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NAVAL OPERATIONS IN PEACETIME

Not Just “Warfare Lite”

Ivan T. Luke

The role of naval power in peacetime today is much different from what it was in the days of Mahan, but unfortunately naval theory has not kept up. Under the prevailing theoretical paradigm, many of today’s peacetime missions are seen as little more than less-violent subsets of similar wartime tasks, and the theory of naval warfare is assumed to be sufficient for understanding these operations in today’s maritime operating environment, despite its increasing complexity. This is not the case. The things the U.S. Navy and other navies of the world are doing in peacetime today are fundamentally distinct from naval warfare, and they are important enough to demand an expanded naval theory that incorporates their unique aspects. Continued reliance on naval warfare theory alone puts the Navy at risk of not doing its best to meet the challenges of, or not capitalizing on the opportunities present in, the maritime domain today.

The greatest difference between modern peacetime missions and naval warfare is the importance of legitimacy and the degree to which legitimacy hinges on the right choice of a regime of authority for action. In wartime there is no choice as to which legal regime to invoke; the law of war always applies.¹ In operations short of armed conflict, it is not that simple. There is a broad and growing array of legal regimes, treaties, and sources of authority that need to be fully appreciated, understood, and leveraged for success. Choosing the right regime of authority for action and fully understanding the implications of that choice can make the difference between strategic success and failure. In peacetime, legitimacy is often a decisive factor, and it can hinge entirely on the authority for action and legal status of naval forces, much more so than in war.

This article argues that naval theorists and practitioners should rethink their approach to naval activities other than war and that they should recognize the

importance of fully understanding the source, nature, and implications of the authorities invoked for action during peacetime. A framework is offered as a step toward a reconceptualization of the continuum of naval operations from peace to war.

TODAY'S MARITIME OPERATING ENVIRONMENT IS DIFFERENT

The global maritime domain and the role of naval power in peacetime have changed significantly in recent decades. The U.S. Navy and many of the other navies of the world are regularly—and quite appropriately—doing things for which they were not designed. Naval forces that were organized, trained, and equipped for combat are finding themselves increasingly engaged in enforcing sanctions, chasing pirates, interdicting narcotics, and performing a host of other noncombat tasks.² Naval forces have always been used for non-war-fighting tasks during times of peace, but today the strategic context is different. Today, naval action short of war can have strategic effects like never before, and the operating environment is increasingly complex. The modern context is different from that of the past largely owing to three factors: the impact of globalization on maritime commerce, changes in the threat environment, and the evolution of international maritime law.

The first of these, the impact of globalization on maritime commerce, has made the global web of maritime trade more complex, more interdependent, and more vital to the world's economic well-being than ever before. It has also made the maritime transportation system more vulnerable to disruption. Much of the world's commerce is dependent on the growing role of seaborne transportation. Today the vast majority of international trade moves by sea; maritime transportation is more efficient and economical than ever before. This maritime link is vital to the American economy and to the economies of this nation's friends and allies around the world. By some estimates, almost a third of the American economy depends on efficient, uninterrupted oceanic transportation.³ Other developed nations are similarly dependent on uninterrupted maritime trade. Protecting this critical peacetime economic link is a vital national interest and a pillar of global stability.

Surprisingly, though, as maritime commerce has grown in importance, merchant shipping has largely lost its national character—neither the United States nor any other single, major trading nation maintains a national merchant fleet even remotely adequate to meet its own shipping needs.⁴ Increasingly, merchant ships are registered under flags of convenience, those of nations that neither own nor operate vessels but register them for a fee, allowing owners to avoid high labor and regulatory costs. At present, just three flag-of-convenience states—Panama, Liberia, and the Marshall Islands—account for over a third of the

total world shipping capacity, although none of them is a major trading nation.⁵ Technology has played a role as well. The shipping container and the intermodal infrastructure it spawned have led to a system where a number of nations might at the same time have interests in the cargo aboard any given merchant ship.

The significance of these changes for the navies of the world is that supporting national economic interests at sea is now more complicated than ever before,

The president of the United States does not need any other authority to direct U.S. naval forces to do whatever is necessary if national security is threatened.

and success requires careful consideration of sources of authority and their effects on legitimacy. Protecting commerce has always been an important role for navies, but

today the task is no longer limited to guarding one's own national merchant ships, as it was for the Royal Navy of a previous era. Today, with the goods of many nations carried in ships flying flags of still other nations and the system increasingly interconnected and interdependent, the task requires securing the entire global maritime transportation system. This in turn requires broad international cooperation; naval actions must be seen as legitimate if that cooperation is to occur.

