

## GRASPING “THE INFLUENCE OF LAW ON SEA POWER”

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Over the past two decades international maritime law has evolved from a set of rules designed to avoid naval warfare, by keeping maritime powers apart, toward a new global framework designed to facilitate maritime security cooperation, by bringing naval forces together to collaborate toward achieving common goals. The effects of this change are far-reaching—for the first time, law is a force multiplier for pursuing shared responsibilities in the maritime domain. In a departure from the past hundred years of state practice, the contemporary focus of international maritime law now is constructive and prospective, broadening partnerships for enhancing port security, as well as coastal and in-shore safety, extending maritime domain awareness, and countering threats at sea. In contrast, the predominant influence of law on sea power from the first Hague conference in 1899, through two world wars, and continuing until the end of the Cold War, was focused on developing naval arms-control regimes, re-

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fining the laws of naval warfare, and prescribing conduct at sea to erect “firewalls” that separated opposing fleets. The maritime treaties were designed to maintain the peace or prevent the expansion of war at sea by controlling the types and numbers of warships and their weapons systems and by reducing provocative or risky behavior.

Today treaties do more than reduce friction and build confidence: contemporary international maritime agreements spread safety and security through networks or coalitions. Laws and international

institutions have become catalysts for fostering coordination among states and distributed maritime forces and spreading the rule of law at sea, and as a consequence, the strategic, operational, and political “landscapes” of the oceans have decisively changed.

The remainder of this article is divided broadly into four sections. First, it is essential to describe briefly the major features of historical international maritime law, which traditionally focused on the law of naval warfare and naval arms control. This survey extends from the beginning of the Hague Law, at the turn of the nineteenth century and beginning of the twentieth, to the Jackson Hole Agreement between the superpowers at the end of the Cold War. Along the way, high points in the terrain include the treaty system negotiated by the five greatest naval powers at the Washington Conference in 1921–22, the naval arms-limitations agreements that were extended at the London Naval Conference of 1930, and the several Cold War treaties, such as the Seabed Treaty and the Incidents at Sea (INCSEA) agreement.<sup>1</sup> The dean of this school of traditional international maritime law was the late New Zealand scholar D. P. O’Connell, who published his influential *The Influence of Law on Sea Power* in 1975.<sup>2</sup> O’Connell passed away in 1979, and since that time both international maritime law and naval warfare have been transformed to reflect changing patterns in the distribution of power within the world system and in the role of naval forces. O’Connell delineated the function of international law in naval planning by focusing largely on the law of naval warfare, and his seminal volume epitomizes the relationship between sea power and international law over the previous century.

In the second section the article shifts toward an explanation of the relationship between law and sea power since the fall of the Berlin Wall and highlights the primary characteristics of international maritime law today. In doing so, this analysis fills a void by connecting the major legal initiatives for maritime security to the prevailing world political system, just as O’Connell did for a very different world more than thirty years ago. Recently emerging maritime treaties and partnerships have transformed international maritime law and thereby re-configured the nature of sea power by creating agreements to unite collective efforts to enhance global shipping and combat maritime piracy, terrorism, proliferation of weapons of mass destruction, and narcotics trafficking. These new regimes presage an integrated and cooperative approach, and their development over the past two decades has shaped the diplomatic space to such extent that they now may be seen as collectively the principal impetus for the 2007 U.S. maritime strategy, *A Cooperative Strategy for 21st Century Seapower*.<sup>3</sup> In that sense, the new maritime strategy was not a revolutionary document but a lagging indicator of the changes in the legal and policy frameworks evolving in the

global maritime system, and to that extent the document merely leveraged the emergence of new cooperative relationships. For the first time, international law is serving as a force multiplier for sea power, promoting maritime security both globally and regionally, by broadening maritime partnerships and developing emerging norms.

Third, the article turns to offer a roadmap of the most important international maritime security treaties, agreements, and partnerships. These treaties and agreements include the 1982 Law of the Sea Convention (UNCLOS), which entered into force in 1994 and is the umbrella framework for international law in the maritime domain, as well as such post-9/11 updates to older agreements as the 1948 Convention on the International Maritime Organization (IMO) and recent revisions to the 1974 Safety of Life at Sea (SOLAS) Convention. Furthermore, the authorities contained in the 1988 Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation and especially the 2005 protocols thereto, and even the applicability of enforcement action in the maritime domain under Chapter VII of the United Nations Charter by the Security Council, have all been expanded in recent years. These and other agreements are creating a network of complementary and interlocking legal and policy authorities that form the basis for the new maritime order.

Having placed these agreements and partnerships in an analytical context, the article provides a brief description of some of the principal initiatives. The depth of the new measures and the creation of the self-perpetuating legal and policy networks that propel them mean law now plays a defining role with respect to modern notions of sea power. International law is becoming just as important as—indeed more important than—aircraft carriers and submarines for ensuring global maritime security, because it unites the international community in pursuit of common goals.

Finally, the article concludes that because international maritime law has risen in importance, the United States should adopt a more savvy approach to maritime diplomacy. Competing narratives or contending visions of international maritime law and contests with competitor states over how to shape the future order of the oceans should move from relative obscurity to the front burner. The aggressive Chinese “swarming” ship maneuvers against the military survey vessel USNS *Impeccable* while it was operating in the East China Sea in early March 2009 demonstrate how inextricably these issues are connected to diplomacy and national security. This will require national-level leadership from the National Security Council to ensure that all agencies and departments are aligned on these issues and strongly advocate legal and policy positions that clearly prioritize American security interests over other U.S. interests in the oceans, such as the preservation of the marine environment and climate change.

The United States was the primary impetus for developing the new international maritime law, but it remains to be seen whether it will be the most influential country in the shaping of the future maritime order.

#### HISTORICAL INTERNATIONAL MARITIME LAW

Early maritime law was designed to ameliorate conflict at sea. Perhaps the first law directly affecting sea power was the set of customary rules governing the law of “prize”—that is, the capture of vessels in wartime. Prize arose under the concept of neutrality and of neutral goods that are exempt from capture by a belligerent anywhere on the high seas. The rule was recognized as early as 1164 and subsequently included in the *Consolato de Mare*, widely adopted by Mediterranean city-states in the High Middle Ages. Early prize law evolved continuously throughout the early modern era, with its greatest prominence stretching from the mid-fifteenth century to mid-nineteenth. In 1618, the Dutch jurist Hugo Grotius cogently set forth the natural-law doctrine of “freedom of the seas,” a concept that preserved access to the seas for all nations and thereby fueled an explosion in international trade. Grotius’s law setting forth the legal divisions of the oceans was validated in the mid-seventeenth century, when the Bourbon and Hapsburg rivalry engulfed central Europe in the Thirty Years’ War. The conflict was brought to a close with the peace of Westphalia in 1648. The Treaty of Westphalia was an epochal document, recognizing sovereignty over land areas under individual autonomous rulers and ushering in the era of the modern nation-state. Whereas the complex treaty recognized that states exercise complete authority over and are responsible for maintaining security inside their borders, it was manifest that no nation could exercise sovereignty over the oceans. For four hundred years, international law regarding land areas was governed principally by the canon of state sovereignty reflected in the 1648 Treaty of Westphalia, and the rules pertaining to the oceans derived from the complementary doctrine of freedom of the seas.

