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Focusing New Zealand's approach to maritime domain security

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Abstract

Although New Zealand is a nation with a maritime setting, it does not have a clearly-focused approach to maritime domain security. Instead, the country's approach to maritime security has developed in an *ad hoc* manner; the result of legacy issues and an apparent lack of understanding of strategic maritime imperatives. New Zealand has laid claim to a significant portion of the maritime region within which it is located. However, this thesis argues that there are compelling reasons why New Zealand's approach to maritime domain security needs to be refocused. There is thus a need to refocus away from the arguably short-term interests that are currently viewed as the priority, towards a more strategic approach that seeks to protect New Zealand's less tangible – but more important – long-term interests. Drawing heavily on the Australian experience as a comparison model, this thesis contends that the architecture and structure of New Zealand's maritime security 'sector' must be reviewed and that New Zealand should develop a more holistic approach to its future maritime security needs; for example incorporating traditional security agencies as well as other relevant non-security focused players in the maritime domain – both government and non-government. Furthermore, this comprehensive approach should be supported by the creation of an overarching maritime strategy, reflecting New Zealand's long-term strategic interests and encompassing a joint, whole-of-government, whole-of-nation (i.e. encompassing non-government entities) approach. The creation of an overarching maritime strategy, coupled with a holistic approach – focused on long-term strategic interests – would significantly enhance New Zealand's maritime domain security into the future.

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Glossary

A-4 Skyhawks	RNZAF decommissioned combat aircraft
ADF	Australian Defence Force
AIS	Automatic Identification System
AMIS	Australian Maritime Identification System
ANZUS	Australia, New Zealand, United States Security Treaty
AP-3C Orion	Australian maritime patrol aircraft
ASW	Anti-submarine warfare
BPC	Border Protection Command
CCAMLR	Convention on the Conservation of Antarctic Marine Living Resources
EEZ	Exclusive Economic Zone
GDP	Gross domestic product
IMO	International Maritime Organization
IUU fishing	Illegal, unreported and unregulated fishing
HQJFNZ	NZDF's Joint Force Headquarters
JOPC	Joint Offshore Protection Command (predecessor to BPC)
MAOT	NZDF term for multiagency operations and tasks
LOSC	Law of the Sea Conventions (or UNCLOS I, UNCLOS II, and UNCLOS III collectively)
NIWA	National Institute of Water and Atmospheric Research
NMCC	National Maritime Coordination Centre
NZDF	New Zealand Defence Force
Operation MAWSONI	New Zealand Government surveillance support to CCAMLR
Operation RELEX	Australian operational response to irregular migration in 2001
P-3K2 Orion	RNZAF upgraded maritime patrol aircraft
Pacific Island Dependencies	Tokelau, Niue and the Cook Islands
Project Protector	RNZN procurement project undertaken during the 2000s
PST	People Smuggling Taskforce (Australian Government committee)
RAAF	Royal Australian Air Force
RAN	Royal Australian Navy
RNZAF	Royal New Zealand Air Force
RNZN	Royal New Zealand Navy
Ross Dependency	New Zealand's territorial claim in Antarctica
SAR	Search and rescue
SIEV	Suspected Illegal Entry Vessels
SOLAS	International Maritime Organization's Safety of Life at Sea Convention
UAV	Unmanned aerial vehicles or drones
UNCLOS I	First United Nations Convention on the Law of the Sea (concluded 1958)

UNCLOS II	Second United Nations Convention on the Law of the Sea (inconclusive 1960)
UNCLOS III	Third United Nations Convention on the Law of the Sea (came into force 1994)
VMS	Vessel Monitoring System (fisheries)

Introduction

When the New Zealand Government ratified the United Nations Convention on the Law of the Sea in July 1996, this nation acquired a maritime territory between 15 and 20 times larger than the total land mass of New Zealand. As a consequence, New Zealand is now recognised as having one of the largest maritime domains of all coastal states, with an Exclusive Economic Zone variously quoted as being the fourth or fifth largest in the world; an area of as yet unknown potential. However, while the social and economic benefits of this disproportionately large maritime area are becoming more and more important to New Zealanders, it is arguably the case that this country maintains an ambivalent attitude towards its maritime domain. For instance, given the concepts and ideas which are central to New Zealand's national identity (Māori culture, *kiwiana*, native flora/fauna, and so on), it is surprising that the vast ocean area that surrounds the wide-spread groups of islands that constitute this country do not feature prominently – if at all. Conversely, land is considered central to New Zealanders' identity.¹ This apparent maritime ambivalence is arguably reflected in New Zealand's approach to national security, and this has resulted in a maritime security regime that – while effective in many respects – fails to focus on New Zealand's long-term national interests.

In recent decades, New Zealand's wider security arrangements have undergone a considerable shift in focus away from the traditional security and defence model towards a more comprehensive approach; encompassing all-hazards be they man-

¹ The Encyclopedia of New Zealand, "New Zealand Identity: Symbols of Identity," Ministry for Culture and Heritage, <http://www.teara.govt.nz/en/new-zealand-identity/page-7>. (Accessed 07 February 2014).

made or natural, domestic or external, to better reflect the events that this country has been faced with in recent times. As a consequence, maritime security is correctly being viewed increasingly as an area of strategic priority by the Government. New Zealand has already laid claim, under the provisions of the Third United Nations Convention on the Law of the Sea (UNCLOS III) to a significant portion of the maritime region within which it is located. Nevertheless, the legacy of past maritime security arrangements, coupled with an apparent mis-prioritisation of strategic maritime imperatives, clearly indicates that New Zealand needs to change its approach to maritime domain security. Moreover, consideration of the existing security arrangements New Zealand has in place to ensure that its maritime domain interests are protected supports this need for change.

This thesis argues that there are compelling reasons for New Zealand's approach to maritime domain security to be refocused. It contends that New Zealand should refocus away from the arguably short-term interests that are currently viewed as the priority, towards a more strategic approach that seeks to protect New Zealand's less tangible – but more important – long-term interests. Furthermore, the operational mechanism by which maritime security is realised needs to be reconsidered; again away from a traditional siloed basis towards a more holistic approach to ensure that New Zealand's modest resources are being used most effectively in her disproportionately large maritime domain.

This thesis draws on a wide range of sources. Most notably this includes relevant academic work, often Australian or New Zealand in origin and focus. Given the central importance of international agreements in establishing areas of sovereignty, interest and responsibility, various agreed conventions are also considered. Similarly, research into contemporary media also features to provide commentary on some of the issues raised. Finally, and perhaps most importantly, where possible relevant government publications and papers have been incorporated to provide a more complete picture of New Zealand's maritime security arrangements.

Before considering how New Zealand's approach to maritime security can be better focused, it is important to examine what comprises New Zealand's maritime domain. This thesis initially seeks to clarify New Zealand's maritime areas of interest; with Chapter One arguing that – despite the aforementioned ambivalence – New Zealand is indeed a maritime nation with a huge maritime domain the geographic boundaries of which can be difficult to define. On one hand, New Zealand has a maritime domain which is quite clearly circumscribed by various international covenants; most notably the UNCLOS III. However, there are also much more contestable parts of New Zealand's maritime domain than the maritime territories embraced under that Convention; the Ross Sea Region in Antarctica being one example.

Similarly, security arrangements exist to protect or preserve the specific interests of the state that has put those arrangements in place. Therefore, one must identify what New Zealand's interests in its maritime domain are before considering how its

approach to maritime domain security could be enhanced. Chapter Two argues that New Zealand's maritime domain security interests can be loosely grouped under four headings; sovereignty, resources management, law enforcement, and environmental protection. However, arguably, not all of these represent the long-term interests upon which New Zealand's maritime security approach must be focused.

Paramount among New Zealand's maritime domain security interests are those represented under the heading pertaining to sovereignty. Chapter Three contends that the long-term protection of New Zealand's sovereign rights over its maritime domain must be prioritised within national maritime security arrangements. Ensuring that New Zealand's sovereign rights over its ocean claims are assured lies with this country's ability to demonstrate a constant, credible and legitimate presence within its maritime domain. This will not be achieved through traditional methods alone, but rather through the demonstration of a credible investment in improving maritime domain awareness and marine understanding; defined in this thesis under the central concepts of presence and stewardship.

New Zealand's wider security is – to a large extent – reliant on an international rules-based system. Under this system, New Zealand's enduring presence within its maritime domain (in both security and non-security contexts) serves to demonstrate sovereign rights over that ocean territory. Similarly, maintaining sovereign rights over maritime claims comes with a subsequent duty to protect and preserve the marine environment, and the idea of stewardship also serves to enhance, or potentially to

detract, from a nation's claim over ocean territory. If the national interest pertaining to sovereignty is New Zealand's most important interest in the maritime domain, then this thesis argues that environmental protection interests are a key enabler in ensuring that sovereignty is upheld. The idea that New Zealand can act as an 'environmental custodian' over its maritime domain – with resources management and law enforcement interests implicit therein – and subsequently enhance its sovereign rights over that territory is an important one. This thesis argues that the pillar of 'stewardship' must become a central component of New Zealand's approach to maritime domain security.

Having established national interests within New Zealand's maritime domain, it is important to reflect upon the security arrangements that have been put in place to ensure their protection. Consideration of what maritime security actually means highlights the fact that in New Zealand's case, while traditional military, political, economic, societal and ecological themes do apply, this country is unique in many respects. The evolution of New Zealand's current approach to maritime domain security owes much to this nation's history, including political decisions in recent decades to shift capability away from traditional defence imperatives towards civil-maritime patrol and law enforcement. Many would argue that New Zealand does not have the resources to protect and secure its maritime domain through traditional or conventional means. In this context, traditional or conventional maritime security can be considered to mean the exercise of naval power, air surveillance, and maritime law enforcement activity. However, one of the key considerations of this thesis is

whether or not the continued emphasis on these traditional or conventional means should be the focus of ensuring New Zealand's maritime security into the future.