The second element that has changed the maritime environment and increased the importance of authority for action is the evolution of the threat. Transnational crime and terrorism are not new but have morphed in recent years. Today, small groups can create devastating effects with far-reaching consequences. New technologies and the vulnerabilities of the increasingly interconnected maritime transportation system have raised the potential impact of crime and terrorism to a strategic level. Any significant criminal or terrorist event that significantly disrupts the system could have dire consequences for the world economy.⁶ Also, ships and vessels themselves can be used as weapons of terror, or to smuggle weapons of mass destruction or terrorists across maritime borders for attacks ashore. Advanced technology and the proliferation of antiaccess capabilities have also increased the threat to naval forces and commercial vessels alike from shore-based terrorists and subnational groups.

The implication for designers of naval operations is that the line between criminal and military threats can become blurred but that it is still very important. There are significant and far-reaching differences between naval actions conducted under the law of war and those done to enforce some element of criminal law. Here again, a full understanding of the ramifications of the underlying authority for naval action is crucial to maintain legitimacy and avoid unintended strategic consequences.

The third and arguably most important factor that makes the peacetime naval operating environment different today is the continuing evolution of

international maritime law. There has been a significant growth in recent years of international law that governs the conduct of mariners at sea. The law is now a factor in ways it never used to be. For centuries, international maritime law was essentially restrictive in nature, aiming to prevent war by keeping opposing naval forces apart and then once war broke out to impose some degree of fairness on the conduct of the belligerents. In contrast, a number of recent treaties and agreements have changed the dominant maritime-law paradigm from one of separation to one of cooperation on matters of common interest. A full discussion of these instruments is beyond the scope of this article, but examples include the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA), the 2002 International Ship and Port Facility Security Code, and the 2003 Proliferation Security Initiative (PSI).⁷

The implication for naval officers of these developments in international maritime law is that there are now more comprehensive legal structures and authorities with which to deal, and also more opportunities for naval officers of various nations to work together as partners in countering common maritime threats and protecting common interests. A level of international maritime cooperation is possible today that would have been inconceivable a generation ago. A good example of this unprecedented cooperation is NATO Operation ACTIVE ENDEAVOUR.⁸ The various counterpiracy operations off Somalia provide more examples, including the European Union's Operation ATALANTA, Combined Task Force 151, and several unaffiliated but cooperative operations by individual nations, including the People's Republic of China. Such cooperation does not occur automatically, however. It takes work and a sound understanding of the fundamentals. Key among those fundamentals is the importance of the source, nature, and implications of the authority for action in any given circumstance.

NAVAL THEORY IS INADEQUATE FOR PEACETIME MISSIONS

One reason that the fundamental distinctions between naval operations in peacetime and war are often overlooked is that theorists have almost exclusively focused on naval warfare, leaving naval peacetime activities largely unmoored from sound theoretical underpinnings. This is a problem because theory is important for both strategists and practitioners. The late Henry E. Eccles, writing at the Naval War College after his retirement from the U.S. Navy as a rear admiral, held that theory is the key to understanding the effects that one can and cannot achieve through the use of military forces, as well as to distinguishing between the important and the unimportant in structuring a complex problem.⁹ The theorist Milan Vego, also of the Naval War College, explains that the purpose of theory is to frame one's thinking by providing a general, conceptual foundation from which to work.¹⁰ All thinking about the design and conduct of military

operations should be grounded in a body of theory that suits the current situation. Clausewitz tells us that the essential nature of conflict does not change over time but that the details, forms, and languages do change with new technologies and new social-political structures.¹¹ The naval peacetime operating environment has changed enough that naval theory needs to catch up and expand to include the fundamentals and tenets that distinguish peacetime naval activities from warfare.

In one sense it is understandable that contemporary naval theory is focused on warfare; after all, it is firmly rooted in the works of Admiral Alfred Thayer Mahan and Sir Julian Corbett. Mahanian thinking drove naval operations during both world wars and the Cold War, and to a large degree it still dominates the design, strategy, and doctrine of the U.S. Navy. Mahan’s central tenet is that a navy’s true purpose is command of the sea (although his work is actually much more nuanced than this might suggest). Mahan writes that the best way to achieve command of the sea is to focus on the enemy fleet, asserting that “the proper main objective of the navy is the enemy’s navy.”¹² Corbett, also widely influential in naval thinking, is actually more in agreement with Mahan than he is often given credit for, primarily diverging from Mahan on the importance of naval power for supporting forces ashore.