In addition to promoting freedom of the seas, British and, later, American governments championed international law and international institutions as necessary for the foundation of an effective world system of stability and conflict avoidance. In doing so, “the United States and Great Britain looked at the world in a different way than have most of the European countries,” writes Walter Russell Mead. “The British Empire was, and the United States is, concerned not just with the balance of power in one particular corner of the world but with the evolution of what we today call ‘world order.’”<sup>4</sup> Over the last two hundred years the singular leadership roles of the United States and the United Kingdom in advancing a security paradigm based on both sea power and international law have been critical for international security. In developing and

maintaining the order, the United Kingdom and the United States have had, between them, outsized influence on the shape of maritime law and its effect on war prevention, naval warfare, and grand strategy.

### *Law of Naval Warfare*

By 1758, the Swiss lawyer and diplomat Emmerich de Vattel had expounded two fundamental principles of the law of neutrality that had gained widespread acceptance: belligerents were obligated to respect the neutrality of states remaining neutral, and a neutral state had a duty to remain impartial. In 1856, at the end of the Crimean War, the plenipotentiaries adopted the nonbinding Declaration Respecting Maritime Law, in conjunction with the Treaty of Peace.<sup>5</sup> The 1856 declaration abolished the practice of privateering and provided that a neutral flag covers enemy goods, except contraband that could support the war effort, and furthermore that neutral goods, except contraband, are exempt from enemy capture.

Prize courts applied the doctrine of “continuous voyage” and “ultimate destination” to look beyond the stated destination of a vessel or goods to ascertain whether the final destination was an enemy state. A proposal for an international prize court, reduced to writing in the Convention of an International Prize Court 1907 (Hague No. XII of 1907), never entered into force because it did not secure any state ratification. In 1909, however, the Declaration of London Concerning the Laws of Naval War adopted the doctrine of ultimate destination, which permitted capture of absolute contraband whether its route to an ultimate destination in enemy territory was direct or indirect and circuitous, through neutral state waters or ports.<sup>6</sup> Aside from its rules of prize and capture, the Declaration of London was the definitive code of naval warfare for its day. It was observed by several nations during World War I, although the document never entered into legal force.

The first Hague Peace Conference, which met in 1899, adopted the Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 1864 (Hague III).<sup>7</sup> The 1868 Additional Articles Relating to the Condition of Wounded in War provided protections for certain categories of persons at sea.<sup>8</sup> The second Hague Peace Conference in 1907 adopted seven treaties relating to naval operations, which include the Convention (No. VI) Relating to the Status of Enemy Merchant Ships at the Outbreak of Hostilities; the Convention (No. VII) Relating to the Conversion of Merchant Ships into Warships; the Convention (No. VIII) Relative to the Laying of Automatic Submarine Contact Mines;<sup>9</sup> the Convention (No. IX) Concerning Bombardment by Naval Forces in Time of War; the Convention (No. X) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention;<sup>10</sup> the Convention (No. XI)

on Restrictions with Regard to the Exercise of the Right of Capture in Naval War; and the Convention (No. XIII) Concerning the Rights and Duties of Neutral Powers in Case of Maritime War. This corpus of Hague law was complemented by the Helsinki Principles on the Law of Maritime Neutrality, which codified the rules applicable to the relations between parties to a conflict and provided that neutral states should be governed by the law of peace, not war.<sup>11</sup> For example, article 2 reduced to writing the customary law permitting belligerent states to intervene in neutral waters against another party to the conflict if the neutral coastal state either allowed or tolerated the misuse of its territorial sea.

For most of this period, international law influenced naval power through normative restraints on methods and means of warfare, such as proscribing unrestricted antisubmarine warfare during World Wars I and II and shaping naval force structures through ceilings on warship type and tonnage. At sea this meant controlling the application of force in interstate conflict throughout the oceans—by, for example, rules governing naval bombardment and mine warfare—and calibrating the exercise of naval self-defense. Customary international law and the 1936 London Protocol prohibited destruction of enemy merchant vessels unless the passengers and crew were first disembarked and their safety assured.<sup>12</sup> This rule did not apply if the merchant vessel resisted the belligerent's right of visit and search to determine the enemy character of the vessel. During World War II, however, both the Axis and the Allies routinely disregarded this rule and intentionally targeted the merchant ships of the enemy, in campaigns of unrestricted submarine warfare.

Finally, the Second Geneva Convention of 1949 restated customary rules for international humanitarian law applicable to international armed conflict at sea.<sup>13</sup> The humanitarian principles of common article 3 prescribe rules pertaining to the treatment of surrendered, wounded, and shipwrecked sailors.

#### *Law of Naval Arms Control*

While the law of armed conflict sought to reduce the effects of war upon those placed out of combat, the law of naval arms control sought to restrict the development of ever-greater instruments of war at sea. During the period between the two world wars, the Washington Treaty of 1922 fixed battleship ratios for all the major maritime powers.<sup>14</sup> Following the abrogation of the Treaty of Versailles by Germany in 1935, Germany and the United Kingdom concluded the Anglo-German Naval Agreement, limiting the German navy to 35 percent of the Royal Navy and requiring Germany to conform to the rules of the Washington Treaty.<sup>15</sup> Despite cheating among some of the parties, the agreement actually did slow the construction and size of capital warships. Perversely, however, the pact also provided incentives for states to redirect naval ambitions into other systems, such as submarines, that were not explicitly controlled.

