
Does the RAN have the capacity and capability to meet its enforcement roles as outlined in Australia's Oceans Policy?

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A state that thinks of itself as a small power is self-confessedly dependent on external help even to protect its own territory. A state that knows itself to be a superpower, however massive its strategic preoccupations has at least the knowledge that militarily it can protect its interests unaided. But for the medium power, nothing is absolute.¹

Introduction

On 4 September 2001 the Royal Australian Navy (RAN) attracted world wide attention when 354 asylum seekers were embarked from the MV TAMPA into HMAS MANOORA for their eventual transfer to an immigrant processing facility in Nauru. At precisely the same point in time the Anzac Class frigate HMAS ANZAC was conducting Maritime Interdiction Operations in the Northern Arabian Gulf as part of the sanctions against Iraq, and coincident with both these events, HMAS ADELAIDE was visiting Singapore prior to her involvement in EXERCISE STARDEX 2001. This snapshot in time provides a perfect example of the dimensions that a modern navy must now work within and what will probably be expected of it in the future.

The Australian Maritime Doctrine presents these dimensions as the span of maritime operations,² which Booth describes as the constabulary, military, and diplomatic roles.³ The multitude of tasks that result from these dimensions can be quite daunting for a Navy representing a country classified as a medium maritime power.⁴ The RAN's ability to conduct all these roles successfully, especially concurrently, is significantly limited both economically and geographically. Historically, the total Defence budget has been limited to approximately 2 per cent of Gross Domestic Product (GDP). Combine this with a potential surveillance and enforcement area of 14.8 million square kilometres and the result is a challenging responsibility. To achieve it a medium maritime power and its Navy must be 'brave as lions and cunning as foxes because they do have some ability, some potential, and they have to choose how best to deploy it in their interest'.⁵ These interests are becoming more specific as Australia realises the importance of her biologically diverse marine domain. The interests were recognised with the publication of *Australia's Ocean Policy Volumes 1 & 2* (AOP) in 1998. Volume 2 of this document outlines the Australian Defence Forces (ADF) responsibilities for surveillance and enforcement.

The aim of this paper is to assess whether the RAN, as a Navy representing a medium maritime power, has the capacity and capability to meet its enforcement roles as outlined in AOP. Any possible changes to policy and/or capability, which would allow the RAN to perform successfully as a medium navy in these roles, will then be identified.

To achieve these aims, Australia's identity as a medium maritime power must first be established. Hill's concept of a medium maritime power and its associated strategies will then be expanded before outlining the RAN's responsibilities in AOP. An assessment will then be made as to whether the RAN has the capacity and the capability to meet these responsibilities. Finally,

recommendations will be made as to any possible changes that could be made to policy and/or capability, which would result in the RAN performing more successfully as a medium navy whilst fulfilling its responsibilities outlined in AOP.

Australia—A medium maritime power

In Rear Admiral Hill's treatise on *Maritime Strategy for Medium Powers* he provided a thorough examination on the factors that determine whether a country is a medium power. He noted:

Superpowers are unlikely to suffer direct challenges to their territory, their political independence or their national welfare. Small powers, on the other hand, are unable to guard their own interests without some form of external support and guarantee. Medium powers fall between these two groups and they are most clearly identified not so much by any inherent characteristics as by their primary security objective.⁶

Is Australia a medium power? National power consists of many elements. It includes a state's: social and political cohesion; economic strength; quality, depth and breadth of relationships; military capability; historic and current absence of disputes; strategic location; quality of international contribution; and its geographical scale and quality. When all these are taken into consideration it is assessed that Australia is a medium power on a world scale. The next question is, does Australia fit into the associated category of a medium maritime power? Once again there are a number of components. These include trade and access, a shipbuilding industry, the exploitation of natural resources and military power at sea.⁷ Given Australia's geography and that it has varying levels of all the above elements it is assessed that Australia is also a medium maritime power.

As a medium power Australia seeks to 'create and keep under national control enough means of power to initiate and sustain coercive actions whose outcome will be the preservation of its vital interests.'⁸ In policy terms these words could be described as autonomy or self-reliance.⁹ To preserve the vital maritime interests the RAN, as a medium power Navy must have sufficient capabilities¹⁰ with a maritime strategy to support them. Inherent in this approach is joint operations. Medium powers cannot afford duplication. A credible capability will increasingly depend on the integration of all the combat services.¹¹ Having established Australia as a medium maritime power and the RAN as a medium navy, Hill's concepts and strategies will now be briefly outlined.