Mahan’s command of the sea and Corbett’s support of forces ashore live on today as the concepts of sea control and power projection—ideas that largely drive U.S. naval acquisition and naval strategy.¹³ Of the two, sea control more often leads to confusion about the theoretical distinctiveness of naval activities in peacetime. Properly understood, sea control is a concept that is meaningful only in the context of a state of hostilities and as such intrinsically implies the law of war as the underpinning legal regime. Naval thinkers and practitioners often miss this point. Sea control is the creation of conditions such that the enemy is unable to interfere significantly with the accomplishment of one’s military objectives.¹⁴ The key word here is “enemy.” There are threats in peacetime but enemies only during war. The objective of sea control is freedom of action for one’s own military forces and supporting units in the context of an opposing belligerent. The methods of obtaining or disputing sea control are enemy focused, aiming at the destruction or neutralization of the enemy force.¹⁵

The warfare concept of sea control is often confused with the peacetime concept of freedom of navigation, but the objectives, methods, and sources of authority for the two are fundamentally incompatible. The objective during peacetime is freedom of *navigation*, defined as unhindered access for all legitimate users of the sea as guaranteed by the law of the sea.¹⁶ In wartime the objective is freedom of *action* for friendly forces, achieved in accordance with the law of war; all others can fend for themselves (in theory, at least). One can set the conditions for sea

control during peacetime by forward presence, intelligence gathering, or partnership building, but sea control itself can be gained or disputed only in times of hostilities. Attempting to apply this warfare concept to peacetime activities is a recipe for muddled thinking and not the best way to deal with today's challenges and opportunities. Unfortunately, signs of the attempt can be seen in current American strategies and doctrine.

Current U.S. naval thinking is captured in "A Cooperative Strategy for 21st Century Seapower" and subsequent supporting works, *Naval Operations Concept*

The . . . line between criminal and military threats can become blurred but it is still very important.

2010 (known as NOC 10) and *Naval Warfare* (NDP 1). At its issuance, observers applauded the 2007 cooperative strategy as a move toward a "postmod-

ern" theory of sea power, because it elevated constabulary roles and naval soft power to the status of core capabilities.¹⁷ Upon closer examination, however, "Cooperative Strategy" and its supporting documents fall short of their true potential by failing to recognize fully the important theoretical distinction between peacetime and hostilities. For example, NOC 10 inappropriately includes peacetime roles in a wartime concept by saying that naval forces will "conduct sea control operations to *enforce freedom of navigation, sustain unhindered global maritime commerce, prevent or limit the spread of conflict, and prevail in war.*"¹⁸ This same theoretical disconnect is reflected in NDP 1: "Sea control is the essence of seapower and is a necessary ingredient in the successful accomplishment of all naval missions."¹⁹ "All" naval missions today is a set that includes many conducted outside of a state of armed conflict, the only context in which sea control is meaningful.

It could be argued that by conflating elements of peacetime and wartime concepts the authors of all three papers were intentionally attempting to broaden the concept of sea control to encompass peacetime activities, but this does not seem likely. The documents' glossaries define sea control conventionally as a wartime concept and the discussions only imply its application to peacetime activities.²⁰ This suggests that the authors simply failed to appreciate fully the underlying theoretical distinctions. In any case, none of the documents address international maritime law or regimes of authority in any substantive way, certainly not as a fundamental constraint on and enabler of operations in peacetime, or as a critical factor for ensuring legitimacy. Rather than intentionally broadening the concept of sea control, it is more likely that the authors were relying on traditional naval warfare theory alone.

It is reasonable, of course, to question whether such theoretical fine points really matter. Naval culture has always been action oriented, and naval officers

pride themselves not on theorizing but on flexibility and mission accomplishment. Why should it matter what theory we use, as long as we get the job done? It absolutely does matter. Legitimacy is a principle of joint operations, vital for success in missions conducted to secure the global commons.²¹ Legitimacy for naval operations in peacetime hinges on whether those operations are designed and conducted with a full appreciation of the fundamentals, especially the implications of the source and nature of their authorities for action.

