

DISCUSSION PAPER | JUNE 2018

# ADDRESSING MARITIME THREATS

## MARITIME ENFORCEMENT & THE RULE OF LAW

By Chuck Ridgway

The world's oceans link us together and are the source of much of the world's wealth, whether through the resources they contain or as the highways by which we trade and communicate. The oceans also provide a stage from which illicit actors can pose a variety of threats to the security and wellbeing of those on land. The vast expanse of our oceans makes them difficult to govern, even in areas nominally under the jurisdiction of states, like territorial waters and exclusive economic zones (EEZs), and thus provide the operating space and the means of both concealment and movement for many kinds of illicit activity.

Stable Seas, a project of One Earth Future, measures and maps a range of threats to maritime security and investigates the steps being taken to counter these threats. In so doing it has identified nine issue areas, ranging from international cooperation to coastal welfare to maritime mixed migration, some of which describe challenges and others of which describe positive steps being taken to address these challenges. Of these issue areas, two stand out as being central to efforts to improve maritime security: maritime enforcement and the rule of law. This issue paper examines how these two issue areas are inextricably linked to one another, and how together they are vital to national and regional efforts to address threats to maritime security.

### STABLE SEAS RULE OF LAW AND MARITIME ENFORCEMENT SCORES

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Photo by Jean-Pierre Larroque.

## I. HOW ARE MARITIME ENFORCEMENT AND THE RULE OF LAW RELATED?

In the Stable Seas Maritime Security Index, maritime enforcement is defined as the capability of a state to patrol and enforce laws in its waters, accounting for such things as the number and capacity of its maritime law enforcement assets and size of the state's EEZ. Rule of law analysis evaluates the state's ability to put policy into practice, considering bureaucratic efficiency, level of corruption, and inclusiveness. When it comes to enhancing maritime security, the two issue areas of maritime enforcement and the rule of law describe the extent to which a state can police, and ultimately govern, its maritime domain.

A helpful way of looking at this relationship is offered by the African Union's Lomé Charter, which addresses maritime security and safety in Africa, and its concept of marine governance, which it defines as "the national and international legal and regulatory framework and associated enforcement processes that ensure the peaceful and sustainable use of the seas for commerce, food, energy and raw materials." (Emphasis added.)

Rule of law can be seen as the sum of the legal and regulatory frameworks that allow enforcement to take place and result in effective combatting of the threats to maritime security. Maritime enforcement is the sum of activities undertaken by a state to exert governance over its maritime domain, being guided, restrained, and empowered by the legal and regulatory frameworks. When seen in this light, two things become clear.

First, marine governance is vital to enhancing maritime security. Threats can't be thwarted nor opportunities capitalized upon in other issue areas without it. Unless a nation has the capability to enforce its laws in its maritime domain—alone or in cooperation with the international community—by interdicting illicit activities and apprehending illicit actors, efforts expended on positive issue areas like coastal welfare and the Blue Economy will likely bear little fruit, while negative issue areas like piracy and armed robbery at sea or illegal, unreported and unregulated (IUU) fishing will continue to pose significant challenges. Marine governance may not be the only factor in enhancing maritime security, but it is a necessary one.

Second, the rule of law and maritime enforcement are inextricably intertwined, and one without the other is largely useless for enhancing maritime security. A state may have a large number of patrol assets, but high corruption, underdeveloped legal frameworks, or an inadequate justice system will prevent it from impacting illicit activity at sea. Conversely, a state with well-developed, inclusive, and efficient legal frameworks but no navy or coast guard to speak of will be completely unable to even know what crimes are taking place in its waters, much less combat them.

Let's examine the elements of the Lomé Charter's definition in more detail.

### Legal and Regulatory Framework

Having a legal and regulatory framework begins with having laws in place that define maritime crimes and that support the peaceful and sustainable use of the seas. It also means that systems and processes are in place to prosecute violations of these laws. Depending on the legal frameworks and authorities in each nation, navies and coast guards may have to work closely with other agencies in order to combat certain crimes, and with the justice system to ensure they are prosecuted. So an effective regulatory framework allows the various government agencies involved in maritime enforcement to work effectively together, assigning responsibilities and authorities accordingly.

