big War paradigm might be comforting and conducive to justifying a large share of the national treasure. But its relevance to today’s geopolitical disorder is questionable.”<sup>39</sup> Furthermore, the idea that we are living in an interlude and that normal service will be resumed

when “Big War” comes back is incomplete and ahistorical. Irregular or “small” war has existed throughout history. Even as organized forces clashed at Cannae, Breitenfeld, Waterloo, Gettysburg, Verdun, and Khe Sanh, the drumbeat of conflicts on the edge of ancient empires, colonial wars, the wars of America’s westward expansion, the anticolonial wars, and the Cold War “wars of liberation” continued uninterrupted.

#### *What Is the Source of Maritime Disorder?*

Disorder at sea is multifarious. Talk of “disorder” presupposes an order, yet the notion of the freedom of the seas as articulated by the Dutch philosopher Hugo Grotius in 1609 depends on a very restrictive idea of order outside the narrow strip of territorial water over which each coastal state has control. The gradual acceptance of his restrictive notion created the first global “common.” Being a common, it is anarchic; even the very minimal order that has existed upon it has always been exerted by a hegemon. That order has depended, in other words, on the self-interest of an imperial or global power or powers to enforce it, either alone or with the help of regional allies. In the absence of such a self-interested power or powers, seafarers have generally been subject to the depredations of criminals or state-sponsored privateers. This is how it has always been and will continue to be for the foreseeable future. Those who argue that the security of a global common can be exercised through treaties or “regimes,” rather than hegemonic power, in anything other than a limited or temporary sense have scant evidence upon which to base their faith.

In Grotius’s vision this anarchic state applied only to the high seas—that is to say, the area beyond the territorial limit. In reality it existed right up to the coast of any and every state that was unable to enforce its own will over its territorial waters. The same applies today in the case of failed states, such as Somalia, Sierra Leone, and Papua–New Guinea.<sup>40</sup> In the case of weak states such as Indonesia, the Philippines, and Bangladesh, it can also extend right up the coast in some areas and can even affect major ports such as Chittagong or Lagos if the authorities are underfunded or corrupt. Failed and weak states can provide criminals and terrorists with sanctuary. Weak states where order is more a semblance than a reality can, ironically, provide more secure shelter for criminals and terrorists than do failed states, because weak but corruptible law enforcement can protect them from internal enemies and deter external powers and international organizations from pursuing them directly, by the fear that such action will make an already bad situation worse.

#### *What Is the Role of the United States?*

What then is the role of the United States, and what has it to do with the suppression of piracy and maritime terrorism? The United States must pursue its

self-interest; it must “please itself in the process of serving the general good”; otherwise, “a praiseworthy desire to improve conditions here or there must prove too shallow a motive to bear the traffic when unexpected costs are suffered.”<sup>41</sup> That general good manifestly includes the maintenance of good order and freedom of movement at sea. Although the United States prides itself on its maritime heritage, it is more of a continental island than a nation that depends on the sea. Vast oceans have protected it, and it has historically been untroubled by anything other than homegrown maritime disorder. It therefore subscribes to the illusion that maritime security is at most times and in most places a law enforcement problem, one that is properly the concern of coast guards. This is strange, given that the first serious action in which the fledging U.S. Navy engaged was the suppression of Barbary piracy. But then again, perhaps not—the predators of the Barbary Coast were in fact servants of the Barbary states, who owed allegiance to the Ottoman sultan. They were, in other words, not pirates in pursuit of private gain but effectively privateers; they provided these local lords with what today would be termed “contractor support.” What the Navy was confronting then was not a law enforcement problem but a political one, because what the Barbary pirates did was perfectly legal.<sup>42</sup>

Consequently, although the U.S. Coast Guard has a leading role when it comes to ensuring maritime security in home waters, it can play only a supporting role globally, because the problem, which is primarily political, is the same now as it was then. This is undoubtedly the case when it comes to international waters. The suggestion that operations on inland and coastal waters are substantially different from those on deep water (and, by implication, that the former is more suited to coast-guard activity whereas the latter is the preserve of the gray-hulled navy) is seductive but wrong.<sup>43</sup> Although each venue has different operational characteristics, they are essentially a continuum that criminals, insurgents, and terrorists have no hesitation in exploiting. The Navy must do the same. The advantages cited for coast guards include a lower political profile that, it is said, is less threatening in situations where sovereignty is an issue and the fact that they are generally cheaper to establish and maintain.<sup>44</sup> The argument also seeks to draw a hard line between the “defense of trade” and “constabulary” missions, but this line will be increasingly hard to draw as the seas become more crowded and the operational seascape more complex.

