

## ISSUES TO CONSIDER

- The number of Coast Guard personnel and assets assigned to the U.S. Combatant Commands and Embassies in the region should be reviewed. What impact does this have on relations with the region? What message is being sent by this allocation of resources? Are the nation's objectives being thusly met?
- The USCG ship-rider agreements throughout the region have worked well in countering smuggling. This could be used as the first step toward the Heritage Foundation's proposal of an enhanced constabulary force for the Hemisphere's maritime domain.
- Declining oceanic natural resources and the inefficiency of voluntary regulatory regimes make it easy to justify authorizing an international regime to help manage the problem. But paying for it and arriving at a consensus model that is satisfactory to all is still problematic.
- The use of coast guard forces is an established and credible precedent for enlarging their role. The U.S. Navy would never be allowed to enter the harbor of Havana, but the U.S. Coast Guard regularly returns *balseros* rescued in the Bahamas Channel to that port, and enjoys a good reputation there and elsewhere in the region. This reflects its role as a police force, not a belligerent war-fighting force imposing U.S. policy. This model could be used to increase regional cooperation on maritime issues.
- The U.S. *Posse Comitatus* Act of 1878 restricts the military's role in the domestic arena, though not outside the U.S. borders. A strict reading of the Act might allow the military to detain illegal aliens within the U.S. border, because, technically, they are not citizens or legal visitors accorded protections through

international custom, though this interpretation is fraught with threats to civil liberties and some U.S. legal experts may disagree with it entirely. The Act does not affect the military's role outside the state's borders: a navy can legitimately detain hostile ships (regardless of nationality or lack thereof), though the demise of restrictions do not hinder the Navy's ability to detain drug smuggling go-fast boats illegally entering national waters, and the norm for centuries was to sink such interlopers, specifically to deter future violations to national law.

- Existing legal regimes can serve as models for developing short-term consensus on acceptable programs. Examples include the 2007 Cricket World Cup Tournament in the Caribbean, which developed a legal regime to provide security and access to visitors throughout the 10 states involved; the Guarantor States Agreement of 1942 to monitor the border between Peru and Ecuador shows how such forces can disband after hostilities and re-group in the case of future incidents.
- Resources are the major obstacle to regional cooperation. Convincing any government to participate in a coalition not directly in its national interest or policy requires incentives, usually an offer to finance that country's participation.
- The effort to coordinate interests and objectives needs to follow a coherent plan divided into distinct phases, specifying roles and missions of each agency involved. Short-term objectives (e.g., SAR, training exercises) should not become a strategic end-all, as this would lead to a lack of progress and interest. Long-range objectives should be specific, and a strategy for achieving them agreed to by all participants.



## REGIONAL INSIGHTS

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## REGIONAL MARITIME SECURITY INSIGHTS

by Martin Edwin Andersen and James L. Zackrisson

**Abstract:** *How to secure the maritime environment is an age-old problem. During times of war, navies secure those lanes of communication vital to their states' interest; during peacetime, coast guard forces enforce national laws at sea. This study, limited to the Western Hemisphere, assess the viability of a regional maritime constabulary, analyzing the need for it and problems of cohesion and mission. A lack of a common threat perception and scarce resources are major hindrances to developing a regional force.*

## INTRODUCTION

Securing the maritime environment has been a problem ever since the first ships put to sea. Legal efforts in that regard have led to significant developments in international relations, as states seek to answer the fundamental question posed during the 17th century debate between Dutch jurist Hugo Grotius and Oxford scholar John Selden: Can a state claim exclusive ownership of the sea, and what rights accrue to a state from its citizens' activities at sea.<sup>1</sup> The United Nations' Law of the Sea (UNCLOS) traces its origins to even earlier traditions, and much of the debate surrounding it represents an effort to adapt maritime and naval traditions to 21st century technology.<sup>2</sup>

Safe passage and untrammelled communication in an interdependent global economy means that the sea lanes, major coastal waterways and port infrastructures need to be secure. Traditional ways of extending power and influence now run parallel to or are challenged by irregular tactics such as piracy, drug trafficking, terrorism, weapons smuggling, and other illicit activities, characterized by decentralized planning and execution and melded into myriad unorthodox technologies. The current U.S. naval strategy reflects a new focus, including common threats short of war.<sup>3</sup> Its multilateral approach emphasizes conflict prevention and the use of "soft power" while retaining the traditional mission of winning wars through combat on the high seas.