Hill's concepts and strategies

In Hill's *Maritime Strategy for Medium Powers* he highlights a number of concepts and strategies for the medium power navy. The two most fundamental concepts are *levels of conflict* and *reach*. He divides conflict into four levels: normal conditions, low intensity operations, higher level operations and general war. Reach is described as cutting across all these levels and is the distance from a home base that a navy can carry out operations. As this paper is directly related to the RAN's enforcement responsibilities outlined in AOP, which are essentially peacetime responsibilities, the focus will be on *normal conditions*. Hill defines normal conditions as a state where 'changes in international conditions occur in a controlled way aided by processes of negotiation; no use of force is taking place except at an internationally accepted constabulary level; and threats of force are confined to the normal process of deterrence.'¹² A medium navy's constabulary duties are central to this thesis as 'these are, after all, what most of us in the fighting services are doing, most of the time'.¹³

To fulfil these duties it is necessary to first establish a medium maritime power's *vital interests*. Hill describes these as essentially territorial integrity and political independence.¹⁴ However a medium power will have few resources to spare for the exercise of power beyond what is necessary

to safeguard or where possible further these vital interests.¹⁵ With the introduction of the 200-mile Exclusive Economic Zone (EEZ) and the 1982 Law of the Sea Convention (LOSC) the responsibility for maintaining territorial integrity is now quite large for most maritime countries. It requires extensive surveillance, information gathering, and a capability to board and if necessary, detain, all within a framework of municipal law that conforms to international law.¹⁶ For this capability to be a successful part of a medium power's maritime strategy then it must be both *ready* and *effective*.

Hill states that *readiness* is a watchword for all medium powers. This is especially so in the context of constabulary operations, as it does not just address deployed readiness, but in some cases it would take the form of readiness in-being. If it becomes obvious to a potential transgressor that a medium power is ready to enforce its sovereignty and rights, then it may prove to be a deterrent. The same can be said for *effectiveness*. If it were apparent that the medium power is materially efficient, well trained and organised, then this also would have a deterrent effect.

The final themes in Hill's strategy are *reach* and *presence*. Reach will relate to a medium power's vital interest. How far does it need to go to protect its interest? This may not just extend to its maritime zones, but could expand to offshore territories or sea lines of communication (SLOC). Integral to reach is sustainability, or how long reach can be maintained. Presence could be considered a corollary to reach in that it is a visible demonstration of a country's ability to prove its reach. Having now briefly examined Hill's concepts for a medium power, specifically in the area of normal conditions and constabulary operations, they will now be put into an Australian context.

Australia's Ocean Policy—the RAN's responsibilities

Australia has one of the most biologically diverse marine environments in the world. Compared to many other countries this environment is in a generally good condition, due in part to Australia's geographical isolation. However, there is increasing pressure being placed on ocean systems. This pressure comes from such areas as an escalating world demand for fish, expanding mineral and petroleum exploration activities, and tourism and recreation. In an attempt to plan for these increased pressures the Australian Government released the AOP in 1998. It 'sets in place the framework for integrated and ecosystem-based planning and management for all of Australia's marine jurisdictions'.¹⁷ In the case of Australia these jurisdictional areas are extremely large. As a signatory to the 1982 LOSC Australia has sovereign rights to explore, exploit, conserve and manage the natural resources within its EEZ. It also has rights and responsibilities to the limits of the continental shelf. This is in addition to the sovereignty that it maintains over the contiguous zone and territorial seas.¹⁸ A fundamental aspect of a government policy that encompasses regulation and management are the enforcement measures to be implemented.¹⁹ In the case of the AOP many of these measures lie within the purview of the ADF, and are addressed in three sections under the main heading of *Protecting the National Interests*. They are Defence, International, and Surveillance and Enforcement.

Each of these sections is divided into three areas: The Challenges, Background and Response. In the Defence section the challenges are to protect Australia's national interests and sovereign rights, and to provide accurate, up-to-date hydrographic, oceanographic, and navigation information within our maritime jurisdictions.²⁰ The Background refers to Australia's Strategic Policy defining the defeat of attacks against Australia's territory as 'our core force structure priority' and is the focus of all Defence activities.²¹ The ADF is given the task of safeguarding marine jurisdictional areas, controlling maritime approaches and of exercising and protecting Australia's sovereignty and sovereign rights.

