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Ocean of opportunity or murky waters?

Information-sharing and Combating Transnational Maritime Crime in the Indo-Pacific

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EXECUTIVE SUMMARY

Although the Indo-Pacific has recently experienced immense growth in the number of regional institutions, this has not always improved efforts to combat transnational maritime crime. This report analyses the extent to which information-sharing can be used to aid regional efforts to inhibit such crime in the Indo-Pacific. This is an important area of discussion in a political environment where maritime crime and information-sharing are often overshadowed by other international issues.

The report first explores the threat of transnational maritime crime to security and order at sea, and how the complexity of the maritime domain facilitates criminal activity. The important role of institutions in mitigating these complexities is emphasised, but it is exposed that the Indo-Pacific's regional security architecture has not achieved this due to simultaneous over- and under-regulation. Consequently, this report identifies information-sharing as an area upon which regional cooperation efforts should focus. Information-sharing increases state' Maritime Domain Awareness, alleviating some of the issues that maritime complexity presents. Although there are significant challenges to information-sharing, the argument for increasing such activities is compelling. Information-sharing is thus shown to be integral to the future of combating transnational maritime crime.

This report makes three recommendations that would assist Indo-Pacific nations in prosecuting and preventing transnational maritime crime. Included in the recommendations are specific considerations of how Australia can contribute to these efforts. The recommendations made are:

- Penalties for transnational maritime crimes must be increased to impose higher costs on offenders.
- Capacity-building activities by well-resourced states in the IP must be used to strengthen the domestic institutions and abilities of partner states to combat transnational maritime crime.
- An information-sharing arrangement for the IP must be created to increase regional Maritime Domain Awareness by consolidating existing frameworks, resolving issues generated by technological differences, and ensuring state sovereignty is protected.

This report concludes that states in the Indo-Pacific must work together to build an information-sharing mechanism in the region if criminal activities are to be prevented, potentially saving millions of lives in the region.



INTRODUCTION

In 1942, Nicholas J. Spykman, a prominent realist scholar, wrote *America's Strategy in World Politics: The United States and the Balance of Power* and in 1944, *The Geography of Peace*. Across these books, Spykman vividly describes the Asiatic Mediterranean, a zone extending from Asia to Australia between the Pacific and Indian Oceans. He argues that states in the region must operate amphibiously to mount an effective defence as they face security threats on both fronts.¹ He delivers a picturesque description of a zone of “insular world par excellence”, plentiful rainfall, rich in minerals and “fertile soil”.² Yet, across the region’s densely populated “littoral and island rims” are vast oceans, unknown to most who only admire seas from coastlines.³ Despite Spykman’s hopeful descriptions, the oceans of the Asiatic Mediterranean, which approximate the Indo-Pacific (IP), are the stage for illegal enterprises exploiting the maritime domain for criminal purposes, harming millions of people.⁴ This reality is the concern of this report.

For many years, regional and international forums have sought to combat illegal maritime operations such as piracy, trafficking (human and contraband), and illegal, unreported, and unregulated (IUU) fishing. While groups undertaking these activities often seem ramshackle, their persistence suggests their operations are complex and clandestine. Perpetrators often belong to international criminal or terrorist groups using illegal activities to fund further endeavours.⁵ The complexity of the maritime domain, due to issues like invisible borders and jurisdictional conflicts, enables these groups to cause widespread disruption.⁶ These challenges are exacerbated by an oversupply of contradictory regulation in the IP, the area of focus for this report.⁷ Concurrently, just as there is a superabundance of regulation concerning what actions should be considered illegal, so the regulation is insufficient in critical areas such as information-sharing, both of which are crucial for states to have sufficient Maritime Domain Awareness (MDA).⁸ This report identifies shortcomings in the present regulatory structure and argues for, not more, but better regulation – for regulation that is clear and sufficient.

International media reporting and political debate are often preoccupied with military hard-power and geostrategic competition, particularly between the United States (US) and China. These issues are certainly important, as growing tensions could lead to destructive global conflict. However, this report will avoid such discourse, not to argue that one issue is more important than the other but raise into the common consciousness a topic other than that which is already mass-broadcast in both academic discourse and media. This report instead reflects on the challenges of tens of millions of individuals suffering at the hands of transnational crime, facilitated by the complexities of the maritime domain.⁹

To examine this, Part I of this report defines maritime security, framing the problem, nature, and implications of transnational maritime crime in the IP. Part II evaluates existing regional and international cooperative mechanisms in the IP. Part III discusses the nature of information-sharing and how it could aid efforts to combat transnational crime. Finally, Part IV makes several recommendations and specifically reflects on how Australia could implement them, to conclude that information-sharing is the future of combating transnational maritime crime in the IP.



PART I: FRAMING THE PROBLEM OF TRANSNATIONAL MARITIME CRIME

Transnational crime is the most severe maritime security issue in the IP, threatening “good order at sea”.¹⁰ As with many concepts, maritime security has no universal definition. Instead, scholars like Christian Bueger argue that there are different frameworks through which we can view the concept (Case Study 1). Each framework differs in its interpretation of maritime security, but they converge on similar ideas of marine power, piracy, and criminal enterprise.¹¹ This convergence demonstrates the inherent relationship between maritime crime and security. Thus, transnational crime must be managed and ultimately eradicated, to maintain regional maritime security.

Case Study 2: IUU Fishing

Only 3 per cent of global fish stocks are considered underexploited. Often, the depletion of fish stocks caused by IUU fishing “creat[es] more fertile recruiting grounds” for other criminal operations as local fisherman turn to illegal activities to feed themselves.¹ Further, ships conducting IUU fishing often facilitate other crimes, using trafficked labour and trafficking other contraband as well as fish. Therefore, these “endemic issues security problems” in the region are interlinked.²

Works Cited

1: United Nations Office on Drugs and Crime, “Transnational Organized Crime in the Fishing Industry”; Gregory B. Poling and Conor Cronin, “Illegal, Unreported, and Unregulated Fishing as a National Security Threat” (Center for Strategic & International Studies, 2017), 8.

2: Trajano, “Combatting Human Trafficking”, 1.

Case Study 1: What is Maritime Security?

