CHIEF OF AUSTRALIAN NAVY SPEECH

SRI LANKA NAVAL SYMPOSIUM: REVISITING MARITIME LAWS

8 DEC 2010

Good morning Vice Admiral Samarasinghe, Chief of the Sri Lankan Navy and host of today's Symposium; other VIPS TBC; distinguished guests, ladies and gentlemen,

This plenary discussion on *Sustainable Support for Security and Safety at Sea*, and in particular the complexities of maritime law on the subject, is of critical importance to us as Indian Ocean nations, and to all users of the sea. It is one in which I cannot emphasis strongly enough the role of cooperation and a shared understanding of our maritime security interests.

Current counter-piracy and maritime security operations in the Indian Ocean have highlighted the strengths of a cooperative approach between agencies and between governments, the same is also true in the case of the Border Protection Command within Australia, which coordinates the expertise and response capacity of the Australian Customs and Border Protection Service, the Royal Australian Navy as well as other government agencies to ensure a coordinated national approach to Australia's offshore maritime security.

It is clear that this kind of cooperative and interagency approach, at both the national and international level, is the most effective means of enhancing maritime security, within the current international and domestic legal regime.

When considering the current legal regime there are two related concepts which arise. The first is what we consider to be security interests at sea. The second is the legal processes we may use to pursue and prosecute those who endanger maritime security. These are the two issues which I will focus on this morning.

Since the terrorist attacks on the United States on September 11 2001, nations and military forces around the world have been confronted with terrorism as a fundamental threat. The re-emergence of piracy in the Indian Ocean region has also been a dominant theme. However, I think it important to note that there are a range of threats against which we are required to defend our countries and our region. Threats to maritime security are not limited to terrorism and piracy, and nor is the spectrum of crimes at sea.

Other threats emphasis the increasing impact of transnational crime on the planning of Naval operations. They concern the illegal exploitation of natural resources, including fisheries; illegal activity in protected areas, which may place the environment at risk; irregular maritime arrivals; threats to each nation's customs regime, which is not limited to illegal drugs; threats to

bio-security through the deliberate or accidental introduction of pests and disease; and marine pollution.

Australia's unique geography as the largest island continent makes our Nation particularly susceptible to many of these threats. However, we are not alone, and these threats are common across the Indian Ocean region. The nature of these threats challenges not just our domestic legal processes but also the international framework that exists to protect our environment, resources, and people.

The international law framework, guides how our domestic maritime enforcement policies operate. In general, the *United Nations Law of the Sea Convention* sets out the conditions of national jurisdiction over the sea, and it also governs the high seas. In that area, which belongs to no nation, the Convention sets the conditions under which we may board and search vessels flagged to other nations, or not flying a flag. Article 110, for example, allows a right to visit and search pirate vessels on the high seas. Our commitment to the rule of law ensures that these basic principles remain the foundation of our joint approach to combating maritime security threats.

The significance of the Law of the Sea Convention should not be underestimated. Indeed, the Secretary-General of the United Nations at the time the Convention was signed described it as 'possibly the most significant legal instrument' of the last century. However, the developing threat situation since the Law of the Sea Convention was first signed in 1982 has required additional and more specific treaties. These agreements allow Nations to respond to modern maritime security dangers. They include the *Convention for the Suppression of Unlawful Acts Against the Safety of Navigation* (SUA); *UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*; the Proliferation Security Initiative; and the *International Ship and Port Security Code*.

None of these treaties provides a direct, international means of prosecution for security offences, such as an international tribunal. Instead, enforcement actions generally rely on each country's domestic criminal law framework and offences and cooperation between states with respect to these sorts of prosecutions.

For example, Australia has implemented the provisions of the SUA Convention domestically and amended our criminal laws to include offences relating to the security of shipping. These include violence against ships flagged to another party to SUA.

Australia has also signed additional United Nations counter-terrorism instruments aimed squarely at taking enforcement action against ships. In particular, the 2005 Protocol to the SUA Convention requires Parties to take cooperative measures in relation to enforcement action taken against suspect ships. Australia is in the process of developing domestic legislation

required to implement its obligations under the Protocol and expects to ratify the Protocol in the near future.

In our Indian Ocean region, there has been wide ratification of SUA. We are committed to it at an international level. However, achieving prosecution requires us to maintain a shared approach to domestic implementation. We also need a shared commitment to extradition and prosecution. Success depends on a cooperative approach and understanding of our capabilities that is developed through fora such as this. To that end, when I speak of cooperation in maritime security prosecutions, I speak in the broadest sense, including all aspects of maritime security operations.