It also highlights the importance of joint operations between the RAN and the RAAF, and bilateral and multilateral agreements to facilitate operations and patrols in south-east Asia and the south-west Pacific. The Background also lists a range of tasks that the ADF undertakes or contributes to, and are directly relevant in the implementation of the Oceans Policy. These are:

- Preparedness and contingency planning;
- Maritime surveillance and response;
- Fisheries law enforcement;
- Search and rescue;
- Hydrographic services; and
- The Australian Oceanographic Data Centre.²²

The Response paragraph expands on these tasks by providing a comprehensive list of activities that the ADF will continue to do in support of the above tasks.

In the Surveillance and Enforcement section the Challenges are to ensure that there is an effective and efficient surveillance capacity for Australia's marine jurisdictions, and that there is effective enforcement of national legislation throughout Australia's marine jurisdictions. The Background addresses the importance of surveillance to identify legal and illegal activities in Australia's vast marine jurisdictions and how it must be coupled with effective enforcement action. It highlights the many agencies involved with the national surveillance effort and that the ADF is a major contributor. It states that the ADF also provides the main contribution to fisheries enforcement through its patrol boats in the north and other units in the Southern Ocean. The Background also refers to the other civil enforcement activities conducted by the ADF including low-intensity policing tasks such as interdiction of people and drug smuggling. The Response paragraph expands on government requirements. These include specific details for the ADF including:

- ensuring the ADF continues to contribute fully to the National Surveillance program managed by Coastwatch; and
- ensuring the ADF contributes fully to fisheries law enforcement activities, particularly in Australia's north and north-west but also within the EEZ of Australia's offshore territories.²³

Australia's Ocean Policy versus Defence Policy

An analysis of these tasks and those associated in the Defence section does highlight some inconsistencies with Australia's current Defence Policy *Defence 2000 (D2000)*, especially in the area of enforcement. *D2000* refers to the role of patrol boats, surveillance aircraft and intelligence capabilities in the monitoring and policing of the maritime approaches, but emphasises that these roles should not detract from the core function of defending Australia from attack. It goes as far as to

mention that a 'civilian response may be more appropriate' when addressing non-military concerns.²⁴ This is incongruent with AOP which lists fisheries law enforcement as a defence task and includes a statement, 'the government will ensure the ADF contributes fully to fisheries law enforcement...'²⁵ Despite these policy inconsistencies it is still possible to determine whether the RAN has the capacity and capability to fulfil its responsibilities under AOP.

Capacity

The majority of the tasks that have been designated to the ADF in the AOP quite obviously affect the RAN more than the other Services. The analysis of the relevant sections of the AOP has also identified a number of key terms and concepts that are common to Hill's theories for medium navies. The AOP refers either directly or indirectly to *interests, reach, presence* and *joint operations*, all integral components in a medium powers maritime strategy for *normal conditions*. An assessment will now be made as to whether the RAN, as a medium Navy, has the capacity and the capability to achieve these tasks. One of the fundamental elements of an enforcement capacity is satisfactory legislation. Hill acknowledges this when he says, 'Any state desiring an orderly basis for its marine constabulary has to evolve a framework of municipal law within which it can operate'.²⁶ It is also recognised in the AOP, as a response required by government to 'review and rationalise effort involved in and capacity for surveillance and enforcement, including reviewing legislation relating to enforcement in Australia's marine jurisdictions'.²⁷

The ADF and Customs are the only two Commonwealth agencies that have the capability for enforcement at sea. The Australian Federal Police (AFP) and State Police will at times make use of these assets as well as State Police vessels. Generally the ADF will be used due to the wide range and flexibility of their assets.²⁸ The ADF has enforcement powers under a number of Acts, which usually incorporate provisions for ADF personnel to be accorded 'authorised persons' status. These Commonwealth Acts include:

- Migration Act 1958
- Fisheries Management Act 1991
- Customs Act 1901
- Quarantine Act 1908
- Environment Protection (Sea Dumping) 1981
- Petroleum (Submerged Lands) Act 1967
- Migration Act 1958
- Border Protection (Validation and Enforcement powers) Act 2001
- Border Protection Amendment Act 1999
- Hazardous Waste (Regulation of Exports and Imports) Act 1989²⁹

Although this would appear to be an adequate framework it can often prove to be unwieldy. A case in point for the RAN would be the training of boarding parties. A large degree of legal training is now required for these parties as they are quite often tasked with a wide range of boardings. This training is required as there may be large legislative differences between simple fishery enforcement boardings under the *FMA 1991* and a boarding conducted under the *Migration Act 1958*.