Legitimacy aside for the moment, the choice of a legal regime for a naval action in peacetime can have strategic consequences. Take, for example, counterpiracy operations off the Horn of Africa. In recent years these have been collectively a shining example of tactical success and international cooperation, but long-term strategic effectiveness has proved elusive. Some have suggested escalating the fight by mounting a military campaign against the pirates. Others believe we should just arrest and prosecute them. At the theoretical level, this question comes down to whether pirates should be seen as military problems—essentially treating them as enemies to be engaged—or as common criminals to be arrested and prosecuted. From the perspective of authority for action, this is a question whether to invoke international criminal law or assert the right of national self-defense. The strategic implications of the two different approaches could be profound. One approach could open a state of international hostilities, while the other would not—a national strategic choice of significant gravity, not to be made lightly. This is exactly the kind of question that calls for a solid understanding of the underlying fundamentals and an appreciation of the factors that distinguish naval activities in peacetime from those in war.

PEACETIME NAVAL OPERATIONS THEORY

There is a long tradition of and a robust body of literature on the theory of naval warfare, but not until very recently has any serious intellectual effort been applied to peacetime naval operations. A proper military theory should involve a comprehensive analysis of the subject, including its patterns and inner structure and the key relationships between the various components and elements.²² No such comprehensive analysis yet exists for peacetime naval activities in the modern context, although some work has been done in this direction.

One such effort is British scholar James Cable’s seminal study *Gunboat Diplomacy 1919–1991*. Cable analyzes the use of limited naval force in support of foreign policy through most of the twentieth century, but he does it from a Cold War perspective; constabulary roles and the complexities of the modern operating environment are scarcely addressed.²³ Milan Vego, a leading contributor to the contemporary discourse on military and naval theory, also addresses naval peacetime activities, but only as part of the spectrum of conflict at sea. He does

not develop the theory underpinning peacetime operations in any degree of detail.²⁴ British theorist Geoffrey Till writes in more depth about the evolving character of peacetime naval activities, although like Vego, he treats peacetime missions in a largely descriptive way, focusing mainly on navies' methods and investment strategies and less on the underlying principles or tenets. Till breaks down peacetime operations into two categories, activities for maintaining good order at sea and activities for maintaining a global maritime consensus.²⁵ Till does an excellent job of describing the strategic importance and complexity of peacetime operations and makes it clear that peacetime naval activities should be seen as theoretically distinct from naval warfare. He does not develop that underlying theory in any depth, however.

Perhaps Till's greatest contribution to the discourse is his caution against applying naval warfare concepts too broadly to peacetime activities, arguing that doing so "could all too easily make them banal, ambiguous and unlikely to offer the kind of guidance for force and campaign planners that is the main justification for all the intellectual effort that produces them in the first place."²⁶ Till stresses the need to think anew about the fundamentals of sea power in the modern context rather than continuing to try to force-fit everything into a naval warfare paradigm. Sailors, Till warns, will have to "do some hard thinking about how they cope and the extent to which they need to reconsider some long-standing assumptions."²⁷

A SUGGESTED FRAMEWORK

Till's call for hard thinking about the modern peacetime role of navies should ideally lead to a comprehensive theory of naval operations that addresses the continuum from peace to war, based on a thorough analysis of the key principles, tenets, and important interrelationships. That is a tall order and will take time, but a good starting point would be to achieve consensus on a framework for conceptualizing the various peacetime activities based on their most important factors. Current U.S. thinking simplistically divides peacetime missions into the categories of "maritime security operations" and "humanitarian assistance," essentially lexical conveniences that ignore the most important commonalities and differences. Till's categories are similarly descriptive rather than analytical in nature. A better approach is to array naval activities conceptually, according to the source and nature of the authority for action—which has, of all the underlying principles, the greatest potential strategic effect in peacetime. The figure is an outline of such a framework. It lays out the continuum of naval activities from peace to war, from the most restrictive regimes to the most permissive.

One important thing to understand about this suggested framework is that the categories are not mutually exclusive. Specific naval activities can be, and often

