TANZANIA KEYNOTE 4

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"Good Order at Sea:P Revisiting the Imperative"

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Introduction: Threats to Good Order at Sea

Once the role of the military in general and of navies in particular was largely and simply to guard the state, but now, with the impact of globalisation their function has become much wider.[1] Globalisation, with all its social and economic linkages, now operates over and beyond the level of the traditional national state in a borderless world. It produces what is in effect a global system and one that is based in large measure on the carriage of goods by sea. It is a system in that what happens in one part of the world, in one constituent of the system, may affect all the others - the peace and prosperity of everyone else in other words.

There have arisen a wide number of threats to that system. They include its own inherent weaknesses and vulnerabilities, graphically demonstrated during the 2007-9 recession, catastrophic events, the prospective consequences of interstate war, deliberate attack by hostile forces both state and non-state based and systemic disorder ashore and at sea, and the illicit use of what is increasingly called the 'global commons'. This paper will focus on the latter and in particular on the nature and threats posed to the system by transnational crime, particularly at sea, and on the need to contain them by the maintenance of good order at sea.

These more specific sea-based threats to the system include illegal fishing, people smuggling, arms smuggling in its various

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1 The widening of the concept of security is dealt with in Barry Buzan's *People, States and Fear* (2nd edition) (New York: Harvester Wheatsheaf, 1991) and Jessica Tuchman Mathews 'Redefining Securuty' *Foreign Affairs*, Spring 1989.

forms, piracy, terrorism and the illicit drugs trade. It is worth making the point straightaway that much of this may be interconnected. The rise of piracy off Somalia is due mainly to the breakdown in order in that country, to the illegal dumping of poisonous wastes in the country's waters and to illegal fishing to the tune of the loss of some $300 million per year which have between them ruined the livelihoods of Somalia's artisanal fishermen, forcing them to seek other forms of employment. Unsurprisingly, the huge profits to be made from piracy have attracted many of these dispossessed fishermen, and their success has attracted many others, further eroding good order within the state, and damaging the international trade upon which the system depends.

There are, moreover, often real links between the one form of illicit activity at sea and another. Successful criminals tend to diversify as a strategy for the management of risk. Hence around the world the drugs trade is linked with terrorism and other forms of threat against the system. Such crimes create a complex and inter-twined world of 'interested reaction' (such as insurers and piracy ransom negotiators) on the one hand and naval counter-piracy forces and provate secuirity agencies on the other. In this linked diversity, though, the sea is the common denominator, and the maintenance of good order at sea is often the first line of against such threats.

First Reactions to the Threat

A number of issues immediately arise from this.

Firstly, most of these sea-based crimes are as globalised (or at least regionalised) as the damage they do. Take the drugs trade for example. The sad current state of parts of Mexico reflects the fact that the country was once a transit area through which cocaine from Central and Southern America was supplied to the United States. Local criminals saw the benefits of participating in this traffic, especially when the cartels paid

for their services in kind rather than in cash, with donations of cocaine. From the early 1990s, these Mexico-based organisations evolved into 'vertically integrated multinational criminal groups' with distribution arms in over 200 US cities.[2]

Much the same now appears to be happening in West Africa, an area, like northern Mexico, already under economic and social challenge.[3] The destabilisation of West Africa, an area from which the US may need to draw up to 25 per cent of its oil imports within the next decade would also have serious strategic consequences for the outside world. There is evidence that South American cartels have moved into the area in order to expand their markets and improve access to Europe. There are also indications of specific links in West and North Africa between the drugs trade and terrorists. Terrorists seem able to access the transport services offered by drugs and other smugglers, along the African coast and across the Mediterranean on their way to the Europe.[4]

In all these cases, the sea is the common element because of its historic role as the world's major means for the transportation of goods.[5] The sea, famously, needs to be thought of as one. Thus Halford Mackinder:

> The unity of the ocean is the simple physical fact underlying the dominant value of sea-power in the modern globe-wide world.[6]

The fact that the sea is 'all-joined up' – the road that goes everywhere, as W. McNeile Dixon[7] once said – means that events at sea are of common interest to countries far and wide,

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2 Robert C Bonner, 'The New Cocaine Cowboys: How to Defeat Mexico's Drug Cartels' *Foreign Affairs,* Vol 89, No 4, p 37.