### *The Political Dimension of Naval Operations*

Navies are different from the other armed services. Killing people and breaking things in the service of the state constitute only part of what they do—historically, only a very small part. Navies have always been aware of the political consequences of their actions. They have therefore often been more willing than other

armed services to exert their influence politically rather than militarily. The growing political challenge will be to secure both the ocean spaces and the coastal waters, upon which human activity will encroach more and more. It will require political sensitivity more than law enforcement acumen. It will also require that all the levers of national power be applied and focused with political confidence and determination. Providing that the U.S. Navy can absorb the lessons that ground forces have learned so painfully over the last half-century and adapt its force structure and training accordingly, it has the substantially greater resources and the vital relationships with its naval counterparts that will be necessary to tackle the maritime security role effectively.

But, given the current wave of anti-Americanism that is sweeping the world, is America in a position to anchor the global maritime order? It appears that anything America touches or anything with which it is associated is tainted and provokes an immediate and negative reaction. But even if so, there is no alternative to American leadership, for the moment at least. The effect of this wave of resentment and suspicion has been to set American political and military leaders a very delicate task. When promoting the “thousand-ship navy” the United States is right to be as backward as it can be when coming forward. Necessary humility is not, however, a substitute for clear leadership. Free markets demand free movement at sea, free from harm. Subtlety is not a substitute for strength but its servant. As Teddy Roosevelt admonished: “Speak softly and carry a big stick; you will go far.”

#### *The Future of Maritime Disorder*

Piracy and terrorism show no apparent links, but the presence of piracy is a possible indicator that the conditions exist for maritime insurgency or maritime terrorism to take root.<sup>45</sup> As the issue has been put, “While we should not take piracy as a marker for terrorism, it is a useful indicator of the level of security in the area.”<sup>46</sup> How maritime insurgents and terrorists might exploit opportunities in the future can only be a matter of speculation. What will motivate them, however, is quite clear. The constraints, geography and opportunity, will remain the same, and so too will the imperative: the need to respond to political circumstances on land.<sup>47</sup> Only if political circumstances change on land will insurgents and terrorists need to operate at sea. Among the salient characteristics of salafist, Islamist terrorism have been its mobility and its willingness to support local groups with specialist knowledge, even if that support amounts to little more than advice and political exhortation. The concern must be that unless naval forces are prepared to confront such eventualities, there is a good chance those groups will succeed.

For example, if U.S. forces are constrained to operate from sea bases because local conditions preclude secure land bases, a sea base might well become a target if it is in confined waters, such as those of the Persian Gulf or the eastern Mediterranean.<sup>48</sup> Alternatively, if salafist organizations are able to gain footholds in areas where political change or instability might allow them to operate with greater freedom than they do now, and where the sea might offer them significant opportunities, that combination might increase the incentive to place greater emphasis on the development of a maritime capability than is the case currently. In the first instance, it is likely that terrorists and insurgents will develop the capacity to do more of what they are doing now—moving cadres, equipment, and money. Thereafter they could possibly build on this expertise to develop an attack and area-denial capability to interdict international trade, hinder the free movement of naval forces, and impede access to littoral waters. Keeping the constraints of geography and opportunity firmly in mind, Southeast Asia, the Horn of Africa, and the eastern Mediterranean are all maritime theaters surrounded by large Islamic populations, which if Islamist attitudes take hold could develop into areas of future conflict.