NAVAL ACTIVITIES BY SOURCE OF AUTHORITY

	Regime of Authority for Action					National Defense	
	Consent	Law of the Sea	Domestic Criminal Law	International or Foreign Criminal Law	UN Mandate	Prehostilities	Hostilities
Examples	<ul style="list-style-type: none"> FHA/DR Security cooperation Port visits Mil-mil Permissive NEO 	<ul style="list-style-type: none"> FON ops Survey Salvage High-seas maneuvers, training Intel collection 	<ul style="list-style-type: none"> Border control Counterdrug Migration Port security Homeland security 	<ul style="list-style-type: none"> Counterpiracy Human trafficking interdiction Counterterror WMD proliferation interdiction 	<ul style="list-style-type: none"> Sanctions Embargoes Other operations authorized by UNSC resolutions 	<ul style="list-style-type: none"> Counter-proliferation Deterrence Coercive diplomacy Enhanced interdiction (EMIO) Nonpermissive NEO 	<ul style="list-style-type: none"> Strikes Raids COIN War
Sovereignty Implications	<ul style="list-style-type: none"> Entirely contingent on goodwill of host nation 	<ul style="list-style-type: none"> Right of all nations Subject to due regard for others' rights 	<ul style="list-style-type: none"> Must have jurisdiction End game: prosecution in U.S. court 	<ul style="list-style-type: none"> Often multinational End game: prosecution, often in foreign court 	<ul style="list-style-type: none"> Legitimized under UN Charter 	<ul style="list-style-type: none"> Inherent right of nations—always an option 	<ul style="list-style-type: none"> Inherent right of nations Individual or collective
State of Armed Conflict?	No state of armed conflict						State of armed conflict exists
Use of Force/ ROE	<ul style="list-style-type: none"> Self-defense Defense of others 	<ul style="list-style-type: none"> Minimum force to compel compliance ROE conduct based; no forces declared hostile 			<ul style="list-style-type: none"> Per UNSCR Nations may interpret differently 	<ul style="list-style-type: none"> May be treated as a belligerent 	<ul style="list-style-type: none"> Governed by law of armed conflict ROE status based; forces may be declared hostile

are, conducted under different authorities, depending on the circumstances, the objectives, and choices made. In fact, one of the most important decisions to be made when developing concepts for peacetime naval action is the choice of which regime of authority to invoke in light of the circumstances and desired objective. There are always choices. For example, sovereign nations always have the right of national self-defense. The president of the United States does not *need* any other authority to direct U.S. naval forces to do whatever is necessary if national security is threatened. There are consequences to such a choice, of course, one of which could be starting a war. Understanding those consequences and making the right choices are where a sound theoretical foundation is important.

Consent. Turning to the framework in the figure, the most restrictive regime of authority for naval activities is the consent of a foreign government. Examples of missions normally conducted with a foreign government's consent include humanitarian assistance and disaster relief, security cooperation, port visits, and military-to-military professional exchanges. The underlying commonality of these activities is that they are entirely contingent on the goodwill and permission of the host nation. The implications are that these activities must be non-threatening and conducted with full regard for the sovereignty concerns of the host government, which can significantly impact the design of operations and limit their scope. A good example of this principle in action was the Indonesian government's placing severe restrictions on American service members carrying arms or remaining ashore overnight during the post-tsunami relief operations of 2005.²⁸ There is normally no authority for the use of force during consensual operations, beyond the inherent right of self-defense.

Law of the Sea. The next category up the spectrum includes activities conducted under the rights guaranteed to all nations by the law of the sea.²⁹ Operations regularly conducted under this authority include high-seas naval exercises, freedom-of-navigation missions, transit passage through international straits, and most hydrographic survey, intelligence collection, and salvage missions in international waters. The fundamental principle in this category is that the law of the sea guarantees all nations equal rights to use the sea for legitimate purposes, subject only to "due regard" for the corresponding rights of others.³⁰

Coastal nations exercise some control over adjacent waters, but, in general, freedom of navigation allows ships to go peacefully anywhere, anytime, as long as they do not do things injurious to other nations.³¹ This broad freedom applies to warships as well. Naval activities conducted under this authority do not require the consent (or even the awareness) of foreign governments, but there are limitations and restrictions in the law of the sea that need to be understood. For example, the law requires submarines transiting foreign territorial seas under

the regime of innocent passage to remain on the surface.³² In reality, submarines presumably do transit some foreign waters submerged. Choosing to do so would be a choice to invoke some authority other than the law of the sea, most likely the inherent right of national self-defense. There are potential consequences to such a choice, of course. Actions taken under the law of the sea are normally nonprovocative, whereas invoking national self-defense certainly can be provocative, as discussed below. The key point here is that international maritime law can be either an enabling or a constraining factor, depending on how it is factored into the plan, and choices made about which authority to invoke have consequences.