In addition to these Commonwealth Acts, Australia is party to a number of international agreements that may have an effect on ADF and RAN enforcement tasks. These treaties have been ratified by Australia and include:

- LOSC 1982 Agreement for Management of Straddling Fish Stocks and Highly Migratory Fish Stocks
- Convention for the Conservation and Management of the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean
- Convention on the Conservation of Antarctic Marine Living Resources 1980
- Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation
- Convention for the Protection of the Natural Resources and Environment of the South Pacific Region 1986 and Protocol
- Convention for the Prohibition of Fishing Long Driftnets in the South Pacific and Protocols³⁰

With ratification of these treaties Australia declared its *interest*. Not only was it responsible for the regulation and management of its own maritime zones it now could be called to contribute to distant enforcement. This has a significant impact on capability especially when *reach* and *presence* is required in such isolated areas as Antarctic waters.

Capability

Capability is the most important part of the enforcement equation. Without capable vessels and people, enforcement at sea will not occur. As has already been established the RAN is the preferred agency for this activity. Despite the government fulfilling its AOP requirement and purchasing eight Bay-class patrol boats for Customs, there is still some doubt about their enforcement effectiveness due to their lack of armament. There are many examples where vessels will not stop unless a warship is present to enforce the order.³¹ It has been acknowledged that enforcement is the weak point in the equation. The Deputy Commissioner of the AFP expressed the view in 1998 ‘that while the surveillance might be adequate, the ability to respond to surveillance, to intercept and detain, to board and search, to enforce laws, and to effect sovereignty is entirely inadequate.’³² This view is agreed. Coastwatch does an excellent job coordinating all the surveillance covering an area measuring 14.8 million square kilometres. However, it can only achieve a re-visit rate of once every 12 days with its available assets,³³ and has very limited response options including 15 RAN Fremantle Class Patrol

Boats³⁴ and the 8 Bay Class Customs vessels. The RAN undertakes the majority of responses in the north and north-west of Australia.³⁵ This reliance on Defence assets for enforcement was also demonstrated during the arrest of the MV PONG SU, a vessel suspected of importing drugs into Australia. After State Police attempts to stop the vessel were unsuccessful RAN assistance was sought in the form of a frigate and helicopter. These and other ADF units were used to board the ship and then hand over jurisdiction to the AFP and Customs.

Recommendations for a medium Navy

This reliance on the ADF, and more specifically the RAN, has obvious ramifications when it comes to capability development. Although this reliance is acknowledged in the AOP, it does not receive the same level of recognition in *D2000*, which incorporates the Defence Capability Plan, or 'shopping list'. It is accepted that these constabulary roles should not detract from the ADF's core function of defending Australia from armed attack³⁶ but if such a reliance is going to be placed on them in AOP then they should at least get more emphasis in Defence's primary policy document. If the RAN is to be as 'brave as a lion and as cunning as a fox' and be able to provide *reach* and *presence* along Australia's extensive coastline and distant offshore territories then there is probably a requirement for a larger class of offshore patrol vessel. To take this argument further there may even be a requirement for an ice-breaking capability as fish stocks diminish and fishermen illegally venture into the Antarctic territories. There are other areas where Australia could be a little more 'cunning' especially in the areas of maritime strategy and legislation.

This paper agrees with the recommendation of the Joint Standing Committee of Foreign Affairs, Defence and Trade inquiry into Australia's Maritime Strategy, which states that a new Defence White Paper should incorporate explicit reference to the AOP.³⁷ This would remove the disconnect that occurs between the current documents and provide a clearer explanation of government requirements for the ADF in its constabulary role. As for legislation, it is recommended that the government continue with its review required by the AOP. There would certainly be utility in overarching legislation, which would simplify the enforcement capacity of the ADF.

Conclusion

This paper has identified that a modern navy now has a diverse number of roles. These have been encapsulated in Booth's triad of military, diplomatic and constabulary dimensions. The tasks that fall out of these dimensions are substantial, especially for a medium navy. It was established that the RAN fell into this category given Australia's status as a medium maritime power. To be a successful medium navy Hill posits that the Navy needs to be as 'brave as lions and as cunning as foxes' while creating and keeping under national control enough means of power to initiate and sustain coercive actions whose outcome will be the preservation of its vital interests. In the context of constabulary operations under *normal conditions* these interests were determined to be those outlined in the AOP.

