

RETHINKING SOVEREIGNTY AND SECURITY AT THE MARITIME FRONTIER

PIRATES, PROXIES,
PASSWORDS AND PIPELINES

CTPSR Maritime Security Programme Special Report



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Research Centre
Trust, Peace and
Social Relations



Centre for Trust, Peace and Social Relations (CTPSR) –
Coventry University
Maritime Security Programme (MSP)

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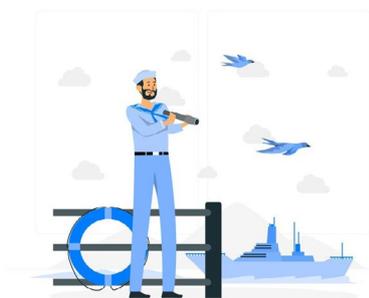
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Executive Summary

The *Rethinking Sovereignty at the Radical Frontier: Pirates, Proxies and Post-state Philosophies* conference organised by CTPSR's Dr Adam J. Fenton and Dr Ali Jones under the STRAITSECURITY: Hybrid threats to shipping H2020 Marie-Curie project with additional funding from PeaceRep (Dr Jan Pospisil) was held at the Coventry University Technocentre on 30-31 March 2023. With a program of over 20 speakers from 15 different countries it was a truly international hybrid conference highlighting a range of topics from maritime cybersecurity to anti-fascism.



Maritime Security was a strong theme with two panels and five speakers devoted to “marsec”. Joseph Davies, a PhD researcher at CTPSR, spoke about China’s “dark fleets” of fishing vessels in the South China Sea – estimated to be in the region of 17,000 vessels – “committing state-sanctioned, mass-scale, trans-boundary illegal, unreported and unregulated (IUU) fishing”. Dr Robert McCabe outlined the “invisible and silent” subsea infrastructure of pipelines and cables – an “anarchic domain traditionally outside of legislative scope” – that is “always out of sight, but in recent times, seldom out of mind”. The sabotage of Nordstream pipelines in October 2022 has brought into stark focus the need to address security concerns – both in policy and practice – around subsea infrastructure. Rounding out the panel chaired by Dr Ioannis Chapsos, Dr Adam Fenton presented on the cybersecurity vulnerabilities of modern large semi-automated container and tanker ships – “floating networks” of linked devices and systems – with a focus on the congested “chokepoint” of the Malacca Strait, an area that continues to be subject to pirate activity.

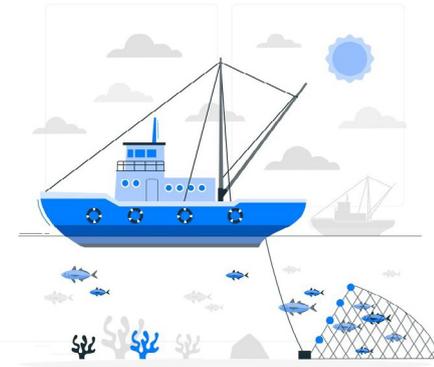


Bringing an Africa perspective to the conference, Dr Carina Bruwer, of the Institute of Security Studies, South Africa, presented her research titled *Stateless enterprises: when pirates, traffickers and States take to the sea* examining the “global illicit economy” driven by pirates and traffickers operating “at sea under the blanket of statelessness”. Continuing the Africa theme, Jacqueline Nakaiza spoke on the security situation in Somalia which continues to be a driving factor in terrorism, TOC and instability in the region. Finally, Dr Tamlyn Monson discussed the securitization of irregular maritime arrivals in the United Kingdom by the current Conservative government.

The full program, bios and abstracts can be found at:
<https://bit.ly/CTPSR-Rethinking-Sovereignty>



With an introduction from the Head of CTPSR's Maritime Security Research Programme, Dr Ioannis Chapsos, this report brings together six short articles based on the presentations outlined above. To provide context, Joseph Davies sets the scene with an explainer on the United Nations Convention for the Law of the Seas (UNCLOS) the so-called "Constitution of the Oceans" which is the basis for international law with regard to territorial boundaries and international maritime order.



In summary, the report highlights the complexity of governing and securing the maritime space. Maritime threats increasingly cross borders and affect multiple states and actors. Land and sea are interlinked; coastal state responsibilities extend offshore. Threats in international waters also require collective action. Despite continuing primacy of sovereignty, the papers emphasize the need for information sharing, joint efforts, and international cooperation to address the complex, interconnected nature of modern maritime security challenges.



We commend this report to you.

If you have any questions about the content in this report, want to know about the Maritime Security team's research, or wish to discuss training and consultancy services, please email: adam.fenton@coventry.ac.uk

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Maritime Security and Sovereignty



Dr Ioannis Chapsos

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Introduction

The upsurge of maritime piracy and armed robbery off the coast of Somalia over the last decade (Ama Osei-Tutu, 2011; Bahadur, 2011; Murphy, 2011), made the headlines and grabbed international attention triggering a broad discussion within the scholarly debate and policy practice, focused on contemporary maritime security.

What was hitherto understood as a mainly state-centric, traditional challenge, defined by sea power, territorial disputes, and United Nations (UN) imposed sanctions such as naval blockades and evacuations of civilians from conflict zones by sea (Klare, 1975; Kraska, 2009; Rose, 2007; Till, 2004), had to be re-approached and redefined, under the aegis and urge of the UN (UN General Assembly, 2008). Challenges such as for example piracy, IUU fishing, trafficking and smuggling crimes by sea, maritime terrorism, and deliberate damage to the marine environment, although they were nothing new, they were placed at the forefront of the contemporary maritime security agenda and signified a shift to a more non-traditional approach, examined through a human-centric and developmental lens (Bueger, 2015; Chapsos, 2016; McNicholas, 2008).

In this framework, and as part of our research, our primary aim isn't the actual

distinction between traditional and non-traditional security challenges and their categorisation as such. What is of greater interest is the way the two interact with each other to form physical, cyber or hybrid threats in the contemporary maritime security environment.

Furthermore, several concepts have been deployed within the contemporary maritime security debate, such as the blue economy, irregular migration by sea and its securitisation, climate change resilience, etc. (Barnett, 2010; Boswell, 2022; Rahman, 2009; Voyer et al., 2018). Yet, the concept of sovereignty has rarely been discussed in maritime security discourses and this is exactly the gap we aim to address with this report.

How do these contemporary challenges manifest themselves within different maritime zones and sovereign states' jurisdictions and how do sovereign states

respond? How does sovereignty and the states' rights and obligations that it entails affect these particular challenges? Are there any crossovers and interactions between sovereignty and cybersecurity in the maritime domain?

The papers that follow and form the main body of this report, were presented at a conference that took place in Coventry University, UK, in March 2023, titled *'Rethinking Sovereignty at the Radical Frontier: Pirates, Proxies and Post-State Philosophies'*, with the aim of exploring these questions.

After an introduction to sovereignty in the maritime domain, the first paper by Adam Fenton looks into maritime cybersecurity in SE Asia's Malacca Straits, where three countries (Malaysia, Singapore and Indonesia) share the responsibilities for providing security. In this environment where sovereignty remains all but clear, he identifies how crime perpetrators, vulnerabilities and modes of attack have shifted – largely into the digital sphere – with the advent of widespread cyberattacks, combined with conventional security threats. Robert McCabe follows then with an examination of how improving technological capacity could help secure Ireland's underwater infrastructure in the light of the sabotage of the Nord Stream pipelines in October 2022. Then, Carina Bruwer examined state responses to piracy and drug trafficking at sea, to better understand how sovereignty interacts with these crimes in the maritime domain. Joseph Davies follows with his paper on China's state-sponsored illegal fishing where he examines how the so-called 'dark fleets' operate as non-state actors and challenge states' sovereignty, hence highlighting the significance of international cooperation,

information and intelligence sharing and maritime domain awareness to address contemporary maritime security challenges. Jacqueline Nakaiza then gives a historical overview of Somali piracy and examines how foreign intervention can contribute towards safeguarding international trade. Finally, Tamlyn Monson examines how irregular migrant groups are increasingly represented as a subversive threat to national sovereignty, by analysing how irregular migration in the UK has recently been represented as a powerful external threat to security and governance.

This fascinating coverage of geographical regions and maritime security challenges is of course underpinned by and examined through the lens of sovereignty, as was the aim of the research in the first place. The rich, constructive and thought-provoking analysis that follows is a testament to the breadth and complexity of contemporary maritime security per se, and the extent to which such concepts, threats and challenges are interconnected and interrelated.

It also highlights in the most explicit way, that although sovereignty is the primary concern and underpinning concept to examine states' responses to these threats, the manifestation of these contemporary maritime security challenges affects many more state and non-state actors, far beyond the state under examination. For example, Ireland's potential failure to meet their sovereign responsibility to protect their underwater communication sea cables, will affect crucial transatlantic communications between the US, the UK and Europe, including financial transactions, business operations, and everyday internet access. Cyber attacks and/ or hybrid threats in the Malacca strait do not affect only the three states that share the patrolling responsibility and security provision in the straits, but all the international shipping traffic that

transits through this strategic choke point on a daily basis. Irregular migrant groups cross numerous sovereign states' territories before reaching the UK, including sovereign maritime zones. IUU fishing, piracy and trafficking by sea have

strong links to transnational organised crime and by no means affect a single sovereign country, while the implications of insurgency and terrorism spilling over in adjacent regional countries are well documented across the globe.