Domestic Law. The next column in the figure lists activities conducted under the authority of domestic law. This is a relatively new area for the modern U.S. Navy, which before the fall of the Soviet Union rarely got involved in missions traditionally seen as the purview of the U.S. Coast Guard. Domestic law enforcement missions are more common for the Navy today and include various homeland security and border protection tasks, drug and migrant interdiction, and fisheries enforcement. The Coast Guard is the lead U.S. service for maritime law enforcement, but Navy assets regularly participate. The Posse Comitatus Act, the law that restricts the U.S. Army from direct participation in domestic law enforcement, does not apply to the Navy, but by policy, direct law-enforcement activities such as arrest or seizure are normally conducted by Coast Guard detachments, with Navy support.³³

The fundamental principle here is that the intended outcome of these operations is prosecution in an American court. This goal drives the design of these operations, because federal jurisdiction must apply and evidentiary rules must be accommodated. This point has sometimes led to confusion about the Navy’s role in law enforcement. It is important to realize that the nuances of federal legal jurisdiction do not tie the president’s hands if national security is at stake; the president can direct the Navy to defeat any threat at any time, on the basis of the right of national self-defense. That decision potentially involves far-reaching consequences, however, and the much less escalatory option of acting under domestic law is often a wiser choice if circumstances permit. Again, a thorough understanding of the fundamentals is very important.

International or Foreign Criminal Law. A separate category of law-enforcement-related activities are those conducted under the authority of some international or foreign criminal law. Authority can come from one of the various international treaties (for example, SUA) or from customary international law (e.g., piracy is a universal crime). Sometimes authority is granted by a foreign government to take action on its behalf.³⁴ For example, counternarcotics operations in the Caribbean often involve naval units interdicting Colombian traffickers on behalf of the

Colombian government under a bilateral agreement between the two governments. Other operations in this category might include counterpiracy operations, counterproliferation operations under the PSI, and some counterterrorism operations.³⁵ These activities are often, but not always, multinational. An underlying principle of these activities is that the constraints and authorities vary widely from case to case and must be carefully considered to avoid unintended consequences. There is also a strong diplomatic element in many of these operations, and diplomatic objectives often drive the choices made.

United Nations Mandate. The next category includes naval operations conducted pursuant to United Nations authority, most often in the form of a UN Security Council resolution. Common activities in this category include naval embargoes and the naval enforcement of sanctions, often involving interdiction and boarding of foreign-flag vessels at sea (in American usage, “maritime interception operations,” or MIO). Each Security Council resolution is different, and the rules of engagement, as well as the provisions for seizure, detention, and disposition of persons, vessels, and cargoes, differ from case to case. UN-authorized operations can straddle the line between peace and war; they can involve the use of combat power, ranging from strikes or raids to support of full-scale interventions ashore. Operation ODYSSEY DAWN, the 2011 imposition of a no-fly zone over Libya, was such a case. These activities can fall under either the policing power of article 42 or collective self-defense, article 51.³⁶ These missions are invariably multinational, and individual nations often interpret the specifics of the UN mandate differently. It is vital that a full understanding of the underlying authority be factored into the design of these operations.

National Self-Defense. The two right-hand columns in the framework address naval operations conducted under the right of national self-defense—in other words, the regime of naval warfare. In a sense, naval national self-defense has two subcategories: naval warfare and prehostilities, naval actions that risk or threaten to open a state of armed conflict. National self-defense is not limited to wartime but can be invoked in peacetime as well, as discussed below. The strategic ramifications of invoking national self-defense in peacetime are significant and should be fully understood and considered. Nonetheless, national-self-defense authority is always in the back pocket, so to speak, ready for use should less provocative regimes of authority fail to meet the objective.

An example of the use of national self-defense as an authority during peacetime would be using force to stop a foreign merchant vessel on the high seas because it is carrying persons or cargoes that represent a national-security threat. Some less provocative authority, such as international or domestic criminal law, would almost invariably be a better option, but if those are not viable for one

reason or another, the president’s inherent authority under the Constitution to use naval force as necessary to defend the nation is sufficient. Of course such use of force against a foreign vessel would bring consequences. It would threaten legitimacy for certain and potentially lead to international armed conflict. The point is that such a choice should not be made lightly or without a full understanding of the ramifications of invoking the various sources of authority.

Another case where national self-defense would be invoked in peacetime would be a noncombatant evacuation under nonpermissive conditions. If the host nation denied permission for entry, for example, naval forces could enter its territory to effect the evacuation of embassy personnel under the right of national self-defense alone. Again, the strategic ramifications of such action could be significant. It could start an armed conflict.

Choosing the right regime of authority for action and fully understanding the implications of that choice can make the difference between strategic success and failure.