In this respect, this thesis draws heavily from the Australian experience as a comparison model for New Zealand's own approach to maritime domain security. Consequently, Chapter Four demonstrates that New Zealand has much to learn from its larger neighbour. The rationale for using Australia's security arrangements as a model for comparative analysis is because, unlike almost every other comparable coastal states in terms of size or capability, the maritime security priorities of Australia and New Zealand are more or less identical.

Australia's maritime security arrangements have been significantly enhanced over the past decade as a result of the non-traditional threats that Australian authorities have been required to deal with; particularly the asylum seeker issue (or irregular maritime arrivals). Arguably, the most significant improvement has been the establishment of an overarching all-of-government maritime security regime. Australia's approach to maritime security serves as an operational model New Zealand would benefit from replicating – albeit in a more modest form – since there are many of the same challenges arising from both being island nations with disproportionately large maritime domains (i.e. the identical security priorities alluded to).

However, when considering the civil-maritime security arrangements of Australia, it is difficult not to reflect on the huge financial costs involved; costs that New Zealand could never conceivably replicate. Accordingly, Chapter Five questions how New Zealand's maritime security arrangements might be structured in order to protect maritime domain interests in a manner that reflects the best cost benefit to New Zealand. It argues that the composition of New Zealand's maritime security *sector* must be reviewed. Rather than looking to those agencies and activities that have traditionally protected the country's maritime interests in the past, New Zealand should take a more holistic approach to its future maritime security needs.

Furthermore, Chapter Six demonstrates that this comprehensive approach should be supported by the creation of an overarching maritime strategy, reflecting New Zealand's long-term strategic interests and encompassing a joint, whole-of-government, whole-of-nation school of thought. In order to protect New Zealand's maritime security interests, activities and strategic investments in its maritime domain – both security and non-security in nature – should be guided by a unified long-term approach. The creation of an overarching maritime strategy, coupled with a holistic approach – focused on long-term strategic interests – would significantly enhance New Zealand's maritime domain security into the future.

Chapter 1: Defining the maritime domain

What is New Zealand's maritime domain?

New Zealand faces numerous and as yet unknown political, societal, economic and environmental challenges over the coming decades. Given the size and potential of its oceanic estate, New Zealand's maritime domain will undoubtedly feature prominently as both cause and solution. In order to ensure it is best placed to meet these challenges, it will become increasingly important that New Zealand maintains an on-going, multi-faceted presence within, and stewardship over, its maritime domain. But before considering what that multi-faceted approach might be, it is important to attempt to define New Zealand's maritime domain.

New Zealand's social and economic identity has historically been based firmly on the land. However, when one considers New Zealand's geographic surroundings – it is clear that New Zealand is a maritime nation. The most commonly recognised world maps are focused on either Europe (the Greenwich Meridian) or the Americas. New Zealanders are therefore used to seeing their nation and its environs tucked away in the periphery, disproportionately shrunken in size to allow for detail to be added to the more heavily populated northern hemisphere and/or the curvature of the Earth. While this does not necessarily diminish New Zealander's awareness their of surroundings, it is a distortion and as a graphic does not reflect New Zealand's actual geographical position; an archipelagic chain of islands surrounded on all sides by vast tracts of ocean over which it has significant interest.



Figure 1: New Zealand's Place in the World²

As a nation made up entirely of wide-spread groups of islands, New Zealand has laid claim to a significant portion of the maritime region within which it is located under the provisions of the Law of the Sea Conventions (hereafter referred to as LOSC).

Centred broadly around the two main North and South Islands, New Zealand consists of more than 600 smaller islands within 50 kilometres of the coast. More importantly in respect to the maritime domain, New Zealand also possesses far removed groups of offshore islands, specifically the Kermadecs, the Chathams, and the sub-Antarctic Islands (refer to the map at Figure 3).³ Under international conventions, these remote

² "New Zealand's Place in the World," Ministry for Culture and Heritage, <http://www.teara.govt.nz/en/map/6958/new-zealands-place-in-the-world>. (Accessed 07 September 2013).

³ Department of Conservation, "Offshore Islands and Conservation," Department of Conservation, <http://www.doc.govt.nz/conservation/land-and-freshwater/offshore-islands/>.

outposts of sovereignty provide New Zealand with a significant “maritime domain”; approximately 1.2% of the Earth’s surface.⁴

Despite these facts, there is still debate about what exactly constitutes New Zealand’s maritime domain. For instance, alluding to the “just-enough-in-time supply chain philosophy”, Geoffrey Till proposes that the Royal New Zealand Navy’s area of operations extends as far as South East Asia, the waters of the South Pacific, and in the case of the two *Anzac* frigates even “further afield”.⁵ Conversely, when considering the “range of pressures on New Zealand’s maritime domain”, Peter Cozens places a greater emphasis on the waters out to the limits the EEZ and extended continental shelf along with commercial shipping routes around New Zealand’s coasts.⁶ Notwithstanding the fact that Till and Cozens are each approaching this question of definition through different areas of focus (i.e. Till’s piece is almost exclusively military centric), it is worth noting the working definition of New Zealand’s maritime domain currently used by government agencies. This working definition refers to the maritime domain as being anything on, under, relating to, adjacent to, or bordering on a sea, ocean, or other navigable waterway, including all maritime-related activities, infrastructure, people, cargo, and vessels and other conveyances that impacts on New Zealand’s interests.⁷

⁴ M V McGinnis, "Ocean Governance: The New Zealand Dimension," *A Summary Report. School of Government. Wellington: Victoria University. 58pp* (2012): 14.

⁵ Geoffrey Till, "New Zealand's Naval Choices," in *Strategic Manoeuvres : Security in the Asia-Pacific*, ed. James Veitch (Wellington, New Zealand: Centre for Strategic Studies New Zealand, 2009), 24.

⁶ Peter Cozens, "Commentary: Some Reflections on Recent Oceans Policy and Oceans Governance Issues in New Zealand," *Australian Journal of Maritime & Ocean Affairs* 6, no. 1 (2014).

⁷ Author’s interview with Kevin Arlidge, Director National Maritime Coordination Centre.

The ambiguity over what might constitute New Zealand's maritime domain necessitates a thorough examination of the issue before an assessment of New Zealand's approach to maritime domain security can be conducted. This thesis contests that New Zealand's maritime domain should be defined as being those stretches of ocean over which the country has a clear strategic interest; but that it also has, or *should* have, the direct ability to influence. Specifically, this includes: the maritime territory out to and beyond the EEZ and extended continental shelf, the Southern Ocean including the Ross Dependency and its EEZ, and the wider Pacific including the waters of Tokelau, Niue and the Cook Islands. This conception of New Zealand's maritime domain, while more clearly circumscribed than the working definition currently used by government agencies, still encompasses a huge maritime area.

The more obvious maritime domain

The word domain has various modern usages, and it is useful to briefly consider a conceptual clarification of the term. Dictionary definitions of "domain" include realm or territory governed by a single ruler or government; while the term "dominion" can be defined as being lands or domains subject to sovereignty or control. With regard to the maritime environment, therefore, the term domain is often used to describe an area over which sovereign rights and/or responsibility theoretically exists.

As mentioned, there are a number of international conventions that seek to define areas of maritime sovereignty, interest, and/or responsibility; these include: the *Law*

of the Sea Conventions, the International Convention on Maritime Search and Rescue, and the International Convention for the Prevention of Pollution from Ships. Conventions relating to ownership or sovereignty typically focus on the waters surrounding recognised land masses. Equally, in addition to the waters adjacent to or surrounding its land territory, there are arguably very large tracts of sea in the wider Southern and Pacific Oceans that New Zealand may also legitimately regard as being part of its maritime domain; such as the Ross Sea and the waters around New Zealand's Pacific Island Dependencies. There are also maritime regions throughout the world that are either recognised as being New Zealand's responsibility under a rules-based international system, or that are viewed by many as being essential to New Zealand's national interests; such as New Zealand's Search and Rescue Region and the maritime trade routes that underpin the national economy.⁸ Finally, New Zealand's maritime domain could be said to extend to New Zealand flagged vessels and therefore anywhere in the world that those ships may travel.

As a geographically-isolated maritime nation, New Zealand has benefitted considerably from the international agreements and conventions created to settle disputes over sovereignty and the laws of the sea; most significantly the *Third United Nations Convention on the Law of the Sea* (which was adopted in 1982, came into force in 1994, and was ratified by New Zealand in 1996).⁹ By way of illustration, the

⁸ Natalie Klein, Joanna Mossop, and Donald Rothwell, "Australia, New Zealand and Maritime Security," in *Maritime Security: International Law and Policy Perspectives from Australia and New Zealand*, ed. Natalie Klein, Joanna Mossop, and Donald Rothwell (New York: Routledge, 2010), 13-16.

⁹ Division for Ocean Affairs and the Law of the Sea, "The United Nations Convention on the Law of the Sea (a Historical Perspective)," United Nations, http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm. (Accessed 19 July 2013).

absence of any close neighbours and consequent competing claims meant that New Zealand could lay claim to a maritime territory between 15 and 20 times larger than its total land mass (the composition of which will be discussed in greater detail shortly). The Law of the Sea Conventions (LOSC) are fundamental in understanding how a particular nation might lay claim to an area of ocean; and the resources that may exist above, within the water column (i.e. the notional column of water from the surface to the bottom in a natural setting), on the seabed, or below the sea-floor.