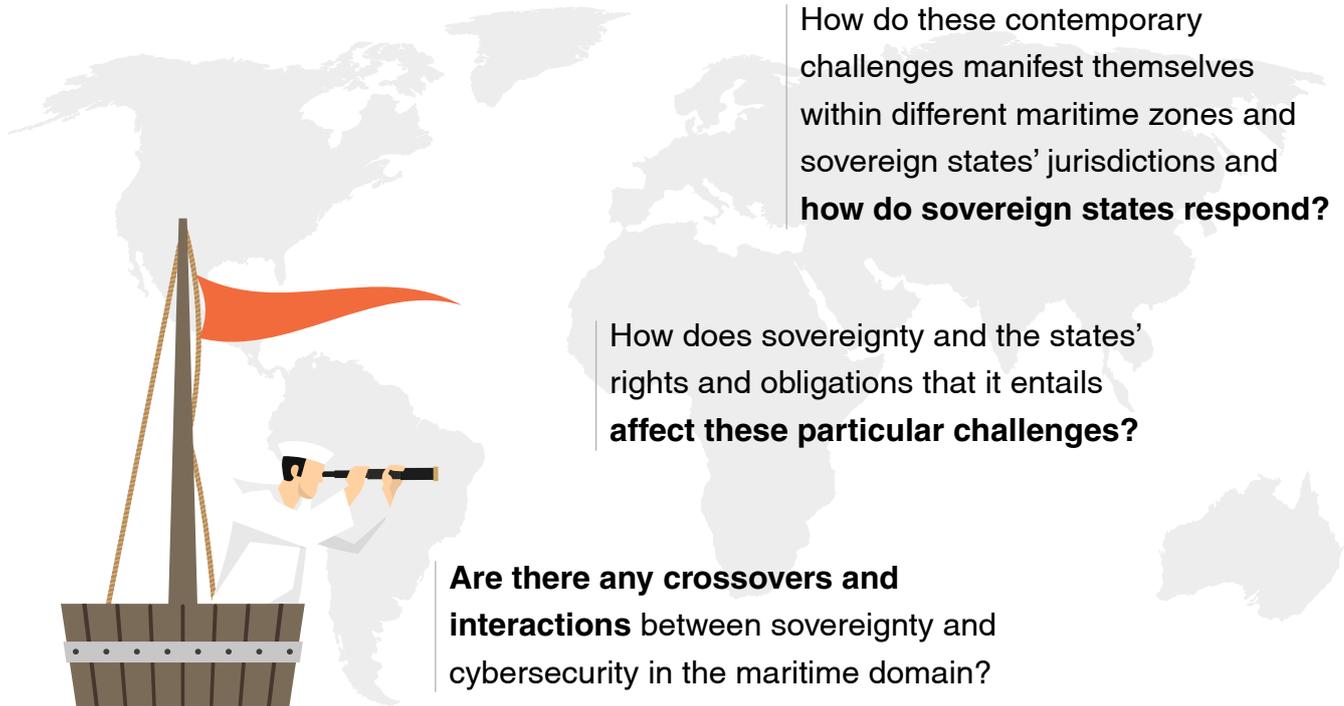
It's the right time for the international community to minimise sea blindness and acknowledge the significance of the maritime domain in all social, economic and security affairs through efficient maritime security strategies

BUEGER & EDMUNDS, 2017; MUGRIDGE, 2009



This report also intends to act as a reminder of the inseparable land-sea nexus and highlight more emphatically than ever that coastal states' sovereign territory doesn't end at the coastline but extends further offshore, up to the defined limits of their territorial waters; and coastal states maintain policing responsibilities further out at sea, to include its exclusive economic zones. But it's still crystal clear that these crimes also occur even beyond these maritime zones, in the high seas, in the oceans where no states have sovereign rights, but the need for sharing policing responsibilities of the global commons is a major requirement if we want to keep order at sea. It's the right time for the international community to minimise sea blindness and acknowledge

the significance of the maritime domain in all social, economic and security affairs through efficient maritime security strategies (Bueger & Edmunds, 2017; Mugridge, 2009). In addition, and although sovereignty remains unchallenged and fully respected in the international community, the contemporary maritime security environment is in dire need of information sharing, international cooperation, and joint effort to address these challenges.



How do these contemporary challenges manifest themselves within different maritime zones and sovereign states' jurisdictions and **how do sovereign states respond?**

How does sovereignty and the states' rights and obligations that it entails **affect these particular challenges?**

Are there any crossovers and interactions between sovereignty and cybersecurity in the maritime domain?

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Sovereignty in the Maritime Domain



Joseph Davies

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Introduction

Covering approximately **70%** of the Earth's surface, bordering **151 countries** and facilitating over **80%** of global trade, the world's oceans are a truly vast and inherently international space. It is a domain in which the notion of sovereignty is not as apparent or natural as it is on land where rivers, mountains, linguistic and ethnic communities, and the history of ownership provide much clearer guidance as to who controls and adjudicates what.

Often referred to as 'the global commons', the seas constitute a critically important space in which stakeholders at all levels pursue economic prosperity, natural resources, and security. These stakeholders range from nation states to commercial entities, non-governmental organisations (NGOs), coastal communities, seafarers, and more. However, how we have subsequently bordered and delineated the oceans has created a regime that has inevitably given rise to competition in peoples' acquisition of these vital resources and conditions. This competition drives certain actors across multiple levels to pursue their objectives through means that have the potential to harm, disrupt and challenge the stability of the maritime domain. For instance, criminals illegally exploit the relative undetectability afforded by the vastness of the ocean to plunder and pillage its wealth of trade and natural resources for financial gain through transnational organised crime, piracy, and illegal, unreported, and unregulated (IUU)

fishing. Furthermore, terrorists target the critical infrastructure that supports global supply chains, data exchange, and transport routes for political objectives. At the highest level, nation states pursue geostrategic advantages and leverage through marine territorial disputes, grey zone tactics, legal loopholes, and in some extreme cases through acts of state piracy. How we border and delineate the seas and oceans is therefore of significant importance to understanding how to better foster and promote maritime security at all levels and, in doing so, to uphold international law.

The purpose of this paper is to outline how sovereignty has been and is applied to the maritime domain, how it is demarcated, divided, and contested. This lays the foundation for understanding the following papers in these conference proceedings which each deal with a specific area of interest and concern for maritime sovereignty and, ultimately, maritime security.

What is Sovereignty?

Before determining how sovereignty is applied at sea, it must first be understood as a concept. At its core, sovereignty concerns the territorial integrity of a state, the supremacy of an authority within that territorial boundary, and that state's right to non-interference from other states or entities (Osiander, 2001, p.261; SEP, 2020, Strayer, 1970 p.58). The notion of sovereignty is broadly held to have emerged from the Westphalia Peace Treaties of 1648 at a time when technological and societal advances began to allow central governments to expand their remit and control and to define a territorial space in clearer political, economic, and social terms (Osiander, 2001, p.281). European powers were thus beginning to experience and understand a new, more complex relationship between governance and space, both domestically and with their foreign counterparts. These rules and principles surrounding unequivocal jurisdiction over a territory and the agreement to not intervene in other states' affairs that were born from these treaties subsequently spread worldwide and continue to form the basis of the notion of state sovereignty (Brown, 1992, p.74).

To a significant extent, sovereignty presents a conceptual paradox. On the one hand, sovereignty is a distinctly internal process that concerns domestic jurisdiction, as well as political, economic, and social cohesion. The values and objectives of a sovereign state are then carried beyond its borders to the international stage to serve the interests of its citizens. Indeed, territorial sovereignty itself is the key that legitimises a state to act and engage in international affairs, it is the proof of its belonging (Bierstecker and Weber, 1996, cited in de Nevers, 2015,

p.600). On the other hand, however, it is the international community's recognition of a state that forms the central pillar of its own derived sovereignty. It is not a state's military, population or tax revenue that comes first in the list of what makes it sovereign, it is rather the sovereignty that it is accorded by the international community (Krasner, 1988, p.89). Irrespective of which came first in this 'chicken and egg' type scenario, what remains is that the contemporary international community is entirely defined by the notion of territorial sovereignty as it is built upon the interaction, engagement, and mutual recognition of states.

“It is a feature of authority all across the globe. Even supranational and international institutions like the European Union and the United Nations are composed of states whose membership is in turn defined territorially. This universality of form is distinctive of modernity and underlines sovereignty’s connection with modernity (SEP, 2020).”

That is to say, it is the territorial sovereignty of the member states and signatories to international organisations and supranational bodies that lends legitimacy to the laws, decrees and conventions that they pass (Franck, 1990, p.39). Legitimacy in the international order therefore exists from the essence of state sovereignty.

Finally, a fundamental component of sovereignty at both the domestic and international level is that it grants a monopoly over the use of legitimate

force (Weber et al., 1978, p.54). Over the course of the 20th and 21st centuries, the international community has introduced laws and conventions that govern key areas regarding force and violence, namely human rights and warfare, however it remains that the recognised sovereign state possesses sole legitimacy in these actions, lawful and sanctioned or otherwise.

In conclusion, sovereignty defines the modern state and forms the blocks that build the international order. As such it is the very basis of how we understand governance, political geography, authority, and jurisdictional control. It must be noted that there are numerous disputed aspects of sovereignty, and it often manifests itself in ways that are more ambiguous than the rather clear-cut, undiluted theorised

notions of sovereignty set forth in this section. However, the principles remain consistently relevant and foundational. As Krasner asserts:

“The sovereign state is the only universally recognised way of organising political life in the contemporary international system. It is now difficult to even conceive of alternatives” (1988, p.90).

It is with this understanding that these conference proceedings progress in their analyses of issues pertaining to contestations of sovereignty in the maritime domain, and the resulting challenges to maritime security.

Sovereignty at Sea

With the key defining features and components of sovereignty outlined, the question remains as to how exactly these are applied in the maritime context? However, a complicating factor in answering this question is that sovereignty is an entirely land-centric concept. On land, the physical defining features of a territory as well as the adjacent political, social and economic delineations are relatively tangible and visible. The maritime domain, however, is an entirely different space in nature, vast and transnational. The Spilhaus projection of the world map (Figure 1) illustrates this perfectly by inverting the focus of the map from the landmass to the oceans. When viewed like this, it is possible to comprehend just how centric the ocean is to the land-based order, rather than peripheral.

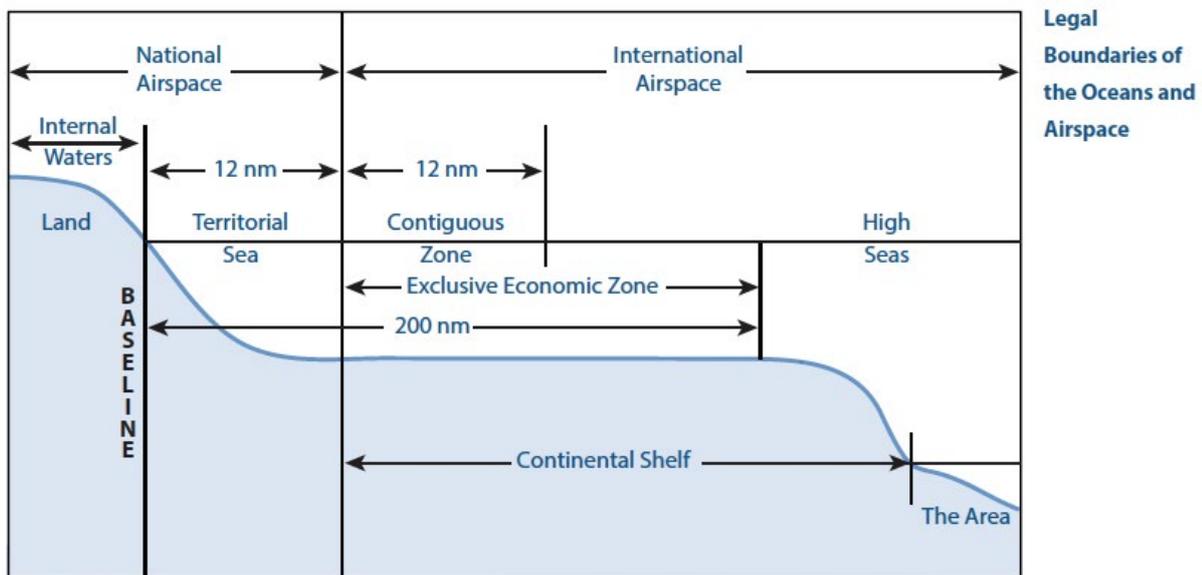


Figure 1: The Spilhaus Projection (Spilhaus, 1991).