During the Cold War, Western security ultimately was dependent upon strategic deterrence. The primary function of international law was to prevent superpower conflict, in particular to reduce the likelihood of nuclear war. In that setting, international law took the form of nuclear and conventional arms-control regimes, which were important parts of the broader equation of managing superpower competition. The 1971 Seabed Treaty, for example, slowed the spread of nuclear weapons by banning their emplacement on the floor of the ocean beyond twelve nautical miles from the coastline. Similarly, the 1963 Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water sought to stop the introduction of nuclear capabilities into new areas of the global commons. One of the few agreements that represented a departure from the law of naval war and the naval arms-control paradigm was an August 1944 agreement, Coordinated Control of Merchant Shipping, in which the Allied powers agreed to pool and cooperatively manage shipping resources under their jurisdiction as the war was winding down in

#### NORMATIVE FRAMEWORKS FOR MARITIME SECURITY: PAST AND PRESENT

Elements	Past	Present
Maritime Security Paradigm	Hegemony	Collaboration
Principal Area of Operation	High seas—seaward of the exclusive economic zone	Littorals—landward of the exclusive economic zone
Threat Vector	Concentrated; conventional forces; strategic nuclear missiles	Diffuse; commercial shipping; weapons of mass destruction
Optempo	Routine	Unpredictable
International Legal Authorities	UN Charter; customary international law of the sea; bilateral superpower agreements for war prevention	UN Charter; Law of the Sea Convention; global and regional multilateral regimes for maritime safety, security, and environmental protection
International Institutions	Contending alliances: NATO (1949–present) Warsaw Pact (1955–91) SEATO (1954–77) CENTO (1955–79)	Multilateral regimes: Law of the Sea Convention (1982–present) International Maritime Organization (1948–present) Proliferation Security Initiative (2003–present) Suppression of Unlawful Acts at Sea (2009?–present)

Europe and the Far East.<sup>16</sup> Law also served a channeling function to guide behavior toward less confrontational conduct, as illustrated by the INCSEA agreement of 1972, designed to avoid an unintended conflict between American and Soviet naval forces.

Today, in contrast to the past “build-out” in the law of naval warfare and naval arms control, the new international maritime law is inclusive rather than exclusive, inviting any country to cooperate; it is progressive rather than conservative, seeking to promote and integrate international maritime networks rather than capture and restrict the activities of the major maritime states. Made possible by the end of the Cold War, the new international maritime law experienced its greatest growth in response to global cargo-chain security and maritime homeland security after the attacks of 9/11.

#### THE CONTEMPORARY ERA

International law has experienced dramatic growth and change since the 1970s, both becoming more diffuse and exerting a more powerful influence on the world system than in previous time. Over the past twenty years, seismic changes in the world system—the collapse of the Soviet Union and the terrorist attacks of 9/11—have caused international law to evolve quickly in order to accommodate, and even influence, the shape of the international system. In contrast, because it takes years to design and construct modern warships and aircraft, and since those platforms remain in service for decades, naval force structure and doctrine progress more slowly. So it is that in recent decades naval power and naval theory have lagged as indicators of change in the nature of power in the international system, but international law has been at the vanguard, driving those changes. For instance, these legal trends predated and catalyzed the conceptualization of the *Cooperative Strategy*, the legal and policy networks created arising in new forms of international law influenced naval strategy, rather than the other way around. The release of the *Cooperative Strategy* in 2007 reflected a shift in theoretical approach to sea power away from the concept of command of the sea, the linchpin of geostrategist Alfred Thayer Mahan, and toward the notion of constabulary sea control, which was promoted by British historian Sir Julian S. Corbett. Mahan envisioned naval forces taking command of the seas through large-scale engagements between battle fleets. For Corbett, however, naval force structure should include not only ships of the line with focused combat power but globally distributed engagement forces, such as frigates, that are capable of exercising control of the seas.

“Sea power” encompasses both naval power and maritime power. Naval power combines strategy and doctrine with warships and aircraft in order to deter maritime threats, win war at sea, and project power ashore. The more

inclusive concept of “maritime power” applies all components of diplomatic, informational, military, and economic aspects of national power in the maritime domain. The expanded notion of sea power as against purely naval power is dependent upon the regimes created by progressive maritime law. The primary beneficiaries of this phenomenon in the United States are the Coast Guard and Marine Corps, which share a history of maritime constabulary operations—positioned at the seam between peace and war and embracing the geographic dimensions of land and sea. In contrast, for decades the Navy marginalized amphibious warfare; only in the last decade has this mind-set changed. It is no coincidence, however, that while the Coast Guard and Marine Corps have become more relevant, the Navy still struggles to find its place amid a network of new regimes that enable coalition maritime constabulary operations and the building of maritime security capacity and partnership. The *Cooperative Strategy* of 2007 attempts to serve as a framework to fill this void, but problems of adapting to the new approach persist. Four years after introducing the “thousand-ship navy” concept and a year after soliciting inputs from American embassy posts, the Pentagon still has yet to implement its vision for the Global Maritime Partnership.<sup>17</sup> Furthermore, the new legal networks and partnerships that facilitate maritime coalitions should have been central to the *Cooperative Strategy*; instead, the document barely mentions international law, obliquely noting that “theater security cooperation” requires, among other things, “regional frameworks for improving maritime governance, and cooperation in enforcing the rule of law,” at sea.<sup>18</sup> Although the strategy correctly suggests that “trust and cooperation cannot be surged,” it fails to promote America’s great strength in broadening the rule of law in the oceans. The lack of a specific reference to the global network of international laws that implicitly underlie the *Cooperative Strategy* represents a missed opportunity to play to the core U.S. strength, focus the purpose and goals of national maritime security, and reassure states skeptical of American intentions.

The emerging global maritime security regime is inclusive, multilateral, and consensual. In contrast to the disparate and competing national perspectives on international law concerning the initiation of war and the conduct of armed conflict (in Iraq beginning in 2003, in Lebanon in 2006, and in Georgia in 2008), there is great accord on the legal framework necessary for ensuring maritime security. Since the United States was the principal sponsor of the international system developed in the wake of World War II, the evolution of sea power as an outgrowth of international maritime law plays to a unique American strength. The trend converts traditional competition arising from naval power—a “struggle for power”—to a contest to interpret and shape the legal regimes of the global maritime partnership—a “struggle for law.”

The United States has become the world's leader in advancing these positive relationships, which include such nonbinding political arrangements as the Proliferation Security Initiative (PSI), the Department of Energy's megaports initiative (to detect radioactive sources inbound to the United States from foreign ports), and the Department of Homeland Security's Container Security Initiative (CSI), which seeks to screen, though not necessarily inspect, every container entering the country. The United States has also been a principal proponent and organizer of multilateral binding legal instruments, including UN Security Council Resolution 1540 of 2004, which requires states to enforce effective measures against the proliferation of weapons of mass destruction (WMD), as well as several post-9/11 updates to important treaties under the rubric of the IMO.