3 'US and Britain fear drugs are destabilizing west Africa' *The Guardian,* 15 Dec 2010. The release of the Wikileaks cables has dsamagingly shown the low opinion held by these two countries of the enformecements agencies in countries such as Ghana and sierra Leone.

4 "US trains Africans to fight Al-Qaida' UPI Staff Writers, 18 May 2010.

5 This issue is tackled in my *Seapower: A Guide for the 21st Century* Third Edition (London: Routledge, 2013) pp 7-12.

6 Halford Mackinder, *Britain and the British Seas* (London: D.Appleton & Co, 1914) p 12.

7 W Macneile Dixon, *The Fleet Behind the Fleets,* (London: Hodder & Stoughton, 1917) p 95.

and not just to those in the immediate proximity of the illicit activities in question.

Secondly, for both such reasons, these kinds of non-traditional threats normally simply cannot be resolved at the national level, however powerful and well-organised that state is, and whatever its geographic position relative to the particular activity at issue. These problems have to be tackled regionally, even globally. They are not just the private concern of particular states in Africa or anywhere else. Geographically distant states are affected and will need to become involved in the response to such threats. For them, but indeed for all states, there is a 'home' and 'away' aspect to the defence of maritime security.

Partly, therefore, their responses will be focussed on maritime security in their own waters, partly, if they can afford it, they will be involved in the distant defence of that security in waters far remote from their own shores. The activities of CTF-151 in the international counter-piracy effort off Somalia is one obvious example of this; the similar European and American efforts in the Caribbean against the illicit trade in drugs is another. In both cases, outsiders join with local states in common cause against common threats.

Thirdly, threats to good order at and from the sea need to be thought of holistically as well as systemically. Particular threats like the illicit trade in drugs needs to be thought of 'in the round' with a 'whole of government approach.' It is impossible to disentangle the drugs problem from its context and the wider issue of conflict and instability, and the same is true of every other form of sea-based crime.[8] This complexity tends to mean that each maritime threat is a 'wicked' problem, to which there will be no clear and easy solutions.

SCALING THE THREAT

[8] Paul Rexton Kan, *Drugs and Contemporary Warfare* (Washington DC: Potomac Books, 2009)

But before looking at possible solutions and what they require, we may need to assess the level and seriousness of the threat that 'bad order at sea' generates. How much actually should we worry about this, when compared to the other challenges that most states in Africa face ? One useful device is to consider the scale of the threat at the three levels of individual, state and system. These are of course not discrete. In their nature and their effect they shade into one another, but nonetheless the notion remains a useful way of parsing the threat.

The Threat to the Individual: For the individual, the trade in illicit drugs or the risk of piracy may well be a matter of life and death. The much-neglected impact of the experience of piratical attack on individual sea-farers who are the unfortunate victims of increasingly brutal piracy attack and sea robbery, and its consequences for the long-term health of the industry can be severe.[9]

The Threat to the State: Because of the extent to which funding their habits drive drugs addicts into crime, and the involvement of criminal organisations in the illicit trade in drugs, have devastated countries like Colombia and parts of northern Mexico. Much the same effect seems threatened in parts of West Africa where fragile state authority is threatened by the corrosive effect of the rise of powerful people who not only break but subvert the law, who do not pay taxes, whose richness encourages other desperate people to follow their example and who often maintain their own militias. Thus the UN Nations Office on Drugs and Crime (UNODC) has labelled Guineau Bissau, for example, as a 'narco-state.' More prosaically even the perception of lawlessness in one part of a country can damage the national economy by undercutting travel and other legitimate business.[10] Fishing boats are the subject of piratical attack all round the coasts of Africa.

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[9] *The Human Cost of Somali Piracy,* published by OBP, Oceans Beyond Piracy, June 2011.

[10] 'Tourist told to stay off the streets as Jamaica's death toll rises.' *The Guardian* 26 May 2010.

Individuals pay taxes to the state in the expectation that the state will look after them. When it fails to do so, its entire legitimacy is imperilled. A failure to deal with maritime crime therefore undercuts the social contract that binds the individual and the state together, and destabilises government. International consequences can also result from the large scale movement of people escaping from one lawless area into another neighbouring country.