Legal frameworks also encompass the need for nations to be involved with their neighbors, with those foreign entities that use the seas under their jurisdiction, and with the broader international community. This means not only being party to

regional and international arrangements that aim to protect the seas and those who work on them, but also committing the resources necessary to meet one's own obligations under those arrangements.<sup>1</sup>

## Enforcement Processes

While the legal and regulatory frameworks are essential underpinnings of an effective maritime enforcement regime, the teeth of any maritime enforcement activity lie in the ability to detect, deter, and interdict illicit activity at sea. A state must have the capability to maintain awareness of the activity going on in the seas under its jurisdiction and to respond across the breadth of its maritime domain, from ports and river mouths to the farthest reaches of the EEZ. Primary responsibility for maritime enforcement thus falls on the navies, coast guards, and various maritime agencies of a nation, and enforcement capacity depends on the capabilities of their personnel, their assets, and the supporting infrastructure.

A state's ability to enhance governance of its maritime spaces begins with having a cadre of maritime professionals who understand what is going on in their waters and what to do about it. These professionals must have at their disposal response assets that serve to detect, deter, and, when needed, interdict maritime crime. These assets ideally include inshore boats for riverine and port work, coastal craft capable of operating in the contiguous zone, and larger offshore patrol vessels and corvettes able to spend a week or more at sea and operate far offshore, supported by land-based maritime patrol aircraft or organic helicopters operating from the larger vessels. These sea-going assets should be complemented by a mix of land-based information-gathering and integration systems, such as radar and the Automatic Identification System (AIS). The exact mix of assets will depend on the size, resources, and geography of a nation's maritime domain.

The ability to know the patterns of life in one's waters and detect when something is not following these patterns is known as Maritime Domain Awareness (MDA). Good MDA depends on the experience of personnel; having the right technical tools, like coastal radar systems; and on routine at-sea operations. Another important element of MDA is having access

## MARITIME DOMAIN AWARENESS

The concept of Maritime Domain Awareness (MDA) was first articulated in 2005 by the United States in its published National Plan to Achieve Maritime Security. The definition of MDA subsequently adopted by the International Maritime Organization (IMO) is:

"The effective understanding of anything associated with the maritime domain that could impact the security, safety, economy, or environment."<sup>1</sup>

The 2005 U.S. strategy elaborates on that definition to include "where the maritime domain is defined as all areas and things of, on, under, relating to, adjacent to, or bordering on a sea, ocean, or other navigable waterway, including all maritime-related activities, infrastructure, people, cargo, and vessels and other conveyances."<sup>2</sup>

The purpose of MDA, and the closely related concept of Maritime Situational Awareness (MSA) used by NATO and the EU, is to establish a usable real-time picture of what vessels are at sea and what they are doing. It also seeks to understand patterns of life and historical trends, and by analyzing these, seeks to identify individual anomalies or longer-term changes in trends. The rather theoretical distinction is that MDA is slightly more focused on patterns while MSA is more focused on real-time positioning.

The MDA concept came about as a result of the introduction of the Automatic Identification System (AIS) and the 2002 requirement from the IMO for all vessels over 300 gross tons to broadcast on it. This created a wealth of raw data about vessel movements and the following years saw many efforts to collect and analyze this data. Both commercial and government databases were established and much effort was made to engage other nations and the shipping community in capturing and sharing data through the installation of AIS receiver antennas and in developing ways to feed the received signals via the internet to these central data servers and thereby establish a global AIS picture.

As a result, much of the effort towards developing MDA has focused on technological solutions for capturing, sharing, displaying and analyzing AIS data. But mapping and tracking "white shipping," a catch-all phrase describing legal merchant traffic, is only one part of developing MDA. There are many other sources of information to support understanding one's maritime domain, including not least the knowledge and experience of those maritime professionals working in a region. A patrol boat's commanding officer or port captain can often have as good an understanding of the maritime patterns of life in an area as can be gleaned from analyses of AIS data, and dock workers or tavern owners, interacting with visiting merchant sailors, can be important sources for reporting anomalies or detecting illicit activity, which typically can't be detected on AIS. The challenge is to fuse all of these sources and present the resulting knowledge in a way that allows enforcement agencies to recognize threats and respond.

