

# GOORANGAI

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## GLOBALISATION, NEUTRALITY AND THE PROTECTION OF SHIPPING

This paper outlines the background to the emergence of the Naval Co-operation and Guidance for Shipping doctrine (NCAGS).

During the Cold War era it was assumed that, in the event of hostilities, Eastern Bloc forces would target merchant ships to undermine the economic capacity of the western nations to wage war and to prevent the USA from reinforcing continental Europe. As a consequence, nearly all Western navies, including the RAN, exercised a global system known as Naval Control of Shipping (NCS). The NCS system was designed to extend protection to 'Allied' merchant ships; that is merchant vessels flagged by countries of the NATO Alliance and vessels consigned by the National Shipping Authorities of other flag states.

The end of the Cold war brought about a fundamental change in strategic outlook. Naval strategists no longer considered this type of economic warfare likely. While the possibility of sporadic attacks on merchant shipping was not ruled out, the prospect of sustained campaigns against shipping, of the sort that occurred in the two World Wars, was dismissed as remote.

This belief was reinforced by changes that were taking place in the world of commercial shipping. Nationally flagged merchant fleets were in sharp decline. This, in part, reflected the fact that maritime trade had become globalised to an extent that trading nations were dependent upon shipping *per se* as distinct from national shipping assets. Strategists believed that this change might afford some protection to merchant vessels. Professor Till, for one, observed that globalization had increased the commercial and political penalties that would flow from targeting maritime trade. He noted, 'an attack on any part of the world's economic system could so easily rebound on the transgressor.'<sup>1</sup>

This was just as well as this new order posed a number of difficulties for navies charged with the protection of trade. Till noted:

It is now common for beneficial ownership of merchant hulls to be vested in shifting multinational shipping alliances. With finance extended by one country, the cargo owned by another set of companies, the ship in transit from one state to another and crewed by people from a range of countries. So when a ship is attacked, it is often hard to tell who is being hurt, apart from the immediate victims. ...In such a globalised world, it may seem curiously anachronistic to expect...navies to be tasked with the protection of other people's property, especially in conditions when it is not particularly easy to discover who those other people are.<sup>2</sup>

The Tanker War that raged from 1981 to 1988 between Iran and Iraq qualified the first of Till's assumptions and underscored the need for navies to develop a new doctrine

for the protection of merchant ships to meet the changes wrought by the globalisation of maritime trade.

The Tanker War saw both combatants engage in anti-shipping operations which, in terms of their sustained intensity, were comparable to the anti-shipping campaigns conducted in WWII. By the end of the conflict the combatants had attacked more than 546 merchant vessels, resulting in the loss of 40 million in deadweight tonnage (more than half the tonnage of all merchant shipping sent to the bottom in World War II).<sup>3</sup> Of equal significance was the fact that the vast number of merchant vessels attacked, some 85%, were neutrals, ostensibly engaged in neutral commerce and flying the flags of 32 different states.<sup>4</sup> It is difficult to see that globalisation did anything to ameliorate the frequency of these attacks. Rather, globalisation seemed to provide an impetus for this style of warfare by blurring the traditional boundaries between neutral and belligerent trade and by providing the means by which both combatants sought to internationalise the conflict for their strategic ends.



Figure 1- Political map of the Arabian Gulf.  
Source:www.mideastweb.org

From the outset of hostilities, each side targeted the others oil exporting capacity. Iran very quickly destroyed Iraq's access to the Gulf. This forced Iraq to export its oil by pipeline and to tranship its oil products via Kuwaiti terminals. Iraq, in turn, strove to cut off the flow of Iranian oil exports. To do this, Iraqi forces attacked all tankers (irrespective of flag) found in the vicinity of Kharg Island and all tankers found anywhere in the Iranian declared war zone.

In response, Iran chartered a fleet of 20 shuttle tankers to ferry oil down 'Exocet Alley' that is from the Kharg Terminals to Serri and Larak Islands and commenced escorting



tankers, irrespective of flag, to the Kharg Island terminals. In addition, Iran invoked a system of naval control of shipping so that all vessels entering its war zone were subject to Iranian naval control.

In retaliation to Iraq's attacks on shipping, Iran commenced attacking all merchant ships proceeding to and from neutral Gulf ports. These attacks were intended to:-

- (a) coerce the Gulf Co-operation Council and the world community into compelling Iraq to stop its attacks on tankers serving Iranian oil ports;
- (b) punish Iraq (on the theory that goods carried to and from Gulf ports indirectly aided the Iraqi economy); and
- (c) punish, in particular, Kuwait and Saudi Arabia, whom Iran considered had forfeited their neutral status by actively aiding the Iraqi war effort.<sup>5</sup>

Finally, Iran exerted the right to visit and search merchant vessels transiting the Gulf, stopping and searching more than 1,200 merchant vessels and seizing cargoes from 30 of them.<sup>6</sup>



**Figure 2-** Large oil tankers were found to be very difficult to sink. The emphasis of attacks quickly turned to the killing of the crews. Source: [www.barryversion.com](http://www.barryversion.com)

Neutral navies could not remain aloof from this conflict as it took place in waters that were vital to all the major economies. Some 70% of Japanese, 50% of West European and 7% of American oil imports passed through the Straits of Hormuz during the 1980s. This had the effect of drawing into

the combat zone naval forces from 12 Western navies, the USSR and eight regional navies. These naval forces were confronted with two basic problems – what ships to protect and how to protect them.

The USN, RN and RAN provided sailing guidance advice to merchant vessels that were:

- (a) entered on their national shipping register;
- (b) entered on open registers but beneficially owned by their nationals; or
- (c) engaged in direct trade with their national ports.