This study, while focusing specifically on the Western Hemisphere, addresses an issue common throughout this centuries-old debate, the framework for international cooperation on the high seas required to protect shipping and ocean resources; it focuses specifically on the Western Hemisphere.

## BACKGROUND

During the XV through XVII centuries, the debate over maritime security used the same lexicon of threats and tactics to counter them found in today's parleys. Governments sought to control the seas from incursions by non-government or non-national enterprises, both licit and illicit, often in the same locations or analogous situations that are problematic today. Great Britain, France, Scandinavia, and the Low Countries hired private companies to carry out their constabulary function at sea, issuing letters of marque or privateering licenses, paying the licensees with a share of the prize money obtained by selling the ships and goods thus captured. Spain and Portugal seldom licensed privateers,<sup>4</sup> fearing the effort to delegate state authority might prove more troublesome than beneficial, though viceroys and governors of distant colonies sometimes authorized the use of private *corço* ships to keep pirates and smugglers at bay, and to perform traditional coast guard functions. The Dutch

government formed two quasi-governmental entities, the East India Company and the West India Company, both authorized to wage war against any state or private rivals in the South Atlantic and Pacific Oceans.

Efforts to bring an end to such delegated government functions failed so long as the various states prohibited open and legal trade between their citizens and foreigners. The Treaty of Westphalia in 1648 and the subsequent Treaty of Münster in 1649<sup>5</sup> required all European states to take responsibility for the actions of their citizens in foreign environments, specifically by prohibiting piracy and privateering.

Smuggling has for centuries been a traditional means of evading national and international fiscal and trade laws; it also allows governments to postpone developing onerous regulation. Much of the smuggling takes place at sea or along the many navigable river systems, areas where government presence may be negligible or non-existent. This situation imposes at least two

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major obstacles: the high cost of developing forces to patrol and enforce regulations in areas that provide little income to the state, and the problem of stopping a practice that allows a significant percentage of the population to earn a living without resorting to public social welfare systems, or greater overt manifestation of illicit behavior. All countries in the region, including the United States and Canada, are incapable of stopping the smuggling in drugs, small arms, humans, and other commercial items in their territories, and this inability is worse along their coastlines and internal waters.

### MARITIME ISSUES IN THE HEMISPHERE

The Western Hemisphere is not a monolithic or even homogenous area, which poses a problem because shared values do not always overcome threat perceptions. North America considers nuclear deterrence critical to its survival, while the rest of the Hemisphere signed the Treaty of Tlatelolco in 1968 forswearing such weapons; the Caribbean states often include commercial issues as a component of national security. Furthermore, the force structure varies greatly: Costa Rica and Panama do not have national armed forces, and many Caribbean states have only police and coast guard forces. In some states, coast guard forces are components of naval forces (Chile, Colombia, and Uruguay), independent forces (Argentina, Brazil), subsumed forces (Mexico), or varied according to war footing (the U.S.). Such organizational variations make it difficult to form a common command structure.

Such diverse national policies and threat perceptions do not indicate a lack of interest in maritime issues. South American diplomats have been a major factor in the development of international maritime law. Peru helped develop the economic exclusion zone (EEZ), expanding jurisdiction from the traditional three nautical miles out to 200 nautical miles, reflecting the desire to regulate exploitation of resources and an increase in the reach of offensive naval weapons. Chile developed the concept of *Mar Presencial*, noting the need to expand national responsibility for resource management, given that voluntary compliance by fish and commercial fishermen had failed.<sup>6</sup> In both cases, regional theorists delineated areas of responsibility, rather than creating naval or constabulary forces to enforce existing regulatory regimes. It is easier to negotiate geographical boundaries than to coordinate concepts of national interests with potential rivals.