In addition to it being a vast, transnational, kinetic space, it is also disproportionately more multi-stakeholder and multi-actor than land. This complicates the notion of sovereignty, which presumes supreme authority over a territory. Indeed, the ocean is not a space over which any supreme jurisdiction or control can be asserted or maintained.

Despite these complications, sovereign control and territorial-jurisdictional

delineations have been applied to the maritime space as an extension of the land-based system of sovereign states. The primary means by which this extension has been made is through the 1982 United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS provides for territorialising the sea by attributing different degrees of sovereign control that diminish further and further from the shoreline. These are depicted in Figure 2.



nm – nautical mile

Figure 2: Maritime Zones under UNCLOS (Fletcher, n.d.)

Firstly, the territorial sea extends to up to 12 nautical miles (nm) from the baseline. Here, the coastal states have absolute sovereignty over the sea at the surface, on the seabed, subsoil and in the airspace, however they may not prohibit the innocent passage of foreign vessels (UNCLOS, 1982, pp.27-30). Secondly, up to 24nm from the baseline is the contiguous zone, in which the coastal state has reduced sovereignty but retains jurisdiction over matters pertaining to immigration, customs, fiscal, and sanitary protocols as defined by their domestic policy (UNCLOS, 1982, p.35). Thirdly, a coastal state can claim an Exclusive Economic Zone up to 200nm from its baseline within which it has sovereign resource rights for the waters, the seabed, and subsoil, namely those to explore, exploit, conserve and manage natural resources – both alive and inanimate – and

to produce energy from tides, currents, and wind (UNCLOS, 1982, pp.43-44). Beyond the EEZ lies the high seas which are beyond any national jurisdiction and are ‘the common heritage of all mankind’ and are freely open for navigation, overflight, and the laying of subsea cables (UNCLOS, 1982, p.70). These provisions therefore lay the foundations for how national sovereignty over the maritime space is delineated and allocated in a manner that is considered to be fair and proportional. Should these zones, or water columns, overlap with those of another coastal state, the boundary is taken at the median distance between the two baselines (UNCLOS, 1982, p.30). That is not to say that there are not conflicts and disputes, but those occur within the framework provided for under UNCLOS and are the result of differing interpretations of these rules.

**These provisions therefore lay the foundations for
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In addition to the demarcation of sovereignty within static columns of water, sovereignty at sea is also determined and exercised by vessels. As the spaces in which humans are actually found at sea, vessels are subjects of sovereign jurisdiction. However, the supreme authority over these vessels depends on their location and their interactions as they transit across these different regulatory zones. The default jurisdiction over a vessel is that of the flag state. Under UNCLOS, ships bear the nationality of the state with whom they are registered and under whose flag they sail (UNCLOS, 1982, p.58). The flag state holds exclusive jurisdiction over all legal, technical, administrative, compliance, and social matters onboard the vessel unless provided for elsewhere in the convention and, when on the high seas, only a warship of the same nationality may intercept them, unless they are committing an international crime such as piracy or slavery (UNCLOS, 1982, pp.58-63). Although vessels have the right to conduct innocent passage in any territorial waters, the sovereignty of the flag state is exceeded by that of a coastal state if the vessel is conducting activities that are 'prejudicial to the peace, good order, or security of the coastal state' within its territorial seas, extending to matters relating to customs, fiscal, immigration or sanitary laws in the contiguous zone (UNCLOS, 1982, p.31). Lastly, the regime of sovereignty once again changes under the jurisdiction afforded to the port state. In principle, the port state is the same as the coastal state, however the latter is used in reference to the sovereign jurisdiction extending out from the baseline, whereas

the former refers to the powers that the state is afforded when a vessel is voluntarily within the boundaries of one of its ports or off-shore terminals (UNCLOS, 1982, p.110). According to UNCLOS, a port state may undertake investigations on a foreign flagged vessel within its port that is suspected on reasonable grounds to have violated international law or the territorial law of the coastal state within its zones of jurisdiction (UNCLOS, 1982, p.110). Indeed, a port state's jurisdiction over foreign flagged commercial vessels is well established in international law, however the same does not apply to non-commercial, governmental vessels. These vessels are required to comply with the coastal state's laws, as well as international law, but they are immune from inspection, arrest and seizure by authorities that aren't from their flag state (NOAA, n.d.; UNCLOS, 1982, p.35, p.59, p.116). The make-up of vessels is then further complicated by the mismatched nationalities of the ship's ownership, its charterer, and the crews, which are often mixed-nationality. Nevertheless, these are all secondary to the structure of jurisdictions outlined above.

These ideas of ownership that have been applied to both physical water columns, as well as the vessels that traverse them, therefore form the notion of sovereignty at sea. They show how states apply their jurisdiction to varying degrees in the maritime space, and equally recognise the spaces that are beyond ownership and claim. This both closely resembles the notion of land-based sovereignty explored above and it recognises the uniquely transnational and global nature of the seas and oceans.



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Conclusion

Overall, this preliminary paper of these conference proceedings has sought to introduce the unique and complex characteristics of the maritime domain which render it an inherently challenging space to regulate and govern.

By first exploring the concepts behind our contemporary understanding of sovereignty, this paper was able to then discuss how these land-centric norms have been extended out into the sea through international conventions. Indeed, the individual territorial sovereignty of the participating states is itself what lends legitimacy to the internationally recognised Convention on the Law of the Sea (UNCLOS). As such, this has demonstrated how exactly the sea both is and, in many ways, is not a place where sovereignty can be applied. The following papers each explore challenges whose complexities and nuances are themselves grounded in the complicated nature of sovereignty at sea.

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Maritime Cybersecurity in the Straits of Malacca and Singapore:

Protecting the Global Maritime Transportation System From Catastrophic Hybrid Attack¹



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Introduction

Maritime cybersecurity is beginning to receive the serious attention it deserves from key stakeholders including regulators, industry and academia.

The Maritime Transportation System Under Threat

The complex “system of systems” (Kessler & Shepard, 2022) that comprises the global Maritime Transportation System (MTS) is critical to the smooth running of global trade and commerce. It is, in the words of the UN Conference on Trade and Development (UNCTAD), “the backbone of international trade and the global economy” (UNCTAD, 2021). “Around 90% of traded goods are carried over the waves” (OECD, 2023). Take a moment to think about that – nine out of ten of the objects in your home were brought to you by ship. If the MTS suffered a catastrophic breakdown, nine out of ten traded goods could become unavailable or scarce, potentially resulting in severe economic, political and social chaos. Key stakeholders are now beginning to understand the MTS’s growing dependence on complex

digital and automated systems (Höyhtyä, Huusko, Kiviranta, Solberg, & Rokka, 2017; Tam & Jones, 2018; Yağdereli, Gemci, & Aktaş, 2015), and the vulnerabilities of those systems to malicious cyber-physical interference capable of causing a catastrophic collision or simultaneous cascading disruption to fleets of ships, or a major port. It is the kind of risk that is beginning to garner serious attention from government, the maritime sector broadly, international bodies like the IMO, and importantly the insurance sector that is being called upon to underwrite the risk.

The drivers of greater efficiency, decarbonisation, reduced costs, and improved safety, seek technological solutions. In the words of UNCTAD: “beyond cleaner fuels, the industry needs

¹ This project has received funding from the European Union’s Horizon 2020 research and innovation programme under the Marie Skłodowska-Curie grant agreement No 101029232

to move faster towards digital solutions like AI and blockchain to improve efficiency as well as sustainability” (UNCTAD, 2021). Enormous investment is being poured into developing autonomous ships (Askari & Hossain, 2022; Fenton & Chapsos, 2023; L3HARRIS, 2021; MSubs, 2022; UKRN, 2021), and other ways AI can be applied to the MTS (Palmejar & Chubb, 2023; Sivori & Brunton, 2023); such as improved ship design, streamlining work processes, automated monitoring of critical systems

“beyond cleaner fuels, the industry needs to move faster towards digital solutions like AI and blockchain to improve efficiency as well as sustainability”

like engines, ballast and navigation, and optimised voyage planning to name a few.

While efficiency, situational awareness, even safety can be enhanced through automation, the reliance on networks of sensor, communication, and IoT devices is bringing about

a convergence of Information Technology (IT) and Operational Technology (OT)². In the words of leading UK researchers “this convergence can provide useful monitoring and fine-grained control, sometimes even remotely, but also increases the possibility a cyber-attack could have physical consequences” (Tam et al., 2022).

Kinetic impacts on a ship’s OT have been demonstrated in the laboratory proving a capability to alter the rudder angle and engines. Using a known Common Vulnerability and Exposure (CVE) and a firmware update attack on a Programmable Logic Controller (PLC) the malicious firmware is able to use geo-fencing to define the entry coordinates to a port and begin to manipulate NMEA³ data. A number of simulated studies have attempted to



estimate the potential economic impacts of the shutdown of a major port or strait, such as Seville or the Straits of Malacca and Singapore (the SOMS) (Qu & Meng, 2012; Tam, Chang, Hopcraft, Moara-Nkwe, & Jones, 2023). A real-world demonstration of the enormous knock-on effects and economic costs from a blockage of a major chokepoint came with the grounding of the giant container ship *M/V Ever Given* in 2021 (Jain, 2021). While some have speculated that the *Ever Given* grounding could have been due to a cyber-attack (Weiss, 2021) the official report concluded that the root cause of the incident was “loss of maneuverability of the ship” due to “wind speed, wind direction, squat, bank suction” and communication difficulties between the two pilots and the master and bridge crew (PMA, 2023). Regardless of the cause, losses from the grounding were estimated at \$400m (£290m) per hour or \$9.6bn (£7bn) in trade and goods per day (Jain, 2021). In comparison to the Suez canal which has around 50 ships transiting each day, the SOMS has around 300 ships per day which would make a blockage potentially six times worse by volume.

As the *Ever Given* case also illustrates, even *without* intentional external interference such as a cyberattack, confusion and miscommunication on the bridge can lead to

2 Operational Technology or OT converts digital packets of information into real-world, kinetic effects such as digital instructions to hydraulic steering gear to shift the angle of a rudder, for example.

3 The National Marine Electronics Association (NMEA) NMEA 0183 and NMEA 2000 are standards for electronic communication between devices in ships. NMEA allows equipment to exchange information over a single communication network allowing the integration of multiple devices including navigation, sensors, engine monitoring and others.