Bueger identifies three frameworks for understanding maritime security. The first is as a conceptual matrix, explaining one concept by showing its associated concepts. A second framework is securitisation, analysing how a concept becomes seen as a threat, and subsequently how the threat becomes political agenda. The third framework is security practice theory, observing the actions of groups alleged to be conducting maritime security rather than looking at definitions.

Works Cited

Bueger, “What Is Maritime Security?”, *Marine Policy* 53 (March 2015): 159–64.

In discussing transnational maritime crime, this report focuses on piracy, the trafficking of people and contraband and IUU fishing as they are the most common, profitable and threatening activities in the IP (Appendix A).¹² Piracy became a policy priority, in particular, after the crisis in Somalia, but it also significantly affects other areas like the Sulu Sea and Malacca Strait.¹³ Trafficking is a major area of concern as the IP suffers disproportionately, with over two-thirds of human trafficking victims located in East Asia.¹⁴ Further, IUU fishing presents a severe threat, increasingly depleting the fish stocks that millions rely on (Case Study 2).¹⁵ Table 1 outlines the severe impacts of these crimes.



TABLE 1: The Impacts of Transnational Maritime Crimes

Crime	Impact
Piracy	Economic cost: ransom payments, the destruction or theft of ships, cargo, and other goods. ¹⁶ In the Sulu Sea alone, this cost \$3.25 million in 2016. ¹⁷
	The human cost: lives lost due to violence.
Trafficking (human)	The human cost: immeasurable abuse and loss of human life to forced labour and commonly, sex. Conservative approximations estimate there to be 25 million victims of human trafficking in Asia alone. ¹⁸
	Economic cost: human capital lost in areas.
Trafficking (contraband)	The human cost: lives lost or damaged due to the abuse of contraband. Some estimate there to be 3 million heroin users in Asia/Oceania alone. ¹⁹
	Economic cost: money spent on contraband that could be used in other parts of local economies (see Appendix A for figures). ²⁰
IUU Fishing	Environmental cost: depletion of fish stocks and degradation of marine environments. Only 3% of global fish stocks are under-exploited. ²¹
	The human cost: extreme loss of food security. There are an estimated 50 million fishers worldwide. 4.5 billion people rely on fish for 15–20% of their protein intake. ²²
General	Environmental cost: Incidents at sea have been linked to oil spills, fires, and leakages of hazardous cargo as boats are generally older and in bad condition. ²³
	Political stability: corruptive activities weaken domestic institutions and the ability of states to manage threats, supporting a positive feedback cycle of corruption. Increasing globalisation escalates volatility. ²⁴
	Economic cost: money made from all illegal activities is often used to fund more nefarious activities (see Appendix A for figures).

The nature of the maritime domain presents unique challenges that facilitate transnational maritime crime. Resources, such as fish, move freely without awareness of maritime borders and international law, creating resource competition.²⁵ Maritime borders often overlap or are disputed, producing



jurisdictional conflicts that make regulation difficult to navigate.²⁶ The IP is particularly affected by this given the abundance of island states competing for territorial claims.²⁷ Moreover, the vastness of the ungoverned high seas, designated by the United Nations Convention on the Law of the Sea (UNCLOS), makes monitoring and mitigating transnational crime in such “immeasurable” areas challenging.²⁸ Bueger argues that “even the most advanced and well-resourced maritime nations struggle” with this.²⁹ Yet, while no single state is responsible for these areas, the safety of these waters is in the common interest given the transnational nature of maritime crime.³⁰ Importantly, these issues uniquely affect the maritime domain, as opposed to aviation, due to the large volume of important trade the sea carries.³¹ In these ways, the maritime domain generates distinct challenges in mitigating transnational maritime crime.

The complexity of international systems of shipping exacerbates the maritime domain’s unique issues. The sea carries up to 90 per cent of global trade, including trade of critical resources like oil and gas.³² Specifically, 99 per cent of Australia’s trade is conducted at sea, valued at over AUD 600 billion.³³ Ensuring such huge volumes of trade as they depart, transit and dock are safe and absent, for example, of trafficked goods, requires immense inter-agency coordination.³⁴ This cooperation must occur between multiple parties: domestic government agencies (for transport, fisheries, agriculture, trade, police, defence and more), port and shipping companies, private security contractors, regional groups, and international bodies too.³⁵ Logistically, efficient communication between such a diverse and large number of groups is difficult because of each party’s different data, systems, processes and languages. Such communication is particularly challenging in the IP, an area of extreme cultural and historical diversity.³⁶ The inclusion of private companies is important too, as Bueger notes that “actors from the maritime industry are a potential target as well as potential perpetrators [of crime]”.³⁷ Both private and government agencies can abet illegal activities when domestic institutions are weak and inter-agency cooperation is ineffective.³⁸ For this reason, there are limited penalties for transnational maritime crime in the region, almost incentivising illegal activity.³⁹ Consequently, maritime complexity and institutional issues allow some groups to benefit from permitting, rather than stopping, illegal activity. The following section discusses how institutions should have the ability to mitigate, rather than exacerbate, the issues that state in the IP face.

PART II: EXISTING REGIONAL AND INTERNATIONAL COOPERATIVE MECHANISMS

Liberal institutionalism argues that institutions mitigate conflict in the international political system, providing “focal points” for cooperation.⁴⁰ States can discuss issues of mutual concern, increasing transparency and reducing ambiguity (which often generates conflict).⁴¹ There is certainly no universal agreement on these benefits. Realists like John Mearsheimer maintain that institutions are intervening variables that reflect existing power relations and are, therefore, redundant to facilitating cooperation.⁴² Yet, even realists like George Kennan acknowledged the benefits of institutions as states cultivate “solidarity with other like-minded nations”.⁴³ Contemporary institutions take many forms with broad or limited membership, facilitating economic, cultural, to security cooperation. The wide proliferation of, and support for, regional and international institutions suggests that states see benefits to these cooperative mechanisms.



The benefits of institutions can be applied to the maritime domain. Edward Luttwak writes in *The Political Uses of Sea Power* of “suasion”, the indirect political application of the navy to compel or deter an adversary or ally.⁴⁴ Royal Australian Navy (RAN) Doctrine reflects similar ideas, emphasising maritime barrier operations and naval presence as deterrence methods within constabulary and diplomatic categories of maritime tasks (Appendix B).⁴⁵ The presence of international navies, including the RAN, in the Gulf of Aden, has significantly deterred piracy around Somalia since the peak of the crisis in 2011, demonstrating this effect.⁴⁶ Interestingly though, Luttwak’s term focuses on the potential of navies and institutions for such tasks beyond the actual conduct of them that creates the deterrent effect.