According to the United Nations' Division for Ocean Affairs and the Law of the Sea, during the twentieth century competing sovereignty claims for maritime territory, rival demands for lucrative fish stock or seabed mineral resources, and the increased presence of maritime powers threatened to "transform the oceans into another arena for conflict and instability".¹⁰ Consequently, following several decades of negotiation, the *Third United Nations Convention on the Law of the Sea* (hereafter referred to as UNCLOS III) brought about what is viewed by many as a comprehensive treaty for the oceans.¹¹ It is comprehensive in that 167 states and parties are signatories (the term states obviously referring to nation states and the term parties referring to bodies such as the European Union).¹² Importantly, the Convention significantly benefits small maritime nations in that there are as yet unquantified resources in the maritime estate that could benefit a coastal state such as New Zealand.

¹⁰ Ibid.

¹¹ The First and Second United Nations Conventions on the Law of the Sea, UNCLOS I and UNCLOS II respectively, were considered insufficient or inconclusive.

¹² United Nations Treaty Collection, "Chapter Xxi Law of the Sea," United Nations, https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&lang=en#1. (Accessed 14 February 2014).

The importance of UNCLOS III as a comprehensive international agreement for the world's oceans cannot be overstated. At its signing then-Secretary General of the United Nations, Perez de Cuellar, called the Convention the most significant legal instrument of the twentieth century.¹³ However, it is important to note that not all nations are signatories and currently 39 out of 196 states have not signed the convention. For instance, the United States has yet to ratify UNCLOS III.¹⁴ This is despite high-level support for LOSC, as illustrated in a 2009 statement by then Secretary of State Hillary Clinton that the ratification of UNCLOS III was a "long overdue" priority for the United States.¹⁵ More recently, in June 2013 the Vice-Chairman of the Joint Chiefs of Staff, Admiral James A. Winnefeld Jr., stated in a testimony to the Senate Foreign Relations Committee that he considers it "awkward to suggest that other nations should follow rules to which the United States has not yet agreed".¹⁶ However, although LOSC has been subject to much academic and political scrutiny since it came into force in 1994,¹⁷ it is not the intention of this thesis to reanalyse LOSC but rather to outline its implications when considering New Zealand's approach to maritime security.

¹³ Don Hinrichsen, *Coastal Waters of the World: Trends, Threats, and Strategies* (Washington D.C.: Island Press, 1998), 41.

¹⁴ John A Duff, "United States and the Law of the Sea Convention: Sliding Back from Accession and Ratification, The," *Ocean & Coastal LJ* 11 (2005): 2.

¹⁵ Council on Foreign Relations, "Transcript of Hillary Clinton's Confirmation Hearing," <http://www.cfr.org/elections/transcript-hillary-clintons-confirmation-hearing/p18225>. (Accessed 28 September 2013).

¹⁶ U.S. Department of State, "U.S. Admiral Strongly Urges Approval of Law of the Sea Convention," <http://london.usembassy.gov/forpol321.html>. (Accessed 27 December 2013).

¹⁷ John R. Stevenson and Bernard H. Oxman, "The Future of the United Nations Convention on the Law of the Sea," *The American Journal of International Law* 88, no. 3 (1994); Myron Nordquist and Satya N Nandan, *United Nations Convention on the Law of the Sea 1982, Volume VII: A Commentary*, vol. 7 (Martinus Nijhoff Publishers, 2011); Klaus Dodds, "Flag Planting and Finger Pointing: The Law of the Sea, the Arctic and the Political Geographies of the Outer Continental Shelf," *Political Geography* 29, no. 2 (2010).

The New Zealand Government ratified UNCLOS III in July 1996. As a result, under the Convention, New Zealand acquired a maritime territory variously stated as being the fourth or fifth largest Exclusive Economic Zone (EEZ) in the world; territory 15 times larger than the total land mass of New Zealand or 20 times larger when one includes the area of continental shelf that extends beyond the EEZ.¹⁸ This is a disproportionately large maritime area compared to other coastal states, especially in light of the geographical size and population of New Zealand (i.e. approximately 270,000 square kilometres and 4.5 million people).¹⁹ For instance, although roughly similar in land mass size, New Zealand's population is approximately 23 times smaller than the population of the Philippines (4.5 million against 107 million respectively) while its claimed EEZ is almost three times larger (officially 6,697,428 square kilometres against 2,265,684 square kilometres respectively).²⁰ Although it is worth noting that the Philippines has additional contested maritime claims.

UNCLOS III defines specific tracts of water over which a state may exercise various levels of sovereignty and authority. Measured from the low-water mark, these are:

¹⁸ Michael De Alessi, "The Political Economy of Fishing Rights and Claims: The Maori Experience in New Zealand," *Journal of Agrarian Change* 12, no. 2-3 (2012): 398; McGinnis, "Ocean Governance: The New Zealand Dimension," 14.

¹⁹ Christopher David Swan, "The Exclusive Economic Zone: An Instrument of National Security?" (Massey University, 2012), 10-11; Statistics New Zealand, "New Zealand in Profile: 2014," http://www.stats.govt.nz/browse_for_stats/snapshots-of-nz/nz-in-profile-2014/about-new-zealand.aspx. (Accessed 02 November 2014).

²⁰ Biliiana Cicin-Sain, David L VanderZwaag, and Miriam C Balgos, *Routledge Handbook of National and Regional Ocean Policies* (Routledge, 2015), 8.

- the Territorial Sea (an area that extends from the agreed low-water mark, i.e. mean low water springs, to a boundary line at 12 nautical miles);²¹
- the Contiguous Zone (extending outwards from 12 to 24 nautical miles);
- the Exclusive Economic Zone (all maritime territory extending from the low-water mark out to a boundary line at 200 nautical miles); and
- the Continental Shelf (classified by UNCLOS III as the seabed and its subsoil that extends beyond the limits of the territorial sea and EEZ throughout the natural prolongation of land territory to the outer edge of the continental margin).²²

Of these tracts of water, the most problematic to define has been the extended continental shelf where, according to Clive Schofield, the initial 1958 Convention (now known as the *First United Nations Convention on the Law of the Sea* or UNCLOS I) allowed for the possibility that an individual coastal state could make a national claim for the entire seabed.²³ Article 76 of UNCLOS III has now provided specific methods of measurement that allow for a state to claim sovereign rights over maritime territory outside of its EEZ (i.e. 200 nautical miles), with an independent scientific officiating body created to assess potential claims: the United Nations Commission on the

²¹ Note that a nautical mile is approximately 1.85 kilometres.

²² Note that Part II of UNCLOS also refers to internal waters and archipelagic waters; excluded here as they clearly fall within any definition of what New Zealand's maritime domain might be (Waitemata Harbour or the Marlborough Sounds for example).

²³ Clive Schofield, "The Delimitation of Maritime Boundaries of the Pacific Island States," in *Proceedings of International Seminar on Islands and Oceans 2010* (Akasaka, Tokyo: University of Wollongong, 2010), 161.

Limits of the Continental Shelf. As of 06 February 2014, 71 submissions had been made to this Commission internationally.²⁴

New Zealand's own submission was made by the New Zealand Permanent Mission to the United Nations in April 2006, with the Commission's findings and recommendations adopted in August 2008. New Zealand's claims were divided into four regions: Northern including the Three Kings Ridge, Colville Ridge, and northern Kermadec Ridge and Kermadec Trench; Eastern including the southern Kermadec Ridge and Kermadec Trench, Hikurangi Plateau, Chatham Rise, Bounty Trough, and northern Campbell Rise; Southern including the southern margins of the Campbell Plateau; and Western including the southern Norfolk Ridge System, New Caledonia Basin, Lord Howe Rise, and the Macquarie Ridge Complex (refer to Figure 3). In general terms, the Commission accepted all of New Zealand's extended continental shelf claims with the exception of an area of territory in the South Fiji Basin, west of the Kermadec Island chain.²⁵

²⁴ Division for Ocean Affairs and the Law of the Sea, "Submissions, through the Secretary-General of the United Nations, to the Commission on the Limits of the Continental Shelf, Pursuant to Article 76, Paragraph 8, of the United Nations Convention on the Law of the Sea of 10 December 1982," United Nations, http://www.un.org/Depts/los/clcs_new/commission_submissions.htm.

²⁵ Commission on the Limits of the Continental Shelf, "Summary of the Recommendations of the Commission on the Limits of the Continental Shelf (Clcs) in Regard to the Submission Made by New Zealand 19 April," United Nations, http://www.un.org/Depts/los/clcs_new/submissions_files/nzl06/nzl_summary_of_recommendations.pdf.