Some modern maritime security threats, which are also crimes, pose particular challenges to traditional legal processes. When they occur on the high seas, or overlap with national waters, we do not always have a clear process, and we may be given special international authority to operate. For example, terrorism and piracy, those characteristic threats to international shipping, come under the jurisdiction of the UN Security Council which may authorize the use of force.

However, even this international authority often lacks a clear procedure. This is a key issue which affects current operations in the Indian Ocean region. The UN Security Council authority provides a legal framework to operations, but does not set out one consistent prosecution process for those detained during counter-piracy and counter-terror operations. This still depends on the domestic courts of coastal and regional states, where different procedural rules regarding apprehension, evidence, human rights and jurisdiction result in a very complex regime. Counter Terrorism operations under Resolution 1904, for example, are governed by the domestic requirements of all 24 Coalition partners and three observer nations operating in and around the Gulf of Aden.

This legal fragmentation is not limited to the international sphere. Australia's experience of domestic maritime security enforcement has also cemented the importance of legal coordination. Previously, enforcement agencies have operated under many different statutes, which defined their powers consistently with international law. These included, for example, the *Fisheries Management Act 1997, Customs Act 1901* and *Migration Act 1958* among the 35 or so different statutes which included maritime enforcement powers. These Acts differ from one another in terms of the types of powers they contain, the form of those powers, and the procedures associated with them. Clearly, this poses difficulties for operational agencies in ensuring the accuracy of their policies and procedures for different situations.

A single *Maritime Powers Bill* for Australia was announced last year as the solution to this legal regime, this proposed Act will consolidate all maritime enforcement powers in a single

Act and this will significantly simplify and enhance our ability to effectively conduct domestic maritime security operations.

The new legal organization reflects the whole of government approach which Australian has taken in conducting enforcement operations since 2005, when Border Protection Command (then called Joint Offshore Protection Command) was established.

In concert with other government agencies and stakeholders, BPC protects Australia's national interests by generating awareness of activity in Australia's Maritime Domain and responding to mitigate, or eliminate, the risks posed by security threats. Australia's maritime domain is defined as all things relevant to the national interest on, under, associated with, or adjacent to Australia's maritime zones.

BPC is staffed by members of the Department of Defence and of the Australian Customs and Border Protection Service, along with members of other government agencies, including the Australian Fisheries Management Authority, the Department of Immigration and Citizenship, the Australian Quarantine and Inspection Service and the Australian Maritime Safety Authority. It is commanded by an RAN Officer, who is currently RADM Tim Barrett.

In its enforcement operations, BPC is able to task maritime assets from all these agencies, including the RAN's Armidale class patrol boats and the Bay class patrol boats operated by the Australian Customs and Border Protection Service. Its efforts emphasis *awareness, response* and *prevention.*

In my view, and I think as shown by the Australian domestic experience and our current international maritime security operations in the Indian Ocean, cooperation only at the point of prosecution is the least effective form of a joint approach to maritime security. It is cooperation throughout the operational spectrum, including training, detection and apprehension of suspects, together with a shared approach to information and prosecution, which ensures an effective response.

The Australian approach to multi-national cooperation is similar to our domestic cooperative strategy, and is based on three focus points.

Firstly, there is direct cooperation in enforcement operations. For instance over many years, RAN (and Customs) personnel and vessels have operated with the French Navy on fisheries enforcement in our southern ocean zones.

Secondly, we pursue regional training initiatives, especially with nations with whom we share maritime boundaries, such as Indonesia, and nations with whom we operate at sea.

Thirdly, we focus on information sharing. In a world dominated by transnational threats and organizations, it is only through a cooperative approach to information that any of us can succeed in protecting maritime security. Information in this sense can be intelligence, or when a prosecution is brought, there will be a requirement to share information which can ultimately be used as evidence to prove the commission of an offence. The two kinds of information are not always the same, and in many cases intelligence sourced information does not meet the test as evidence. For Australia and our partners in South East Asia, information sharing on people smuggling is an essential part of our regional approach.

The essence of this approach is a shared view of the range of maritime security threats we face and a consistent process to prosecute those who propagate those threats by committing offences on the high seas and in national waters. These are the current obstacles to the effective prosecution of maritime security offences.

We have a cooperative operation against terror and piracy in the Indian Ocean region. However, our respective domestic legal structures currently make a cooperative approach to detention and prosecution very complex. National experiences in domestic maritime enforcement, such as Australia's can provide useful solutions to this international quandary.

Cooperation in this does not require us to abandon the foundational principles of the law of the sea, especially freedom of navigation on the high seas. As maritime nations, we are agreed on a range of crimes which threaten maritime security, including terrorism, piracy, drug trafficking and pollution. We are also agreed on other threats, such as illegal use of resources or protected areas or activities which affect bio-security.

I am firmly convinced that it is only through cooperation at all stages that we will achieve our mutual goal of sustainable security at sea.