Further examples of institutional benefits can be readily identified. The MALSINDO Operation (2004–12), a trilateral cooperative operation between Malaysia, Singapore and Indonesia, played an important role in reducing piracy in the Malacca Strait.⁴⁷ The institution’s efforts were assisted by its “vital” provision that states could not patrol in each other’s waters, protecting state sovereignty.⁴⁸ MALSINDO was aided by the Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships (RECAAP), an arrangement with greater membership and Information-Sharing Centres (ISC) to facilitate cooperation. As was suggested above, the management of Somali piracy is another example of institutional success (Case Study 3). Institutions have even facilitated cooperation against maritime crime between historically hostile states such as China and India which “would be unthinkable in another context”.⁴⁹ Table 2 demonstrates further benefits of specific international institutions and their relevance to managing issues of the maritime domain.

Case Study 3: Institutions and Somalia

Institutions have been key to mitigating Somali piracy. In 2009, the International Maritime Organisation (IMO) adopted RECAAP’s model to form the Djibouti Code of Conduct (DCoC) to facilitate cooperation.¹ As the crisis developed, several United Nations (UN) Security Council resolutions were also issued, allowing states to enter Somalia’s sovereign territory to combat piracy. The first was Resolution 1816 in 2008, but they remain in place to this day, the latest being Resolution 2554.² These resolutions, alongside the DCoC, efforts of individual state navies, the North Atlantic Treaty Organisation, the European Union (EU), and regional naval groups such as the Combined Maritime Forces (CMF) have greatly reduced the incidence of piracy in the area.

Works Cited

- 1: Raymond, “Countering Piracy and Armed Robbery”.
- 2: United Nations Security Council, “Resolution 1816 (2008) / Adopted by the Security Council at Its 5902nd Meeting, on 2 June 2008”, 2 June 2008; United Nations Security Council, “Resolution 2500 (2019) / Adopted by the Security Council at Its 8678th Meeting, on 4 December 2019”, 4 December 2019; United Nations Security Council, “Security Council Resolution 2554 (2020) [on Piracy and Armed Robbery at Sea off the Coast of Somalia]”, 4 December 2020.



TABLE 2: Key Institutions that Exist to Mitigate the IP’s Maritime Issues

Maritime Issue	Institution	Role of Institution
<i>Intangible borders</i>	UNCLOS	Key international framework designating maritime borders and providing definitions for criminal threats. ⁵⁰
<i>Difficulty monitoring the vast seas</i>	Five Eyes (FVEY)	Limited IP membership but integrates information-sharing between the US, United Kingdom (UK), Canada, Australia, and New Zealand (NZ). ⁵¹
	RECAAP	Focus on sharing information regarding piracy in Asia. Has a broader regional membership of 20 states. ⁵²
<i>Monitoring/ Securing ships and ports</i>	International Ship and Port Facility Security Code (ISPS)	An amendment to SOLAS (below), providing security and monitoring arrangements for ships and ports. ⁵³
	Container Security Initiative (CSI)	An agreement to a standard of scrutiny in monitoring cargo. ⁵⁴
<i>Maintaining general safety at sea</i>	Convention on Maritime Search and Rescue (SAR)	Provides states in the region with guidelines on their responsibilities to perform search and rescue operations. ⁵⁵
	International Convention for the Safety of Life at Sea (SOLAS)	Key international treaty safeguarding merchant ships. ⁵⁶
	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA)	Outlines penalties for actions threatening maritime security. ⁵⁷

Despite the abundance of evidence demonstrating the importance of institutions in the IP, transnational maritime crime continues. The most apparent reason for this is the IP’s complex yet “underdeveloped” security structure.⁵⁸ For example, “too many actors” are responsible for combating IUU fishing, “resulting in little individual accountability and no chain of command”.⁵⁹ The IP’s institutional complexity is easily illustrated by listing just how many bodies, agreements, organisations, and forums have been tasked with combating transnational maritime crime in the area (Appendix C). Specifically, Appendix D summarises how many of which Australia alone is a member. The existence of such many similar institutions creates duplication and competition for resources and funding.⁶⁰ Further, it would be almost impossible for so much regulation to exist



without inconsistencies emerging between agreements. Even between the IMO and International Maritime Bureau (IMB), there are different definitions of piracy which considerably change assessments of criminal threats (Table 3).⁶¹

TABLE 3: Contrasting Definitions of Piracy Between the IMO and IMB⁶²

IMO	IMB
Piracy must be committed on the high seas or in a place outside the jurisdiction of any state. A criminal attack with weapons on ships within territorial waters is an act of armed robbery, not piracy.	The distinction does not exist between attacks on the high seas and territorial waters.
Piracy has a “two-ship” requirement. Pirates need to use a ship or ships to attack another ship. This excludes mutiny and privateering from acts of piracy.	A “two-ship” requirement is abolished. Attacks from any watercraft or even from ashore are acts of piracy.
Piracy is committed for private ends. This excludes acts of terrorism and environmental activism.	Piracy may be committed for private or other ends. Attacks on a ship for political or environmental reasons qualify as piracy.
Because pirate attacks must be committed by the crew or passengers of privately owned vessels, attacks by naval craft fall outside the bounds of piracy.	The acts of government naval craft can be deemed piracy in certain circumstances.

There are also significant gaps in the IP’s criminal regulation despite this excessive institutional complexity. UNCLOS contains a pertinent example of this. Despite being a relevant overarching maritime framework, it is not comprehensive and facilitates IUU fishing through Flags of Convenience (FoCs).⁶³ The framework does not guide what a state should do if they suspect that FoCs are being used by a boat or ship, outside of reporting it to the flag state.⁶⁴ These FoCs are only accessible in states with weak institutions, however, meaning the flag state lacks the capacity or motivation to prosecute criminals.⁶⁵ Therefore, institutions and regulation do not always aid efforts to combat transnational maritime crime.