#### THE EMERGING FRAMEWORK FOR MARITIME SECURITY

This narrative on the importance of international law at sea is at odds with much of the conventional wisdom that characterizes the oceans as an ungoverned legal vacuum.<sup>19</sup> The global order of the oceans springs from the architecture of the international law of the sea and of the IMO, and the new maritime security regimes fall within those frameworks. The 1982 Law of the Sea Convention was the first—and remains the foremost—international instrument for realizing collaborative approaches to maritime security. Attempts in 1930, 1958, and 1960 at developing a widely accepted multilateral framework on oceans law had either ended in utter failure or achieved only modest gains. In contrast, UNCLOS contributes directly to international peace and security, by replacing abundant conflicting maritime claims with universally agreed limits on coastal-state sovereignty and jurisdiction. The treaty is anchored in a set of navigational regimes that establish common expectations, delineating the rights and duties of flag, port, and coastal states. Even though some state parties occasionally propose rules that evidence unorthodox misreadings of the convention—such as China's bogus security claims in the East China and Yellow seas—UNCLOS has served as a stabilizing force, a framework that protects and promotes the principal American interest in freedom of the seas. In doing so the multilateral agreement, which now has more than 155 state parties, picked the international community out of what D. P. O'Connell once described as an "intellectual morass" in which competing opinions and views served as a substitute for law. As a result, the number of controversies in the oceans has declined.<sup>20</sup>

UNCLOS contains provisions relating specifically to maritime security. Article 99 pertains to trafficking in human slaves, articles 100–107 address piracy, and article 111 contains provisions for hot pursuit from the high seas into a coastal state's territorial sea. The convention also provides for the control of the

illicit traffic in narcotic drugs, in article 108, international maritime drug trafficking having become more prevalent during the decade of the treaty's negotiation. Article 110 incorporates the customary norm in international law that warships may exercise the right of "approach and visit" of merchant vessels. The convention permits a right of visit or boarding on the high seas by warships of all nations, even without the consent of the flag state, for the purpose of disrupting certain universal crimes, such as human slave trafficking.<sup>21</sup> Whereas the right of visit and search in the law of naval warfare has largely become an anachronism, the right of approach and visit is employed on a daily basis in maritime security operations.

The IMO, as a specialized agency of the UN recognized in the law of the sea as the "competent international organization" for the setting of worldwide shipping standards and approval of coastal-state regulations affecting international shipping, is the key institution for the development of international maritime law. With 167 state parties, the organization is consensus oriented and broadly inclusive. Since its inception under the 1948 Convention on the Inter-governmental Maritime Consultative Organization, the organization has proved remarkably effective in promoting safe, clean, and efficient shipping. There is a refreshing absence of the political posturing that too frequently marks the proceedings of some other UN agencies. The IMO member states have adopted nearly fifty treaties and hundreds of codes, guidelines, and recommendations that address nearly all aspects of shipping. These regimes are now applicable to almost 100 percent of global tonnage.<sup>22</sup>

### *Global Cargo-Chain Security*

Given especially the increasing reliance on "just in time" delivery, countries have become closely bound together by maritime shipping; more than 90 percent of global trade is conducted over the sea-lanes. Ensuring maritime security requires a concerted effort among littoral and coastal states, landlocked and port states, and especially flag states, working in conjunction with international organizations and the maritime industry. Nearly every maritime security scenario involves multiple states and stakeholders—all with an interest in collaborative decision making. A vessel hijacked by pirates or engaged in smuggling most likely is registered in one nation (such as Greece), owned by a corporation located in another nation (perhaps South Korea), and operated by a crew comprising nationals of several additional countries (say, the Philippines or Pakistan). Furthermore, the vessel may well be transporting either containerized cargo or bulk commodities owned by companies in one or more additional states, like Singapore. Finally, port officials or naval forces from several nations may become involved in intercepting the ship, and each is likely to operate

within its own rules of law enforcement and the use of force. Consequently, international law constitutes the “language and logic” for facilitating cooperation among these stakeholders.<sup>23</sup>

Specifically, the 1974 SOLAS Convention is the cornerstone for cooperation regarding merchant fleet security. The treaty applies to 98 percent of world shipping, and it reflects comprehensive safety standards for construction, design, equipment, and manning of vessels. Ship subdivision and stability, fire protection, lifesaving appliances and arrangements, radio communications, safety of navigation, carriage of cargoes and dangerous goods, and safe management practices are all part of the package. In 2002, in the wake of the attacks of 9/11 the IMO convened a diplomatic conference to adopt amendments to Chapter XI of SOLAS, called the International Ship and Port Facility (ISPS) Code. The ISPS Code launched a worldwide public-private partnership for maritime security, designed to enable national governments to develop better oversight of their commercial shipping and port facility industries. The code contains mandatory requirements for governments, port authorities, and shipping companies, as well as a separate (nonmandatory) set of guidelines. In force for 158 states, accounting for over 99 percent of the world’s merchant-fleet gross tonnage, the ISPS Code provides a standardized framework for evaluating risk. By assisting governments in synchronizing changes in the threat level with security measures, it reduces the vulnerability of assets and infrastructure.

Another set of SOLAS amendments has also enhanced the security of the global cargo chain by bringing greater transparency to the maritime domain. Using technology to pinpoint the location of merchant shipping, these amendments provide commercial fleet, port, coastal-state, and flag-state authorities with a greater level of “maritime domain awareness.” Situational awareness depends on the ability to monitor activities so that trends can be identified and irregularities distinguished. Data must be collected, fused, and analyzed; computer data-integration and analysis algorithms can assist in handling the disparate data streams. By understanding where legitimate shipping is located, states can focus scarce resources on anomalous contacts and sort civil commerce from suspicious activity.

Two systems for collecting and sharing information are attached to the SOLAS Convention—the Automatic Identification System (AIS) and the emerging, satellite-based Long Range Identification and Tracking (LRIT) system. AIS was originally designed in the 1990s to make transit through the Panama Canal safer. Vessels equipped with AIS continuously transmit size and heading data; because of the signal’s limited range and the system’s open-access architecture, however, AIS has substantial limitations. By way of developing a next-generation approach to maritime situational awareness, in May 2006 the

IMO adopted LRIT as an additional amendment to SOLAS Chapter V. More secure than AIS and favored by the U.S. Coast Guard, LRIT is a global, satellite-based vessel-identification system. When fully operational in 2009, LRIT will make information on vessel location and identity available worldwide. Flag and port states will be able to collect information on vessels flying their flags or bound to their ports, and coastal states on vessels passing within a thousand nautical miles of their coastlines. Vessels will transmit position reports periodically to cooperating national, regional, or international LRIT data centers. The new system will be mandatory for ships three hundred gross tons or greater making international voyages.

As early as 2002, Admiral Vern Clark, U.S. Navy, then Chief of Naval Operations, called for creation of a “maritime NORAD,” a maritime analogue of the U.S. Federal Aviation Administration or an international Identification Friend or Foe (IFF) signal, by which states would carefully plot and track every vessel. After all, it was reasoned, ships are both slower and larger than aircraft; if aircraft can be tracked in real time, why not vessels? But maritime situational awareness is not an unmitigated public good. Both coastal states and rogue nonstate maritime groups, such as terrorists or pirates, could misuse data; coastal states could use the information to impede the exercise of freedom of navigation and overflight; and international criminal organizations might employ it to attack or disrupt shipping. In November 2008, for example, Somali pirates reportedly used AIS to locate and hijack the thousand-foot-long supertanker *Sirius Star*, which was passing 450 miles off the coast of Kenya.