There may moreover be severe opportunity costs for many countries, not least those in Africa, if their inability to maintain good order sea means they are unable to exploit the rich marine resources, currently in the shape of oil, gas and fish, that could supply the revenues needed to tackle a host of domestic challenges on land. According to one estimate, the Nigerian economy loses about $7 billion annually to oil theft alone.[11] Tanzania's offshore oil and gas industry for example seems likely to increase the country's GDP by some 30-100 % if properly defended. The McKinsey Report of 2010 suggests this is broadly true for Africa as a whole – and to this figure needs to be added value of the fishing industry, participation in world shipping development and so forth.[12]

The Threat to the System: The direct economic costs of piracy to international trade have been variously estimated at between about $7 to 12 billion dollars a year but to that need to be added an indirect range of huge social and political costs.[13] The spreading effect of sea-based crime results in systemic threat even faster when the threatened areas are of critical importance to the rest of the world for the natural resources to be found there or the sheer scale of the market they represent. Ungoverned spaces also attract other forms of illicit activity of global significance such as transnational

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[11] Defence IQ Interview with Rear Admiral Emmanuel Ogbor, Nigerian Navy, 8 Jan 2013.

[12] McKinsey Global Institute report "Lions on the Move; The Progress and Potential of African Economies.' June 2010.

[13] Martin Murphy, 'Somali Piracy: Why Should we Care ?' RUSI Journal, December 2012

terrorism, those who trade illegally in small arms and weapons of mass destruction and so forth. Some individual trades, such as in drugs or illegal immigrants become economic forces which as a simple function of their size have global effect. The production and supply of illicit drugs for example is a transnational and truly global business, that takes up between five and six percent of overall world trade, slightly more than the combined value of the trade in cars and agricultural products combined.[14]

When analysts consider the relative importance of different types of non-traditional threat, and indeed of many traditional threats in the shape of inter-state wars, the assumption is often that international terrorism represents the gravest challenge to the international system. If and when, terrorists gain access to weapons of mass destruction, that assumption may turn out to be true. But at the moment, when measured in both financial and human costs the trade in illicit drugs and human trafficking would currently seem to be much worse, and deserving of more attention.

So if the overall scale of the threat to good order at sea seems to warrant serious attention and the devotion of serious resources to the struggle to its maintenance, what are the principal problems in doing so ?

Enforcement problems

Firstly, the rewards for the wrong-doer are enormous. The returns from a successful attack on a merchant ship or tanker off Somalia or in the Gulf of Guinea are huge. This attracts future generations of perpetrators and allows investment in new technologies and procedures to outwit the hard-pressed forces of law and order at sea. Similarly drugs trade organisations normally operate in the expectation of profits of

[14] Some estimates are rather higher than this. Globalisation 101 News Analysis Case Study: Illicit Drugs and Globalization, http://www.globalization101.0rg/news1/drugs_glabalization- 27 Feb 2011; 'The globalization of the Drugs Trade' UNESCO. http://www.unesco.org/most/sourdren.pdf - 27 Feb 2011.

about 300 percent. To deal with this, it has been estimated that the rate of interception needs to be about 75 per cent. Interception rates of shipments at sea across the Caribbean or the Indian Ocean for example are difficult to assess but they are certainly much lower than this.

Secondly, the world ocean, as the Russians call it, is a very big place and the number of assets devoted to the task is relatively small. This particularly applies to the seas around Africa, where few countries have the necessary level of GDP (about $ ten billion) to operate effective coastguards/navies. The result is a vast area of seven to eight million square kilometres of sea policed according by too few assets many of which are barely serviceable, although the growing economic power of the African continent will hopefully generate greater resources in the future. Moreover, the volume of world trade, and hence the extent of sea-based trade is expected to increase by 50% over the next 20 years, while the number of Western naval assets will decline by about 30 %. The resultant resources shortfall will need to be filled by a mixture of local forces, the newer naval powers of the Asia pacific and elsewhere and *properly regulated* private security companies.[15]