Coercive naval diplomacy, strategic deterrence, and ballistic missile defense could also be conducted under a national-self-defense regime during peacetime. The choice

to invoke the right of national self-defense (instead of the law of the sea) for missions such as these would likely be based on the geopolitical circumstances, the objective of the operation (coercion, deterrence), and the probability of attempted interference. The potentially significant consequences of using national self-defense as the authority for peacetime operations outside of other, accepted peacetime legal regimes need to be carefully weighed.

The key principle of using national self-defense as an authority in peacetime is that actions might well open a state of armed conflict or earn belligerent status for parties to an ongoing conflict. Activities conducted under national self-defense can be seen as hostile acts by other governments. That is why the decision to invoke national self-defense is made at the national strategic level. Use of national self-defense during peacetime is intrinsically a national strategic decision with far-reaching consequences, and political factors will almost always trump purely military considerations.

It is important to reiterate once more that many missions can be conducted under one regime of authority or another, depending on a number of factors, and the choice of which authority to invoke is of key importance and can have strategic consequences. Also, while important, the distinctions between these conceptual categories are not always “bright lines,” a point that reemphasizes the importance of a full understanding. Counterterrorism operations in particular demonstrate this. International law regarding terrorism is evolving as the community of nations comes to grips with the new realities. Specifically, the line

between criminal law and the law of armed conflict (national self-defense) is becoming blurred regarding international terrorism. Formerly perceived as a distinctly criminal activity, international terrorism is now increasingly seen to straddle the seam between criminal law and national defense. Writing in this journal, Commander James Kraska, a U.S. Navy judge advocate officer specializing in international law, equates the shift to a reconfiguration of the very nature of sea power.³⁷ The point to be taken is that international law today can be leveraged—not as a constraint but as an important force multiplier—only if the law is fully understood as a fundamental principle and factored into the design and conceptualization of naval operations.³⁸ Operations conceived or conducted without a full appreciation of the underlying principles can have unfavorable strategic consequences.

Naval operations in the modern globalized maritime domain are strategically important and increasingly complex. Naval strategists and practitioners will need to be smart about how they approach peacetime missions, yet existing naval theory fails to support the necessary full understanding. This is not to imply that conventional naval warfare theory has diminished in importance; it has not. The Navy must always be ready to prevail in combat, should it come to that, but the role of naval power in peacetime has grown in both strategic importance and complexity, and naval theory needs to catch up. Naval theory needs to expand and evolve to support a thorough understanding of the full range of contemporary activities. The framework offered here for conceptualizing the continuum of naval activities according to the authority for action is simply a start. There are other important principles of peacetime operations, including the necessity of employing other nonmilitary elements of national power in concert with naval activities and the complexities of multinational peacetime operations. These represent excellent topics for further study in this area. A more comprehensive theoretical understanding of contemporary peacetime operations will be crucial if navies are to exploit the opportunities and mitigate the risks associated with this new maritime environment.

NOTES

1. “Wartime” in this context means hostilities of any type, scale, or duration. It is U.S. policy to adhere to the law of war (also called the law of armed conflict) during all armed conflicts, no matter how those conflicts are characterized. See U.S. Defense Dept., *Law of War Program*, Department of Defense Directive 2311.01E (Washington, D.C.: 9 May 2006), p. 2. See also U.S. Navy Dept., *The Commander’s Handbook on the Law of Naval Operations*, Naval Warfare Publication 1-14M (Washington, D.C.: July 2007) [hereafter NWP 1-14M], pp. 6-1, 6-2.