Good MDA, based not just on technology but also on good human understanding of the maritime domain, can be a vital tool for enforcement in all its phases, from responding to specific incidents to detecting patterns of illicit behavior to helping develop policies and supporting laws that both counteract illicit activity and encourage maritime economic development and the Blue Economy.

to a wide variety of information sources to supplement the data that can be attained by one's own sensors and vessels. Such sources include other local agencies (e.g., port captains, fisheries ministry), the shipping industry, and counterpart agencies in neighboring states. Processing and analyzing the maritime information that builds MDA is usually performed by a land-based network of maritime operations centers.

Last, a significant shore-side support infrastructure is needed, one which ranges from naval bases that can resupply and maintain naval assets to facilities for maritime operations centers and the radar and communications systems to support them, and to court facilities and prisons to prosecute and incarcerate criminals.

## II. CHALLENGES TO ADDRESSING MARITIME THREATS

Addressing maritime threats puts many demands on a coastal state, requiring it to devote resources to something whose importance is not immediately apparent to those on land, both politicians and the people, who face other, more visible problems. Maritime patrol assets—ships and aircraft—are major investments, as is training the personnel to operate and maintain them effectively and safely. Establishing Maritime Operation Centers (MOC) and participating in the regional efforts to share information and develop MDA requires time and effort by navies and coast guards. Building the necessary inter-ministerial cooperation and legal frameworks requires political commitment and investment as well as facing the traditional organizational challenges inherent when any bureaucratic institutions must work together while also competing for resources and legal authority.

The underlying challenge facing coastal states is developing a cadre of maritime professionals, as doing so depends on gaining experience at sea. The basic seamanship and operational thinking skills needed to safely and effectively conduct maritime enforcement operations at sea can only come about by operating regularly and routinely at sea. Only at-sea operations allow development of the full picture of maritime patterns of life needed for MDA. Similarly, interagency cooperation mechanisms are best developed by regularly and routinely cooperating across agencies, and criminal prosecution processes become more efficient when justice system personnel are involved in more cases of maritime crime. If there is no fuel or maintenance support for enforcement assets, or no assets at all, then there are no patrols, no enforcement, no arrests, and no court cases. No one in the maritime enforcement system gains the necessary experience to perform these tasks well.

This leads to a dramatic self-sustaining loop. The best advocates for putting resources into maritime enforcement are these maritime professionals, especially experienced senior navy and coast guard officers. When a state has neglected its navies and coast guards, then it hasn't developed these personnel, and an important voice for highlighting the danger posed by maritime threats and the importance of maritime enforcement is lost. When, as is often the case in many coastal states, the navy is the smallest organization at the interagency table, or even within its own ministry of defense, non-maritime issues will generally get the attention and resources. Navies will continue to be neglected or not be able to operate, and the cadre of maritime professionals will not develop.

Taken together, these challenges indicate that effective maritime enforcement begins with a commitment by the government, and thus ultimately by the people, to take the security of their seas seriously and expend the necessary resources to protect them. This may be the biggest challenge of all: even for coastal states, problems we can see on land, those tangible and right in front of us, always seem to take priority. Many of the states considered in the Stable Seas Maritime Security Index have taken steps towards investing in maritime enforcement capacity and have made efforts to address maritime rule-of-law issues. These efforts have led to some notable successes in recent years, but there is still a long way to go.

## III. ENHANCING MARINE GOVERNANCE HOLISTICALLY

Combatting maritime crime isn't just about enhancing naval capability and capacity. Effective marine governance means being able to do every step in the process from detecting illegal activity at sea to prosecuting, convicting, and incarcerating the perpetrators. However, just as conceptually there is a distinction between maritime enforcement and rule of law, in practical terms, enhancing capability on the front end and on the back end of this process have tended to be handled independently from one another.