#### THE GAP IN THE CONTINUUM

Confronting these challenges is what navies do. The U.S. Navy is the international “cop on the beat.” It cannot be everywhere, but it needs to demonstrate that it recognizes that at least two aspects of maritime security—the defense of trade from criminal and political threats and the suppression of maritime insurgency—are key parts of its mission. It also needs to be able to demonstrate that it can operate across the continuum, from blue water to brown water. As Admiral Mullen has said, “We cannot sit out in the deep blue, waiting for the enemy to come to us. . . . We must go to him.”<sup>49</sup> To do that effectively will mean changing some of the ways it does its job. It needs to recognize that there is a significant gap in the continuum. Recent U.S. doctrine has viewed the littorals as a space over which expeditionary forces must leap from the fleet to the land, rather than a vital human and economic space that is often poorly secured, to the point that disruptive, subversive, and criminal elements can operate in it to their advantage and to the detriment of the host nation and the international community.

Intelligence is key. Technical intelligence-gathering methods might provide the Navy with a vital edge, or they might not. Currently a heavy investment is being made in a system of fused sensors to deliver “maritime domain awareness.” Modern warships depend increasingly on their sensors to interrogate their environment. However, in any “war among the people,” empathy is as important as data.<sup>50</sup> Dependence on technical intelligence can make any force deaf to the human factor.<sup>51</sup> Once deaf to that, it is blind to complexity.

The only way navies will be able to gather this human intelligence is to behave like their nineteenth-century predecessors by stepping off their ships into boats and onto land. Sailors will need to recognize that, like ground forces, they will have to sacrifice a degree of force protection in order to gather information and interact with the people they are there to win over.

The need, in other words, is to redevelop the old naval virtue of presence. Not merely persistent intelligence, surveillance, and reconnaissance (ISR), the current grail of the intelligence community, but physical presence—ships regularly on station demonstrating particular interest in, and commitment to, the sea peoples of weak and failing states. It cannot fulfill this task alone, which is why it needs to develop close relationships with navies around the world and develop workable and interoperable tactics, techniques, and procedures with navies in critical and vulnerable areas. The thousand-ship-navy concept encapsulates this idea. It is an idea that has been misunderstood or mischievously misrepresented but that if taken forward on the terms of broad equality outlined at the outset could provide a workable platform for the suppression of maritime disorder.<sup>52</sup>

The presence of pirates and terrorists is a wake-up call. Their activities serve to remind the Navy that it cannot stand offshore immune to the complex forms of warfare that have appeared on land, where the lines between the criminal and the political have been blurred. The heightened political content of that warfare also means that the Navy cannot interpret the adjective “maritime,” as in “maritime counterterrorism,” or even the broad sweep of “maritime security” as “naval” and therefore take the lead role. It has a role, in many cases an underestimated one, but as part of a larger interagency force that, under clear political leadership, is able to draw on all elements of national power, including diplomatic, humanitarian, and informational. For a navy like the U.S. Navy, though, working with all these elements is hard-wired into its blood.

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#### NOTES

1. For an example of the continuing vibrancy of this hypothesis see Dan Efron, “Could al-Qaeda Infiltrate Somali Pirates?” MSNBC.com, 11 April 2006.
2. Office of Naval Intelligence and Coast Guard Intelligence Coordination Center, *Threats and Challenges to Maritime Security 2020* (Washington, D.C.: 1 March 1999), chap. 3, available at [www.fas.org/irp/threat/maritime2020/chapter3.htm](http://www.fas.org/irp/threat/maritime2020/chapter3.htm).
3. Portions of this article are based on, and build on, chapter 3 of Martin N. Murphy, *Small Boats, Weak States and Dirty Money: Piracy and Maritime Terrorism's Threat to International Security*, Adelphi Paper 387 (London: Routledge for the International Institute for Strategic Studies [IISS], 2007).
4. The importance of this point has been emphasized by Michael F. Morris, who in an important article provides a succinct summary of the differences between insurgency and