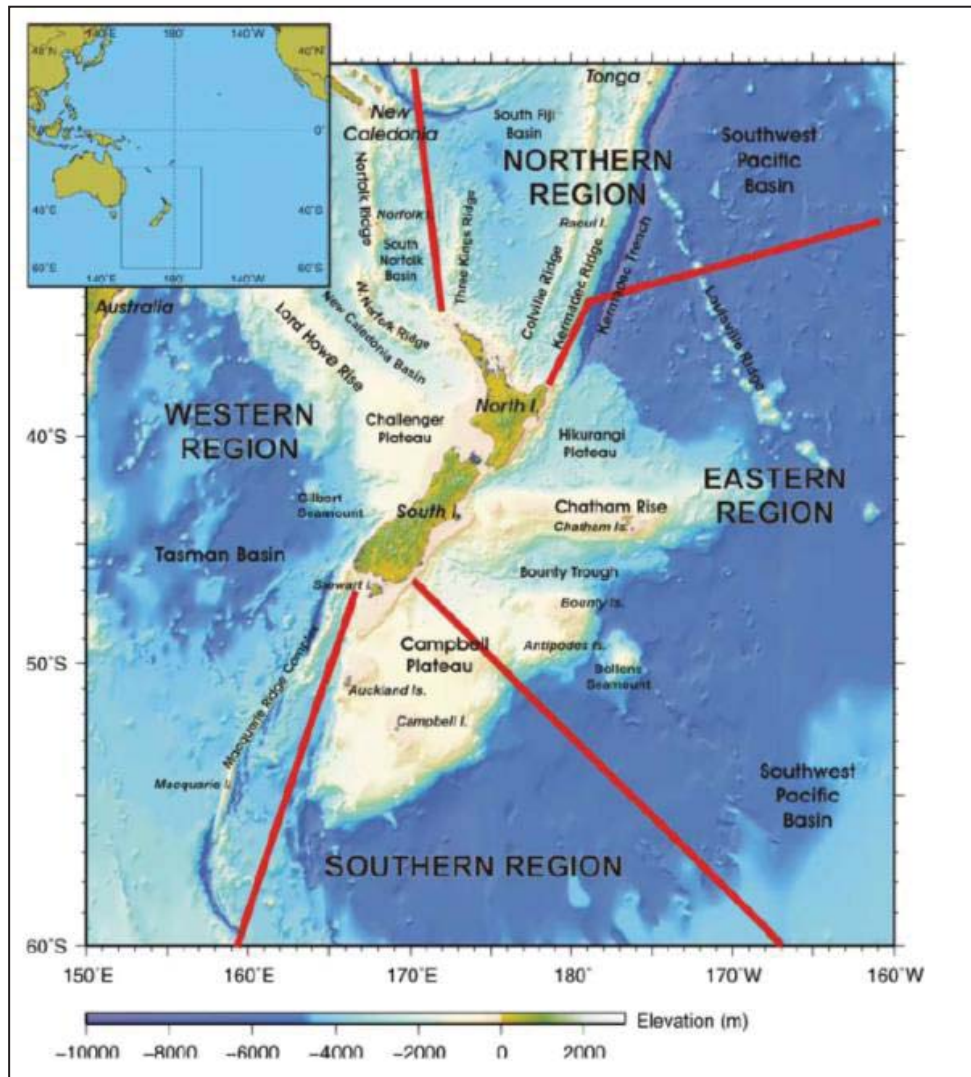


Figure 2: Regional Subdivision and Main Geomorphological Elements of the New Zealand Continental Margin²⁶

Although geographically isolated, New Zealand still shares and contests extended continental shelf boundaries with neighbouring countries; specifically Australia, France (on behalf of New Caledonia), Fiji and Tonga. These boundaries align with significant sea-bed features to the north and south of New Zealand (i.e. Lord Howe

²⁶ *ibid.*, 39.

Rise, Norfolk Ridge, the South Fiji Basin and the sub-sea Macquarie Ridge Complex.²⁷ A boundary delimitation treaty between Australia and New Zealand was agreed in 2004.²⁸ This treaty specifically confirmed the agreed geodesic boundaries between New Zealand territory and Lord Howe and Norfolk Islands (both Australian), and Macquarie Island (Australian) and the Campbell and Auckland Islands (both New Zealand territories). The treaty also confirmed that should any resources be found to lie across the agreed boundary then the two governments will “seek to reach agreement on the manner in which the accumulation or deposit shall be most effectively exploited and on the equitable sharing of the benefits arising from such exploitation”.²⁹

Despite on-going maritime boundary disputes around the world, UNCLOS III is considered a model for international cooperation. For example, Donald Rothwell contested that the Convention was “one of the most complex and ultimately successful international diplomatic negotiations that took place in the twentieth century”.³⁰ This international consensus means that the maritime territory extending out to the edge of the EEZ and extended continental shelf surrounding New Zealand’s recognised islands appears firm in the current global environment. The ocean space defined by LOSC (illustrated at Figure 3) should therefore clearly rest within any definition of New Zealand’s maritime domain. There are a number of

²⁷ GNS Science, "Oceanic Ridges, Submarine Ridges, and Natural Components of the Margin," <http://www.gns.cri.nz/static/unclos/ridges.html>. (Accessed 03 November 2013).

²⁸ The Government of New Zealand and the Government of Australia, "Treaty between the Government of New Zealand and the Government of Australia Establishing Certain Exclusive Economic Zone Boundaries and Continental Shelf Boundaries," (Adelaide 2004).

²⁹ Article 4, Exploitation Of Certain Seabed Deposits. Ibid.

³⁰ D. R. Rothwell, "Issues and Strategies for Outer Continental Shelf Claims," *International Journal of Marine and Coastal Law* 23, no. 2 (2008).

different lenses through which any definition of the maritime domain could be viewed and, with the government's aforementioned working definition effectively extending to any stretch of water in the world, there is obviously some debate about where New Zealand's maritime domain boundaries should be drawn. But under LOSC, and specifically UNCLOS III, a clear level of apparent sovereignty exists over the territorial sea and EEZ surrounding New Zealand's recognised islands; out to 200 nautical miles. Likewise, international consensus with regard to the extended continental shelf surrounding New Zealand's recognised land masses appears firm in the current global environment. Therefore, the vast ocean territory as defined by UNCLOS III is a logical point of departure for focusing the definition of New Zealand's maritime domain.

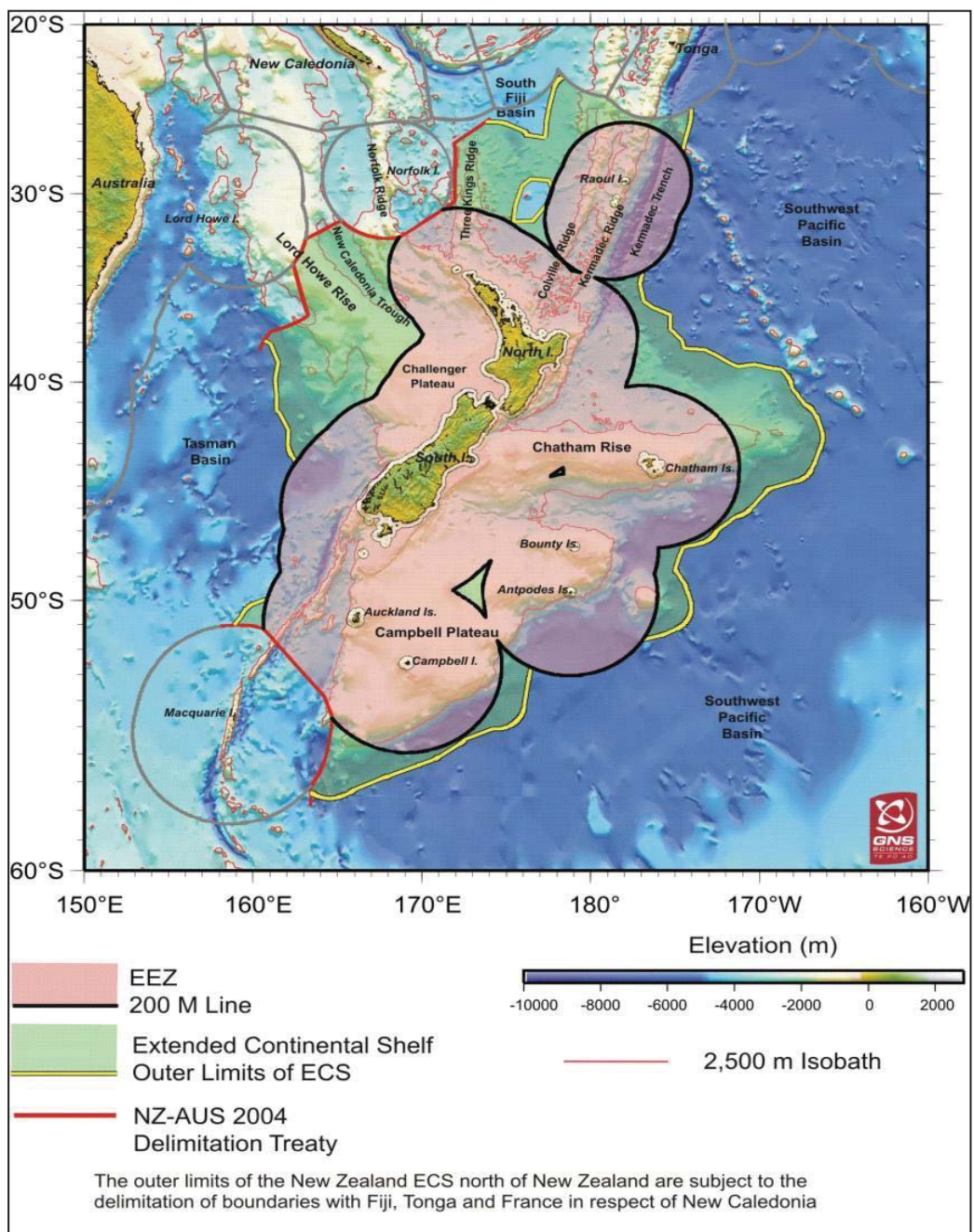


Figure 3: Map of the EEZ and Extended Continental Shelf Boundaries³¹

³¹ Land Information New Zealand, "Map of the Continental Shelf Boundary," Land Information New Zealand, <http://www.lin.govt.nz/hydro/projects-programmes/continental-shelf/undersea-image>. (Accessed 07 September 2013).

The uncertain maritime domain

Notwithstanding the accepted boundaries provided by LOSC, New Zealand's maritime interests do not end at the edge of the EEZ and extended continental shelf surrounding the island chains that make up its recognised land mass. Along with many other nations, New Zealand views large tracts of ocean territory outside of the EEZ and extended continental shelf as defined by LOSC as its own; with arguably the most significant being the Ross Sea in Antarctica.