#### *Counterterrorism and Counterproliferation at Sea*

Since the destroyer USS *Cole* (DDG 67) was attacked in Yemen in 2000, remarkable maritime terrorist incidents have included the attack on the French tanker *Limburg* off the coast of Yemen in 2002 and the deadly bombing in the Philippines of *Superferry 14* in 2004 by the Abu Sayyaf group. These attacks and others illustrate the vulnerability in the maritime domain; in addition, the development of new rules to counter terrorism and WMD proliferation at sea has been a centerpiece of the emerging international law of maritime security. Concern over the threat of catastrophic terrorist attack from the sea galvanized efforts to strengthen port and vessel security after 9/11. In no other area of international law have nations so effectively and seamlessly combined elements of the law of armed conflict and law enforcement into a unified approach.

One of the first efforts to develop new norms against proliferation of WMD was the Proliferation Security Initiative (PSI). Frustrated by the inability of the United States, the United Kingdom, and Spain to seize lawfully the MV *So San* in December 2002, a group of nations collaborated to form PSI. The *So San* was

permitted to continue into port to unload its dangerous consignment (Scud missiles intended for North Korea), but the effect throughout the maritime security community was indelible—and work began immediately on a new initiative to tighten nonproliferation rules.<sup>24</sup>

Speaking in Kraków, Poland, in May 2003, President George W. Bush unveiled PSI as a partnership activity to counter proliferation and trafficking of WMD in accordance with international law and under the guidance of a set of interdiction principles. Originally eleven core members launched the initiative. More than ninety states have joined the informal network to work together in a more coordinated and effective manner, and PSI was endorsed by the UN Secretary-General.<sup>25</sup> Participants include some of the nations with the largest shipping registries in the world, such as Panama, Liberia, and Malta. Nine states have signed PSI ship-boarding agreements with the United States.<sup>26</sup> The agreements do not constitute authority by one state to board the vessel of the other, but they offer a mechanism for expedited review of requests to board, and some provide for presumed consent if a request is not denied by the flag state within a few hours.

Only months after the initiative began, British and American intelligence services discovered that the German-registered vessel *BBC China* was transporting uranium-enrichment equipment from Malaysia to Libya, via Dubai. With the consent of the German government the vessel was diverted to the Italian port of Taranto, where Italian authorities searched the vessel and seized centrifuge materials, which were not listed on the cargo manifest. Two months later Libya announced that it was abandoning its ambition to develop a uranium-enrichment capability.<sup>27</sup> The *BBC China* interdiction has been followed by additional PSI successes, conducted quietly to avoid attention.<sup>28</sup> Efforts by Iran to procure goods for its nuclear program have been disrupted, and a country in another region of the world has been prevented from receiving equipment for a ballistic-missile program.<sup>29</sup>

In separate European regional initiatives, the European Union (EU) and the North Atlantic Treaty Organization (NATO) have taken action against the maritime terrorist threat. Following 9/11, NATO embarked on Operation ACTIVE ENDEAVOUR (OAE) in October 2001, the only operation ever conducted by the organization under the mutual-defense clause of article 5 of the NATO charter.<sup>30</sup> Under OAE naval forces have been patrolling the Mediterranean Sea, monitoring shipping and conducting escort operations and boardings. Warships from Russia and Ukraine also have participated. At the Thessaloníki European Council in June 2003, the EU began to establish effective policies for the disruption of international shipments of WMD and related materials. In August 2004 the EU issued a strategy against WMD proliferation.<sup>31</sup> The cornerstone of the EU's approach to

combating WMD is effective multilateralism, which means that international regimes should be able to detect violations and enforce prohibitions. The EU also advocates strengthening the role of the UN Security Council as the final arbiter on the consequences of noncompliance.

Seven months after the introduction of PSI, the Security Council adopted a historic resolution under Chapter VII of the UN Charter to address terrorism and the maritime transport of WMD. Unanimously adopted in April 2004, Resolution 1540 is binding on all nations under article 49 of the UN Charter. The resolution asserts that proliferation of WMD to nonstate actors constitutes a threat to international peace and security within the meaning of article 39 of the UN Charter and promulgates new rules to address that threat.<sup>32</sup> The resolution calls on all states to take cooperative action to prevent trafficking in WMD, offering a foundation for counterproliferation law. That WMD proliferation poses a threat to international peace and security was reiterated in Security Council Resolution 1718, which was directed at North Korea following Pyongyang's nuclear test of October 2006.<sup>33</sup> The resolution also called upon all states to prevent North Korea from obtaining material that would support its nuclear, WMD, or missile programs, or even substantially replenishing the country's stock of conventional weaponry.

As a complement to Resolution 1540 and reflecting the philosophy of PSI, the International Maritime Organization adopted in 2005 two major protocols that collectively represent a breakthrough in maritime security cooperation. The year after the 1985 hijacking by Palestinian terrorists of the Italian-flag cruise ship *Achille Lauro* and the brutal murder of a disabled American passenger, Leon Klinghoffer, Austria, Egypt, and Italy proposed that the IMO prepare a convention on crimes against the safety of maritime navigation. The goal was a comprehensive set of rules to ensure cooperation among states for the suppression of unlawful acts at sea. The IMO promptly drafted a treaty, and in 1988 a conference in Rome adopted the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA).<sup>34</sup> The prohibited acts include seizing "control over a ship by force or threat thereof or any other form of intimidation" (article 3), acts of violence against persons on board ships, and the placing of devices on board a ship that are likely to destroy or damage it. The convention obliges contracting governments either to extradite or prosecute offenders.

Today 149 states are party to the SUA Convention, and these states represent about 92 percent of the world's merchant shipping tonnage. In 2005 a diplomatic conference at the IMO adopted two protocols to the convention, one on strengthening the rules for the safety of vessels, the other on the safety of fixed platforms on the continental shelf. The 2005 protocols add several new offenses, including

attempts to intimidate a population or compel a government or an international organization. Specifically, the 2005 protocols criminalize such perilous activities as using any explosive, radioactive material, or a biological, chemical, or nuclear weapon on or against a ship; knowingly transporting such material on a ship; or operating a ship in a manner that causes death or serious injury or damage. The protocols also prohibit the transport of “dual use” or source materials that might find their way into chemical, biological, or nuclear weapons.

With PSI, Resolution 1540, and the amended SUA Convention, nations are establishing a global, and increasingly effective, network of legal and policy authorities to synchronize intelligence and operations against terrorists and WMD in the maritime domain. Some believe the SUA protocols may end up eclipsing PSI, notwithstanding the value of an interlocking network of formal and informal arrangements. First, the era of “coalitions of the willing” may be coming to a close, the concept having been badly bruised by the experience of Iraq. For all the groundbreaking (and frankly astonishing) successes of PSI, some countries are wary of its informal nature and process. Second, shipping commerce is a global industry, one that relies on a common framework of international conventions and treaties; the industry can operate efficiently only when regulations applicable to a particular ship are identical at the port of departure, on the high seas, and at the port of arrival. Since PSI focuses on enlarging national authorities rather than global rules, it is more likely to create inadvertently a web of inconsistent national laws than is the standardized international legal regime of SUA. The shipping industry is hopeful that the amended SUA 2005 will attract widespread support and enter into force quickly.

