

## Law, Force & Diplomacy at Sea, by Ken Booth

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**LAW, FORCE & DIPLOMACY AT SEA.** By Ken Booth. Winchester, Mass. : Allen & Unwin, 1985, 231 pp.

## I. INTRODUCTION

The goal of American maritime strategy is to ensure freedom of navigation. To maintain the unhindered use of vital sea lanes, such as the Persian Gulf, United States foreign policy relies principally upon what has emerged as the quintessential symbol of gunboat diplomacy — the deployment of carrier battle groups, rather than negotiated treaties and principles of international law.

The commitment to ensure freedom of passage via gunboat diplomacy was demonstrated in the United States confrontation with Libya in the Gulf of Sidra and was intertwined in the rationale supporting the surgical air strikes against Tripoli on April 15, 1986.<sup>1</sup> The enduring nature of this commitment was reaffirmed by the Reagan administration's recent proposal to escort Kuwaiti oil tankers through the Strait of Hormuz.<sup>2</sup> Even as a reassessment of foreign policy in the Persian Gulf is certain as a result of the missile attack on the USS STARK,<sup>3</sup> gunboat diplomacy remains the paradigm of United States maritime policy.<sup>4</sup>

Attempting to share the diplomatic stage with the warship is the desire of many coastal nations in order to extend their sovereignty over adjacent seas and straits. The rise of this maritime nationalism and the recent entrenchment of a maritime strategy, based upon the unrestricted deployment of naval forces, has deepened a tension between naval mobility and maritime enclosure. With the tension apparent, Pro-

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1. See Interview with Vice President George Bush on *Meet the Press*, 2-4 (April 13, 1987) (available from Kelly Press, Inc., Washington, D.C.) (Vice President Bush explaining the rationale of the Tripoli air strike to the Arabian peninsula nations as an operation to protect their interest in keeping the sea lanes open).

2. See Henry, *Gulf Escorts Reportedly are Offered*, Baltimore Sun, Mar. 21, 1987, at A1, col. 1; see also Keller, *Kuwait to Lease Soviet Tankers; Moscow Weighing Naval Escorts*, N.Y. Times, April 15, 1987, at A1, col. 1; Broening, *Kuwait to Switch Tankers to U.S. Flags for Protection*, Baltimore Sun, May 13, 1987, at A1, col. 2.

3. See Cushman, *Iraqi Missiles Hit U.S. Navy Frigate in Persian Gulf*, N.Y. Times, May 18, 1987, at A1, col. 1; Cushman, *U.S. Defers Giving Naval Protection to Kuwaiti Ships*, N.Y. Times, May 29, 1987, at A1, col. 1 (plan to provide U.S. military cover to Kuwaiti oil tankers has been postponed to allow time for assessment of what military forces will be needed to carry out escort role).

4. See Cushman, *U.S. Widens Navy's Escort Role in Gulf War Zone Despite Attack on Ship*, N.Y. Times, May 20, 1987, at A12, col. 1; but see *supra* note 3.

fessor Ken Booth, a professor of International Politics at the University College of Wales, analyzes, in *Law, Force & Diplomacy at Sea*, the relationship between naval powers and maritime nationalism and the possible role of international law. In a thorough analysis, the author discusses the confrontation between emerging coastal states, their appendage desire for greater national control over adjacent ocean territory and their reliance upon international law, and the desire of traditional naval and economic powers to maintain the status quo of unrestricted maritime access.

What emerging coastal nations are unable to advance through the presence of gunboats, by virtue of their lacking any naval force, they assert by means of international law. The medium is law and the forum has become the United Nations Convention on the Law of the Sea. The author's focus is what effect international law will have on naval strategy and whether the reliance upon the law of sea will serve to further the interest of maritime nationalism or only serve to frustrate nationalistic expectation. Professor Booth concludes that although the law of the sea seeks to change a traditional set of assumptions and practices, and thus appears to be adverse to the interests of traditional naval powers, a more orderly system, recognizing the extended sovereignty of the coastal states, would increase the effectiveness and credibility of forward naval deployment and naval diplomacy.

## II. TRADITIONAL NAVAL STRATEGY

Naval strategy is concerned with the projection of military power and political prestige. The term "traditional naval power" was indigenous to mercantilism and is defined as those nations with an interest in deploying their warships at some distance from their own coastlines and not simply in proximate waters. The phrase "naval diplomacy" refers to the use of warships in support of foreign policy. Both principles, therefore, involve employing vessels so as to establish presence in a region, communicate intentions and to increase influence. One of the major strategic roles of naval firepower is to bring flexible, yet punitive, forces to bear in distant regions.<sup>5</sup>

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5. See, Beatty, *In Harm's Way*, ATLANTIC MONTHLY, May 1987, at 37-53. Beatty states:

The naval buildup called for by the maritime strategy makes sense not as a force to fight a conventional war with the Soviet Union but as a force for intervention in the Third World. In the unquiet wake of Vietnam, Congress would have been unlikely to authorize an intervention fleet. Congress needed the Soviet rationale. What it got was the intervention fleet . . . .