By way of illustration, in March 2005 then-Minister of Research, Science and Technology and Minister of Land Information jointly launched the New Zealand Government's Ocean Survey 20/20 initiative on board HMNZS *Resolution*; the Navy's now decommissioned oceanographic and hydrographic ship.³² According to one of the key research institutes involved in the programme, the National Institute of Water and Atmospheric Research (NIWA), the initiative aimed to provide New Zealand with better knowledge of its ocean territory; stated as being the EEZ, extended continental shelf, and the Ross Sea Region in Antarctica.³³ The Government department coordinating the programme, Land Information New Zealand (LINZ), went further by explicitly stating that Ocean Survey 20/20 would demonstrate *sovereign rights* over the oceans around New Zealand "including the Ross Sea Region".³⁴ Moreover, the Ministry for Foreign Affairs and Trade asserts that since 1923 New Zealand has

³² Pete Hodgson, "Ocean Survey 20/20 Launch Speech," New Zealand Government, <http://www.beehive.govt.nz/speech/ocean-survey-2020-launch-speech>.

³³ National Institute of Water and Atmospheric Research, "Ocean Survey 20/20 - Coastal and Marine Data Portal " <http://www.os2020.org.nz/>.

³⁴ Land Information New Zealand, "About Ocean Survey 20/20," <http://www.linz.govt.nz/hydro/projects-programmes/ocean-survey-2020/about-ocean-survey-2020>.

maintained its right of sovereignty over the Ross Dependency (which could include sovereign rights over its 2.3 million square kilometre EEZ) and that it is constitutionally part of New Zealand.³⁵ New Zealand's formal submission to the United Nations Commission on the Limits of the Continental Shelf in 2006 supports this view, although it is interesting to note that the Commission's resultant recommendations omitted any reference to the Ross Sea.³⁶ In other words, given the numerous specific references to the Ross Sea, it is clear that the New Zealand Government regards significant tracts of ocean outside of those specified within LOSC as its sovereign territory and therefore part of its maritime domain (illustrated at Figure 4).

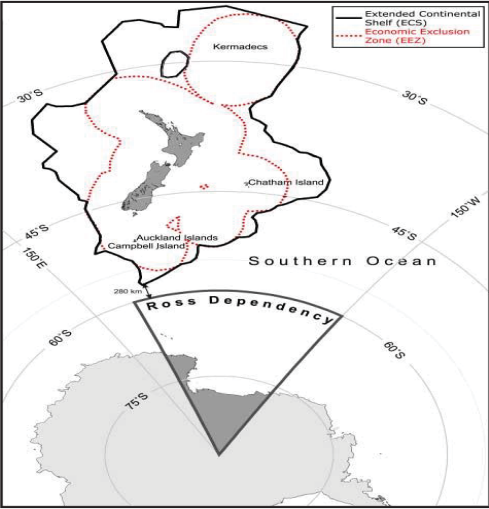


Figure 4: Unofficial Map of New Zealand's Southern Ocean Claims³⁷

³⁵ Ministry of Foreign Affairs and Trade, "New Zealand and Antarctica," <http://www.mfat.govt.nz/Foreign-Relations/Antarctica/1-New-Zealand-and-Antarctica/index.php>.

³⁶ New Zealand Permanent Mission to the United Nations, "Commission on the Limits of the Continental Shelf," https://www.un.org/depts/los/clcs_new/submissions_files/nzl06/nzl_doc_es_attachment.pdf; Commission on the Limits of the Continental Shelf, "Summary of the Recommendations of the Commission on the Limits of the Continental Shelf (Clcs) in Regard to the Submission Made by New Zealand 19 April".

³⁷ Our Far South, "Our Far South – Generously Interpreted," Morgan Foundation, <http://www.ourfarsouth.org/Region/Territory/TerritoryOfOurFarSouth.aspx>. (Accessed 07 September 2013).

Unlike the maritime estate defined under LOSC out to the edge of the EEZ and extended continental shelf, there is a marked lack of consensus on the level of sovereignty and sovereign rights that exists over the tracts of water in the Southern Ocean that New Zealand regards as its own – specifically the Ross Sea. New Zealand has forcefully argued that the Ross Dependency is constitutionally part of New Zealand, and the country maintains a permanent and active presence in the region through Antarctica New Zealand's Scott Base and frequent maritime patrol activity.³⁸ This on-going presence provides a level of legitimacy to New Zealand's claims which, along with the proximity of the sub-Antarctic islands, adds weight to the view that the Southern Ocean (at the very least between the meridians 150° E to 150° W) must be viewed as part of New Zealand's maritime domain.

In addition to its claims of sovereign rights for large tracts of the Southern Ocean, New Zealand also has responsibilities over maritime territories in the Pacific. At the request of the three respective elected Governments, New Zealand has special representative relationships with the Pacific island nations of Tokelau (a self-administering territory of New Zealand), Niue and the Cook Islands (both recognised as self-governing states in free association with New Zealand).³⁹ As a result of these relationships and the consequent responsibilities, such as New Zealand's defence and security guarantee for example, it could reasonably be argued that New

³⁸ Antarctica New Zealand, "Annual Report 2011-2012," (Christchurch2012), 19; Press Release: New Zealand Government, "Hmnzs Otago Leaves for Southern Ocean," Scoop Media, <http://www.scoop.co.nz/stories/PA1311/S00465/hmnzs-otago-leaves-for-southern-ocean.htm>. (Accessed 27 December 2013).

³⁹ The Ministry of Foreign Affairs and Trade, "Pacific Information Papers," <http://www.mfat.govt.nz/Foreign-Relations/Pacific/index.php#papers>.

Zealand’s maritime domain includes the ocean territories of these three Pacific island (or Realm) nations (refer to Figure 5). Indeed, New Zealand has made a continental shelf boundary submission on behalf of Tokelau for the Manihiki Plateau Region; ironically competing against claims made by the Cook Islands.⁴⁰

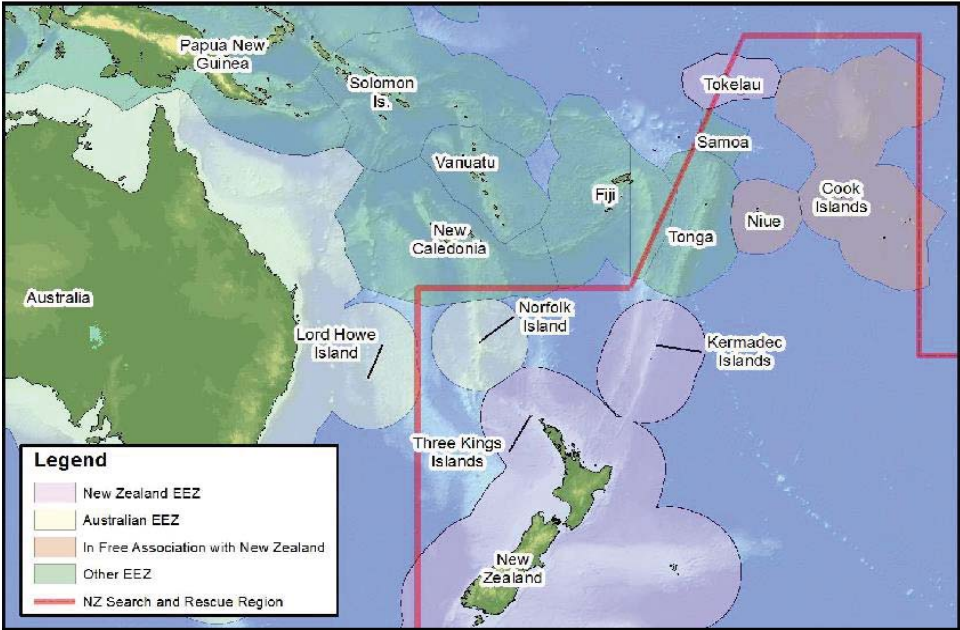


Figure 5: Unofficial Map of South Pacific EEZs

New Zealand’s special relationships with Tokelau, Niue and the Cook Islands come with responsibilities that mean that the ocean territories of these three Pacific island nations must also be viewed as the responsibility of the New Zealand Government. Therefore, from a security context, the maritime territories of Tokelau, Niue and the Cook Islands must also be viewed as part of New Zealand’s wider maritime domain for the foreseeable future. At least until those governments no longer wish that to be

⁴⁰ Schofield, "The Delimitation of Maritime Boundaries of the Pacific Island States," 165.

the case; Article 11 of the Treaty of Free Association allows Tokelau freedom to become independent from New Zealand at any time.⁴¹

In addition to UNCLOS III, another international convention with important implications for what might be considered New Zealand's maritime domain is the *International Convention on Maritime Search and Rescue*. Enacted in 1979 and overseen by the International Maritime Organization, this Convention sought to coordinate search and rescue (SAR) response activity internationally by ensuring that "no matter where an accident occurs, the rescue of persons in distress at sea will be coordinated by a SAR organization".⁴² To this end, the oceans of the world were divided up into thirteen maritime SAR regions, with responsibility for each allocated to a designated regional rescue coordination centre. New Zealand's ratification of this Convention means that the Rescue Co-Ordination Centre New Zealand, now part of the Crown entity Maritime New Zealand, has assumed responsibility for 30 million square kilometres of ocean; stretching from the Equator to the South Pole and from the Tasman Sea across the Pacific halfway to South America (illustrated at Figure 6).⁴³

⁴¹ Government of Tokelau, "Summary of the Treaty of Free Association," Government of Tokelau, <http://tokelau.org.nz/About+Us/Government/Self+Determination+Package/Summary+of+the+Treaty+of+Free+Association.html>. (Accessed 24 February 2014).

⁴² International Maritime Organization, "International Convention on Maritime Search and Rescue," [http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-on-Maritime-Search-and-Rescue-\(SAR\).aspx](http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-on-Maritime-Search-and-Rescue-(SAR).aspx).

⁴³ Maritime New Zealand, "Briefing to the Incoming Minister," (Wellington: Maritime New Zealand, 2011), 19.