### *Counterpiracy*

Maritime piracy has returned as a major security issue only in the last decade. In 2008 maritime piracy doubled in the Horn of Africa, with Somali pirates hijacking more than forty vessels and taking nearly nine hundred seafarers hostage. Piratical attacks in the Gulf of Aden expose civil shipping to dangers not experienced since the Iran-Iraq “tanker war” of the 1980s. The law of the sea defines maritime piracy as an illegal act of violence or detention committed for private ends; on the high seas, anywhere else outside the jurisdiction of a state, and in such ungoverned areas as Somalia’s territorial sea, any nation may take action against piracy. Customary international law provides, in fact, that any nation may assert jurisdiction over piracy, including the state of registry or flag state of the attacked vessel, nations whose citizens are victims, and in some cases coastal or port states.

In 1986 the Maritime Safety Committee of the IMO adopted Circular 443 promulgating measures to prevent unlawful acts against passengers and crew on

board ships.<sup>35</sup> The circular applied to passenger ships on voyages of twenty-four hours or more and to port facilities that service those vessels. After a minor surge in piracy in the early 1990s, the IMO released two circulars, 622 and 623, to counter the threat.<sup>36</sup> The first detailed recommendations to governments for preventing and suppressing piracy, and the second offered guidance to the maritime commercial sector. In 1999 both circulars were revised.<sup>37</sup> The revision to Circular 622 sets forth investigative protocols for use after a pirate attack, as well as a draft regional agreement on counterpiracy.<sup>38</sup> The revised Circular 623 lists measures by which the shipping industry can reduce vulnerability to piracy, such as enhanced lighting and alarms.<sup>39</sup> In 2008 Denmark proposed that both circulars be reviewed and again updated in light of the recent attacks in the Horn of Africa, and that review is under way.

In 2008, after prompting from Mr. Efthimios E. Mitropoulos, the Secretary-General of the IMO, the Security Council took action against piracy in the Horn of Africa by adopting four key resolutions under Chapter VII, authorizing “all necessary means.” The resolutions enhance counterpiracy collaboration among nations, strengthen operational capabilities, remove sanctuaries in Somalia, and support criminal prosecution.

Resolution 1816 of 2 June allowed naval forces cooperating with the Transitional Federal Government of Somalia to pursue pirates into Somalia’s ungoverned territorial waters. Resolution 1838, adopted in October, expressed concern over the threat of piracy to World Food Program shipments to Somalia, called upon states to deploy naval vessels and aircraft to the Gulf of Aden and surrounding waters, and affirmed that UNCLOS embodies the rules applicable to countering piracy. Resolution 1846 of 2 December 2008 suggested that the 1988 SUA Convention could be applied in the extradition and prosecution of pirates. Two weeks later, Resolution 1851 authorized states to take action against safe havens used by pirates ashore in Somalia (an authority likely to be implemented only cautiously). It also invited states with maritime forces in the area and regional states to conclude arrangements to embark local law-enforcement officials on board their warships patrolling the area. Finally, Resolution 1851 encouraged formation of a multinational Contact Group on Piracy off the Coast of Somalia. More than thirty countries and organizations, including the EU, NATO, and the African Union, responded, forming working groups to develop collective action for various aspects of the effort against Somali piracy.

Following the adoption of these four UN Security Council resolutions, the United Kingdom and the United States signed counterpiracy cooperation agreements with Kenya, and the United States made the first transfer of captured pirate suspects to Kenya in March 2009.

Based on language developed at an IMO meeting in Dar es Salaam, Tanzania, in April 2008, eight coastal states situated on the Gulf of Aden, the Red Sea, and the western Indian Ocean, plus Ethiopia, met in January 2009 and concluded the Djibouti Code of Conduct to combat acts of piracy against ships. The agreement is based on a sixteen-nation counterpiracy treaty known as the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), which has been remarkably successful in reducing piracy attacks in East Asia. Just as ReCAAP was the first Asian agreement dedicated to counterpiracy, the Djibouti Code of Conduct is the first such regional agreement between Arab and African countries, although the Djibouti accord is not legally binding.

### *Counternarcotics*

Decades before UNCLOS entered into force, states were negotiating in earnest to counter maritime drug trafficking. These efforts represent windows into early instances of effective collaboration in the maritime domain. Today, internationally organized criminals operate illicit maritime networks for drug trafficking, and the ocean is the preferred medium for moving multi-ton loads from producers in the Andean Ridge and South Asia to black markets in Europe and North America. Drug traffickers exploit related illicit networks to facilitate additional crimes, including money laundering, transnational corruption, human trafficking, and terrorism.

Three widely accepted international treaties, which enjoy near-universal acceptance, call on states to cooperate in counterdrug activities and operations. The Single Convention on Narcotic Drugs (1961) has been in force since 1964 and has 180 state parties; the Convention on Psychotropic Substances (1971) entered into force in 1976 and has 175 state parties; and the UN Convention on Illicit Traffic of Narcotics and Psychotropic Drugs (1988) has been in force since 1990, with 170 state parties. These treaties are mutually supportive and complementary. An important purpose of the first two was to codify internationally applicable control measures in order to ensure the availability of lawful narcotic drugs and psychotropic substances for medical and scientific purposes while preventing their diversion into the black market. The third treaty regulates precursor chemicals used in manufacturing drugs controlled by the Single Convention and the Convention on Psychotropic Substances, and it also strengthens provisions against money laundering and other drug-related crimes.

States often fulfill their obligations under the multilateral treaties through bilateral or regional maritime counterdrug agreements. The United States has negotiated twenty-six such bilateral agreements, mostly with Caribbean states. Under these arrangements, states permit other nations to operate in waters

under their jurisdictions in accordance with preplanned actions or responses. The agreements often define specific parameters, such as geographical areas, time periods, frequency, or potential targets or suspects. Operational cooperation may include exchange of information or cooperative patrolling or enforcement actions. Typically state parties prescribe procedures for designating on-scene commanders and mutually acceptable rules of engagement for maritime counterdrug operations. States also may reach agreement on whether a party may board vessels of another party, and if so, under what circumstances. The agreements accelerate real-time decision making, allowing determinations on boarding and seizure to be made more quickly.

### NEW NOTIONS OF SEA POWER

Threats to maritime security flourish at the “seams” of globalization, where jurisdiction can be unclear and the inherent isolation of vessels and nations can be exploited. International law has become the most effective tool for closing these seams. The emerging international rules have had a transformative effect upon how maritime security is thought about and implemented.