Assessing Regional Terrorist Threats to Shipping

catastrophic results. It can potentially take very little interference – a spoofed AIS track, a false radar signal, false or disappearing GPS positions of surrounding vessels or ATONs⁴ – to cause a level of confusion and miscommunication sufficient to cause an incident. A cascading cyber-attack that simultaneously bluescreens multiple ships and overwhelms the ability of Coastguards and other responders to manage a response, is the nightmare scenario for governments, industry and the insurance companies unable to underwrite that level of risk and loss.

Taking account of the cyber capabilities of malicious actors in and around the SOMS, how likely is it that they could conduct such an attack? Interviews indicate that Indonesian terrorist groups for example – the country with the most active terror networks and cells in the SOMS littoral states – have some level of skill in using online tools for recruitment and financing, however, are unlikely to have the necessary knowledge or background in conducting attacks on the maritime sector. Whereas, “the maritime terrorism threat is largely a Southern Philippines phenomenon” and proven links exist between regional groups in Philippines, and the SOMS littorals (KR, 2023). Indonesian terrorist groups Jemaah Islamiyah (JI), Jemaah Anshorut Daulah (JAD) and others have targeted the maritime domain in the past.

In 2005, JI planned a USS Cole-style attack on shipping in the Sembawang region of the Johor strait separating Singapore from Malaysia in a “strategic kill zone where...a warship would not have room to avoid a

collision with an explosive-filled suicide boat” (Farrell, 2007).

“ JI planned an attack in the strategic kill zone where...a warship would not have room to avoid a collision with an explosive-filled suicide boat”.

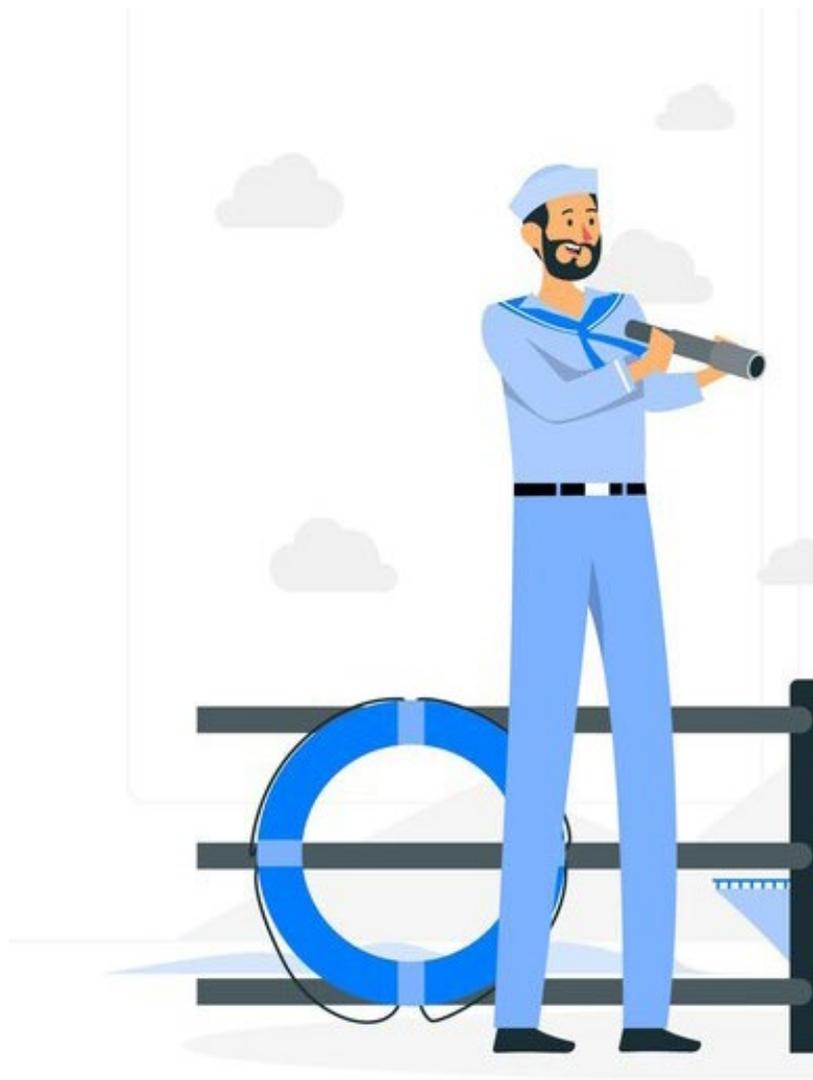
An advanced plot in August 2016 by an Indonesian group linked to ISIS, *Katibah Gonggong Rebus* (KGR) led by Gigih Rahmat Dewa planned to shoot a rocket from the Indonesian island of Batam, across the Singapore Strait to strike the landmark Marina Bay Sands (MBS) resort (Ramakrishna, 2017). One of Bahrn Naim’s protégés, Dodi Suridi, “had been able—based on information gleaned from YouTube—to build and successfully test-fire a makeshift rocket launcher employing a plastic tube, potassium nitrate extracted from fertilizer, and other substances” (Ramakrishna, 2017). In February 2004, the Philippines-based Abu Sayyaf Group (ASG) committed its most lethal attack, a striking example of maritime terrorism, the attack on *SuperFerry 14* in Manila Harbour which killed 116 and wounded many others. The attack was far more lethal than the maritime terrorist attack on *USS Cole* in 2000, which killed 17 US sailors and severely damaged the ship; and the 2002 attack on the *M/V Limburg*, a tanker chartered to Malaysian state-petroleum agency, Petronas, which “blew a gaping hole in the side of the tanker” (Henley & Stewart, 2002) off the coast

4 Aids to Navigation (ATONs) such as buoys.

of Yemen killing one crew member and causing a massive and disruptive oil spill.

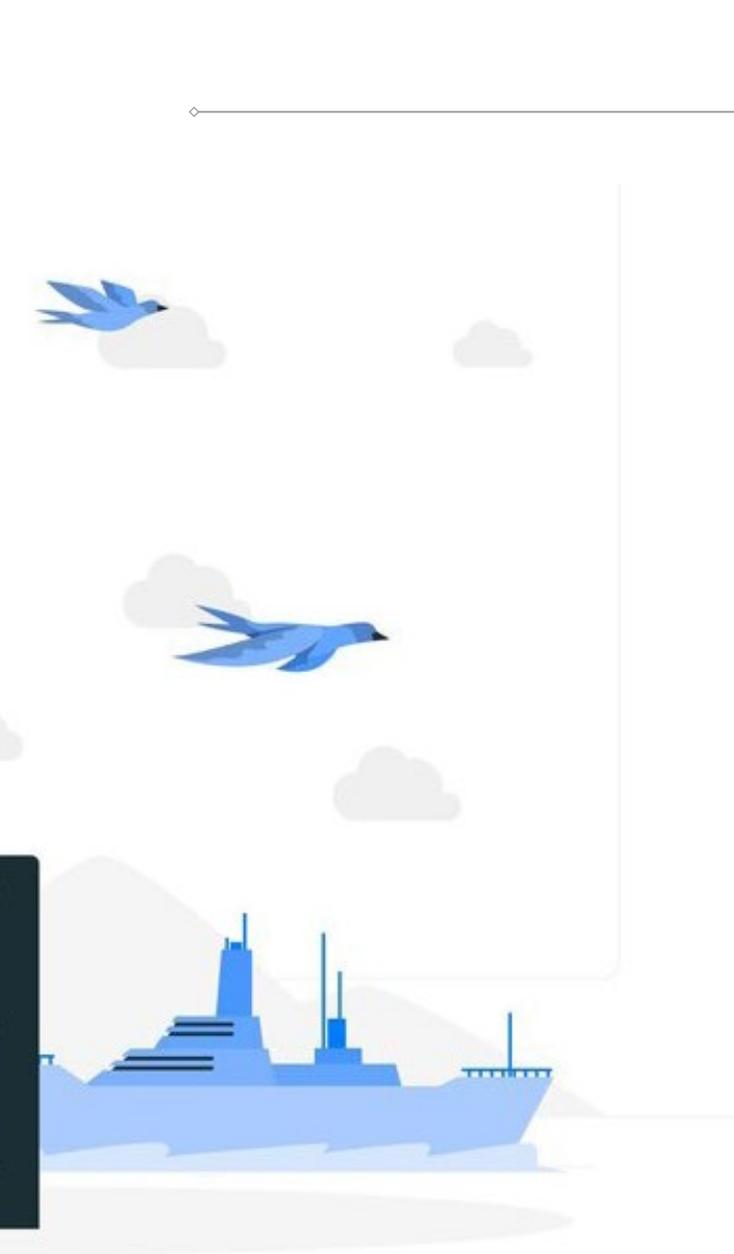
From the foregoing discussion of regional terrorist threats to shipping several points are evident. First, it is difficult to avoid the conclusion that if any of the aforementioned terror attacks had been successfully committed in or around the SOMS they would have severely impacted the flow of shipping through the region causing knock-on effects similar to that of the 2021 *M/V Ever Given* incident. Second, these examples also illustrate the desire to target the maritime space and that, if the opportunity presented itself to commit a large-scale cyber-attack on shipping, it would be in line with the general call to jihad that is characteristic of regional terror groups. Third, while a catastrophic cyber-attack on shipping has yet to be seen, it does not preclude the possibility of a “black swan event”, nor that regional groups are not developing the necessary cyber skills. And fourth, a cyber-attack on shipping in the SOMS would not necessarily originate in the adjacent littorals, rather, depending on the nature of the attack, could be conducted remotely from any part of the world.

An attack that was hybrid in nature would likely require some kind of physical presence in the region – **to covertly install malware on a ship’s bridge using a USB stick for example**



The Growing Risk of Catastrophic Cyber Attack

Whereas a catastrophic cyberattack on shipping, in the SOMS or elsewhere, has not yet occurred there are hundreds of recorded examples of cyber interference and disruption from both state and non-state actors. The Maritime Cyber Attack Database (MCAD) (NHL, 2023b) compiled by researchers at NHL Stenden University, Netherlands, catalogues around 180 open-source incidents of cyberattack on the maritime sector. It includes cyberattacks on merchant ships off the coast of Somalia by pirate groups able to remotely disable



The borderless nature of cybercrime and the internet mean that an attack on shipping in one region of the world, could be perpetrated from virtually any other part of the world, and easily across sovereign borders...

ships transiting past Djibouti (NHL, 2023b). Given the sometimes secretive nature of responses to cyberattack, the creators of the MCAD admit that these open-source recorded incidents are just the “tip of the iceberg” (NHL, 2023a) and indicates one of the main challenges in maritime cybersecurity, a lack of information sharing. Crucial for cyber defence is knowledge of the types of threats and vulnerabilities that exist, however, this is difficult when corporations are reluctant

to share intelligence about attacks for fear of reputational or liability concerns. The borderless nature of cybercrime and the internet mean that an attack on shipping in one region of the world, could be perpetrated from virtually any other part of the world, and easily across sovereign borders – depending on the type of attack vector employed.