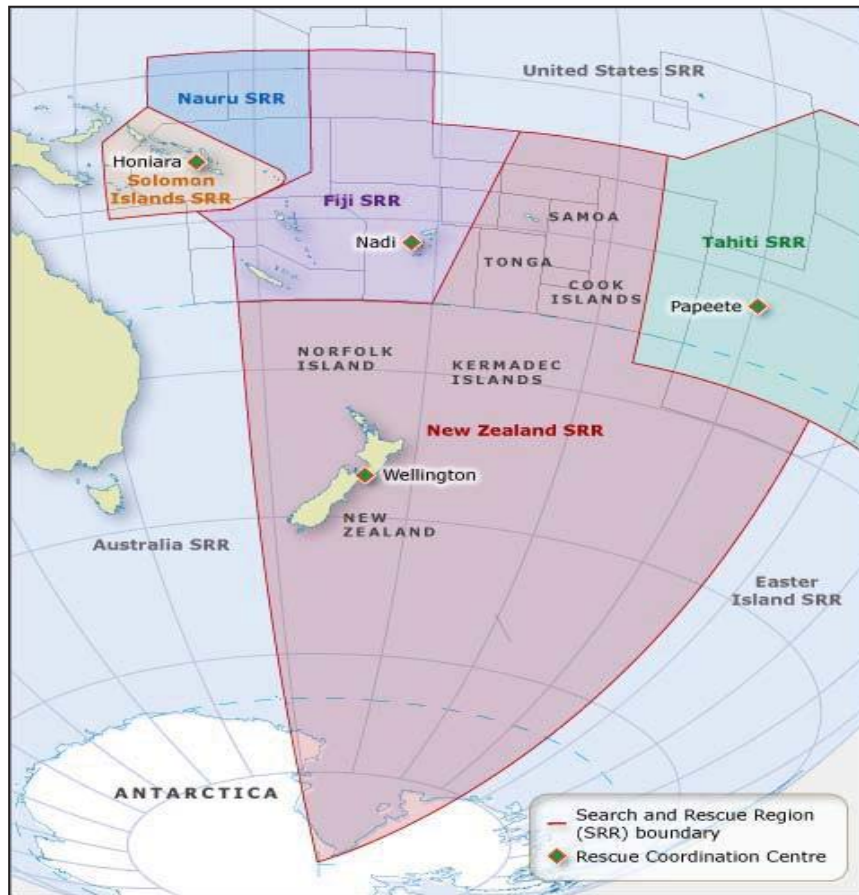


Figure 6: New Zealand's Search and Rescue Region⁴⁴

Similarly, New Zealand also recognises its obligation to assist its smaller and more resource-constrained Pacific neighbours in undertaking their SAR responsibilities, for example deploying military aircraft to support vessels in distress transiting between Pacific islands.⁴⁵ A further demonstration of this assumed responsibility can be evidenced by New Zealand's commitment to support Fiji with search and rescue operations despite the often turbulent relationship between the two countries'

⁴⁴ The Encyclopedia of New Zealand, "Story: Search and Rescue," Ministry for Culture and Heritage, <http://www.teara.govt.nz/en/map/13199/new-zealands-search-and-rescue-region>. (Accessed 07 September 2013).

⁴⁵ 3 News, "Three Rescued Off Coast of American Samoa," (Wellington: MediaWorks TV, 2013).

respective Governments.⁴⁶ Accordingly, given the New Zealand Government's maritime SAR responsibilities over huge expanses of the Pacific and Southern Oceans, SAR boundaries might also be considered a method by which one might define New Zealand's maritime domain. This is despite the fact that much of the ocean territory that lies within New Zealand's SAR boundaries includes the recognised territorial waters of other states such as Pacific island nations and Australia.

Given New Zealand's SAR responsibilities any consideration of New Zealand's maritime domain *could* also include the vast areas of water covered by the SAR region, especially those waters where New Zealand Government assets such as defence vessels and aircraft are often deployed to cover incidents. However, for the most part, New Zealand has no authority, sovereignty rights, or claims over territories within its SAR region not covered by UNCLOS. When considering the specific question of security, rather than safety of life at sea, the SAR region should be viewed no differently to other maritime regions throughout the world that New Zealand has a direct interest in.

Beyond the issue of SAR responses under the *International Convention on Maritime Search and Rescue*, there are other large areas of ocean that encroach upon other nations' recognised territorial waters, but which New Zealand might consider to be

⁴⁶ Pacific Islands Legal Information Institute, "Exchange of Letters Constituting an Agreement between the Government of Fiji and the Government of New Zealand on Search and Rescue Operations," University of the South Pacific, http://www.paclii.org/pits/en/status_pages/1984-3.html. (Accessed 24 December 2013).

within its maritime domain. Despite seeking to define national sovereignty over maritime territory, LOSC (and UNCLOS III in particular) includes important provisions that recognise that maritime domain interests will often overlap and that it is advantageous to all states that these areas of potential discord are clarified. The most pertinent aspect of such provisions relates to rights of access to maritime transit routes.

The sea has always been regarded a highway for travel and trade and, given the modern global economy, it is more important than ever that critical international sea lines of communication are not constrained by challenges of sovereignty and rights of access to maritime transit routes. The idea of the freedom of the seas is fundamental to the Law of the Sea and has been grappled with for centuries. For instance, in his seminal work *Mare Liberum*, Netherlands lawyer Hugo Grotius (1583 – 1645) sought to codify the idea of the freedom of the seas in order to justify Dutch merchant trade in East Asia during the seventeenth century.⁴⁷ While modern international law has refined many of the concepts upon which early maritime law was based, freedom of the seas continues to remain a core tenant.

Parts III and VII of UNCLOS III specifically deal with ‘straits used for international navigation’ and the ‘High Seas’ respectively, allowing for vessels of all nations to transit free from interference. Likewise, perhaps the most significant provision throughout LOSC is the customary law of ‘the right of innocent passage’; whereby a

⁴⁷ Robin Rolf Churchill and Alan Vaughan Lowe, *The Law of the Sea* (Manchester University Press, 1999), 4, 71.

vessel or craft of one state can pass unhindered through the waters of another, so long as it does not engage in illegal or hostile activity such as threatening the use of force, unpermitted fishing, or carrying out unauthorised surveillance.⁴⁸ Consequently, UNCLOS III recognises the importance of sea lanes of commerce, trade and communication remaining free and open. This is particularly the case for sea lanes of communication that pass through so-called choke points and strategic maritime bottlenecks; which are given special recognition under LOSC.

A long-recognised example of the discord that strategic maritime bottlenecks can cause is the on-going antagonism surrounding the Straits of Hormuz in the Persian Gulf, with New Zealand not immune from the resultant political and economic repercussions. Ostensibly the territorial waters of Iran and Oman, the Straits of Hormuz are a recognised international waterway through which 20 per cent of the world's oil supply travels each day. In a May 2013 interview the Commander of United States' Naval Forces Central Command, Vice-Admiral John Miller, highlighted the global strategic importance of the Straits of Hormuz.⁴⁹ This view is supported by Roger Stern's work, calculating that America has spent US\$8 trillion protecting oil resources in the Persian Gulf region since 1976.⁵⁰

⁴⁸ Natalie Klein and Donald R Rothwell, "Maritime Security and the Law of the Sea," in *Maritime Security : International Law and Policy Perspectives from Australia and New Zealand*, ed. Natalie Klein, Joanna Mossop, and Donald R Rothwell (New York, NY: Routledge, 2009), 27-28.

⁴⁹ Nick Hopkins, "United Kingdom Sends Underwater Drones to Gulf for Anti-Mines Exercise," *The Guardian*, 22 May 2013.

⁵⁰ Roger J. Stern, "United States Cost of Military Force Projection in the Persian Gulf, 1976–2007," *Energy Policy* 38, no. 6 (2010).

According to information released by both the Ministry of Economic Development and the Parliamentary Library, New Zealand's own oil supply is similarly dependent on the flow of shipping through this maritime chokepoint. As Michael Levi contends, there is simply no alternative route for most of the maritime traffic that passes through this international bottleneck.⁵¹ The detrimental effect of a potential 'oil shock' scenario resulting from the closure of the Straits is predicted as being of national significance to New Zealand.⁵²

Its enduring military presence in the area demonstrates that, rightly or wrongly, the United States views the Straits of Hormuz as part of its maritime domain. The evident importance of international waterways such as the Straits of Hormuz to this country's own national strategic interests begs the question whether New Zealand's maritime domain should also extend to strategic international waterways far removed from the Pacific?

This is certainly the case if one considers the conveyance of New Zealand goods carried in foreign flagged and crewed ships and the security of that cargo, either in the New Zealand maritime domain or beyond. Likewise, New Zealand has the exclusive right to exercise legislative and enforcement jurisdiction over New Zealand flagged vessels; raising the situation whereby New Zealand's maritime domain could be said to extend to wherever in the world New Zealand flagged vessels are

⁵¹ Michael Levi, "The Enduring Vulnerabilities of Oil Markets," *Security Studies* 22, no. 1 (2013): 136.

⁵² Peter Clough, James Zuccollo, and Daisy Shen, "New Zealand Oil Security Assessment Update: NZIER Report," ed. New Zealand Institute of Economic Research (Wellington: Ministry of Economic Development, 2012), 51. Clint Smith, "The Next Oil Shock?," ed. The Economics and Industry Team Parliamentary Library (Wellington: New Zealand Government, 2010).

present.⁵³ New Zealand clearly has a significant interest in ocean trade routes, but its ability to exert influence over stretches of water outside of the Pacific must be taken into account when considering any realistic definition of the maritime domain. On the other hand, according to John Yeabsley's often-quoted 1995 figures, 90% of New Zealand's exports and imports by value and 99% by volume move by sea. More recent figures put the values at 75% by value and 85% by volume, but also include the 90% of international telecommunication services that are carried on submarine cable systems. It might therefore be argued that the country's economic prosperity is absolutely reliant on sea lines of trade and communication.⁵⁴

Traditionally, control or influence over sea lines of trade and communication has long been a strategic imperative for maritime nations. Accordingly, as a maritime nation some of New Zealand's most historically significant events have resulted from efforts to control strategic maritime bottlenecks (albeit often using land-based methods) – such as the Dardanelles (in 1915) and the Suez Canal (1916 to 1918 and 1940 to 1943); although on each occasion as part of a wider coalition of allies all possessing similarly shared objectives. However, arguing that the Suez Canal (though still a critical route for New Zealand's trade and export) should be considered part of New Zealand's maritime domain is questionable – despite the fact that New Zealand military assets have actually deployed to the region in recent times and the Defence

⁵³ Churchill and Lowe, *The Law of the Sea*, 208.