Backed by a heavy-carrier Navy, we would be free to project our power as

Naval development depends essentially upon the freedom of navigation; a traditionally permissive doctrine allowing the naval powers to further their political interests and limited only by their will and capability.<sup>6</sup> As Professor Booth states: "the doctrine of freedom of navigation" simply reflects the reality that nations have historically attempted to further their interests by whatever instruments they have at their disposal—be they military, economic, diplomatic or legal.

The assets of warships are summarized as follows: (1) the ability to perform a variety of tasks, (2) the potential to escalate and/or de-escalate upon command, (3) mobility and (4) projected symbolism. The objective of naval strategy is to control the use of the sea, to secure for four general purposes: (1) cargo and passenger transit, (2) deployment of military power for diplomatic consumption, (3) a base of operation for striking at land or sea targets, and (4) resource exploitation.

Navies are deployed to demonstrate "presence," or, termed another way, to "show the flag"<sup>7</sup> to secure the use of the sea and to be in position to prevent others from using the sea to their disadvantage. In this process of fulfilling their objective, navies have had three characteristic deployments: (1) military, (2) diplomatic and (3) policing. Each mode of action requires secured mobility.

### III. MARITIME NATIONALISM

Against this reliance upon open maritime access, coastal states have begun to assert control of the adjacent ocean areas by seeking to govern the access through straits and to coastal zones. This territorialization of the sea is based partially upon the idea that the national sovereignty over a state's land territory is simply being extended seaward in terms of rights and duties and the desire to assert dominion

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and where we saw fit. Such a Navy would give teeth to what has been called the Reagan doctrine — the U.S. effort to aid guerilla fighters against revolutionary regimes in the Third World. Off Nicaragua the fleet has already been used to scare the Sandinistas. And should Jonas Savimbi, who leads the U.S. backed guerrillas in Angola, get in a tight spot, the fleet could help him out. That's the sort of mission for which the 600-ship, 15-carrier battle group Navy is suited. But deterring the Soviets in peacetime and defeating them in war? This fleet is not the instrument for that job.

6. See McNees, *Freedom of Transit Through International Straits*, J. MAR. L. & COM. 175-211 (1975).

7. See, e.g., Apple, *Showing the Flag*, N.Y. Times, May 22, 1987, at A10, col. 5 ("Often the deployment of American troops or ships, or the provision of American supplies and advisers, are explained by officials here as with such murky phrases as 'projecting American power' or 'showing the flag.' As long as things go well, there are few objections. But when trouble strikes . . . doubts multiply.").

and control over the economic resources this annexed territory may bring. Balancing the forces of continuity and change, the process of extending the jurisdictional limit represents a challenge to the mobility which has traditionally been the foundation of naval deployment.

The basic problem for naval powers is created by the confrontation between maritime nationalism and the need for navies to rely upon access and mobility. Naval powers fear that the process of territorialism will give unreliable coastal nations increased bargaining power and influence over naval deployment and mobility.<sup>8</sup> If coastal states come to control the passage of foreign warships, naval mobility, according to the author, will probably have to be negotiated. Coastal states may threaten passage by linking naval access to some reciprocal agreement on a particular foreign policy issue. Perhaps, as the author speculates, passage would be dependent upon prior notification schemes for warship passage and aircraft overflight or a complete ban on the passage of nuclear powered or armed vessels or ammunition ships. These restrictions upon navigation are seen as threats because any notification schemes would increase the ship's vulnerability.

#### IV. DIPLOMATIC OPPORTUNITY

According to Professor Booth, naval powers have viewed these restrictions solely in terms of a challenge and have not yielded to any understanding of the opportunities presented by this political modernization at sea. Booth views territorialization as providing new opportunities for the enhancement of the foreign policy role of warships. Revival of a more selective and salient form of naval diplomacy would encourage calculation before the deployment of task forces. As a consequence, there would be a premium on naval deployment and the decision to interdict a warship would seem a more credible act.

#### V. INTERNATIONAL LAW

On April 30, 1982, the United Nations Law of the Sea Conference approved, over the objection of the United States, an international agreement that defined the limits of territorial waters and coastal economic zones.<sup>9</sup> One author has explained the rationale of the treaty's

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8. See Burns, *Canada May Add 10 Nuclear Subs to Arctic Patrol*, N.Y. Times, May 3, 1987, at A1, col. 4 (U.S. reluctant to recognize Canadian claim over Northwest passage for fear that it would set a precedent for other countries and that a future Canadian Government might bar passage to U.S. Navy).