### NAVAL FORCES

A nation's primary means of projecting power on the seas is the navy, a force designed to conduct warfare. Navies have

been used to protect maritime trade routes when not occupied in combat operations. The simplest means to enhance the capability to control the maritime environment, or at least to deny it to rivals, is to increase the number of ships in any area deemed crucial to such operations. The U.S. Navy's efforts to increase its order of battle to 600 ships have suffered reverses at the hands of Congress and the President, and the latest effort proposes to rally allied or friendly nations' participation in what is referred to as a 1,000-ship coalition navy. The basic idea is to harmonize national objectives, developing command and communication systems so all can operate as a single naval force. The primary stumbling block is the lack of a common threat on which to build operational plans and a force posture. Such an ambitious project offers advantages to the U.S. Navy, but it is less obvious what other navies have to gain from it.

### POLICE FORCES

A recent Heritage Foundation report proposes the alternative of using coast guard forces to achieve much of the same capability.<sup>7</sup> This may prove a more credible option to the 1,000-ship navy, in that maritime police forces would be used in a law-enforcement role on the high seas, a concept that can more readily allow for agreement on perceived criminal threats. The current literature on this topic refers to such forces as constabulary, reflecting a blend of the police function with technology and tactics more often associated with military forces, in this case seeking to confront highly-armed and aggressive pirates and smugglers in the various chokepoints of the globe.

### FUNDAMENTAL DIFFERENCES

The basic difference between the proposed plans for maritime security – naval vs. constabulary – is that navies exist for military action, either aggressive or defensive, while coast guard forces exist for law enforcement activities. To be sure, naval platforms can be used for law enforcement operations, though their design and role is specifically the destruction of an opposition force and require special adaptation and training to operate in a policing role, reducing their capacity to carry out their principal objective beyond what is considered rational, including possibly the political decision to add arrest authority to their mission. Navies protect a state's sovereignty and fight its wars; tasking them to arrest and prosecute criminals reduces their ability to carry out either function effectively. Furthermore, the increased powers for the military force are seen by some as putting civil society at risk.

Because coast guard forces are designed primarily to enforce a state's laws and regulations within national waters –

inland waters such as rivers, lakes, or along the coastline, ocean bays or inlets – their equipment and personnel capabilities are designed specifically to detain violators and rescue victims of disaster. This means they carry on board only that firepower deemed necessary for their mission. Few coast guard forces have platforms capable of conducting warfare, and to do so would require adaptation and training that would detract from their ability to carry out their assigned roles.

### ANALYSIS

The authors conclude that neither the navy nor the coast guard approaches are – in and of themselves – viable for the region, because neither addresses the multiplicity of issues facing the Hemisphere as a whole, or for each nation standing alone.

A navy defends a nation's sovereignty and carries out those aspects of foreign policy that take place at sea. Any plan to subject it to a different purpose must adequately address the state's requirement for a navy, or it will fail to elicit total participation. In essence, forming a 1,000-ship navy by joining together 36 navies would require a guarantee of the sovereignty of each state involved, and the promise to carry out each one's foreign policy at sea. While theoretically possible, this ignores the possibility of aggression, dispute, or disagreement between two or more participant states, a situation that would turn that navy inward, requiring it to wage war against itself. Any boundary dispute, conflicting claim of jurisdiction, or row over an overlapping resource claim would bring into question the loyalty of the states involved in the coalition force, and could require that they withdraw until the issue is resolved.

The problem is one of threat perception, which varies throughout the region. The United States and Canada have genuine global security interests and responsibilities, making their participation in a regionally-restricted joint venture questionable. At some point either one would have to withdraw and deploy elsewhere, thus either putting into question the operational capability of the remaining force or severely limiting its responsibilities to comparatively small issues.

This same situation makes it difficult to design the joint force to meet threat perceptions not exclusively Hemispheric. States with little or no interest in, say, the Indian Ocean, would be reluctant to commit forces into that area, regardless of how strong the justification supporting the deployment. This is even more critical when examining the proposal for global constabulary forces, as coast guard forces would be even less inclined to move assets even within the Hemisphere, if only because many of the platforms are not designed for transiting high seas.

### NATIONAL PRIORITY

Regional naval forces are normally at the shallow end of the resources pool, and are unlikely to receive the support necessary to participate in the 1,000-ship coalition force, absent a 100 *per cent* U.S. subsidy. Perhaps the most difficult issue to overcome is the global outlook on security in the U.S. and Canada and almost completely ignored elsewhere. One possibility is to not attempt such a “one-size-fits-all” approach to

security agreements, and instead seek a multiplicity of bilateral or tri-lateral agreements aimed at similar issues, each tailored to the requirements of the signatories. Any single issue could thus be addressed by the states involved without putting the entire region at odds over specific national policies or interests.