⁵⁴ John Yeabsley, "The Economics of New Zealand's Maritime Security," in *A Maritime Nation: New Zealand's Maritime Environment and Security*, ed. Peter Cozens (Wellington: The Centre for Strategic Studies Victoria University of Wellington, 1996); Ministry for the Environment, "Offshore Options: Managing Environmental Effects in New Zealand's Exclusive Economic Zone," (Wellington: Ministry for the Environment, 2005).

White Paper 2010 specifically references that maritime region as being “of national interest”.⁵⁵

In the age of empire, a geographically-small maritime nation (such as Britain) might have invested in a strong navy to ensure that its sea lines of communication remained free from threats. In the modern world, however, this is clearly neither a palatable nor viable option for a liberal democracy with a small economy. New Zealand will therefore remain reliant on a rules-based international system in order to promote its security interests outside of the Pacific. While it may be argued that chokepoints such as the Suez and Panama Canals, and the Straits of Hormuz, Malacca, Sunda and Lombok are all of national strategic importance to New Zealand, it would be misleading to define them explicitly as part of New Zealand’s maritime domain – with the implied security responsibilities that this would entail and this country’s inability to uphold them.

New Zealand’s maritime domain

Clearly there are numerous lenses through which one might seek to define New Zealand’s maritime domain. However, in a security context, New Zealand’s maritime domain is more easily demarcated. For instance, the New Zealand Defence Force (NZDF) has a useful model to cover possible activity it may be called upon to undertake: Employment Contexts. There are five Employment Contexts, broken down geographically, each illustrating plausible wider security challenges New

⁵⁵ Ministry of Defence, "Defence White Paper 2010," (Wellington: Ministry of Defence, 2010), 20.

Zealand could potentially face. From a maritime perspective, Employment Context One covers “New Zealand’s environs” (i.e. the EEZ) and Antarctica, while Employment Context Two covers “the South Pacific”. Employment Contexts Three, Four, and Five cover Australia, the Asia-Pacific, and the rest of the world respectively.⁵⁶

It is arguable that all the world’s ocean trade routes could be included the definition of New Zealand’s maritime domain (i.e. the government’s current working definition). However, given the analysis provided in this Chapter, this definition of New Zealand’s maritime domain is both unhelpful and unfeasible. Therefore, only the maritime territory covered in Employment Contexts One and Two can reasonably be included in any definition of what New Zealand’s maritime security domain might be. This is because New Zealand’s maritime domain should be defined as being those stretches of ocean over which the country has a clear strategic interest; but that it also has, or *should* have, the direct ability to influence (i.e. a meaningful **presence** within and **stewardship** over). Unquestionably, the maritime territory out to and beyond the EEZ and extended continental shelf, the Southern Ocean including the Ross Dependency and its potential EEZ, and the wider Pacific including the waters of Tokelau, Niue and the Cook Islands. Using these parameters, New Zealand’s

⁵⁶ New Zealand Defence Force, "Statement of Intent 2013 - 2016," (Wellington: New Zealand Defence Force, 2013), 17.

maritime domain encompasses a huge area; approximately 11.5 million square kilometres.⁵⁷

⁵⁷ Rögnvaldur Hannesson, "The Exclusive Economic Zone and Economic Development in the Pacific Island Countries," *Marine Policy* 32, no. 6 (2008): 889; McGinnis, "Ocean Governance: The New Zealand Dimension," 15.

Chapter 2: What are New Zealand's interests in the maritime domain?

Defining interests

Having established a working definition of New Zealand's maritime domain, the next challenge is to define the national interests that exist within this area. In general terms, the maritime security arrangements of a sovereign nation exist to ensure the protection and/or preservation of that state's maritime interests. Accordingly, there is value in reflecting on New Zealand's own maritime interests before considering how to better focus her approach to maritime domain security.

There have been a number of attempts by Government to define New Zealand's maritime interests.⁵⁸ For instance, in 2010 the Office of the Auditor-General undertook a performance assessment examining how effectively civilian and military maritime patrols were coordinated "to support New Zealand's many maritime interests". These interests were explicitly stated as being "maritime sovereignty and security, marine resource management, law enforcement, environmental protection, maritime safety, and external relations".⁵⁹ Similarly, Joanna Mossop, a prominent maritime legal specialist, noted that New Zealand's maritime interests include conventional security, resource protection (i.e. fisheries), security of shipping and the sea lanes, law enforcement (i.e. transnational criminal activities including terrorism,

⁵⁸ Recent examples include various Defence White Papers, the 2001 Maritime Patrol Review and the 2014 National Maritime Security Strategic Framework.

⁵⁹ Office of the Auditor-General, "Effectiveness of Arrangements for Co-Ordinating Civilian Maritime Patrols," (Wellington: Office of the Auditor-General, 2010), 9.

etc.), and environmental and biodiversity protection.⁶⁰ These views concur with the interests outlined in what is arguably the most comprehensive Government security assessment of New Zealand's ocean territory, the 2001 *Maritime Patrol Review*.⁶¹

In February 2001 the Department of the Prime Minister and Cabinet released the *Maritime Patrol Review*. The purpose of the Review was to undertake an all-of-government assessment of New Zealand's civil-military maritime surveillance capabilities, and the consultation process included a wide range of government and non-government viewpoints both domestic and offshore.⁶² As a significant first step, the authors of the Review undertook a comprehensive assessment of New Zealand's interests in the maritime domain. The authors stated that a holistic assessment of the country's interests and resultant surveillance requirements had never been carried out;⁶³ however, this assertion arguably discounts the consultation process that informed preceding Defence White Papers.⁶⁴

As part of its findings, the Review categorised New Zealand's maritime interests as being: Sovereignty; Resources Management; Illegal Activity (or law enforcement); Environmental Protection; and Marine Safety.⁶⁵ Consequently, with the exception of marine safety (i.e. non-security search and rescue activity excluded here for the

⁶⁰ Joanna Mossop, "Maritime Security in New Zealand," in *Maritime Security : International Law and Policy Perspectives from Australia and New Zealand*, ed. Natalie Klein, Joanna Mossop, and Donald R Rothwell (New York, NY: Routledge, 2009), 55-60.

⁶¹ Department of the Prime Minister and Cabinet, "Maritime Patrol Review," (Wellington: Department of the Prime Minister and Cabinet, 2001), 5.

⁶² *ibid.*, Annex I.

⁶³ *ibid.*, 3.

⁶⁴ Derek Quigley, "The Evolution of New Zealand Defence Policy," *Security Challenges* 2, no. 3 (2006): 45,50.

⁶⁵ Department of the Prime Minister and Cabinet, "Maritime Patrol Review," 5.

reasons provided in Chapter One), the *Maritime Patrol Review* provides an authoritative point of departure and a useful framework for establishing New Zealand's interests in the maritime domain.

Sovereignty interests

Sovereignty – loosely defined as the power or authority possessed or claimed by a state – is New Zealand's most important interest in the maritime domain; and it is the key element upon which all other interests broadly rest. However, in the twenty-first century, preservation of maritime domain sovereignty need not be wholly reliant on traditional methods such as the maintenance of a strong navy. As will be covered in greater depth shortly, the concepts of *presence* and *stewardship* are central components to the maintenance of maritime sovereignty and are not necessarily dependent on military sea and air capabilities.

In common with many other small nations, New Zealand's sovereignty and sovereign rights over its maritime domain are largely reliant on the existence of a rules-based system and stable international order.⁶⁶ It is therefore in the national interest to ensure that sovereignty and sovereign rights over the maritime domain are credibly demonstrated through exercising New Zealand's rights and responsibilities under international law. Ensuring that a stable international order is maintained is a

⁶⁶ Other examples of small nations that rely on this approach are Singapore and Norway, which both boast significant merchant fleets. Department for Transport, "World Fleet Registered Vessels," UK Government, <https://www.gov.uk/government/statistical-data-sets/fle05-world-fleet-registered-vessels>. (Accessed 27 December 2013).

principal defence and foreign policy goal for New Zealand,⁶⁷ as evidenced by the primacy given to “strengthening international order to promote security” in *New Zealand’s National Security System*.⁶⁸

In the absence of a National Security Strategy, the Government published a strategic document entitled *New Zealand’s National Security System* in 2011. This document explicitly sets out to provide a comprehensive view of national strategic security interests and how the New Zealand Government should work to mitigate and respond to significant security issues.⁶⁹ Importantly, the scope of the *National Security System* viewed security matters differently to more traditional assessments, encompassing all-hazards; be they man-made or natural, domestic or external.⁷⁰

Of the seven key national security objectives listed in the publically released document, the top four can be directly transposed onto the maritime domain: preserving sovereignty and territorial integrity; protecting lines of communication; strengthening international order to promote security; and sustaining economic prosperity.⁷¹ It is worth noting that the seven national objectives have since been revised to six; with the protection of lines of communication being subsumed within the aim of strengthening international order to promote security.

⁶⁷ Ministry of Defence, "Defence White Paper 2010," 20.

⁶⁸ Department of the Prime Minister and Cabinet, "New Zealand’s National Security System," (Wellington: Department of the Prime Minister and Cabinet, 2011).