The greatest gaps in current institutional regulation concern the role of information-sharing in combating illegal maritime activity. The United Nations Office on Drugs and Crime (UNODC) 2020 Study on Firearms Trafficking argues that to minimise illegal arms trade, “open communication



channels and information exchange” to “enhance the intelligence picture on firearms trafficking” must be improved.⁶⁶ Combating human trafficking could also be improved with better information-sharing as states like Indonesia and Australia could more effectively implement the SAR convention, saving countless lives.⁶⁷ Indeed, states cannot monitor the high seas alone. Thus, information-sharing makes state efforts to monitor and track all illegal activities more effective.⁶⁸ Such an assessment has been made frequently, and yet, there has been an absence of action on this issue.⁶⁹ To understand why we move to Part III.

PART III: INFORMATION-SHARING TO COMBAT TRANSNATIONAL MARITIME CRIME

States collect information to gain a deeper awareness of developments not only in public but also in the “fog-enshrouded battlespace” that is the private domain.⁷⁰ The acquisition of information can provide states with strategic advantages over adversaries, or even allies.⁷¹ In the last century, a plethora of agencies responsible for the collection of different types of information has been created (Case Study 4).⁷² States then analyse information to assess the implications of what has been learnt. Importantly, this is followed by a process of dissemination, and information may be shared if it is deemed safe and relevant to do so.⁷³ In the context of transnational maritime crime, this may be to seek advice on a threat or to warn another state of an incoming threat.

Case Study 4: Types of Information

Types of information have been differentiated to allow for agency specialisation. They include:

- Signals: tracking of communication between people and electronically.
- Measurement and signature: identifying sources that emit signatures (e.g., radar).
- Geospatial: analysis of geographical/physical features of the earth.
- Imagery: investigation of satellite/aerial photography.
- Human: collected by interpersonal contact.
- Open source: analysis of any publicly available sources.

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John Hughes-Wilson, *On Intelligence: The History of Espionage and the Secret World*, 1st ed. (Boston: Little, Brown and Company, 2016).



Case Study 5: Regional information-sharing

Current information-sharing in the IP is facilitated by RECAAP, but the agreement is limited in its aims and membership, and it has no relationship to other institutions in the IP.¹ The CMF has similar issues, with a dysfunctional internal information-sharing system which limits its ability to share information externally, such as with US Central Command Bahrain and EU Naval Force Somalia (EUNAVFOR).²

The Changi C2 ISC is perhaps the only information-sharing institution that has, in recent years, improved efforts to brief states in the region. Looking internationally, although the Five Eyes Community has an open sharing system, its limited membership is not designed to deal with the issues of the IP.

Works Cited

- 1: Raymond, "Countering Piracy and Armed Robbery".
- 2: CMF Operations Analyst, "Interview", 14 May 2021.
- 3: Pfluke, "A History of the Five Eyes Alliance".

It is important here to reiterate that cooperation in information-sharing, just as in the IP's broader security architecture, has no coherent structure. There is no defined relationship between national, regional, and international organisations, let alone with private companies. Jurisdictional boundaries between agencies that are perhaps understood domestically do not translate regionally, and certainly not internationally.⁷⁴ This is not to say that no agreements provide for information-sharing in the IP, but what does exist is not necessarily purpose-built (Case Study 5). Indeed, even in Australia, the "lack of this coordination is often a barrier to effective maritime security in the region".⁷⁵ Therefore, information-sharing has not been sufficiently developed to facilitate efforts to combat transnational maritime crime.

Several factors inhibit regional information-sharing. Although some argue that information-sharing is commonplace, states are often unwilling to share due to the incoherent institutional structure of the region as it is unclear how sharing information may be beneficial.⁷⁶ There are technological

constraints too, as confidential information cannot be shared via forums like e-mail that would be used for informal communication.⁷⁷ More secure networks are required. However, when states have different technological capabilities, finding an effective shared method is difficult.⁷⁸ Modern threats in cyberspace make this exponentially more challenging.⁷⁹

The most significant factor obstructing information-sharing, however, is the fundamental issue of trust. Knowledge by one party of the information of another can reveal how the information was collected, creating a security threat. This fear is omnipresent but is doubly concerning when a state is seen as hostile, particularly in realist interpretations of international politics (Case Study 6).⁸⁰ Where one state has weak domestic institutions, there are additional concerns that information may reach an unintended audience due to a security breach. These issues have been significant in the IP as the region contains many states that have weak institutions, rampant with corruption.⁸¹ Additionally, many states in the region are not well-aligned due to political, cultural, and historical animosity.⁸² Finally, trust must also be gained by the broader public who must be confident that information collection respects privacy laws and rights. Public trust has been of particular concern in the Five



Eyes' Echelon network, a global surveillance system.⁸³ Therefore, trust is the key inhibitor of cooperation in regional information-sharing.

Case Study 6: Realism and Information-Sharing

Realist theory sees self-help as the only way a state can achieve security in an anarchic world. Therefore, for classic realists, information sharing is not sensible as it provides one state with the opportunity to undermine another state. Relative power is particularly important; meaning the act of sharing information knowingly gives another state greater power.

Works Cited

Munton & Fredj, "Sharing Secrets".

Yet, secrecy and discretion come at the expense of the millions of lives affected by transnational maritime crime. Luttwak argues that visibility is vital to the success of suasion. Greater acknowledgment of information-sharing activities would thus discourage some groups from even attempting illegal activities. In the absence of this deterrence effect, increased information-sharing would still benefit the IP by overcoming the limitations of individual states' capabilities, particularly those which are not well-resourced.⁸⁴ This is one of the Five Eyes' greatest successes

as it implements burden-sharing for information collection.⁸⁵ Burden-sharing in this way also mitigates group-think and ethnocentrism which occur when the same homogenous population dominates both information collection and analysis.⁸⁶ Information exchange can thus, in fact, play an important role in managing the negative effects of cultural disparity. This benefit of information-sharing is not often acknowledged.

Fundamentally, information-sharing supports states in protecting people against transnational crime by increasing MDA (Case Study 7). It addresses the greatest challenge of the maritime domain for those combating maritime crime: monitoring vast high seas. Having widely separated states exchanging information allows monitoring activities to occur over a more dispersed area with fewer resources. Much like the benefits of institutions, information-sharing increases transparency and understanding between otherwise disconnected states, encouraging consensus on what regional priorities should be and where resources are needed. Further, it encourages cultural understanding between these states. Improved monitoring also increases the cost of criminal activity by increasing risk, further discouraging criminal activity. Given the interconnectedness of criminal operations, stopping illegal activities in one area also benefits efforts in other areas.⁸⁷ Information-sharing is therefore integral to combating transnational maritime crime.