2. For a more extensive list of contemporary nonwarfare missions, see Milan Vego, "On Naval Power," *Joint Force Quarterly*, no. 50 (3rd Quarter 2008), pp. 8–17.
3. James J. Carafano and Martin E. Anderson, *Trade Security at Sea: Setting National Priorities for Safeguarding America's Economic Lifeline* (Washington, D.C.: Heritage Foundation, 2006), p. 1.
4. "World Merchant Fleet by Flag of Registry and Type, Year-End 2009," *U.S. Maritime Administration*, www.marad.dot.gov/.
5. *Ibid.*
6. Michael D. Greenberg et al., *Maritime Terrorism, Risk and Liability* (Santa Monica, Calif.: RAND, 2006), pp. 15–16.
7. James Kraska, "Grasping 'the Influence of Law on Sea Power,'" *Naval War College Review* 62, no. 3 (Summer 2009), pp. 122–30.
8. Stood up in the wake of 9/11, this ongoing multinational naval effort has been conducting counterterrorism operations in the Mediterranean Sea with the participation of most NATO nations, plus Russia, Israel, and other non-NATO states.
9. Henry E. Eccles, *Military Concepts and Philosophy* (New Brunswick, N.J.: Rutgers Univ. Press, 1965), p. 22.
10. Milan Vego, "On Military Theory," *Joint Force Quarterly*, no. 62 (3rd Quarter 2011), pp. 60–61.
11. Antulio J. Echevarria II, "War, Politics, and RMA: The Legacy of Clausewitz," *Joint Force Quarterly*, no. 10 (Winter 1995–96), p. 78.
12. Alfred T. Mahan, *Naval Strategy: Compared and Contrasted with the Principles and Practice of Military Operations on Land* (Boston: Little, Brown, 1911), p. 199.
13. For a discussion of the evolution of the concept of command of the sea into the modern notion of sea control, see Geoffrey Till, *Seapower: A Guide for the Twenty-First Century*, 2nd ed. (London: Routledge, 2009), pp. 151–53, and Robert C. Rubel, "Command of the Sea: An Old Concept Resurfaces in a New Form," *Naval War College Review* 65, no. 4 (Autumn 2012), pp. 21–33.
14. Milan Vego, *Operational Warfare at Sea* (London: Routledge, 2009), p. 25. Definitions in U.S. Navy and NATO documents are consistent.
15. Till, *Seapower*, p. 157.
16. NWP 1-14M, p. 2-14.
17. Geoffrey Till, "A Cooperative Strategy for 21st Century Seapower: A View from Outside," *Naval War College Review* 61, no. 2 (Spring 2008), p. 28.
18. U.S. Navy Dept., *Naval Operations Concept 2010: Implementing the Maritime Strategy* (Washington, D.C.: n.d. [2010]) [hereafter NOC 10], p. 52, available at www.navy.mil/maritime/noc/NOC2010.pdf [emphasis added].
19. U.S. Navy Dept., *Naval Warfare*, Naval Doctrine Publication 1 (Washington, D.C.: March 2010) [hereafter NDP 1], p. 27.
20. "Sea control operations" are defined in the glossaries of both NOC 10 and NDP 1 as "the employment of naval forces, supported by land and air forces as appropriate, in order to achieve military objectives in vital sea areas. Such operations include destruction of enemy naval forces, suppression of enemy sea commerce, protection of vital sea lanes, and establishment of military superiority in areas of naval operations."
21. U.S. Defense Dept., *Joint Operations*, Joint Publication 3-0 (Washington, D.C.: Joint Staff, 11 August 2011), p. A-4.
22. Vego, "On Military Theory," p. 60.
23. James Cable, *Gunboat Diplomacy 1919–1991*, 3rd ed. (New York: St. Martin's, 1994).
24. Vego, "On Naval Power," p. 10. See also his *Operational Warfare at Sea*, pp. 38–41.
25. Till, *Seapower*, p. 7.
26. Geoffrey Till, "Navies and the New World Order," U.S. Naval Institute *Proceedings* 131, no. 3 (March 2005), p. 63.
27. Till, *Seapower*, p. 81.
28. Kevin M. Charkowske, "Practical Impacts and Effectiveness of Cultural Intelligence," *Marine Corps Gazette* (October 2005), p. 20.
29. The law of the sea is codified in treaty under the 1982 United Nations Convention on the Law of the Sea, commonly referred to as UNCLOS. As of this writing, the United States is not a party to the convention but

recognizes the majority of UNCLOS as customary and accepted international law. See NWP 1-14M, p. 1-1.

30. *Ibid.*, p. 2-10.

31. *Ibid.*, chap. 1.

32. *Ibid.*, p. 2-5.

33. *Ibid.*, p. 3-8. There is a good deal of misunderstanding about the respective boarding authorities and capabilities of the U.S. Navy and Coast Guard. Both have the capability to interdict and board vessels at sea. The difference is that the Coast Guard has domestic statutory law-enforcement authority, whereas the Navy does not. This authority usually matters only if the desired outcome is prosecution

in the U.S. courts. Navy teams routinely conduct boardings in support of UN sanctions (MIO) and U.S. national self-defense (expanded maritime intercept operations).

34. James Kraska, "Broken Taillight at Sea: The Peacetime International Law of Visit, Board, Search, and Seizure," *Ocean and Coastal Law Journal* 16, no. 1 (2010), pp. 1-46.

35. NWP 1-14M, chap. 3.

36. *Ibid.*, pp. 4-1, 4-2.

37. Kraska, "Grasping 'the Influence of Law on Sea Power,'" p. 114.

38. *Ibid.*, p. 112.



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