Navies and coast guards work to enhance their tactical abilities to detect and interdict crime at sea, while—largely separately—the politicians, policymakers, and the justice system work to enhance a nation's ability to define crimes and prosecute criminals. This has often resulted in there being stovepipes between these two sides of the maritime governance coin. Examples range from not having laws that allow interdicting certain crimes to the agencies that have the capability to interdict a crime not having the legal authority

to do so, and from lacking prisons to house criminals to naval personnel responding to crimes at sea not having training on what evidence to collect that can lead to a conviction.

International efforts to enhance maritime governance have also suffered under these stovepipes. Major partner-navy efforts, such as the French Navy's NEMO series of exercises or the U.S. Navy-led Africa Partnership Station, have focused on naval capability—seamanship, MOC operations, boarding team training, and intelligence analysis—without delving into law enforcement and prosecution aspects. Meanwhile,

the UNODC's Global Maritime Crime program has taken the lead on enhancing the justice and prison system aspects of combatting maritime crime in the countries where it is working. There has been little overlap or cooperation in these programs, and often little awareness of what the other side is doing or needs.



*A multiagency team from Cabo Verde prepares to conduct a boarding exercise onboard the CV Coast Guard Cutter Guradião. Three agencies are represented: the Coast Guard, the Maritime Police, and the Judicial Police*

## INTERAGENCY COOPERATION

The integration of maritime enforcement and rule of law into effective marine governance faces significant bureaucratic hurdles. Authority over maritime issues in many states is often divided among several agencies in different ministries. In Madagascar, for instance, 13 different ministries each have some maritime-related responsibility in their portfolio. Getting such a web of ministries to even sit down together to talk about issues—let alone agree on action, especially if it involves relinquishing some level of authority or funding—is generally difficult. Navies and coast guards are often the weakest agency at that table. Madagascar, with its 4,000 kilometers of coast, has just 250 people in its navy; the army numbers 10,000.

Similar hurdles to cooperation exist at the local level. Many navies, as military forces, are not allowed to perform domestic law enforcement, so

various agencies have to cooperate to perform maritime enforcement activities. In Ghana, for instance, only an officer of the Marine Police can issue a citation to persons or vessels found violating Ghanaian law in waters under Ghanaian jurisdiction. But the Marine Police are not legally competent to determine if a fisheries violation has occurred—only an agent of the Fisheries Agency can do that. And only the Ghana Navy has vessels capable of performing fisheries controls out of sight of land. Three agencies therefore need to be involved to even attempt a fisheries patrol. Such interagency cooperation can be easier at the local level, where personal relationships can overcome regulatory hurdles, than between ministers in the capital, but there are still hindrances to cooperation. There have been cases where the only means of communication between local navy commanders and other agencies was personal cell phones or Facebook accounts. And each time people change jobs, personal relationships must be built again from scratch. In the end, relying on well-defined policies and procedures rather than personal relationships enhances transparency and, ultimately, the rule of law.

Prosecution of violations involves more agencies than just those directly involved with enforcement actions or the justice system. Simple questions like what to do with the foreign crew of an impounded fishing vessel during the court process, which can take months, involve a complex web of players, none of whom have all the right answers. Taken together, these challenges highlight that interagency cooperation is both an essential element of and a major hurdle to effective marine governance.

## REGIONAL COOPERATION

Sub-Saharan Africa has put a great deal of effort into enhancing regional cooperation to improve maritime security. Two multinational agreements underpin these efforts: the [Djibouti Code of Conduct](#) and the [Yaoundé Code of Conduct](#), both of which create frameworks for multinational cooperation in the maritime domain in the Western Indian Ocean and the Gulf of Guinea, respectively.