Case Study 7: What is MDA?

MDA describes the process by which navies collect data and information to gain awareness, as the term itself says, of what occurs at sea. This has been a function that navies have always done, but in recent years, the scale of MDA activities has been greatly expanded. This is because technological innovation has vastly improved our ability to collect information.

Works Cited

Commander Steven C. Boraz, "Maritime Domain Awareness: Myths and Realities", *Naval College War Review* 62, no. 3 (2009): 137-46.



PART IV: RECOMMENDATIONS AND APPLICATION

Drawing on the above research, this section provides recommendations addressing penalties, capacity-building, and information-sharing.

RECOMMENDATION 1: Penalties for transnational maritime crimes must be increased to impose higher costs on offenders.

States in the IP must increase penalties for crimes in the region to make crime more costly, as low cost facilitates transnational maritime crime. Penalties include increasing jail time for those found to have committed illegal activities and increasing the seizure and destruction of illegally obtained goods and equipment used to assist in illegal activity. Even increasing fines would impact the profits of criminal enterprises, deterring some groups as they are fundamentally driven by profit.

In this regard, Australia excels. Trafficked drugs, for example, are extremely expensive in Australia by international standards as the supply of drugs is so low.⁸⁸ The UNODC notes that, since the 1990s, Australia has implemented strict and effective policies to achieve such success against drug trafficking.⁸⁹ Recently, this has occurred through initiatives like the National Ice Taskforce to combat drug prevalence and the national wastewater monitoring program to measure and increase awareness of drug use in Australia.⁹⁰ Such policies also apply to a broader range of crimes, making Australia a leader in penalising transnational maritime crime in the region.⁹¹ Australia's ability to promote similar policies into the broader IP region relies on capacity-building operations, the focus of the next recommendation.

RECOMMENDATION 2: Capacity-building activities by well-resourced states in the IP must be used to strengthen the domestic institutions and abilities of partner states to combat transnational maritime crime.

Capacity-building is a mid-term solution, focusing on “improving governance, infrastructure and law enforcement capacity”.⁹² Capacity-building operations strengthen the domestic institutions of partner states, namely those with maturing economies and governments, by enhancing their ability to combat transnational maritime crime. Although institutions such as the UNODC and EU Capacity Building (EUCAP) are existing capacity-building institutions, more can be done. Some improvements include focusing on low-tech solutions to allow under-resourced states to integrate with those that are wealthier.⁹³ Capacity-building education programs that promote the importance of maritime security, as well as efficient policing, data, and knowledge management processes, are also valuable as they increase MDA. Capacity-building solutions should target local efforts to detect and prosecute maritime criminality, rather than reducing the incidence of illegal activities.⁹⁴ However, this must be limited to assisting states in increasing their maritime capabilities, rather than repeating errors of the past in foreign interventionism by seeking to improve a state's political system.⁹⁵ Furthermore, states should engage in more mutual confidence-building activities such as combined exercises focused on maritime crime scenarios.⁹⁶



It is in Australia's interest to pursue capacity-building policies. The 2009 and 2016 Defence White Papers, and adjustments made in the 2020 Defence Strategic Update, note the strategic importance of security and Australian assistance to "our immediate neighbourhood".⁹⁷ Australia has incorporated some capacity-building policies in the IP.⁹⁸ Broadly, Australia's establishment of the Pacific Transnational Crime Network (PTCN) has provided Pacific Island states with an information-sharing forum and operational assistance to combat crime.⁹⁹ Australia's Maritime Border Command (MBC) has increased the capacities of states to stop trafficking, such as Indonesia and Papua New Guinea, through "joint cross-border patrols" and aerial surveillance assistance.¹⁰⁰ Further, the Pacific Maritime Security Program (PSMP) and its predecessor, the Pacific Boat Patrol Program, have been the leading Australian capacity-building programs providing Pacific Island states with naval technological assistance and training.¹⁰¹ However, more could be done to provide states in the broader IP with greater agency.

Existing scholarship notes the powerful asset of education and training in conducting maritime capacity-building, and Australia is uniquely positioned to provide these to the IP.¹⁰² To do this effectively, Australia must engage with the unique sea-faring and judicial cultures of states in the IP (that have existed for longer than Europeans have been in Australia).¹⁰³ The aforementioned arguments surrounding the importance of avoiding ethnocentrism through burden-sharing demonstrate that Australia must empower, rather than impose, naval and policing practices onto the region. Although burden-sharing does not exclude the possibility that Anglo-Western nations will enforce their own beliefs onto other states, conscious efforts to cooperate and develop policy with culturally diverse states can be effective ways to integrate different cultural frames of reference. Just as Alfred T. Mahan articulated Western maritime traditions, moving them from commonly understood ideas to tangible theoretical frameworks, so too must Australia support other states in articulating their traditions. By facilitating the translation of such traditions into maritime security policy, Australia can effectively assist in developing the technological and institutional maritime capacities of states in the IP region. How Australia can achieve such acknowledgment of and integration with unique regional cultural practices must be an area of future research into transnational maritime crime.

RECOMMENDATION 3: An information-sharing arrangement for the IP must be created to increase regional MDA by consolidating existing frameworks, resolving issues generated by technological differences, and ensuring state sovereignty is protected.

Information-sharing is integral to the future of combating transnational maritime crime and thus an arrangement must be created to this end. Existing scholarship has identified this need, but little work has explained how it should occur.

Current widely dispersed information-sharing frameworks must be consolidated to create a simple and more enforceable information-sharing structure in the region. This would solve the issue that RECAAP, for example, suffers from, which is relevant to existing regional frameworks. Instead, a consolidated framework would be based on UN definitions and terms of reference that are consistent with each other and would be more easily agreed to by a diverse range of states. The creation of shared regional naval doctrine would facilitate this as states would agree on regional priorities and how threats should be eradicated.¹⁰⁴



An information-sharing agreement must be underpinned by the resolution of technological and resource differences that challenge the communication of sensitive information at sea. The development of a more expansive common operational picture, supported by the capacity-building activities, would facilitate information integration and visualisation through technology.¹⁰⁵

Finally, issues of trust must be managed as they significantly inhibit current information-sharing. MALSINDO's provision that states cannot collect information in each other's waters must be borrowed to ensure that collection activities respect states' sovereignty.¹⁰⁶ The agreement must borrow from other successful institutions too, such as universally accepted UN agreements and the International Criminal Police Organisation (INTERPOL). The latter has been notably successful in working alongside 194 states' police services without significantly interfering in their operations. Understanding INTERPOL's institutional structure and its ability to be extrapolated from police to customs, naval and coast guard agencies must thus be another area of future research.