- terrorism, as well as a strong argument in favor of treating al-Qa'ida as an insurgent movement. See his "Al Qaeda as an Insurgency," *Joint Force Quarterly*, no. 39 (Fourth Quarter 2005), pp. 41–50, available at [www.dtic.mil/doctrine/jel/jfq\\_pubs/1039.pdf](http://www.dtic.mil/doctrine/jel/jfq_pubs/1039.pdf).
5. J. N. Mak, "Pirates, Renegades and Fishermen: The Politics of 'Sustainable' Piracy in the Strait of Malacca," in *Violence at Sea: Piracy in the Age of Terrorism*, ed. Peter Lehr (New York: Routledge, 2006), pp. 199–223.
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9. Phil Williams, "Combating Transnational Organized Crime," in *Transnational Threats: Blending Law Enforcement and Military Strategies*, ed. Carolyn W. Pumphrey (Carlisle, Pa.: U.S. Army War College, Strategic Studies Institute, 2000), p. 186.
10. Stefan Eklöf, *Pirates in Paradise* (Copenhagen: NIAS, 2006), pp. 82–83.
11. See Martin N. Murphy, "The Blue, Green and Brown: Insurgency and Counter-insurgency on the Water," *Contemporary Security Policy* 20, no. 1 (April 2007), pp. 63–79.
12. Michael D. Greenberg et al., *Maritime Terrorism: Risk and Liability* (Santa Monica, Calif.: RAND, 2006), pp. 81–85; also Martin N. Murphy, "Slow Alarm: The Response of the Marine Insurance Industry to the Threat of Piracy and Maritime Terrorism," *Maritime Studies*, no. 148 (May/June 2006), pp. 10–11.
13. *United Nations Convention on the Law of the Sea of 10 December 1982*, Article 110, available at [www.un.org/Depts/los/convention\\_agreements/texts/unclos/closindx.htm](http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm). Under article 108 vessels suspected of involvement in the smuggling of narcotics and psychotropic substances can also be boarded, but only at the request of their flag states.
14. For a summary of this incident see Joel A. Doolin, "The Proliferation Security Initiative: Cornerstone of a New International Norm," *Naval War College Review* 59, no. 2 (Spring 2006), pp. 29–30, and Michael Byers, "Policing the High Seas: The Proliferation Security Initiative," *American Journal of International Law* 98, no. 3 (July 2004), p. 526.
15. For a discussion of PSI see Doolin, "The Proliferation Security Initiative," pp. 29–57, and Byers, "Policing the High Seas," pp. 526–45. Doolin, as the title of his paper suggests, advances the argument that PSI could lead to a new international norm of "fast track" authority to interdict WMD cargoes on the high seas. Byers is more circumspect, arguing that "much of PSI involves nothing more than the consistent and rigorous application of existing rights under national and international law" but that it is less obvious it will "lead to new rights under customary international law" (p. 528). For a more skeptical view and, arguably, a more accurate account of the international response to the initiative, see Mark J. Valencia, "Is PSI Really the Cornerstone of a New International Norm?" *Naval War College Review* 59, no. 4 (Autumn 2006), pp. 123–30.
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17. Doolin, "The Proliferation Security Initiative," p. 36.
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26. Elliott Richardson, “Power, Mobility and the Law of the Sea,” *Foreign Affairs* 58, no. 4, (Spring 1980), pp. 904, 906.
27. See Martin N. Murphy, “Piracy and UNCLOS: Does International Law Help Regional States Combat Piracy?” in *Violence at Sea*, ed. Lehr, p. 165.
28. Bernard H. Oxman, “The Territorial Temptation: A Siren Song at Sea,” *American Journal of International Law* 100, no. 4 (October 2006), p. 830.
29. *Ibid.*, p. 850. A good summary of the naval arguments advanced in favor of signature is to be found in Jane G. Dalton, “Future Navies—Present Issues,” *Naval War College Review* 59, no. 1 (Winter 2006), pp. 28–30.
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33. David Kilcullen, “Complex Irregular Warfare: The Face of Contemporary Conflict,” in *The Military Balance, 2005–2006* (London: Routledge for the IISS), 2005, p. 413. For his comments on “mission space” and “battle spaces” see pp. 416–17.
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35. Jessica Stern, “The Protean Enemy,” *Foreign Affairs* 82, no. 4 (2003), pp. 27–40.
36. Arthur Herman, “The Strange Death of the Royal Navy,” *New York Post*, 14 January 2007, available at [www.nypost.com](http://www.nypost.com).
37. Gen. Sir Rupert Smith, *The Utility of Force: The Art of War in the Modern World* (New York: Knopf, 2007).
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50. I would like to thank Michael Vlahos for his insight on this point.
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