The new international maritime law increases coordination among concerned partners and improves the readiness of all states to act effectively. The development of the law is regional and global, bilateral and multilateral. The sweeping nature of this development—in its application to all oceans, narrow seas, and coastal areas; the depth of the measures for which it provides; and the self-perpetuating nature of the legal and policy networks that propel them—has given law a defining role with respect to notions of sea power. Collectively, the initiatives described here have completely renovated international maritime law and now presage a new, cooperative approach to sea power.

The widespread consensus throughout the world regarding maritime security has been notably absent in other security contexts, such as the debate over whether counterterrorism operations on land constitute law enforcement or warfare. The principal manifestation of this dispute is the debate over whether captured terrorists should be treated as criminals or some stripe of unlawful combatant under the laws of war. The United States has been incapable of dealing with the issue, dissatisfied with the ability of the criminal-law model to ensure security but uncomfortable with the application of the law of armed conflict. Even the nation’s highest court has been unable to resolve the matter clearly.<sup>40</sup> Meanwhile, maritime international law has moved purposefully and confidently toward a middle path, recognizing that though maritime law arises in a peacetime framework it must be responsive to conventional, asymmetric, and hybrid threats at sea. Informed by centuries of progress and shared

experience in the struggle with piracy, maritime international law quite comfortably straddles the divide between criminal law and the law of war.

Many misunderstand the interface between international law and domestic authorities. This intersection is the sphere of foreign-relations law, and it is the critical bridge between international commitments and treaties and their implementation by individual states. Most international agreements are not self-executing; in the United States and many other countries, international obligations must be implemented by domestic legislation to be given effect. The nuances of this interface have real consequences for naval forces. The fact that an activity like piracy is a universal crime in customary international law does not mean a state can take enforcement action if it has not criminalized piracy under its domestic law. Foreign-relations law fuses sea power and maritime-security operations to international legal regimes.

The U.S. Coast Guard has been much more sensitive to recognize and capitalize on this new state of affairs than the Navy, perhaps because it is simultaneously a law-enforcement agency and an armed force, and because it leads the American delegation to the IMO. The Coast Guard takes a holistic “systems” view of maritime governance, in terms of regimes, awareness, and operations; the Navy’s approach to these issues is not as well developed. For example, the Commandant of the Coast Guard has championed the SOLAS amendments that will create the LRIT system; for their part, few naval officers are familiar with the system, though it is the future of unclassified information sharing for maritime domain awareness. Moreover, international maritime law is too often viewed within the Navy through an outdated prism, particularly by officers who rose during the Cold War. That is, the Navy tends to see international maritime law as comprising the 1982 Law of the Sea Convention (which reflects the core American interest in freedom of navigation) and the law of naval warfare (which has enjoyed only sporadic relevance since World War II). The new treaties and partnerships are unfamiliar to many naval officers.

But this will change as these initiatives continue to reconfigure sea power itself. Consequently it is not surprising (but unfortunate) that the *Cooperative Strategy* failed to promote international law of the sea as the organizing principle and principal goal of U.S. maritime strategy. This glaring omission has been noted by numerous friends and allies, who time and again reminded the United States of the centrality of international law in their responses to the original thousand-ship-navy concept. Writing separately, naval commanders from France, Ghana, India, Portugal, and Spain all made reference to the importance of international maritime law in their comments on the thousand-ship navy published in 2006 by the *Proceedings* of the U.S. Naval Institute.<sup>41</sup> A year later, many of the same chiefs of service were asked to respond to Admiral Michael G.

Mullen's plan for a new U.S. maritime strategy. Once again, international law was a prominent feature of their replies; the leaders of the naval forces of Brazil, Peru, Portugal, Colombia, Uruguay, Lebanon, and Spain urged the United States to ensure that maritime security is rooted in multilateral legal frameworks.<sup>42</sup> It is especially important that the vigorous expansion of maritime partnership integration propelled by international law be maintained. The maritime domain awareness provisions of the SOLAS Convention, the counterproliferation and counterterrorism elements of the SUA 2005 protocols, and PSI, with its informal nature, and Security Council action against piracy, constitute the greatest package of multilateral maritime-security commitments since the interwar period of the 1930s. The United States led each of these efforts, but there is a widespread perception that the American "brand" has suffered since and that the diplomatic influence of its friends and allies in Europe has diminished.<sup>43</sup> Meanwhile, that of China and Russia is expanding. The upshot is a degree of doubt about the ability of the West to shape the future direction of international maritime law toward a shared vision of the rule of law at sea. This means that we should be prepared to make even greater investments in cooperation, and the development of international maritime law and institutions, to realize the goals of the *Cooperative Strategy*.

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#### NOTES

1. "Agreement with the United States on the Prevention of Incidents on or over the High Seas, May 25, 1972," 23 *UST* 1168, *TIAS* no. 7379, 852 *UNTS* 151, as amended by the Protocol of May 22, 1973, 24 *UST* 1063, *TIAS* no. 7624.
2. D. P. O'Connell, *The Influence of Law on Sea Power* (Annapolis, Md.: Naval Institute Press, 1975).
3. *A Cooperative Strategy for 21st Century Seapower*, October 2007. The strategy is available at [www.navy.mil/maritime/MaritimeStrategy.pdf](http://www.navy.mil/maritime/MaritimeStrategy.pdf) and is reprinted in *Naval War College Review* 61, no. 1 (Winter 2008), pp. 7–19.
4. Walter Russell Mead, *Special Providence: American Foreign Policy and How It Changed the World* (New York: Routledge, 2002), p. xvi.
5. "Declaration Respecting Maritime Law, April 16, 1856," reprinted in *American Journal of International Law* 1, Supp. P. 787 (1907).
6. "Declaration of London Concerning the Laws of Naval War, February 26, 1909," reprinted in Sir Thomas Barclay, *Law and Usage of War* (Boston: Houghton Mifflin, 1914), p. 196.
7. "Convention (No. III) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864, July 29, 1899," 32 *Stat.* 1827, 1 *Bevans* 263.
8. "Additional Articles Relating to the Condition of the Wounded in War."
9. "Convention [No. VIII] Relative to the Laying of Automatic Submarine Contact Mines," 18 October 1907, 36 *Stat.* 2332, 1 *Bevans* 669.
10. "Convention (No. X) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention," 15 *LNTS* 340.
11. "Helsinki Principles on the Law of Maritime Neutrality," *International Law Reports* 68 (1998), p. 497.
12. "London Procès-Verbal Relating to the Rules of Submarine Warfare Set Forth in Part IV of