Critical to the success of any coalition force is a delineation of the roles and missions to be carried out. The precedent for such tends to run toward operations that are short in duration, limited in nature, and disband when the principal objective is met. Efforts to extend their lives increase the perception that national sovereignty will be reduced or compromised. Even where formal acceptance is achieved, the colonial dictum, “*obedezco pero no cumpro*” (I obey but I do not comply) is the operative caution, as the region's history is littered with myriad treaties and international entities created to dialogue and act on specific or general issues, but which often do not progress beyond the signing and ratification stage.

Coast guard or naval constabulary forces are police forces afloat seeking to enforce their national laws at sea. Unless a coalition constabulary force is designed to enforce a common set of laws, each state's contribution will sail away to enforce national law, with little recourse for prevention or accountability. Any effort to create the necessary legal commonality or force composition will be seen as an effort to take over national assets for an international cause – or worse, a foreign (U.S.) one.

### CONCLUSION

The U.S. Navy's 1,000-ship navy concept is too hard a sale for its putative Hemispheric partners or rivals, as it comes too close to unification with U.S. national policy. The proposal for an international constabulary force has a better chance of success, though financial responsibility is a major issue. The lack of a common threat perception, political differences, and institutional or organizational differences may preclude the implementation of a region-wide project.

Finding an overarching architecture that includes all the Hemispheric states, concentrating on all security threats or challenges, may be an insurmountable challenge. Because of the difficulty in identifying common threats, such organizational structures tend to devolve into less-than-useful centers of dialogue incapable of action. Tackling security threats on an ad-hoc, temporary basis – though not as efficient from a systemic operational viewpoint – may prove more effective in the long run, as those states affected have the most at stake, and thus would be the most motivated to find a resolution. Thus it may be best to develop a methodology for convening occasional groupings of allies, with the full knowledge that these task forces will be dissolved at the end of its specific objective; the experience of convening such groupings will serve as precedent for similar operations in the future.

The best solution may be the current U.S. government practice of completing a series of individual agreements with each state in the region, while fostering similar arrangements among neighbors, albeit with a smarter and more robust investment of resources and more effective coordination.

<sup>1</sup>Hugo Grotius, *The Freedom of the Seas* (Oxford: Oxford University Press, 1916); John Selden, *Of the Dominium, Or, Ownership of the Sea* (London: William Du-Gard, 1652).

<sup>2</sup>Jaume I of Aragon, *Llibre del consolat del mar* (Barcelona, 1258); *Dyt ys dat högeste unde öldeste water recht* (Wissby, Sweden, 1597); Fernando IV and Isabela II, *Pragmática* (Burgos, Spain, 1494); Felipe II, *Consulados* during the 1560s [for Flemish merchants]; Joseph de Veitia Linaje, *Norte de la Contratación* (Sevilla: I. F. de Blas, 1672).

<sup>3</sup>“A Cooperative Strategy for 21st Century Seapower,” presented at the Naval War College in October, 2007.

<sup>4</sup>Privateers were authorized to patrol the Iberian Peninsula in 1621, and to confront Ottoman pirates starting in 1718. Biblioteca Nacional (Madrid), Caja 147-99, *Real Cédula* signed on 24 December 1621, and Archivo General de Indias (Sevilla), Biblioteca 302/15, *Real Cédula* signed on 17 November 1718, respectively.

<sup>5</sup>Ending the Thirty Years' War and regulating navigation rights in the Caribbean, respectively.

<sup>6</sup>See James L. Zackrisson and LT James Meason, USNR, “Chile, Mar Presencial and the Law of the Sea,” *Naval War College Review* (Summer 1997): 65-85.

<sup>7</sup>Mackenzie Eaglen, James Dolbow, Martin Edwin Andersen, and James Jay Carafano, *Securing the High Seas: America's Global Maritime Constabulary Power* (Washington, D.C.: Heritage Foundation Special Report #20, March 12, 2008).