The visibility of an information-sharing arrangement is important for its deterrence value, satisfying Luttwak's ideas surrounding suasion.¹⁰⁷ A positive promotion of the arrangement would avoid the failures of the EU Agency for Law Enforcement Cooperation (EUROPOL), where public political disagreement undermined its value in combating terrorism in Europe.¹⁰⁸

Australia would significantly benefit from greater MDA and more effective information-sharing through the creation of a new integrated arrangement. Australia should renew its regional information-sharing commitments to institutions such as the CMF and US Central Command by re-filling its liaison positions within these organisations.¹⁰⁹ Liaison officers are individuals sent by one group to connect with another to establish a mutually beneficial relationship.¹¹⁰ The reduction in Australian officers in the US' key maritime authorities relevant to the IP, namely US Central Command and Indo-Pacific Command, has weakened Australia's MDA and ability to combat maritime crime given the significant resources and influence of the US. Regarding a broader arrangement, Australia has the resources to support and promote the creation of such a framework in the region. Like the approach that must be taken to capacity-building, Australia must empower, rather than impose, new arrangements on culturally diverse states in the IP.¹¹¹ To achieve this, Australia must first understand the processes and traditions in place in these states. Then, an assessment can be made of how an information-sharing arrangement should be constructed to fit the purposes and customs of all states in the region.

These three recommendations provide the IP region with more efficient ways to combat transnational maritime crime, but an information-sharing arrangement is the most important measure.

CONCLUSION

Spykman's argument that states must achieve maritime security amphibiously demonstrates that the maritime domain presents complex and multi-faceted threats. This report has argued that the complexity of the maritime domain facilitates transnational maritime crime in the IP, including piracy, trafficking of people and contraband, and IUU fishing. Transnational responses are required to eradicate such "multinational" threats.¹¹² However, the IP's simultaneous over- and under-regulation have inhibited efforts to combat transnational maritime crime in the region.



Ineffective regional information-sharing has specifically contributed to slow progress in stopping illegal maritime activities. Cooperation is constrained by factors such as the region's weak broader security architecture and technological or resource differences that cause issues for sharing information at sea. Most importantly, this report exposes trust and cultural animosity as the key reasons that states choose not to exchange information. Yet, the IP must overcome these challenges as information-sharing is integral to effectively combating transnational maritime crime.

Increasing criminal penalties and capacity-building operations are important in discouraging illegal activity and increasing states' abilities to monitor and combat crime. Further, an information-sharing arrangement in the IP must be created to allow for better and more effective cooperation against transnational maritime crime. This report builds on existing scholarship on this issue by outlining considerations that must be accounted for in creating such an information-sharing arrangement. These include creating an agreement relevant to existing frameworks, that resolves issues of technological integration, but that also ensures the protection of sovereignty to develop trust and confidence between states. Specifically, Australia must consider the unique cultural practices of IP states in developing future capacity-building and information-sharing activities.

Ultimately, transnational maritime crime in the IP exploits the complexities of the maritime domain at the cost of billions of dollars and millions of lives. Information-sharing must be the focus of future regional cooperation to stifle these costly activities.



APPENDICES

APPENDIX A:

Profitability of Transnational Maritime Crime

Transnational Crime	Estimated Annual Value (US\$)
Drug Trafficking	\$426 billion to \$652 billion
Small Arms & Light Weapons Trafficking	\$1.7 billion to \$3.5 billion
Human Trafficking	\$150.2 billion
Organ Trafficking	\$840 million to \$1.7 billion
Trafficking in Cultural Property	\$1.2 billion to \$1.6 billion
Counterfeiting	\$923 billion to \$1.13 trillion
Illegal Wildlife Trade	\$5 billion to \$23 billion
IUU Fishing	\$15.5 billion to \$36.4 billion
Illegal Logging	\$52 billion to \$157 billion
Illegal Mining	\$12 billion to \$48 billion
Crude Oil Theft	\$5.2 billion to \$11.9 billion
Total	\$1.6 trillion to \$2.2 trillion

Table (above): Retail value of Different Transnational Crimes¹¹³

The above table demonstrates that drug trafficking, human trafficking and IUU fishing are the most profitable transnational maritime crimes. Although counterfeiting and illegal logging generate far greater profits than the latter two, they are not generally conducted in the maritime domain and therefore are excluded from this report. Instead, this report includes arms trafficking as an example of transnational maritime crime.

This table demonstrates the extreme profits that are generated by those perpetrating transnational maritime crime. These crimes pose a great threat to individuals and states, and by extension, must be managed, if not eradicated.



APPENDIX B:

Categories of Maritime Tasks

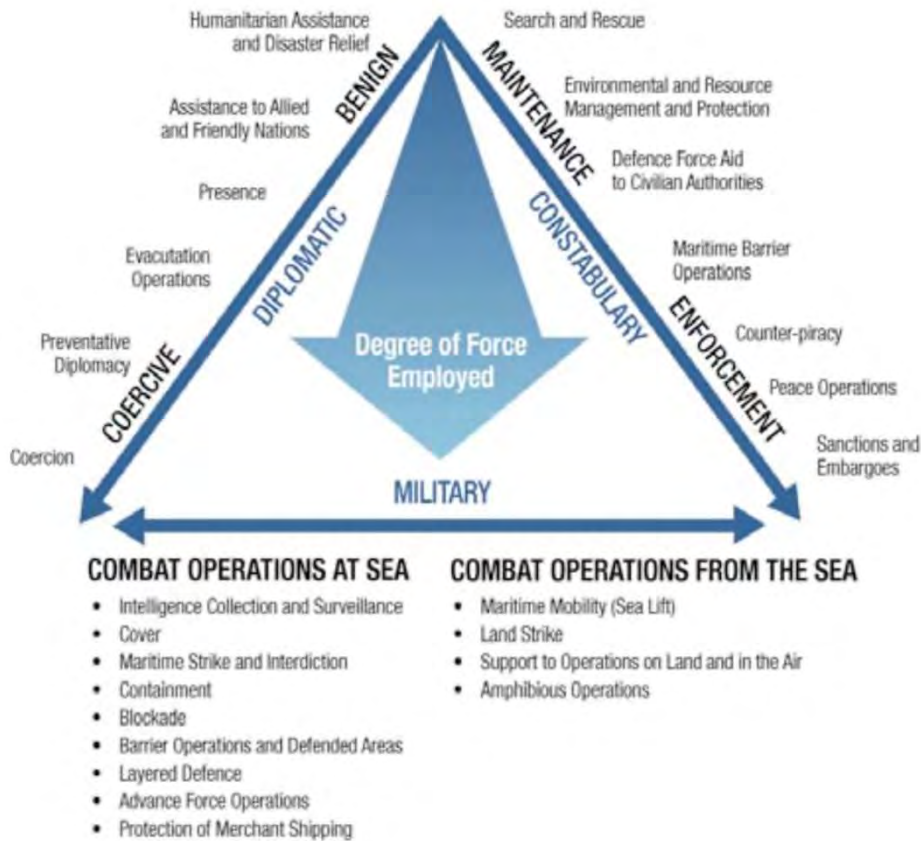


Diagram (above): The Span of Maritime Tasks according to RAN doctrine¹¹⁴

The above diagram provides a visualisation of the responsibilities and potential capabilities of maritime forces. These range between diplomatic, constabulary, and military operations, and differ in the degree of force that is required.



In a force's diplomatic tasks, the diagram includes presence as a function that can be used. As RAN Doctrine states, naval diplomacy is used to shape and influence the policies of other nations. This can be extrapolated to non-state threats too, and therefore it is clear that the RAN sees naval presence alone as a way of influencing the actions of others, precisely describing Luttwak's ideas surrounding suasion and deterrence.

Maritime barrier operations are another example of deterrence or suasion, as such operations blockade and prevent passage to certain areas. Although the operations themselves are enforcement mechanisms, their existence also serves as a deterrent to maritime crime as groups understand that if they attempt to enter a certain area, they will likely be stopped.

In these ways, the RAN doctrine demonstrates the value of navies as institutions in deterring transnational maritime crime.



APPENDIX C:

Institutions Combating Transnational Maritime Crime in the IP

The following list shows the sheer number of organisations that have been tasked with combating transnational maritime crime or have special interests in stopping illegal activities in the IP. Such a list has not been compiled before but is much needed to reveal the complexity of the IP's institutional structure. Each institution is supplemented with a brief description of its geographical or conceptual jurisdiction to expose the overlap between many of these institutions. Further, it is separated into several overarching umbrella institutions which are responsible for other smaller institutions and agreements:

UN Institutions

- *UNCLOS*: Agreement outlining broad regulations regarding international waters.
- *IMO*: Specialised UN agency responsible for the safety and security of international shipping and maritime traffic. It is responsible for several other agreements:
 - o *SOLAS Convention*: Agreement on the safety of merchant ships.
 - o *ISPS Code*: Mandatory instrument for IMO member states to ensure the security of ship and port facilities internationally.
 - o *SUA Convention*: Regulation ensuring that all member states are appropriately penalising those perpetrating unlawful acts at sea internationally.
 - o *International Convention for the Prevention of Pollution from Ships (MARPOL)*: International agreement against marine pollution because of shipping.
 - o *SAR Convention*: Agreement obligating states to search for and rescue distressed persons at sea.
 - o *Ship Security Alert System (SSAS) and Long-Range Identification and Tracking (LRIT) systems*: Systems to track the movements of ships and maritime security threats.
 - o *DCoC*: Agreement specifically focusing on the western Indian Ocean and suppressing piracy.
 - o *Contact Group on Piracy off the Coast of Somalia (CGPCS)*: Group formed to apply the DCoC and suppress Somali piracy.
 - o *International Safety Management Code (ISM)*: International code for the safe management of ships and preventing pollution.



- *UN Food and Agricultural Organisation (UNFAO)*: International Agency to improve food security.
 - o *Port States Measures Agreement (PSMA)*: International and binding agreement against IUU fishing.
 - o *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas*: Agreement to enforce international compliance to conservation and management measures.
- *UNODC*: Peak international body for the control of drugs and prevention of crime.
 - o *UN Convention against Transnational Organised Crime (CTOC)*: Dominant international agreement against a broad category of transnational organised crime.
 - o *Global Maritime Crime Program (GMCP)*: International program to enforce, monitor and investigate maritime crime.
 - o *Indian Ocean Forum on Maritime Crime (IOFMC)*: GMCP task force in the Indian Ocean.
- *High Seas Driftnet Fisheries Enforcement Act*: International moratorium against the use of driftnets for fishing.
- Other *UN Resolutions* (including Resolutions 1816 and 2554 against Somali piracy).

US Institutions

- *US Safe Ocean Network*: US-led international community to combat IUU fishing.
- *US Naval Forces Central Command, US Fifth Fleet*: The US central naval body focused on monitoring the Persian Gulf, Red Sea, Arabian Sea, and the Indian Ocean.
 - o *CMF*: Multilateral group focusing on countering illegal maritime activities, particularly piracy, across the Fifth Fleet's jurisdictional area.
- *US Indo-Pacific Command*.
- *Proliferation Security Initiative (PSI)*: Established by the US but multilaterally led body to stop the trafficking of weapons of mass destruction.
- *Container Security Initiative (CSI)*: US system to ensure that shipping containers are absent of potential terrorist threats.



EU Institutions

- *The Critical Maritime Routes Indian Ocean programme (CRIMARIO)*: successor to MARSIC (Enhancing Maritime Security and Safety through Information Sharing and Capacity Building programme), CRIMARIO focuses on building states' MDA in the Indian Ocean region through information-sharing and capacity-building.
- *Programme to Promote Regional Maritime Security (MASE)*: Project to enhance maritime security in Southeast Africa and the Western Indian Ocean.
- *EUCAP programs*: The EU's capacity-building programs. A number exist in different geographical jurisdictions, such as Somalia.
- *EUNVAFOR*: Also called Operation Atlanta. The EU's anti-piracy military operation in Somalia.