The AOP designates a number of substantial enforcement tasks especially in the area of fisheries to the ADF, or more specifically the RAN. The RAN fulfils these tasks despite them receiving minimal exposure in *D2000*. As a medium navy the RAN should be able to provide *reach* and *presence* to the areas of *vital interest*. Not only does Australia have significant areas of interest contained within its extensive maritime zones but they have also been extended to distant waters with Australia being party to a number of international agreements. To provide *reach* and *presence* to these areas requires a substantial capability that Australia does not currently have.

To improve this situation a number of recommendations were made regarding policy, capacity and capability. Firstly, it is recommended that the requirements for the ADF outlined in AOP be incorporated into future defence policy. Secondly, a review of the existing legislation should occur so as to streamline the current unwieldy process. Thirdly, it was recommended that if the RAN is to fulfil its AOP enforcement tasks then it would require larger and more numerous patrol craft. If all these recommendations could be achieved then it is believed that the RAN would have the right balance and be able to perform more successfully as a medium navy.

Endnotes

1. J.R. Hill, RADM (retd), 1984, 'Maritime Forces for Medium Powers', *Naval Forces*, No. 2/1984, Vol. V, p. 27.
2. *Australian Maritime Doctrine* 2000, Commonwealth of Australia, p. 57.
3. K. Booth, 1977, *Navies and Foreign Policy*, Croom Helm, London, p. 16.
4. J.R. Hill, RADM (retd), 1986, *Maritime Strategy for Medium Powers*, Croom Helm, London, p. 24. Hill describes Australia as a medium maritime power.
5. J.R. Hill, RADM (retd), 1988, 'Maritime Strategy for Medium Powers', *Journal of the Australian Naval Institute*, Vol. 14(2), May 1988, p. 37.
6. J.V.P. Goldrick, CDRE 2001, 'The Medium Power Navy in the 21st Century', *Journal of the Australian Naval Institute*, p. 21.
7. J.R. Hill, 1986, op. cit., pp. 30–34.
8. *ibid.*, p. 21.
9. J.R. Hill, RADM (retd), 2000, 'Medium Power Strategy Revisited', Sea Power Centre Working Paper No. 3, March, 2000, p. 3.
10. J.V.P. Goldrick, 2001, op. cit., p. 21.
11. *ibid.*, p. 26.
12. J.R. Hill, 1986, op. cit., p. 88.
13. J.R. Hill, 2000, op. cit., p. 7.
14. J.R. Hill, 1988, op. cit., p. 37.
15. J.R. Hill, 2000, op. cit., p. 3.
16. *ibid.*, p. 8.
17. *Australia's Ocean Policy Volume 1*, 1998, National Oceans Office, Hobart, p. 2.
18. LOSC Art.
19. B. Snushall, 2003, 'The Enforcement Aspects of Australia's Oceans Policy', Sea Power Centre Australia Working Paper No 14, Canberra, p. 2.
20. *Australia's Ocean Policy Volume 2*, 1998, National Oceans Office, Hobart, p. 37.
21. loc. cit.
22. loc. cit.
23. *ibid.*, pp. 43–44.
24. *Defence 2000: Our Future Defence Force*, Commonwealth of Australia, paras 2.15–2.20.
25. AOP Vol. 2, op. cit., p. 44.
26. J.R. Hill, 1986, op. cit., p. 99.
27. AOP Vol. 2, op. cit., p. 44.
28. B. Snushall, op. cit., p. 8.
29. *ibid.*, pp. 5–6.
30. *ibid.*, p. 14.
31. *ibid.*, p. 13.
32. D.R. Mackinnon and J. Hinckley, 1999, 'Report on Critical Issues Workshop—The Regulation and Enforcement of Crime in Australia's Maritime Zones', *Maritime Studies*, 104, 1999, p. 11.
33. The Auditor-General, *Coastwatch Australian Customs Service*, Audit Report No. 38, 1999–2000, Australian Audit Office, Canberra, April 2000.

34. To be replaced by 11 Armidale Class Patrol Boats which will be multi-crewed and will provide 3200 patrol days a year.
35. Joint Committee of Public Accounts and Audit Report 384, 2001, The Parliament of the Commonwealth of Australia, p. 129.
36. *D2000*, op. cit., p. 13.
37. Joint Standing Committee of Foreign Affairs, Defence and Trade Inquiry, Australian Maritime Strategy, The Parliament of the Commonwealth of Australia, p. xviii.

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