Moving toward a future where more and more shipping and port operations will rely on networked

devices, automated processes and AI applications, cybersecurity is a key concern. Scrutiny and attention from high level organisations like the IMO and proactive member states is beginning to create a shift in awareness and regulation that will lead to improved outcomes in cybersecurity on ships. Whether this is sufficient to avoid a catastrophic cyberattack on a key global chokepoint like the SOMS only time will tell.

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Improving Technological Capacity to Secure Underwater Infrastructure: The Case of Ireland



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Subsea infrastructure, which includes both data cables and oil and gas pipelines, is truly at the radical frontiers of the state. It is an invisible and silent system traversing the high seas, which traditionally was considered an anarchic domain outside of legislative scope or territorial reach (see for example Slogget, 2013).

Subsea cables and pipelines suffer from what Bueger and Liebetrau (2021, p. 392) describe as a “triple invisibility” in that they are offshore, under the sea, and taken for granted. Therefore, subsea infrastructure is always out of sight, but in recent times, it is seldom out of mind. The sabotage of the Nord Stream pipelines in October 2022 and, more recently, the apparent deliberate damage to the Balticconnector subsea gas pipeline between Finland and Estonia, and a telecommunications cable between Sweden and Estonia, has magnified the vulnerability and critical importance of this infrastructure (Foreign, Commonwealth & Development Office, 2023; Pollard and Kauranen, 2023; Kauranen and Solsvik, 2023). It is important then that policymakers, practitioners, and academics understand how subsea networks operate, how they are regulated, who controls them, and how they are protected, particularly as “the dependence between the maritime order

and global prosperity is only likely to grow in the future” (Patalona, 2023; Bueger and Liebetrau, 2021).

Ireland occupies an important strategic position in terms of transatlantic telecommunications cables between the United States, Britain and continental Europe (see McCabe and Flynn, 2023). Around three-quarters of all cables in the northern hemisphere pass through or near Irish waters (see figure 1). They carry a large percentage of global communications, including financial transactions, business operations, and everyday internet access (O’Keefe, 2022). As technology develops, militaries, the oil and gas industry, as well as the scientific community now also extensively rely upon submarine fibre optic cables (Davenport, 2015, p. 58). This report will focus primarily on the role and importance of technological capacity in subsea infrastructural governance using Ireland as a case study.

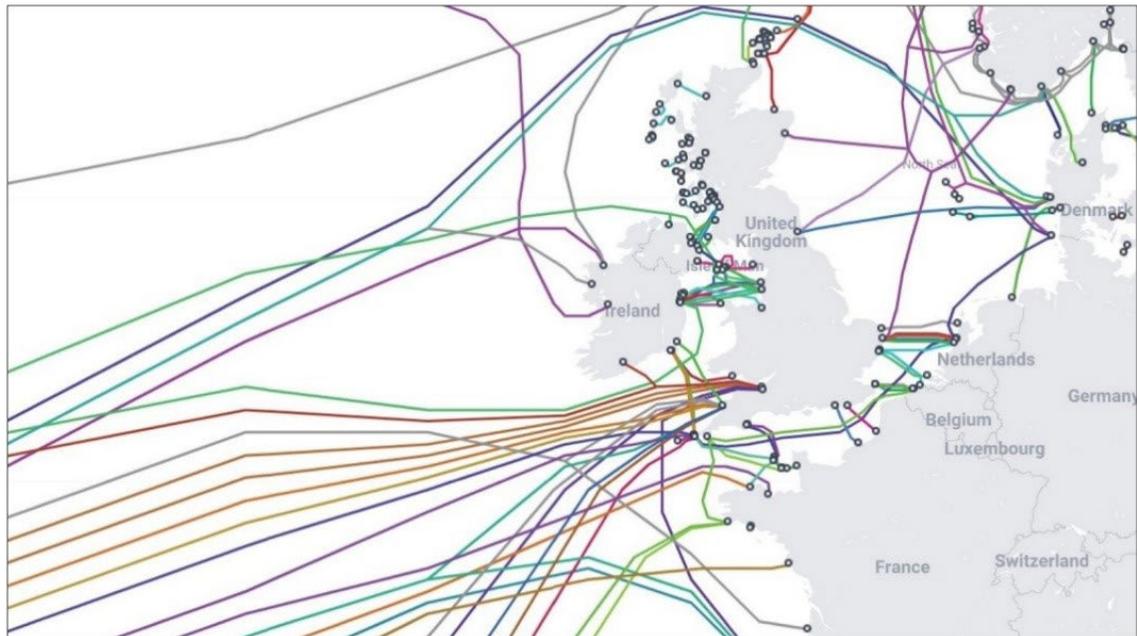


Figure 1. Map of subsea infrastructure in Ireland's maritime jurisdiction

Source: TeleGeography, <https://www.submarinecablenet.com>.

Crisis management response

In the event of an intentional act of sabotage or aggression against a subsea telecommunication cable for example, Ireland lacks the capacity to launch an effective response that might extend to pursuing and apprehending an offender. In practice, the private sector monitors and maintains the security of subsea infrastructure often through third party private operators with much of the interaction between state agencies carried out on an ad-hoc basis. If an interruption is detected, the Network Operating Centre (NOC) would be immediately alerted.¹ The telecoms operator would then contact the Atlantic Cable Management Association in the first instance, which have vessels available 24/7 to repair cables. The NOC will examine Automatic Identification System (AIS) data to determine the potential cause of the disruption such as a suspicious vessel in the area. If a ship turns off its AIS however, it would be undetectable. In this context, interaction with the state would be beneficial but such interaction does not take place at present at least in a formal way.

In terms of the state's role, location is the first thing to consider. If an attack occurs within territorial waters (12 nautical miles (nm) from

the coast) the company's point of contact would be the Irish Police (Gardaí) – a force with only a very limited maritime component. Beyond 12 nm, the cable operator would contact the Coast Guard in the first instance as the designated lead state agency operating under the oversight of the Department of Environment, Climate Change and Communications. However, the Coast Guard has no mandated security role and is primarily a maritime search and rescue agency (Irish Department of Transport 2022). It is important to note that the Irish Naval Service (INS) is not the lead agency with responsibility for monitoring subsea infrastructure despite its broad maritime security remit. However, in practice, the navy does frequently fulfil this role.

The INS does have a limited capacity to undertake such tasks via the Fisheries Management Centre, which carries out monitoring and surveillance of all vessels equipped with a Vessel Monitoring System (VMS) operating in the Irish Exclusive Economic Zone (EEZ) (Irish Defence Forces 2023b). The Fishery Protection System known as 'Lirguard' has relevant systems here, such as the Fishery Information System (an application used to capture, maintain and report on

¹ A Network Operations Center is a centralised place from which administrators supervise, monitor and maintain a telecommunications network (Awati 2023).

The Fishery Protection System known as ‘Lirguard’ has relevant systems here, such as the Fishery Information System and the Fishery Geographic System.

information regarding vessels), and the Fishery Geographic System (enables a range of spatial and analysis operations). The INS have increasingly evolved a Recognised Maritime Picture (RMP) of the Irish EEZ which combines a fusion of data points from AIS, VMS and radio traffic and intelligence

analysis, as well as incidental or planned Air Corps observation reports and radar tracks. Yet this RMP is currently limited to surface contacts and is not as advanced or as systematic as equivalent RMPs generated by NATO member states of the EU.

Technological capacity

Ireland’s Naval Service struggles with limited capacity alongside a current staff retention crisis, which means that the state has fewer ships available to patrol than at any point since the 1970s (Gallagher, 2023). The vessels that are operational are not, according to Ian Speller (2021, p. 2), “the three-dimensional assets that one would find in the navies of other European states of comparable size and wealth”. These problems are not unique to Ireland. Other states with small navies have explored more innovative approaches, such as autonomous systems and uncrewed surface vessels, as potential solutions to their budgetary and personnel problems (Dunley 2023, p. 1). In comparison to larger investments, such as patrol vessels, autonomous systems tend to be cheaper, more durable, and maintain a lower profile and can improve a small state’s capacity to respond to and deter threats across the full spectrum of the maritime security space (US Department of the Navy 2022). This does not suggest that technological solutions

can replace well-trained and experienced human staff, but increased investment in smart technologies, in particular Unmanned Undersea Vehicles (UUV’s), drones, and a towed sonar array, would help create a more level playing field.

Following the 2022 Report of the Commission on the Defence Forces, there are signs of increased investment in building technological capability through the acquisition of Remotely Piloted Air Systems (RPAS) and Unmanned Aerial Vehicles (UAV) for example. The Irish Defence Forces are also participating in a

autonomous systems tend to be cheaper, more durable, and maintain a lower profile

new artificial intelligence equipped drone development programme that aims, in part, to increase the Maritime Domain Awareness (MDA) capacity of the INS (Crumley 2022). Similarly, in 2023, a team of INS divers participated in a NATO Partnership for Peace exercise focussed on robotic experimentation and prototyping with maritime unmanned systems in Portugal (O’Connor, 2023).

...Technological capacity

In terms of intelligence, surveillance, and reconnaissance in the context of subsea infrastructure, investments could extend to the procurement of UUV's such as the Kongsberg Seaglider. This type of UUV could offer more "tactical flexibility" by being deployed in a particular vulnerable location to monitor cables or in response to a specific piece of intelligence for example (Mugg et al. 2016, p. 21). This could complement the role of UAV's and sonar as well as Distributed Acoustic Sensing (DAS) technology used for detecting subsea cable faults in real time (EU Commission 2022). DAS systems in particular are comparatively cost effective and have the latent ability to prevent or deter significant damage by providing early warning of potentially malicious activities (Aragon Photonics 2023).

An additional capability that can significantly increase the capacity of the INS to monitor and detect activity under the surface of the water is procurement of a towed sonar array. A submission to the Commission on the Defence Forces, suggested that this could be an 'introductory-level' CoTS sensor system, such as a shipborne towed system, a 'local area' scale undersea surveillance system or a wave glider array (Commission on the Defence Forces 2022). Such investment would complement the Air Corp's purchase of two CASA C-295 maritime patrol aircraft in 2023, which while capable, lack advanced sonar and sonobuoy equipment (Houses of the Oireachtas 2022b).

Apart from subsea cables, offshore renewable energy, in particular wind, will become an increasing area of importance in the coming years and improved technology will see this infrastructure move further offshore (Gleeson 2023). This means the Irish state will have responsibility to secure and protect an increasing abundance of critical offshore (including subsea) infrastructure over the next decade. This will further increase the surveillance, inspection, and enforcement requirements demanding more from an already overstretched Naval Service.