Thirdly, the trade in humans, drugs and illegal arms is multi-modal; they travel by land, sea and air, and agile criminal organisations alter the proportions in response to the relative successes and failures of enforcement. When they do go by sea, the small physical size of a drugs cargo for example, makes detection difficult. The amount of heroin consumed in one year in the United States for example would easily fit into one standard container, and yet twenty million containers enter the country every year. Considerable ingenuity is devoted to the task of concealing the cargoes so that they become extremely difficult to find even when intercepted. Small drugs-

[15] On this see interview with Peter Cook of SAMI (Security Association for the Maritime Industry) in *Warship International* August 2012; also Segun Adeyemi, 'Nigerian move to outsource naval tasks sparks row' *Jane's Defence Weekly,* 8 Feb 2012..

running dhows operating in the Indian ocean for example often have to be near dismantled to locate their heroin or hashish. A particular nasty device is to conceal this in the primitive, hot, below decks facilities that serve as their toilets, and which require investigating officers to operate in truly disgusting conditions. Dealing with the ingenious and ever-changing concealment of passages and cargoes requires high levels of training and special resources. It also depends on the extent to which search parties are provided with ROEs that allow 'destructive search'[16]

Fourthly, law enforcement at sea faces a variety of special legal constraints, even though the 'universality' of the crime of piracy and such specific dispensations as the UN Convention of 1988 on the Illegal Trafficking in Narcotic Drugs and Psychotropic Substances provides a universal legal framework for the activity. European navies are limited by the effects of the European Convention on Human Rights, which significantly constrain their capacities and which mean that suspected drugs traffickers cannot simply be handed over for prosecution to other less constrained countries. The level of evidence required for a successful prosecution is the same as it would be for a crime on land although the conditions for gathering such evidence are often much harder. Navies operate under varying rules of engagement moreover – the US Navy, for example is limited by considerations of *posse comitatus* and so the lead is actually taken by the U.S. Coast Guard, which will also need to place ship-riding legal detachments on Navy warships in order to arrest suspected malefactors. Other navies have simply to train up their generalist personnel simply to do the best job they can.

Law enforcers have to be agile to keep up with the challenges posed by the traffickers. The introduction of submersibles for

[16] Search parties without such rights have to repair any damage or disruption theuir searches may have caused. Int KW.

instance is not in itself illegal, although these may be regarded as 'ships without nationality.' For that reason the US has enacted a law making the operation of submersibles a felony.[17] Bureaucratic inertia and the sheer size of modern state administration however often means that the response-time of forces of law enforcement to new moves by the perpetrators tends to be slower than *vice-versa*.

The criticality of the legal infrastructure in the defence of good order at sea is illustrated by the difficulties often encountered in suspected pirates and by such things as Somalia's proclamation of a 200 mile territorial sea instead of an EEZ. This self-inflicted wound raised legitimate doubt as to whether it has a 200 mile EEZ and therefore whether IUU Fishing in the area is indeed illegal.[18] The legalities should assist in the defence of good order at sea not hinder it.

Fifthly, while emphasis has been given to the overwhelming need for the response to maritime crime to be multi-national in nature, the problem is that locals and outsiders, may often have very different resources and procedures, and more important very different priorities. Even in the Caribbean Europeans tend to be more interested in monitoring the West-East Highway 10 drugs route , while the Americans focus on the North-South equivalents. Cooperation between the US and African can be bedevilled by the US primary concerns about international terrorism, while local states are more worried by illegal and unregulated fishing.[19]

Sixthly, the complex mix of context and threats to good order at sea around Africa's coasts and the greatly varying motivations and operational procedures used by criminals from one area to another mean that there is no single solution to the

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17 USCG Notes

18 Stig Jarle Hansen, 'Debunking the Piracy Myth: How illegal fishing really interacts with piracy in East Africa' *RUSI Journal* December 2012.

19 Jay Solomon, 'New Terror Threat Prompts US Rethink on Africa' *Wall Street Journal* 22 Jan 2012; Marcus Weisgerber, 'Pentagon Increases Focus on AFRICOM' *Defensenews* 28 Jan 2013.

problem of maintain good order at sea. The lessons hard-learned in one area do not necessarily apply to an apparently similar threat elsewhere on the continent. It is indeed a question of horses for courses, and taking each situation on its own terms.