- the Treaty of London of 22 April 1930, November 6, 1936,” 173 *LNTS* 353, 3 Bevens 298.
13. “Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, August 12, 1949.”
  14. “Treaty between the United States of America, the British Empire, France, Italy, and Japan, Limiting Naval Armament, Feb. 6, 1922,” 43 *Stat.* 1655, 2 Bevens 35. The treaty—known as the Five-Power Treaty, or the Washington Treaty—limited U.S., British, and Japanese battleship strength in a 5:5:3 ratio. For an analysis, see Erik Goldstein and John Maurer, eds., *The Washington Naval Conference 1921–22: Naval Rivalry, East Asian Stability and the Road to Pearl Harbor* (Portland, Ore.: Frank Cass, 1994).
  15. At the time the agreement was signed, and to the utter disbelief of Churchill, Germany was finishing three pocket battleships that displaced 12,000–12,500 tons—that is, 20–25 percent over treaty weight. German violations went unchallenged, culminating in the construction of five heavy cruisers displacing 14,500 tons, surpassing treaty limits by 45 percent. OASD, *Naval Arms Control Record 1919–1939*.
  16. Agreement, with annex, signed at London on 5 August 1944, entered into force 24 May 1945, and terminated 2 March 1946.
  17. For the “thousand-ship navy,” see John G. Morgan and Charles W. Martoglio, “The 1,000-Ship Navy: Global Maritime Network,” U.S. Naval Institute *Proceedings* (November 2005), p. 14; and Ronald E. Ratcliff, “Building Partners’ Capacity: The Thousand-Ship Navy,” *Naval War College Review* 60, no. 4 (Autumn 2007), pp. 46–58.
  18. *Cooperative Strategy*, p. 10 (as posted at [www.navy.mil](http://www.navy.mil)).
  19. William Langewiesche, *The Outlaw Sea: A World of Freedom, Chaos, and Crime* (New York: North Point, 2004), pp. 3–4.
  20. O’Connell, *Influence of Law on Sea Power*, p. 13.
  21. The peacetime right of approach and visit can be contrasted with the wartime right of belligerent right of visit and search of neutral vessels in order to search for contraband or to determine the enemy character of the ship or its cargo under the law of neutrality, an offshoot of the law of armed conflict. Louise Doswald-Beck, ed., *San Remo Manual on the Law Applicable to Armed Conflict at Sea* (New York: Cambridge Univ. Press, 1995), pp. 31–32, paras. 118–21.
  22. The standard international measurement of a ship’s size under the Universal Tonnage Measurement System (UMS), defined by the 1969 Tonnage Regulations, is the “gross ton” (GT). The “ton” in gross tonnage is not a measure of weight but of volume (2.78 cubic meters). Volume in GT is a useful reference for only certain types of vessels, such as conventional cargo ships and passenger ships. Certain other ships, including tankers and bulk carriers, are measured by “deadweight tonnage” (dwt), which represents lifting capacity.
  23. Michael D. Carsten, preface, in *International Law and Military Operations*, ed. Carsten, *International Law Studies*, vol. 84 (Newport, R.I.: Naval War College, 2008), p. xii.
  24. U.S. State Dept., *Digest of United States Practice in International Law 2002* (Washington, D.C.: 2003), pp. 1052–57; David E. Sanger and Thom Shanker, “Reluctant U.S. Gives Assent for Missiles to Go to Yemen,” *New York Times*, 12 December 2002, p. A1.
  25. *The UN Secretary-General’s High Level Panel on Threats, Challenges and Change—Final Report: A More Secure World: Our Shared Responsibility*, UN Doc. A/59/565 (New York: 1 December 2004), p. 45, para. 132.
  26. The nine nations are Bahamas, Belize, Croatia, Cyprus, Liberia, Malta, Marshall Islands, Mongolia, and Panama.
  27. Robin Wright, “Ship Incident May Have Swayed Libya,” *Washington Post*, 1 January 2004, p. 18.
  28. “State’s Joseph Urges ‘Diplomacy of Action’ against WMD Threat, in Singapore, Outlines U.S. Counterproliferation Strategy, Joint Efforts,” 17 August 2005, [America.gov](http://America.gov). Robert Joseph was Under Secretary of State for Arms Control and International Security.
  29. *Ibid.*
  30. “The North Atlantic Treaty,” 34 *UNTS* 243, 4 April 1949, entered into force 24 August 1949.

31. *EU Strategy against the Proliferation of Weapons of Mass Destruction* (Brussels: August 2004), available at [trade.ec.europa.eu/](http://trade.ec.europa.eu/).
32. UN Doc. S/Res/1540 (2004).
33. UN Doc. S/Res/1718 (2006).
34. "United Nations Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988," 1678 *UNTS* 221, 27 *ILM* 668 (1988), entered into force 1 March 1992.
35. *Measures to Prevent Unlawful Acts against Passengers and Crew on Board Ships*, IMO Doc. MSC/Circ. 443 (London: 26 September 1986), para. 3.3.
36. *Recommendations to Governments for Preventing and Suppressing Piracy and Armed Robbery against Ships*, IMO Doc. MSC/Circ. 622 (London: n.d.); and *Guidance to Shipowners and Ship Operators, Shipmasters and Crews on Preventing and Suppressing Acts of Piracy Armed Robbery against Ships*, MSC/Circ. 623 (London: n.d.).
37. IMO Doc. MSC/Circ. 622/Rev. 1, 16 June 1999; MSC/Circ. 623/Rev. 1, 29 June 1999. Circular 622 was revised based upon recommendations that came out of regional seminars in Brazil and Singapore in 1998.
38. IMO Doc. MSC/Circ. 622/Rev. 1, paras. 3–15 (protective measures) and paras. 16–20 (investigative protocols). Appendix 5 sets out procedures for boarding and search of suspect vessels, criminal enforcement, and choice of jurisdiction.
39. Circular 623 has since undergone Revision 2 (6 October 2001) and Revision 3 (7 October 2001).
40. See, e.g., *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), in which the Court recognized the power of the government to detain unlawful combatants but ruled that detainees who are U.S. citizens must have the ability to challenge their detentions before an impartial judge; *Rasul v. Bush*, 542 U.S. 466 (2004), a decision establishing that the U.S. court system has the authority to decide whether foreign nationals (non-U.S. citizens) held in Guantanamo Bay were wrongfully imprisoned; and *Boumediene v. Bush*, 553 U.S. \_\_\_, 128 S.Ct. 2229 (2008), challenging the legality of Boumediene's detention at the Guantanamo Bay military base as well as the constitutionality of the Military Commissions Act of 2006.
41. "The Commanders Respond," U.S. Naval Institute *Proceedings* (March 2006), p. 34. Twenty-five chiefs of navies were asked to offer their views on the nascent thousand-ship-navy concept.
42. "The Commanders Respond," U.S. Naval Institute *Proceedings* (March 2007), p. 14. See also Paul D. Taylor, ed., *Perspectives on Maritime Strategy: Essays from the Americas*, Newport Paper 31 (Newport, R.I.: Naval War College Press, 2008).
43. Richard Gowan and Franziska Brantner, *A Global Force for Human Rights? An Audit of European Power at the UN* (London: European Council on Foreign Relations, September 2008), p. 3.