The former Irish Minister of Defence Simon Coveney accepted that to meet these obligations, the INS and the Air Corps would need "significant investment" (Houses of the Oireachtas 2022a).

This was evidenced in the increased spending on the Defence Forces from €1bn a year to €1.5bn annually by 2028 in what will be the single biggest investment in defence spending in the history of the State (O’Connell 2022). Meeting the accepted recommendations set out in the Report of the Commission on the Defence Forces will go some way to bolstering Ireland’s maritime security capacity in this regard. Notably the development of a primary radar capability, anti-drone and counter UAS capabilities and the further development of RPAS capabilities (Irish Department of Defence 2022, p. 29). However, implementing these recommendations requires the requisite political will, social capital, and long-term investment.



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Piracy and Counter-Piracy: A Case Study of Sovereignty

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The globalized nature of contemporary threats

1

The contemporary world no longer reflects the state-centric world in which the concept of sovereignty originated. The greatest threat to global security has now shifted from powerful states to non-state actors, like organized criminal networks. The nature of this threat is well-described by Naim (2010): “Thanks to al-Qaeda, the world now knows what a group of highly motivated individuals owing allegiance to no nation and empowered by globalization can do. The [...] world still thinks of these networks in terms of terrorism. Yet [...] profit can be as powerful a motivator as God. Networks of stateless traders in illicit goods are changing the world as much as terrorists are, probably more.”

Non-state threats are often the product of globalization and weak state institutions. Organized crimes often serve as an alternative source of income, and even as an alternative form of governance, in developing and fragile regions as criminal networks fill vacuums left by the state. Transnational organized criminal networks are also the response to globalization, as advances in technology have increased people’s mobility and connected all corners of the globe. The ocean has played a key role in globalization since vessels are the lifeline of global licit and illicit trade. Like states and legitimate merchants, criminal actors take to the sea in pursuit of profit and power. We see this as the ocean’s resources are plundered, illegal commodities are shipped, and pirates and traffickers exploit the vulnerability of vessels and people at sea.



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THE GLOBALIZED NATURE OF CONTEMPORARY THREATS

Therefore, although the ocean is often presented as a lawless, stateless void, state and non-state actors have historically maintained a presence at sea. Navies project power and extend state control into the global maritime domain (Germond, 2015), while non-state actors maintain a presence

through the merchant, fishing and other private vessels. These vessels often have multiple nationalities on board – the vessel may be registered in Sierra Leone, crewed by Indonesians, carrying cargo from Europe and traversing the high seas and multiple states' coastal waters.



2

How have states responded to globalized crime at sea?

Global crime governance is regulated by international treaties like the 2000 United Nations (UN) Convention on Transnational Organized Crime, 1982 UN Convention on the Law of the Sea (UNCLOS), and the 1998 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. These treaties prescribe the jurisdiction and international norms governing transnational crimes like piracy and drug trafficking.

UNCLOS was developed to establish a legal order and regulate State behaviour at sea. It provides for two primary forms of jurisdiction - Flag State and Coastal State jurisdiction. The Flag State, the State where a vessel is registered or is otherwise entitled to fly its flag, has primary jurisdiction over that vessel. This applies especially on the high seas, with a few exceptions, and diminishes as vessels enter Coastal States waters. Coastal State jurisdiction

allows States to control and protect certain national interests in their nearest coastal waters up to 200 nautical miles from land.

However, many practical challenges limit exercising jurisdiction at sea. Coastal State jurisdiction diminishes further away from land, and about 60% of the ocean is the high seas where no state enjoys sovereignty. This is further complicated when criminal networks employ stateless vessels with no discernible Flag State.

In pursuit of these threats, States have attempted to exercise control over larger areas of the ocean (Klein, 2011). Yet few, if any, states can exert control across their entire maritime domain (Garland, 1996)

or to their flag vessels on the high seas due to a lack of maritime assets. This can be counterproductive and may contribute to insecurity as states claim jurisdiction over areas and vessels that they cannot or do not wish to exercise control over.

Because globalized non-state threats impacting a range of international interests have proven too complex for individual states or traditional security responses to counter (Vreij, 2018), states have had to adapt their response, including at sea. State and non-state actors now often navigate maritime security collectively or on behalf of one another (Kaldor, 2013). The response to Somali piracy in the Western Indian Ocean (WIO) illustrates this.



Somali piracy – state(s) failure sets sail

3

State failure in Somalia is credited with giving rise to piracy. Depending on the chosen narrative, this is either due to the lack of state institutions able to prevent pirates from taking to the seas, or to prevent foreign

fishing vessels from depleting Somalia’s fish stocks. Somali institutions were therefore unable to protect their waters from external and internal threats (Bruwer, 2021).

SOMALI PIRACY – STATE(S) FAILURE SETS SAIL



The international community contributed to the conditions giving rise to piracy. Somalia has suffered ongoing conflict, terrorism, failed state-building attempts, external interventions at the cost of traditional systems, and the failure of the international community to acknowledge the only truly functioning forms of government. Instead, the international community has supported the formation of a central government rather than allowing Somalis to govern themselves as they see fit (Clapham, 2023). In this

respect, Herbst (2014) has suggested that some states are a legal fiction, considered by the international system as sovereign States despite having few sovereign qualities. This illustrates the role of the international community in sustaining the conditions in Somalia that gave rise to piracy because of competing ideas of sovereignty.

It was in this space of de facto statelessness, insecurity, and economic and political instability that piracy emerged in the early 2000s.

4 Responding to piracy

Because Somalia couldn't prevent piracy, which threatened aid delivery, seafarers and world trade, the international community drove the response. This was enabled by piracy being a crime of universal jurisdiction, allowing any state to arrest and prosecute pirates.¹ States were further authorized to act by UN Security Council Resolutions declaring piracy a threat to international peace and security. This was motivated by the impact of piracy on world trade and its potential to exacerbate the political situation in Somalia. States were even authorized to respond to piracy in Somalia's territorial seas and on land, despite piracy being a high-seas crime by definition.²

This set into motion an unprecedented global effort which nearly eradicated piracy but had little impact on its causes. The response included, inter alia, naval coalitions, self-protection measures by the shipping industry, law reforms, capacity building, and hostage rescues. The response was steered by the Contact Group on Piracy off the Coast of Somalia, which consisted of State and non-state actors like the shipping industry whose cooperation was vital to its success and is a true reflection of global governance.

Williams and Abrahamsen (2009) argue that, instead of global governance resulting in the erosion of state power, states privatise

1 UNCLOS Article 105.

2 UN Security Council. 2008. SC RES 1816 on acts of piracy and armed robbery against vessels in territorial waters and the high seas off the coast of Somalia, 2 June. S/RES/1816 (2008). Available: <https://www.refworld.org/docid/48464c622.html>.

States may implement such efforts based on their legal, ethical and political responsibility to protect and manage the global commons, or because they wish to protect themselves from goods and people from other regions.

Germond & Germond-Duret, 2016

security functions and use it as an extension of state authority. Gould however perceives this as diminished state power: “Perhaps states, private security actors and the maritime community recognize that the interests (and authority) of the commercial shipping industry, and not the democratic interest of the nation, provide the moral basis for thinking about a ‘collective good’ in offshore security provision, and thus that the state has no automatic, significant role in enforcing it [...]. In such an assemblage, the maritime community recognizes that private security actors have near-equal authority to states in enforcing a ‘civilised’ security defined by private interests, rather than the democratic security logics through which State policing institutions are constituted” (Gould, 2017).

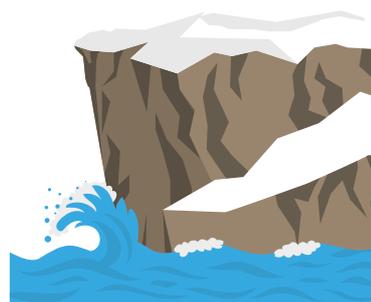
The counter-piracy response was mostly driven from outside of the Horn and eastern African region, primarily by the Global North, which is typical of global crime governance efforts.³ States may implement such efforts based on their legal, ethical and political responsibility to protect and manage the global commons, or because they wish to protect themselves from goods and people from other regions (Germond & Germond-Duret, 2016). Glück (2015) and Germond (2015) have labelled counter-piracy as the protection of capital circulation and the freedom of the seas by enclosing maritime spaces under the guise of securitization. It is therefore reasonable to conclude that the motivation for responding to piracy was not to prevent piracy from exacerbating the political situation in Somalia. Instead, Somalia’s sovereignty was a proxy for serving other interests.

³ Jacobi, A.P. 2014. Global governance and transnational crime: situating the Contact Group. Working paper of the Lessons Learned Project of the Contact Group on Piracy off the Coast of Somalia. Cardiff: Cardiff University.

Lessons in sovereignty from piracy and counter-piracy

5

Piracy incidents across the globe illustrate how criminal networks exploit limited sovereign power at sea and how state and non-state actors pool resources in an attempt to assert this power. This is illustrative of new, cooperative mechanisms to govern non-state security threats at sea, but also illustrates that asserting sovereignty at sea is dependent on the ability to maintain a maritime presence.



Piracy incidents across the globe illustrate how criminal networks exploit limited sovereign power at sea and how state and non-state actors pool resources in an attempt to assert this power.

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Slipping Through the Net:

Chinese Illegal Fishing, Grey-Zone Tactics, Lawfare, and Maritime Sovereignty.

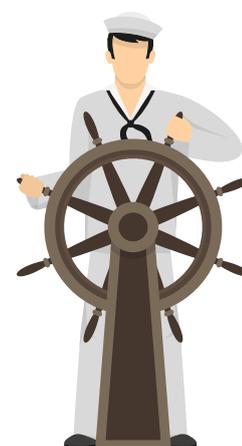


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Introduction

In this conference proceeding's exploration of maritime sovereignty, this paper examines the case study of China's global fishing operations. The illegal, obscure and misdirecting methods employed by the Chinese deep-water fleet succinctly reveal numerous ways in which both the notion and application of sovereignty in the maritime domain are challenged and exploited.

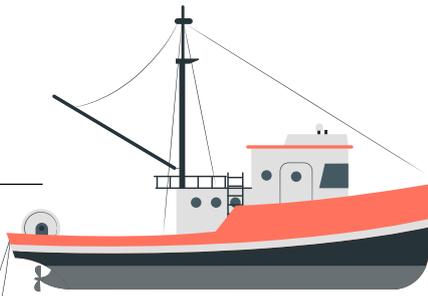


Chinese Illegal Fishing

China operates the world's largest fishing fleet with 16,966 vessels as of 2018, accounting for 38% of global distant-water fishing and responsible for 15% of the global catch (Montecalvo et al, 2023, p.2; Gutiérrez et al., 2020, p.8; Zhang et al, 2022). Fishing is considered to be distant-water if it occurs outside of the coastal state's exclusive economic zone (EEZ), either within the EEZ of another coastal state or in the high seas, a practice that has grown rapidly since the 1950s due to state subsidies in fishing as well as the depletion of fish stocks in domestic waters (Montecalvo et al, 2023, p.2; Gutiérrez et al., 2020, pp.6-8). In venturing into distant-waters, this Chinese fleet conducts

a highly sophisticated and deliberate campaign of marine resource harvesting, supported by an array of refuelling, resupply, and refrigeration vessels that trespasses illegally into the waters of over 90 countries worldwide (Mantesso, 2020; Myers et al., 2022; Zhang, 2022). This form of fishing is illegal and of significant detriment to local ecosystems, fish stock management and environmental quality. For instance, Chinese deep-water fishing in Peruvian waters has gravely disrupted the country's squid sustainability programme and an estimated 30% of garbage that washes up on the shores of the Galapagos comes from Chinese fishing vessels (Fabbri, 2023).