Other unrelated institutions and organisations

- *Regional Fisheries Management Organisations (RFMOs)*: A broad name for several international organisations for regulating high seas fishing activities. These include:
 - o *International Commission for the Conservation of Atlantic Tunas (ICCAT)*
 - o *Indian Ocean Tuna Commission (IOTC)*
 - o *Western and Central Pacific Fisheries Commission (WCPFC)*
 - o *Commission for the Conservation of Southern Bluefin Tuna (CCSBT)*
 - o *South Pacific Regional Fisheries Management Organisation (SEAFO)*
- *IMB*: Department of the International Chamber of Commerce (ICC), responsible for maritime crimes in trade and transportation, such as piracy.
- *INTERPOL*: Facilitates international police cooperation between 194 international member states.
- *RECAAP*: Agreement between 16 countries in Asia to share and disseminate information related to piracy activities.
- *Changi C2 ISC*: An Information Fusion Centre. The maritime security centre for facilitating information-sharing between, currently, 24 partner states from around the world.
- *Pacific Transnational Crime Network (PTCN)*: established by the Australian Federal Police, the network facilitates police cooperation against transnational crime between most Pacific Island states



- *Association of Southeast Asian Nations (ASEAN)*: Economic group between 10 states in Southeast Asia.
 - *ASEAN Regional Forum (ARF)*: Facilitates security cooperation between Indo-Pacific states (including maritime issues). 27 states, including the 10 ASEAN members.
 - *ASEAN Plan of Action to Combat Transnational Crime*: ASEAN mandate for member states to prevent and combat transnational crime.
- *Council for Security Cooperation in the Asia Pacific (CSCAP)*: Informal and non-governmental institution facilitating discussions regarding political and security issues in the Asia Pacific.
- *Indian Ocean Commission (IOC)*: Multilateral institution for African Indian Ocean states on a range of maritime issues.
- *Indian Ocean Naval Symposium (IONS)*: Facilitates discussion between littoral Indian Ocean states to discuss maritime security issues and cooperation.
- *Indian Ocean Rim Association (IORA)*: Facilitating cooperation between 23 member states bordering the Indian Ocean, including maritime security and economic development.
- *MALSINDO*: Trilateral cooperative mechanism between Malaysia, Singapore, and Indonesia (2004–12) that focused on regional maritime security and piracy.
- *Five Power Defence Arrangement (FDPA)*: Multilateral defence cooperation between Australia, Malaysia, New Zealand, Singapore, and the United Kingdom. Includes military exercises such as Operation Bersama Lima
- *FVEY*: intelligence-sharing alliance between the US, United Kingdom Canada, Australia, and New Zealand.
- *MBC*
- *PSMP*
- Shipping interest groups
 - *International Association of Independent Tank Owners (INTERTANKO)*
 - *Baltic and International Maritime Council (BIMCO)*
 - *Society of International Gas Tanker and Terminal Operators (SIGGTO)*
 - *International Association of Dry Cargo Shipowners (INTERCARGO)*
 - *International Chamber of Shipping/Institute of Chartered Shipbrokers (ICS)*
 - *Oil Companies International Marine Forum (OCIMF)*

ROYAL AUSTRALIAN NAVY

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SOUNDINGS



Issue 31, 2021

- *Asian Shipowner's Association (ASA)*



APPENDIX D:

Institutions Combating Transnational Maritime Crime in the IP of which Australia is a Member/Signatory

This list supplements Appendix C, showing which institutions the Australian government is a member of or has been involved in. This shows how Australia is one example of a state caught in the IP's complex institutional structure. The list is organised in the same way as Appendix C:

United Nations

- *UNCLOS*: Australia is a party to UNCLOS, meaning it agrees to be bound by the convention.
- *IMO*: Australia has been a member since 1952.
 - o *SOLAS*: Australia signed the agreement in 1983.
 - o *ISPS*: Australia signed ISPS in 2003.
 - o *SUA*: Australia is signed to SUA through its UN membership.
 - o *MARPOL*: Australia implemented MARPOL in 1983.
 - o *SAR*: Australia signed SAR in 1979.
 - o *ISM*: Australia is a member of ISM through the SOLAS Convention.
- *UNFAO*: Australia's membership began in 1945.
 - o *PSMA*: Australia signed PSMA in 2010 and ratified the agreement in 2015.
 - o *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas*: Australia adopted the treaty's measures in 1993.
- *UNODC*
 - o *CTOC*: Australia has been a signatory since 2004.
 - o *GMCP* and *IOFMC*: Australia is a member and significant financial donor of both.
- *Driftnet Moratorium*: Australia welcomed the agreement in 1991.



United States

- *US Safe Ocean Network*: Australia has been a key member since the network's establishment in 2015.
- *CMF*: Australia is involved in and has previously led CMF task forces.
- *PSI*: Australia has hosted PSI activities since 2003.

Other

- *RFMOs*
 - *IOTC*: Australia has been a leading regional partner since 1996.
 - *WCPFC*: Australia is a member state.
 - *CCSBT*: Australia is one of eight members of the Extended Commission.
 - *SEAFO*: Australia was a leading state in creating SEAFO in the early 21st century.
- *INTERPOL*: Australia has been a member since 1948.
- *RECAAP*: Australia is one of 20 contracted members of RECAAP.
- *Changi IFC*: Australia has sent multiple liaison officers to the Changi centre.
- *PTCN*: Created by Australia after Operation Logrunner in 2000.
- *ARF*: ARF was established in 1994 with Australia as a founding member.
- *CSCAP*: Australia has full CSCAP membership, run at the Australian National University.
- *IONS*: Australia joined IONS in 2014.
- *IORA*: Established in 1997, Australia was a founding member of IORA.
- *FDPA*: Australia has been involved since the agreement's establishment in 1971.
- *FVEY*: Australia was involved as early as 1941 as a part of the UKUSA agreement.
- *MBC*: Australia's de facto coast guard, which cooperates with other states in the region.

PSMP: Australia's Pacific region capacity-building program, including replacement of the Pacific Patrol Boats of the 1980s–1990s.



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¹¹³ Channing May, “Transnational Crime and the Developing World” (Washington D.C.: Global Financial Integrity, 2017), XI.

¹¹⁴ Sea Power Centre – Australia, Royal Australian Navy, *Australian Maritime Doctrine: RAN Doctrine 1*, 100.