The Djibouti Code of Conduct was agreed to by 20 Indian Ocean nations in 2009. As it came about in response to Somali piracy, its initial provisions were focused on cooperation in countering piracy off the Horn of Africa. In 2017, the Jeddah Amendment

to the Djibouti Code expanded its scope to other forms of maritime crime. The Yaoundé Code, agreed to in 2013 by all ECCAS and ECOWAS countries, addressed cross-cutting maritime security threats from the beginning. While these codes document agreement to higher-level political purposes, they also include agreements on tactical-level enforcement mechanisms, such as provisions for embarking liaison officers from other states on enforcement vessels and aircraft and their authority when so embarked, rights of pursuit into a neighboring nation's waters, and commitments to share information and intelligence relevant to maritime crime.

Most notably, both codes have been used as the basis for establishing and developing a regional network of maritime operations centers (MOCs) and information-fusing and sharing mechanisms. In West Africa, this network is based on the Zone Concept, wherein five zones have been established, three among ECOWAS nations and two in ECCAS. Information-sharing from national MOCs is coordinated by zone-level maritime coordination centers (CMC). ECOWAS and ECCAS each operate a regional coordination center, the CRESMAO in Abidjan and the CRESMAC in Pointe Noire, tasked with developing policy and implementing strategy, and an Interregional Coordination Center (ICC) is reaching initial operating capability in Yaoundé. In East Africa, the structure is less formalized and is not zone-based, but there now exists a network of national MOCs and multinational information fusion centers that are designed to enhance MDA and information-sharing across the area.

These codes, though not binding on signatories, have provided a useable framework for nations to enhance their own capabilities for maritime enforcement and for enhancing cooperation among states. This has made it easier for maritime professionals to explain their needs to decision-makers and politicians in their governments, and easier to work with other nations. As such, they can be seen as a notable success in efforts to enhance maritime enforcement in these dangerous waters.



*A boarding team from the NNS Centenary secures simulated pirates aboard the Belgian Navy Ship Godetia during the French-led maritime security exercise NEMO 16-6. Such exercises play an important role in developing the multinational cooperation mechanisms envisioned under the Yaoundé Code of Conduct.*



*Photo by Jean-Pierre Larroque.*

That is beginning to change. Recent NEMO exercises have seen a multiagency crisis response exercise superimposed onto what was otherwise a tactical, at-sea naval exercise. These crisis response exercises are designed to involve a whole-of-government and multinational response to dealing with the consequences of maritime threats from start to finish of a crisis. Similarly, at the most recent iteration of the U.S. Navy-led Exercise Obangame, the UNODC added a mock-trial scenario which will use evidence actually collected by participating personnel during the at-sea interdiction events to try the alleged perpetrators.

These expansions to what were previously navy-only exercises add much-needed opportunities for other agencies to be involved, gain experience, identify gaps, and improve working relationships. They also allow donor partners to work together in ways they haven't previously. Such efforts are essential to improving marine governance as a whole, rather than piecemeal within individual agencies.

## ENDNOTES

- 1 The International Maritime Organization, "Amendments to the International Aeronautical and Maritime Search and Rescue (IAMSAR) Manual," MSC.1/Circ.1367, 24 May 2010.
- 2 Such as the United Nations Convention on the Law of the Sea, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, the United Nations Convention against Transnational Organized Crime, various fishing agreements, the Yaoundé Code of Conduct, the Djibouti Code of Conduct, etc.

## ONE EARTH FUTURE

[oneearthfuture.org](http://oneearthfuture.org)    

One Earth Future (OEF) is a self-funded, private operating foundation seeking to create a more peaceful world through collaborative, data-driven initiatives. OEF focuses on enhancing maritime cooperation, creating sustainable jobs in fragile economies and research which actively contributes to thought leadership on global issues. As an operating foundation, OEF provides strategic, financial and administrative support allowing its programs to focus deeply on complex problems and to create constructive alternatives to violent conflict.

## STABLE SEAS

[stableseas.org](http://stableseas.org)

Stable Seas, a project of One Earth Future, engages the international security community with novel research on illicit maritime activities such as piracy and armed robbery, trafficking and smuggling in persons, IUU (illegal/unregulated/unreported) fishing, and illicit trades in weapons, drugs, and other contraband. These activities perpetuate organized political violence and reinforce each other to threaten economic development and the welfare of coastal populations.

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