CHINESE ILLEGAL FISHING

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2018
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This mass campaign of illegal, unreported and unregulated (IUU fishing) has consistently placed China at the top of the IUU Fishing Risk Index in all of its reporting (2019, 2021, and 2023). Indeed, The Global Initiative Against Transnational Organised Crime has designated the Chinese fleet as the biggest perpetrator of illegal fishing worldwide, complicated by the vessels' modus operandi of deactivating transponders and radar when entering other states' waters (Urbina, 2022; Fabbri, 2022; Gutiérrez et al., 2020, p.17). A significant example of China's illegal fishing is revealed by Park et al. (2020), whose innovative satellite-based research methods identified more than 900 Chinese vessels fishing illegally in North Korean waters in 2017, and a further 700 in 2018, making this 'the largest known case of illegal fishing perpetrated by a single distant-water fleet' (Park et al., 2020, p.4). Such practices have caused significant diplomatic tensions and pose a significant threat to coastal states in the management of their resources, the protection of their environment and their coastal communities, and their ability to enforce their own security and safety regulations.

Additionally, there is a significant humanitarian impact from these illicit practices, with reports indicating that the crews of these distant-water vessels are subject to abhorrent and inhumane treatment, including years-long stretches of time at sea, deliberate isolation from family, 12-hour shifts without rest, prevalent disease, nutrient and vitamin deficiencies, physical abuse, trafficking, and even the confiscation of passports (Urbina, 2022; Human Rights at Sea, 2023). There have been reported incidences of crew death aboard these vessels due to the conditions on board (Klein, 2022).



Exploitation of Sovereignty

Despite multiple assertions from Chinese authorities that it has ‘zero tolerance’ for illegal fishing practices (Montecalvo et al, 2023, p.2), there is abundant evidence to suggest that it supports and promotes this distant-water fishing fleet through subversive and calculated means that circumvent and exploit the structures of sovereignty and accountability that are applied to the maritime domain.

Firstly, there is a considerable amount of obscurity and opacity surrounding the ownership and operation of the fleet (Gutiérrez et al., 2020, p.23). As of 2018, only 2651 of the 16,966 vessels that make up the distant-water fleet were operated under the Chinese flag (Montecalvo et al, 2023, p.2). Nevertheless, these foreign-flagged vessels are often found to be under Chinese state ownership (Myers et al., 2022) and the fleet is awarded billions in state subsidies to offset the cost of fuel and supplies, having been given US\$1.8 billion worth of support in 2019 (Klein, 2022). This therefore muddies and complicates the direct accountability that is established between a state and its

flagged vessels. Secondly, measures taken by the Chinese government to reduce the catch of this distant-water fleet are widely viewed as being a public relations façade, with periods of ban coinciding with the seasonal reduction of stocks (Montecalvo et al, 2023, p.6). China can therefore be seen to be exercising its sovereign jurisdiction over its flagged vessels in such a way that does not significantly impact the outcome of its fishing operations. Thirdly, China purchases fishing rights in the waters of states who lack the capacity and resources to effectively enforce and regulate their own fishing laws and quotas and establish small shell companies. This is a prominent practice in West Africa

China can therefore be seen to be exercising its sovereign jurisdiction over its flagged vessels in such a way that does not significantly impact the outcome of its fishing operations.

where Chinese trawlers can bring in 26 thousand tonnes of fish per day, equivalent to the catch brought in by 400 of the canoes used by local fishermen (Mantesso, 2020). Fourthly, Chinese fishing vessels sit at the edge of marine protected areas and catch the endangered species that migrate in and out of them, most famously in the instance of the protected waters around the Galapagos Islands (Martín, 2021, p.3). This capitalises upon the inflexibility of maritime boundaries and sovereign space alongside the dynamic migration patterns of endangered fish stocks that have no knowledge of these designated spaces. Lastly, the insufficiency of the labour

laws and regulations aboard Chinese shipping vessels is afforded to them by the flags under which they sail. These loose regimes enable the crew of these ships to be subject to sub-standard working environments, poor remuneration, and excessive working hours.

This illustrates some of the ways in which the rigid structures of sovereignty and jurisdiction at sea are exploited and avoided in order to run a global fishing operation that is of significant harm to the environment, to its workforce, and to the coastal states into whose water they illegally trespass.



Photo: Sun Mengting via Getty

Geostrategic Significance

An alarming dimension of China's distant-water fishing operation is how it is used to further China's geostrategic objectives. The use of its fishing fleet to crowd disputed waters and surround islands that it claims as its own, all under the protection of the Chinese Coastguard and the People's Liberation Army Navy (PLAN), is a widely-recognised 'grey-zone' tactic (Layton, 2021; Layton, 2022; Goldrick, 2018; Singh, 2018). This tiered deployment of blue-hulled fishing vessels, followed by white-hulled coastguard vessels and, finally, grey-hulled naval vessels in a carefully timed sequence was outlined as a strategic approach in 2013 by Rear Admiral Zhang Zhaozhong, and is commonly known as the 'cabbage strategy' (Layton, 2021). The grey-zone consists of

actions in pursuit of political objectives that employ mostly non-military assets in integrated and cohesive campaigns that remain just below key escalatory thresholds and red lines in order to avoid conflict, and which aim for a gradual securing of their objectives rather than immediate victory (Mazarr, 2015, p.58). Layton therefore aptly describes them as cumulative rather than sequential strategies (2022, p.106). These methods are primarily employed in China's assertion of its sovereignty over the South China Sea and in the construction of artificial territory in accordance with its nine-dash line claim, a strategy which 'defies conventional understandings of territorial waters' (Atzili and Kadercan, 2017, pp.116-117).



Conclusion

In summary, this report illustrates how a static and inflexible regime of sovereignty can be exploited in the dynamic, multi-stakeholder and international maritime domain to harvest resources and press territorial claims in a way that would never be possible on land.

The case study of Chinese illegal fishing encapsulates these challenges and impacts well, with ramifications for people at all levels, from crews to coastal communities and, at the highest level, sovereign states. It is important to recognise that China is not the only state that participates in harmful fishing practices, almost all countries are culpable in the overexploitation and mismanagement of ocean resources. To not acknowledge this would be

hypocritical. However, this paper's focus reveals that Chinese fishing is distinct from other states' fishing practices for three key reasons: firstly, due to its vast and unmatched scale; secondly, because of its disproportionate participation in illegal, unreported and unregulated (IUU) fishing; and thirdly, because of China's use of fishing as a coercive geostrategic tool. As such, it warrants particular focus from strategists and policymakers, as well as condemnation and counteracting efforts.

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Echoes of Somali Pirates:

Foreign Intervention, Sovereignty and Maritime Security in the Horn of Africa



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The breakdown of the Somali state in 1991 produced unprecedented effects not only for Somalia but the international community too. Among these was the birth of piracy activities in Somali waters that posed extant and potential maritime security threats. The absence of a functional state implied that there was no effective government policing the Somali waters allowing pirates to operate unencumbered and hold the world shipping industry at ransom for decades. Initially, in the early 1990s, Somali piracy was a mission of patriotism and survival (Daniels, 2012; Marchal, 2011). Somalis realised that European and Asian nations were exploiting at a large scale the untouched seafood of the Somali territory in their huge ships leaving little if anything at all for Somali communities. The Somali coastal communities that generated close to 95% of their food from the sea in a country scourged by drought and war devised ways of defending their livelihoods. Thus, Somali fishermen were defending their waters from the

huge fishing boats from Iran, Yemen and other Asian and European fishing vessels (Weldemichael, 2017) that had taken advantage of fishing in the unregulated Somali water harvesting seafood worth billions of dollars every year. At the same time, Italian and Swiss companies paid off warlords to dump toxic waste in Somali waters (Hughes, 2011).

With no government to defend their sovereignty and livelihoods from predatory fishing, Somalis evolved a way of fighting back by establishing an ocean militia known as the Coast Guard which would use tiny boats and ageing armaments to chase down foreign fishing vessels forcing them to pay a fine. From the early 2000s onwards, however, pirates not only upped their technology but started hijacking ships for ransom for huge sums in millions of dollars. This attracted the attention of warlords who saw this as a business opportunity and thus invested in hijacking the vessels traversing the Somali waters and demanding ransoms in millions of dollars (De Coster, 2018).

According to the UN Convention on the Law of the Sea, Article 101(a) (United Nations Convention on the Law of the Sea, 1982) defines piracy as “illegal acts of violence or detention” committed on the high seas against ships or aircraft. Piracy is a serious problem and it poses a real threat not only to the safety of vessels and their crews but also to the economies of affected countries. True to this definition, Somali piracy turned out to be a huge threat to international trade because the Somali waters are a gateway to the Suez Canal one of the busiest highways for global trade. Somalia is situated along a very strategic littoral zone along the Gulf of Aden leading to the Suez Canal a gateway for international shipping. The Suez Canal is one of the world’s most important maritime choke points connecting Europe with Asia (Tadini, 2019). It is estimated that up to 50 shipping vessels go through the Suez Canal daily. In 2022, over 22,000 ships are reported to have transited through the canal (Placek, 2023).

In the early 2000s, hundreds of incidents were reported every year. These reached a peak in 2011 when 160 piracy attacks were reported and incidents soared to 358 during the five years between 2010 and 2015 (Statista Research Department, 2023). These came with a huge cost. Available data indicates that 31 ransoms were paid in 2011, amounting to a total of \$159.62 million, with the average ransom being \$4.97 million (Ueno, 2012). The highest ransom paid on record in 2011 was \$13.5 million to release a Greek-flagged vessel (Statista Research Department, 2013). With no effective government to police and regulate the 3000km Somali coastline – the second longest coastline in Africa after the island of Madagascar – the UN mandated the EU to patrol the Somali

sea to respond to piracy in the region (UN SECURITY Council, 2008). In 2008, the EU launched its first maritime operation, the European Union Naval Force (EUNAVFOR) Somalia, currently Operation Atalanta, a military at sea off the Horn of Africa and in the Western Indian Ocean (Oksamytna, 2011) to counter-piracy attacks. Since then, this operation has been extended every two years, its current mandate is due to expire in 2024.