9. For a solid analysis of the treaty's other provisions and issues, see Clingan, *Freedom of Navigation in a Post-UNCLOS III Environment*, 46 L. AND CONTEMP.

rejection by the United States as being based upon a perceived threat to American economic hegemony:

[T]he treaty was flawed because it created adverse precedents for other negotiations on economic issues between developed and developing nations — the North-South dialogue — subjugated American industry to an international regulatory and management system, and was incompatible with President Reagan's apparent desire to return the United States to a period of power and influence in world affairs in which its policies would simply be enunciated rather than sold to others through a process of diplomacy and negotiation.<sup>10</sup>

In spite of the international consensus approving the agreement on the law of the sea, the author states that more substantive changes regarding maritime affairs will come about only when traditional naval powers change the way they view naval deployment and freedom of navigation. Implicit in the author's residual analysis is the possibility of the re-emergence of the international lawyer-statesman as playing an influential role in establishing legal restraints and shaping the way nations use naval deployments to exert diplomatic influence. These legal restraints could shape the charter of maritime strategy and not simply the attitudes of policymakers.

## VI. CONCLUSION

Professor Booth concludes that economic, political and strategic developments over the long-term appear to be working against large peacetime deployments of surface warships. As a consequence, the attitudes are beginning to change in the international community that will make way for substantive changes in maritime strategy, forward naval deployment and the use of the sea for military-diplomatic purposes. For the moment, according to the author, naval strategy will change in response to changes in technology, international affairs and domestic political pressures (*i.e.*, pressures to balance the budget) rather than as a

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PROBS. 108-23 (1983).

10. Ratiner, *The Law of the Sea: A Crossroads for American Foreign Policy*, 60 FOREIGN AFFAIRS 1006-21 (1982). Another conservative commentator has characterized the decision in a similar vein: "The Law of the Sea Treaty [was designed] to promote a new world order - a form of global collectivism. . . that seeks ultimately the redistribution of the world's wealth through a complex system of manipulative central economic planning and bureaucratic coercion." Malone, *Who Needs the Sea Treaty*, FOREIGN POLICY, Spring 1984, at 44-63.

result of dominance of international law upon maritime affairs. Professor Booth summarizes that "if . . . the long-term effect of the [recognition of international law as a real force in shaping maritime strategy] will be to change the way nations regard the sea as a resource and object of politics, the navies will one day have to face the prospect of major adjustments." The author further suggests that, while there is no prospect of a revival of the sort of gunboat diplomacy which characterized the age of imperialism, warships will remain instruments of diplomacy (and warfare) and, therefore, will retain their major strategic roles and will continue to represent "badges of sovereignty."

Professor Booth's analysis does, however, have two shortcomings. First the author fails to discuss the rise of domestic legislation, in particular, the War Powers Resolution<sup>11</sup> and its effect on naval deployment and use. There is also no comment regarding analysis of the effect on naval deployment of the "New Zealand" position,<sup>12</sup> and its refusal to allow ports of call to nuclear armed warships, and the possible expansion of this policy to Japan,<sup>13</sup> the Philippines, and other strategic ports.

## VII. COMMENT

The challenge for those pivoting their stance on the development of a uniform principle of freedom of navigation is to convince naval powers that international law is a viable diplomatic asset to any use of naval power. As for the possible substantive character change in naval diplomacy, whether principles of law can ever wrestle control of the direction of American maritime strategy away from the economics of an entire shipbuilding industry that depends upon a 600 ship navy, appears doubtful.<sup>14</sup> The continued naval buildup and the dependence upon carrier battle groups as instruments of diplomatic action illustrate the domination of the American maritime strategy by military

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11. 50 U.S.C. §§ 1541-48 (1978). See *Crockett v. Regan*, 558 F. Supp. 893, 899 (D.D.C. 1982), *aff'd* 720 F.2d 1355 (1983), *cert. denied*, 104 S.Ct. 3533 (1984) (discussing Congress' motives for enacting the War Powers Resolution).

12. See Lange, *New Zealand's Security Policy*, FOREIGN AFFAIRS 1009-19, (1985) (banning port access to United States Navy ship carrying nuclear weapons).

13. *But see* Hollaran, *Sign of Secret U.S.-Japan Pact Found*, N.Y. Times, Apr. 7, 1987, at A3, col. 1 (A secret U.S. Japan agreement permitting the U.S. to take nuclear arms into Japan is explicitly referred to in a document uncovered by Japanese Communist Party members).

14. See Wilson, *600-Ship Navy Sailing Towards Rough Fiscal Seas*, Washington Post, March 16, 1987, at A1, col. 1; *Weinberger to Ask Funds to Build Two More Nuclear-Powered Carriers*, N.Y. Times, Dec. 24, 1986, at D16, col. 5.

considerations.<sup>15</sup>

From a pragmatic orientation, the reliance upon carrier battle groups may simply reflect the utility of diplomacy upon fanatical nation-states such as Iran and Libya. Perhaps gunboat diplomacy is destined to survive as an antidote to a perceived sense of American diplomatic inadequacy. Whatever the basis of the underlying rationale, one overriding principle seems clear; the deployment of warships is no longer simply a tactical or a military issue, but has emerged as a political question.

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15. See Tranor, *Role of Officers Growing in NSC*, N.Y. Times, Dec. 15, 1986, at A13, col. 1.

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