Seventhly and lastly, the complexity and inter-twined nature of crime at sea means that there are many vested interests both inside the region and beyond it who have a permanent interest in the continued existence of the problem because it profits them directly or indirectly. Some of them may be in a position to undermine attempts to defeat 'bad order at sea.'

The Contributions of Navies and Coastguards [20]

For all their difficulties facing them, and although they are clearly only part of the solution to maritime crime, navies and coastguards do make a very real contribution to the maintenance of good order at sea because of their command and control systems, their platforms, weaponry and sensors, their capacity for operational planning, their discipline, training and general incorruptibility. Some of the better Coast Guard forces, perhaps a more obvious candidate for the execution of what are after all essentially constabulary duties, have such capabilities too, but usually to a lesser degree.The success of relatively modest forces acting with determination can however be disproportionately effective.[21]

Their success rests on the three closely linked and mutually supporting pillars of intelligence, assets and organisation.

Intelligence

Clearly, when defending Africa's maritime security, it is critical to know what is happening. The interception of the passage of drugs at sea, for example is a pre-eminently intelligence-led

[20] Perhaps the first requirement is not to traffic drugs themselves. Even the best navies may be pen to this form of abuse. 'Former asylum seeker used Navy ship to smuggle cocaine' *DailyTtelegraph,*19 June 2010.

[21] Jeremy Binnie, 'Puntland pursues pirate gang' *janes Defence Weekly,* 20 June 2012.

operation. There are surprisingly few 'cold hits' in which drugs shipments are unexpectedly chanced across. Instead what is required is 'predictive' intelligence in actionable form supplied to those who need it, when they need it. This kind of intelligence usually frames interdiction operations and is absolutely critical to success. While much of this intelligence needs to be land-sourced, warships and submarines provide an important covert means of listening in to telephone communications and so can make a material contribution to wider understanding of the problem.

Intelligence-gathering is closely associated with the maritime domain awareness that can be generated through the use of maritime patrol aircraft, UAVs, surface ships and increasingly aerostats of one sort or another. The number of patrol assets, their range and endurance are critical to success. The resultant data needs to be processed and made available as operational intelligence to those that need it. The US has made important progress here in creating the Office of Global Maritime Situational Awareness (GMSA) to encourage interagency information sharing domestically and and to some extent internationally. The European Maritime Analysis and Operations Centre – Narcotics (MOAC-N) set up in Lisbon in 2007 is another example of the same kind of thing. It emphasises the need to share information, seeks to establish links with the authorities in West Africa and provides a command and coordinating role for interdictions.

Such coordination is not easy however. Language, the tendency to over-classify data, national standard operating procedures and institutional rivalries, especially over budgets all impede the process.

<u>Assets</u>

First their capabilities for high-intensity operations can be useful in dealing with the technological challenges posed by

pirates, and drugs and human traffickers. Helicopters, small maritime patrol aircraft, drones and even aerostats make a significant contribution to this.[22] In the Caribbean the smugglers use commercial vessels and yachts but often resort to so-called 'go-fast boats' which operate at speeds that few patrol craft or warships can compete with. But large long-range helicopters of the sort that can only be carried on large Offshore Patrol Vessels, Corvettes and Frigates and are invaluable for this role. They may need to carry weaponry that can shoot out the engines of boats that will not stop. Should the smugglers resort to submersibles, which are usually only detectable by their wake, or even submarines, sophisticated radars and surveillance systems are often the most effective means of detecting them.

It is important to note the deterrent and disruptive effect on the criminals traffickers' business model of the active presence of the forces of law and order. Not infrequently, the mere appearance of a UAV or a helicopter causes the crew of a go fast boat to jettison their cargo or a pirate skiff to abandon its mission, at considerable cost to the organisation – a clear win for the enforcement authorities even if no cargoes or perpetrators were seized. [23]

Organisation

All this requires effective command and control system and effective date exchange between a variety of civil and military agencies, coastguards and navies. This in turn requires frequent detailed protocols to ensure effective data-transfer, which can be secured either by large-scale multilateral agreement or by a complementary series of bilateral arrangements. The latter are particularly necessary not just in order to authorise rights of hot pursuit and to reconcile judicial

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[22] 'Anti-piracy sensor for Fire Scout' *Jane's Defence Weekly,* 20 June 2012.