However, critics have alleged that Somalia’s reliance on Operation Atalanta to deter piracy activities impedes the country’s resolve to build its naval force to protect its territory from illegal fishing and armed smuggling (M.H.

Ingiriis, personal communication March 3, 2023). The mission has also been accused of being the ‘number-one harvester’ of the depleted supply of

yellowfin tuna and other sea resources in the Indian Ocean as payback for their monies spent on the African Union Mission in Somalia (AMISOM)¹ (Mohamed, 2023). With the EU patrolling the Somali coast and waters, the pirates have not been wiped out. For more than ten years now they have been largely made dormant and non-functional. Isolated incidents and attempted piracy attacks have been reported (EU Naval Force, 2023). However, it is speculated that they can return to the scene anytime because Somalia has no functional and effective navy. The failure of the AU (funded by the EU) to support the Federal Government of Somalia to build an effective navy is presumed to be the desire to create perpetual dependence on foreign intervention undermining aspirations for sovereignty and self-governance.

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¹ Since 2007, African Union deployed peacekeeping troops under ‘The African Union Mission in Somalia (AMISOM)’ currently ‘The African Union Transition Mission in Somalia (ATMIS)’ with funding from the European Union. This mission has generally been responsible for maintaining security in Somalia since. In 2017, the UN Security Council Resolution 2372(2017) mandated AMISOM gradually handover the security responsibilities to the Somali security forces contingent on their abilities, political and security progress in Somalia.

Besides, I note that many countries have deployed their warships (Odeke, 2011) in Somalia to have control of the Somali waters to facilitate trading routes since all trade from Europe to Asia, and from Asia to Europe, passes through the Gulf of Aden. 80% of the trade from Europe will go through the Suez Canal and go to the

Gulf of Aden. So, any instability in Somalia disrupts international trade. To safeguard international trade, all the global powers have deployed their ships and their navies. Despite the deployments, they cannot be effective in controlling the sea unless they have control over the landing ground where the pirates launch their operations.

To safeguard international trade, all the global powers have deployed their ships and their navies.



In conclusion, I argue that, for the effective flow of international trade, Somalia needs to be stable. Unfortunately, Somalia as a state remains weak and cannot survive without the support of the African Union troops. The Federal Government of Somalia has juridical sovereignty with no empirical sovereignty and hardly has control beyond Mogadishu and other key towns. Yet non-state armed actors, mostly Al-Shabaab, are wrestling for control of the country and its

resources including its waters. Currently, the African Union troops are on course to draw down their forces and hand over all the security responsibilities to the Federal Government and the Somali National Army (SNA). However, there are increasing fears that when the troops fully draw down, Somalia will have no capacity to control the breeding ground for the pirates that are mostly hibernating at the moment.

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Fighting a Fictional Invasion via the English Channel:

Self-defeating Discursive Performances of Sovereignty in Response to Irregular Migration¹



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The Conservative UK government's 'Stop the Boats' campaign depicts mobility across the English Channel as an impingement of national sovereignty (Braverman, 2023), and supports exceptional measures to restore it.

Yet scholars have observed that sovereignty is not an attribute but a practice, produced by states' enactment of what it means to assert sovereign power (Edwards, 2020; Aalberts, 2004; Ashley and Walker, 1990). Therefore, although it is often imagined and depicted as an essential, pre-discursive quality possessed by states, state sovereignty has a performative, discursive and constructed character (Edwards, 2020; Spengler et al., 2021; Jones et al., 2017). When shortfalls in state power become evident, performances of sovereignty can be undertaken to obscure apparent state weakness or reassert strength. Performative measures of sovereignty in relation to migration include physical interventions such as border walls

(Brown, 2010) or detention camps (Amit & Lindberg, 2020), or politico-discursive ones such as legislation (Kahn, 2006) and government rhetoric (Akopov & Krivokhizh, 2019).

This paper focuses on performative government rhetoric by members of a political elite, which has "preferential access to the mass media", and the ability to "set or change the agenda of public discourse and opinion making" (Van Dijk, 1995, p. 4). Specifically, it illustrates how cross-channel migration has been represented as a powerful external threat to sovereignty in rhetoric by UK Home Secretaries Priti Patel and Suella Braverman, prompting punitive and exceptional government policies as

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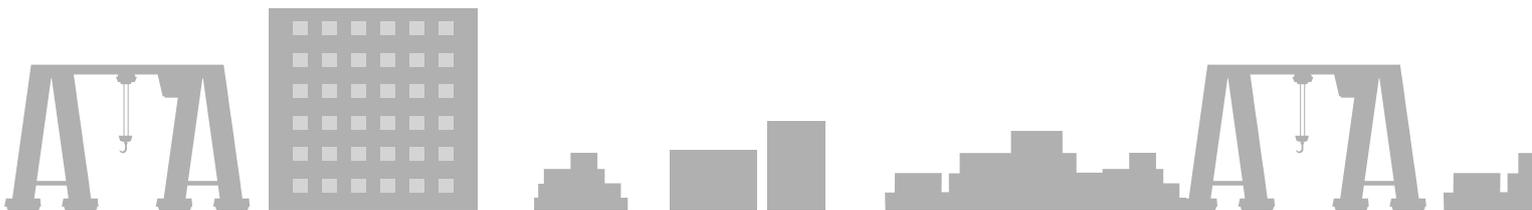
assertions of state power in response. Yet it argues that these performances of a 'strong' sovereign state, and the repressive policies they are mobilised to justify, may actually produce state 'weakness' in practice.

Although sovereignty is not a 'real' possession of states (Ashley and Walker, 1990, p.381), it is constructed in Home Secretary rhetoric as an attribute that was once possessed, and needs to be "restored" or "regained" (Patel 2020a; 2022b) through border controls. This is not an "innocent conceptual fallacy," but functions to disguise the political practice of constituting sovereignty through performance (Edwards 2020: 1), in this case through the idea that border controls are "fundamental to national sovereignty" (Patel 2022a).

Presenting border control as a solution to a deficit of sovereignty requires conjuring a 'crisis' requiring reassertion of state power. This occurs, first, through vocabulary choices that evoke disrepair and dysfunction: a "collapsing" (Patel 2021) and "broken" (Patel 2020b; Braverman, 2022c) domestic migration governance system attributed to unprecedented migration levels, laws that are "not working" and a "broken" (Patel 2022c) global approach to asylum and migration. Second, by rendering visible and problematic certain welfare costs – particularly the cost of asylum accommodation. Third, through the negative framing of channel crossings as a law-and-order problem rather than a

humanitarian obligation, using emotive or stigmatising vocabulary, foregrounding of negative themes, and hyperbole. Channel crossings are painted as an "international criminal trade" (Patel 2020b) in which "criminal gangs laugh in the face of the British people" (ibid); in which bogus asylum seekers from "safe countries" (Braverman 2022a), "exploit" (Patel 2022c), "game" (Braverman 2022a; Patel 2022c), or "abuse the system" (Patel 2020b), launch legal appeals "at the expense of the British public" (ibid); "disappear into the black economy" (Braverman, 2022c) or "seek financial support from taxpayers" (ibid).

In this process, asylum seekers are transformed from a legitimate and inevitable population requiring protection to an urgent criminal threat that citizens must be protected against. Controversially, Braverman (2022b) has even gone as far as to describe cross-channel arrivals as "an invasion of our southern coast" – this after being photographed arriving to visit a migrant processing centre in a military helicopter. Such representations, again, are not innocent, but can be "a knowing and cynical manipulation of the symbols of state power and of the emotions of fear and insecurity" (Garland, 1996, p. 460). These criminalising representations become the basis for securitizing legislation to 'restore' sovereignty. Reassertions of the state's power to govern by force of command appear in Home Secretary discourse through statements of intent directed at solving the constructed 'crisis' (Jones et al, 2017), creating authorising



narratives for securitizing legislation including a discriminatory two-tier system for refugees based on mode of arrival (in the Nationality and Borders Act 2022) and punitive measures to deter channel crossings (in the Illegal Migration Act 2023).

These statements of intent reiterate negative associations and frames, continuously reproducing problematisations of a migrant population that status determinations prove comprises largely legitimate asylum seekers with a right to sanctuary. Deviance and illegality are foregrounded in the use of vocabulary and figures of speech:



... we will stop the abuse of the system... we will stop those who come here illegally making endless legal claims to remain in our Country at the expense of the British public... we will expedite the removal of those who have no legitimate claim for protection.

(PATEL 2020B)

we will prioritise those who play by our rules, over those who seek to take our country for a ride.

(PATEL, 2021)

Pronouns exclude asylum seekers and their allies from the definition of ‘us’ – ‘we’ being those who follow “our rules”, rightfully belong to “our Country”, and are “genuine”, “hardworking”, “caring.” The excluded other to ‘us’ thus becomes a “fictionalised enemy”, with “relations of enmity” (Mbembe, 2003, p. 16) between ‘them’ and ‘us’ continually depicted:



those who seek to undermine and abuse our system are jumping the queue, taking resources from the people who are in genuine need.

(BRAVERMAN, 2022A)

They do not care about intolerable pressures on public services and local authorities. They do not care about damage to our labour market and driving down the wages of the hardworking majority. They do not care about the British people who will have to foot this bill.

(PATEL, 2021)

The Acts introduced by Patel and Braverman to solve the 'crisis' constituted by their rhetoric include exceptional measures that deviate from international human rights and refugee law, such as the prohibition of discrimination and protection of the right to seek asylum on the territory of a state signatory to the 1951 Refugee Convention. Together, these interlinked rhetorical and legislative performances have three self-defeating consequences. First, the sense of crisis depicted in these narratives demands an urgent solution. Yet solutions can be expensive and slow to deliver, especially when open to legal challenge. As such, the 'crisis' will inevitably remain unsolved for a prolonged period, which ironically may lead to a growing public concern about state weakness and inadequate controls. Second, by stigmatising and criminalising asylum seekers rhetorically, these performances provide apparently legitimate grievances around which extremist groups can mobilise. We have

seen the effects of this in the fire-bombing of a centre housing cross-channel asylum seekers in Dover, and in violent protests outside asylum hotels. Vigilante actions and public violence challenge the state's monopoly on the legitimate use of force. Third, where extreme law-and-order measures collide with domestic and international law, the rule of law and due process can appear as an obstacle to sovereignty, effectively setting the state against its democratic institutions and principles. Patel (2020b) derided those who would counter new policies using "grand theories about human rights" while Braverman (2022a) warned they must not be "derailed" by modern slavery laws, the Human Rights Act or orders of the European Court of Human Rights. This undermines the rule of law, which 'holds itself out as the product of the sovereign will' (Khan, 2006).



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