

SEMAPHORE

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MARITIME SECURITY REGULATION

The events of 11 September 2001 initiated a change in concepts of security and a reconsideration of the types of threats that States might face. While States had long been aware of the possibilities of attacks against transportation, September 2001 saw a reorientation from attacking transport toward the use of the transportation system itself as a weapon. What became clear was that the nature of the emerging security environment was not reflected in international law; at issue was the fact that international law was based on acting after the event to 'punish' the perpetrators, rather than allowing States to suppress or prevent such acts from occurring in the first place.

At the instigation of the United States, the international community through the International Maritime Organisation (IMO), began considering in November 2001 how to improve the security of maritime transport worldwide to reduce the possibility of maritime terrorist attacks, and/or the importation of weapons of mass destruction (WMD). In December 2002, after 12 months of deliberation, the international community agreed to amendments to the *International Convention for the Safety of Life at Sea (SOLAS) 1974*. A new chapter was included in SOLAS - Chapter XI-2 *Special Measures to Enhance Maritime Security*, and the *International Ship and Port Facility Security (ISPS) Code* was introduced.¹

In May 2003 State and Federal Transport Ministers agreed to implement the ISPS Code in Australia, and on 12 December 2003 the *Maritime Transport Security Act (MTSA) 2003* was passed, entering into force on 1 July 2004.² Under the MTSA, the owners of 300 port facilities in 70 ports and 55 Australian-flagged ships were required to conduct security risk assessments and develop appropriate security plans to manage those risks. These risk assessments and plans include an escalating security regime, whereby higher security levels require additional security measures to be put in place.

After reviewing Australia's maritime security arrangements in early 2004, the Secretaries' Committee on National Security proposed the creation of a Taskforce on Offshore Maritime Security to examine security arrangements for Australia's offshore oil and gas facilities; this Taskforce subsequently made a number of recommendations. Concurrently with Taskforce deliberations, the Government announced during the October 2004 Federal election campaign that two additional *Armidale* class patrol boats would be purchased for the RAN to conduct augmented patrols of the North West Shelf.³ On 15 December 2004, the Prime Minister announced that the Commonwealth would assume responsibility for all offshore counter-terrorism activity and the protection of offshore oil and gas facilities, with the States and the Northern Territory Government assuming responsibility for port security. He also announced the creation of a Joint Offshore Protection Command (JOPC), comprising the Coastwatch organisation in the Australian Customs

Service and elements of the Australian Defence Force (ADF), and the development of an Australian Maritime Identification System (AMIS).⁴ Under AMIS, it is envisaged that ships proposing to enter Australian ports will be required to provide comprehensive information such as ship identity, crew, cargo, location, course, speed and intended port of arrival at 1000nm from Australia's coast. At 500nm from the coast, information would be sought voluntarily from vessels proposing to transit Australian waters but not enter a port. Within Australia's 200nm exclusive economic zone (EEZ), the aim would be to identify all vessels other than day recreational boats. JOPC is managing the development of AMIS, which will draw upon and fuse information from a variety of agencies. Flowing from the work of the Taskforce, the MTSA was amended in June 2005 to extend Australia's maritime security regime to Australia's offshore oil and gas facilities, resulting in the MTSA being renamed the *Maritime Transport and Offshore Facilities Security Act (MTOFSA) 2003*.⁵

While the ISPS Code established a framework for preventive security for ships and ports, there was acknowledgment internationally that more work was needed to develop a framework for responding to intelligence about planned attacks, and intervening, before such attacks could occur. To address this need, the international community turned to an existing maritime security instrument – the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988*, which has become known as the SUA Convention.

In October 1985, four members of the Palestine Liberation Organisation hijacked the Italian cruise ship *Achille Lauro* on the high seas off Egypt, and an American tourist was subsequently murdered. After jurisdictional wrangling between various governments, the perpetrators were eventually released without being charged with any offences. In reaction to this attack, the IMO developed the SUA Convention, aimed at ensuring that anyone committing unlawful acts against the safety of navigation will not be given shelter in any country, but will either be prosecuted or extradited to a State to stand trial.

After September 2001, the IMO developed amendments to the SUA Convention, to overcome the lack of an enforcement mechanism and to create new offences for acts of terrorism at sea, including for the transport of certain items that could be used to commit terrorist acts. These amendments (the 2005 Protocols) were agreed at a Diplomatic Conference in London during October 2005 and broaden the list of offences made unlawful under the treaties, so as to include the offence of using a ship itself in a manner that causes death or serious injury or damage, and the transport of weapons or equipment that could be used for WMD. They also introduced provisions for the boarding of ships where there are reasonable grounds to suspect that the ship or person/s on board the



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ship is, has been, or is about to be involved in, the commission of an offence under the Convention.⁶ Ninety days after 12 member States have ratified the 2005 Protocols these new provisions will come into force.