[23] The Dutch warship *HMNLS Van Speik* reported one such incident. Amongst the drugs cargo dumped was $500,000 in dollar bills. A go-fast boat will normally carry 1-1.5 tons of cocaine. INt/ConfInf

legal procedures, but also because the operational priorities of individual countries may differ as we have already seen.

For this reason, regional associations and naval/coastguard togetherness such as the African Union at the continental level and Eastern Africa's Intergovernmental Authority on Development (IGAD) or , on the other side of the continent the Maritime Organisation of West and Central African States (MOWCA) and the Gulf of Guinea Commission (GGC)at the sub-regional seem essential– and moreover that such examples of local cooperation have a robust maritime component.

The contribution that external navies and coastguards make to the maintenance of good order in local seas is advanced not just through their presence but also through what might be called facilitative diplomacy and capacity-building.

They can assist through capacity-building operations, in the provision of equipment or the development of operating skills where standards need to be raised. This may be a delicate business, especially where local states are sensitive about their own sovereignty or where they are seduced by technology and seek sophisticated information fusion centres and Command and Control hubs rather than the workaday boarding capabilities they actually need. Geography makes capacity building especially important in some cases. Cape Verde, at the end of Highway 10 across the Atlantic, for example is critical to Europe's interdiction efforts and so attracts a good deal of help.[24]

Soliciting the cooperation of local and neighbouring states in the common fight for maritime security through the establishment of bilateral and multilateral arrangements can be quite tricky politically, not least because of local states'

[24] Interveiw Oct 2010.

sensitivity to their sovereignty, and in some cases suspicion of the broader purposes of outside states, most particularly the United States. Hence the US problem in winning acceptance for AFRICOM and continuing problems in coordination with local countries.[25] Cooperative naval diplomacy and the offer of training facilities and enforcement capabilities are nonetheless important in establishing the framework for a coordinated maritime security campaign.

In many cases though, coastguard forces when they are available, can be more suitable for capacity-building and the establishment of working cooperation. They are generally regarded as less sensitive politically and more focused on non-traditional security tasks. [26] But with the exception of the US and Japanese Coast Guards, few of them are as yet capable of substantial capacity-building activities and most concentrate on the policing of their own waters. Moreover, many LDCs and smaller countries cannot afford to operate both navies and coastguards, and so the latter's duties are usually carried out by the former.

Conclusion

Having reviewed the scale of the problem and the contribution that navies and coastguards can make to the maintenance of good order at sea, this paper will end with a point that has been made many times before, but which is essential nonetheless. In their activities at sea, navies and coastguards are usually dealing with the symptoms of problems ashore; on their own they can rarely solve such problems. Instead, final solutions need to be found by looking more intensively at the

[25] Benjamin Friedman and Harvey Sapolsky, 'Bring Africa Command home' *Defense news 9 May 2011;* Sean D Naylor 'A 'Wilderness of Mirrors: Tension, Inconsistent Allies Plagued US Ops in Africa' *Defensenews,* 5 Dec 2011; Drew Hinshaw, 'Mistrust Blunts US Strategy in Nigeria' *Wall Street Journal,* 28 Feb 2013.

[26] For instance, the time on task of US Coast Guard vessels in the Caribbean is typically twice as long as US navy warships rotated there from other duties for the purpose. USCG Int.

causes of the problem ashore. Hence the developing role for AMISOM in its drive against Al Shabab. [27]While this is true enough, the inter-connections should not be forgotten. Successful maintenance of good order at sea will in many cases reduce the *scale* of the problems to be tackled ashore, and the beneficial protection and exploitation of Africa's bountiful marine resources will make a material contribution to the resources which governments ashore need in order to tackle the domestic land-bound challenges that in many but sadly not all cases, have caused the problems at sea in the first place.

[27] Jeremy Binnie, 'Details of AMISOM expansion revealed' *Jane's Defence Weekly,* 22 Feb 2012.