Thereafter, responses varied. The RN despatched a small contingent of warships designated as the 'Armillia Patrol'. The Patrol's stated function was 'to provide re-assurance to those who operate and sail in merchant ships and to give assistance should this be needed.'<sup>7</sup> This assistance was limited to protecting vessels on the British registers (i.e. UK registers and registers of dependent territories) and foreign-flagged vessels beneficially owned by British nationals. Furthermore, the protection offered by the Armilla Patrol was limited to self-defence under Article 51 of the UN Charter. By limiting the protection to British vessels the UK Government did not permit the Armilla Patrol to defend other neutral shipping under the doctrine of 'collective self-defence'. The UK did, however, permit foreign-flagged vessels to transfer to the British Registers for the sole purpose of obtaining protection from the Armilla Patrol, while making it clear that the Patrol would not necessarily be available to all British flagged vessels, at all times, in the Gulf.<sup>8</sup>

The United States based its operations on a more bellicose interpretation of 'self-defence'. It asserted the right to protect foreign flagged vessels under the right of collective self-defence and to exercise the right of anticipatory self-defence to protect its warships.<sup>9</sup>

Consequently, the USN chose to convoy its ships (including the 11 re-flagged Kuwaiti tankers) through the Straits and Gulf. Its Joint Task Force Middle East organized more than 100 neutral convoys.<sup>10</sup> Further, the United States, while not disputing the legal right of Iran to conduct visit and search as a belligerent right, announced that, if a belligerent sought to exercise the right of visit and search against vessels under convoy, the USN escorts would certify the absence of contraband. Thereafter the escorts would resist any attempts to search the vessels under convoy. This practice was founded on the rights embedded in the *Declaration of London of 1909* which specifically provided for the right of a neutral convoy commander to exempt vessels under his protection from visit and search. This Declaration, however, was never ratified, and, in the two World Wars, Great Britain had asserted the right of the RN to visit and search all neutral vessels irrespective of any such exemption. This divergence in positions led the UK Government to instruct the RN to implement a system of warship 'accompaniment' of merchantmen as distinct from close escort. The accompanying warships were instructed not to resist any demand by Iranian naval units to visit and search the merchant vessels. Whilst the device of 'accompaniment' has now been incorporated into NCAGS doctrine as a less rigid method of physical protection, the use of this term in the Iran/Iraq conflict was intended to signify to the combatants that a different range of responses could be expected from the accompanying warships.<sup>11</sup> The USSR also chose to escort its flagged vessels after 1986 including several under charter to Kuwait.

The approach of France was inconsistent. It initially



announced that its naval units would oppose any attempt by Iranian warships to visit and search French vessels. True to its word, a French frigate did intervene to prevent an Iranian warship from searching the *Ville d'Angers* in October 1985. Thereafter, however, this conduct was discontinued and, in 1987, the French Government announced that its warships would adopt the RN approach of 'accompanying' merchant vessels.

The Netherlands took an intermediate course recognising a right of visit and search, but only with respect to ships proceeding to and from belligerent ports.

This response from the naval community was *ad hoc* and lacked coherence. The divisions that emerged between RN and USN policies resulted, in large measure, from the fact that these navies based their policies on different premises. The USN based its response on the rights under the UN Charter as well as traditional rights accorded to neutral nations during wartime. In contrast, the UK Government based its policies on the UN Charter and the rights to free navigation under UNCLOS. It deliberately eschewed belligerent/neutral rights found in customary law. Of the two approaches the 'non-provocative and de-escalatory' approach of the RN seemed to work best.<sup>12</sup>

The Armilla Patrol provided direct protection to the greatest number of merchant vessels, more than 1,026, and not one was attacked whilst in the company of an RN warship. It must be remembered, however, that 90% of the vessels attacked flew a flag of a state with no naval presence in the Gulf. For this reason the Tanker War provided a clear stimulus for navies to develop a new doctrine for the protection of trade that was coherent, 'inter-operable' and capable of extending protection to vessels irrespective of flag state registration. The doctrine that has subsequently emerged is known as NCAGS.

## Notes

1. Till, G. 'A Changing Focus for the Protection of Shipping' p 12. In *The Strategic Importance of Seaborne Trade*, A. Forbes (ed). Defence Publishing Service, Canberra, ACT, May 2003.
2. *Ibid.*, pp12-13
3. Humphrey, D.R. 'Belligerent Interdiction of Neutral Shipping in International Armed Conflict' *Journal of Armed Conflict Law* 2(1) 1997, p39.
4. *Ibid.*
5. Politakis, G. 'From Action Stations to Action' *Ocean Development & International Law* Vol 25 pp11-60
6. Humphrey, D.R. *Op Cit.*
7. House of Commons *Hansard* Vol 118, 1 July 87
8. Kinley, G. 'Legal Principles Governing the Armilla Patrol' *Lloyds Weekly News* 27 Aug 1987
9. 'Current Developments', *International & Comparative Law Quarterly* Vol 40 pp 464-7
10. The convoys were escorted by four to seven warships. See M. Johnson 'The Role of US Military Forces in the Gulf War' in *The Persian Gulf War*, C.C. Joyner (ed) 1990
11. Current Developments, *Op Cit.*
12. House of Commons, *Foreign Affairs Select Committee Report* 27 Aug, 88 pxxvi.6.9



**Figure 3-** Destruction of Iran's Ras Shadat Oil Platform by the USN in retaliation to attacks on merchant shipping in the Straits of Hormuz, 20 October 1987. Source:

[www.seastory.us](http://www.seastory.us)

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