Linked to the development of the ISPS Code, the IMO plans to introduce a Long Range Identification and Tracking (LRIT) system, to enable countries to identify all vessels transiting their waters and particularly those intending to enter port. All SOLAS-compliant ships will have LRIT satellite systems that will provide the ship's identity and location. It has already been accepted that Flag States will be able to access the data from their ships anywhere in the world, while Port States will be able to access the data from a nominated port following a declaration from the ship of an intention to enter that port. Debate continues on when a Coastal State should be able to gain access to this information for ships transiting its waters but not intending to enter port. From an Australian perspective, the further from Australia this information is made available, the more time is available to identify a threat and develop response options.

Small ships (less than 500 gross tonnes) are not regulated under SOLAS and thus constitute a possible threat to shipping, or are at least a vulnerability. The threat is that these small ships can be used as a means to attack other ships. While the attacks on the USS *Cole* in October 2000 and the MV *Limburg* in October 2002 were by speed boat, these incidents highlighted force protection issues for both warships and international shipping. The vulnerability of small ships is that pirates and sea robbers may target them. Some members of the IMO are proposing to analyse and assess the vulnerability of small ships, and consider the appropriate security measures for them as well as implementation plans.



MV Limburg after being rammed by an explosives-filled speed boat off the coast of Yemen (Bisso Marine)

What does all this mean for the RAN? The impact of maritime security regulation is twofold: where it impacts on how the Navy undertakes its activities; and where it influences the roles the Navy might undertake.

The MTOFSA will have an impact on the RAN. Firstly, warships are exempt from its provisions, and are therefore not required to submit security plans consistent with the ISPS Code when entering an Australian security-regulated port. However, through a process of close consultation with the Association of Australian Port and

Marine Authorities, liaison procedures have been developed to ensure that when RAN ships visit Australian ports, the self-protection measures they implement are consistent with and avoid compromising the port security plans in force. This also extends to ADF member exemptions from carrying the newly introduced Maritime Security Identification Cards when going about their legitimate business in an Australian port. These measures avoid unduly hampering RAN operational activities, but conversely, in a heightened security environment, the RAN cannot utilise the MTOFSA to create security zones around its warships in security-regulated ports. Rather, it may have to rely on amendments to the *Control of Naval Waters Act 1918* to designate these zones when alongside or underway in a port. Secondly, in the normal course of events the RAN is not responsible for commercial port security, which is a State Government responsibility. However, under heightened security conditions, the Commonwealth may direct the RAN to assist State Governments under the call-out provisions of Part IIIAAA of the *Defence Act 1903*. Finally, if a ship is deemed to be a threat, or its bona fides cannot be established, the RAN may be called upon to intercept the ship before it enters an Australian port.

The creation of JOPC, and the assignment to the Commonwealth of responsibility for offshore counter-terrorism and protection of oil and gas facilities, will impact on RAN responsibilities. It is likely that JOPC will make greater use of ADF assets to conduct surveillance, interception or boarding (visit, board and seizure) operations against suspect commercial shipping in Australia's EEZ, and the RAN will make a major contribution to these activities. When the LRIT system is agreed and implemented, the information provided will feed into AMIS, providing a more robust Common Operating Picture. This information will allow agencies to assess risks posed by certain ships in order to determine whether they may transit Australian waters, and/or enter Australian ports. The MTOFSA will allow Australia to deny port access to any ships identified as a risk, while the amendments to the SUA Convention, once ratified and implemented in domestic legislation, will provide the legal basis for the RAN and ADF to intercept, board and detain these ships if necessary, well before they enter Australian ports.

¹ International Maritime Organisation, *SOLAS - Consolidated Edition*, 2004, London, 2004.

² *Maritime Transport Security Act 2003*, Internet <comlaw.gov.au/com law/Legislation/Act1.nsf/0/5ED0B1A0C30020B3CA256F720010C857/\$file/1312003.pdf> (21 November 2005).

³ *Securing Australia's North West Shelf*, The Howard Government Election 2004 Policy, 16 September 2004. Internet <liberal.org.au/2004_policy/Securing_Australias_North_West_Shelf_Policy.pdf> (21 November 2005).

⁴ *Strengthening Offshore Maritime Security*, Prime Minister of Australia, Media Release, 15 December 2004, Internet <pm.gov.au/news/media_releases/media_Release1173.html> (21 November 2005). After some confusion in the region over the purpose of the announced 'Australian Maritime Identification Zone', the terminology was subsequently amended to the 'Australian Maritime Identification System'.

⁵ *Maritime Transport and Offshore Facilities Security Act 2003*, Internet <comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/F8311AC193742AF6CA257084001F6DB0/\$file/MaritimeTransOffshoreFacil Security2003_WD02.pdf> (21 November 2005).

⁶ International Maritime Organisation, *Revised treaties to address unlawful acts at sea adopted at international conference*, Briefing 42, 17 October 2005, Internet <imo.org/newsroom/mainframe.asp?topic_id=1018&doc_id=5334> (21 November 2005).