⁶⁹ *ibid.*, 2-3.

⁷⁰ *ibid.*, 3.

⁷¹ *ibid.* The other three objectives are: maintaining democratic institutions and national values; ensuring public safety; and protecting the natural environment.

Each of the top four objectives has inherent maritime sovereignty implications and raises questions over how New Zealand might, with its modest resources, go about ensuring that each objective is met and maritime sovereignty interests maintained. With respect to conventional maritime security, one could argue that New Zealand's interests lie in its ability to demonstrate that it has a meaningful security presence in its maritime domain; rather than the existence of a naval fleet in a traditional sense.⁷² The question as to what a meaningful security presence might mean, in the context of security, is discussed in further detail in later chapters. However, it is important to first consider in greater detail the essential concept of **maritime domain presence**.

The maintenance of an enduring presence in and above its maritime domain adds weight to New Zealand's claims of sovereignty and sovereign rights over those ocean areas. New Zealand does have an obvious, often non-security focused, presence in its ocean territory, particularly its littoral waters, by way of some 4000 commercial vessels and approximately 250,000 recreational craft.⁷³ Moreover, Government-funded agencies and organisations such as the Department of Conservation and Antarctica New Zealand maintain permanent footprints on islands and land territory the locations of which actually create New Zealand's theoretical maritime domain (i.e. the Kermadecs, Ross Dependency, etc.). Equally, New Zealand's presence in the Pacific is represented through the bilateral linkages it has with the its Island Dependencies coupled with frequent patrol activity in the wider region. For example, New Zealand is a founding member of the Pacific Island Forum Fisheries Agency, a

⁷² Peter Cozens, "Some Reflections on the Security of Sea Lines of Communication," *Australian Journal of Maritime & Ocean Affairs* 4, no. 2 (2012): 37-43.

⁷³ Department of the Prime Minister and Cabinet, "Maritime Patrol Review," 8.

regional maritime domain awareness agency focused on fisheries protection.⁷⁴

Furthermore, all of these prominent examples also demonstrate activity that upholds New Zealand's stewardship over its maritime domain. With a continued presence in its ocean territory one can argue that New Zealand's sovereignty in its maritime domain is credibly demonstrated and, importantly, not always via traditional defence or security-focused efforts.

This demonstration of sovereignty is significant. Without a constant, credible and legitimate presence in its maritime domain, a nation's claims to that ocean territory could be challenged. In New Zealand's case, for instance, with concerns over growing international food shortages, such a challenge could take the form of a military escort to foreign fishing vessels illegally fishing within New Zealand's EEZ.

This type of incident has occurred in other parts of the world, for instance in the waters around the Korean peninsula where fishing fleets escorted by military vessels have led to armed confrontation.⁷⁵

In other more volatile parts of the world, challenges to claims over ocean territory are a frequent occurrence. For example, notwithstanding their proximity to strategic maritime trade routes, many of the reefs, sandbars and seamounts of the South China Sea would have relatively little value to the surrounding countries that claim sovereignty over them, were it not for the significant maritime territory to which the

⁷⁴ Stephen Smith, "Paper Presented by Stephen Smith Mp, Minister for Defence, to the Lowy Institute on the 2013 Defence White Paper," (Sydney: Lowy Institute for International Policy, 2012).

⁷⁵ Kongdan Oh and Ralph C Hassig, *Korea Briefing 2000-2001: First Steps toward Reconciliation and Reunification* (ME Sharpe, 2002), 24.

owner of those specks of land might be entitled. Indeed the dispute over the South China Sea has been commonly viewed as a source of potential regional conflict for some time, with many pointing to China's growing expeditionary military capability as a way in which that country seeks to project power to support its territorial claims in the South China Sea.⁷⁶

Likewise, the late-2013 high profile air-space dispute between China and Japan (backed by its ally the United States) has arguably more to do with contested claims over the Senkaku/Diaoyu Islands in the East China Sea than anything to do with the freedom of movement for air traffic.⁷⁷ Similarly, Professor Timothy Dallen, among others, asserted that, despite historical grievances, the renewed efforts by the Argentinian Government to further its claims over the Falkland Islands (known as *Islas Malvinas* in Argentina) has coincided with recent oil exploration and surveying activity in the surrounding waters. His reasoning being that, under UNCLOS III, the nation that has established and unchallenged sovereignty over the associated landmass can also claim any potential subsea mineral resources out to the limits of the EEZ and extended continental shelf.⁷⁸

While history has an important role in the creation of each of the aforementioned disputes, a constant, credible and legitimate presence on and around each of the

⁷⁶ Chris Elder and Robert Ayson, "China's Rise and New Zealand's Interests: A Policy Primer for 2030," in *CSS Discussion Paper No. 11, 2012*, ed. The Centre for Strategic Studies (Wellington: Victoria University of Wellington, 2012), 4.

⁷⁷ Matt Schiavenza, "How a Tiny Island Chain Explains the China-Japan Dispute," *The Atlantic*, <http://www.theatlantic.com/china/archive/2013/12/how-a-tiny-island-chain-explains-the-china-japan-dispute/281995/> (Accessed 15 December 2013).

⁷⁸ Dallen J Timothy, "Tourism, War, and Political Instability: Territorial and Religious Perspectives," in *Tourism and War*, ed. Richard Butler and Wantanee Suntikul (New York: Routledge, 2013), 15.

contested territories is seen as the solution by the protagonists. In one extreme example, with the ongoing contest to claim the reefs and rocks of the South China Sea, in 1999 the Philippine Government intentionally ran aground a troop-ship on the Ayungin Shoal. The area of ocean around the shoal is believed to hold vast reserves of oil and natural gas and since the grounding the derelict vessel has been continuously occupied by Filipino marines.⁷⁹ An example of a more credible occupation is the United Kingdom's claim to the Falkland Islands, in that there is a constant, viable and legitimate British presence there in the form of a local population; who, in an early 2013 referendum, overwhelmingly elected to remain British (only three of the islands' inhabitants voted against).⁸⁰ Moreover, the United Kingdom maintains a permanent, credible (as opposed to token) military presence on and around the islands; particularly since the 1982 conflict. On the other hand, the reefs, rocks and specks of land contested in the South and East China Seas have been largely uninhabited and unoccupied throughout history, blurring the claimants' assertions of sovereignty. In light of this, the claimant countries have made considerable efforts to establish outposts on these disputed rocks and islands, despite the fact that much of the land territory involved cannot support the numbers of personnel being garrisoned there.⁸¹ To this end, some of the claimants have embarked on highly publicised land reclamation projects; most notably Taiwan, Vietnam, the Philippines and China.

⁷⁹ Jeff Himmelman, "A Game of Shark and Minnow," NY Times, <http://www.nytimes.com/newsgraphics/2013/10/27/south-china-sea/>. (Accessed 02 December 2013).

⁸⁰ Neil Tweedie, "Falkland Islands Referendum: Who Were the Three 'No' Votes?," *The Telegraph*, 12 March 2013.

⁸¹ Reuters, "China to Formally Garrison Disputed South China Sea," Thomson Reuters, <http://www.reuters.com/article/2012/07/22/us-china-sea-idUSBRE86L08B20120722>. (Accessed 27 December 2013).

These garrisons and outposts raise legal questions with respect to Article 121 (3) of UNCLOS III, which states that “rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf”.⁸² Indeed, prominent American legal academic Professor Jonathan Charney highlighted that success in establishing sovereignty over a small rock, island or maritime feature (referred to by Barbara Kwiatkowska and Alfred Soons as the “rocks-principle”)⁸³ will not necessarily guarantee the adjacent EEZ and extended continental shelf. Charney proposed that the idea that, once sovereignty is determined, the successful claimant will “automatically fall heir to vast maritime space to the detriment of the conflicting claimants” is legally flawed.⁸⁴ He concluded that those who “stir up nationalist passions” with a view to strengthening maritime boundaries will lack a firm legal base for extending maritime territory.⁸⁵ This position is supported by others such as Jon Van Dyke and Robert Brooks who have described it as being “inappropriate” that a state should be able to claim maritime territory based on “a remote and seemingly uninhabitable atoll”.⁸⁶

⁸² Division for Ocean Affairs and the Law of the Sea, “The United Nations Convention on the Law of the Sea (Part VIII) Regime of Islands,” United Nations, http://www.un.org/depts/los/convention_agreements/texts/unclos/part12.htm.

⁸³ Barbara Kwiatkowska and Alfred H.A. Soons, “Entitlement to Maritime Areas of Rocks Which Cannot Sustain Human Habitation or Economic Life of Their Own,” *Netherlands Yearbook of International Law* 21 (1990): 176.

⁸⁴ Jonathan I. Charney, “Rocks That Cannot Sustain Human Habitation,” *The American Journal of International Law* 93, no. 4 (1999): 866.

⁸⁵ *ibid.*, 877.

⁸⁶ Jon M Van Dyke and Robert A Brooks, “Uninhabited Islands: Their Impact on the Ownership of the Oceans’ Resources,” *Ocean Development & International Law* 12, no. 3-4 (1983): 288.

In contrast, Taiwanese scholar Professor Yann-huei Song, amongst others, has called for a conference to review Article 121 of UNCLOS III.⁸⁷ Song proposes that there is no conformable position over Article 121 (3), and that it “does not qualify as customary international law”.⁸⁸ The view that elements within UNCLOS III – particularly Article 121 – should be reconsidered is shared by many political leaders, particularly in East Asia. For example, in late 2013, undersea volcanic activity approximately 1000 kilometres south of Tokyo created a new island within Japan’s EEZ. In a country that has reeled from the negative effects of natural seismic events, the news of this eruption prompted the Japanese Government to welcome the creation of this unnamed feature stating that “If it becomes an island, our country’s territorial waters will expand”.⁸⁹ Despite this inhospitable new landmass not being able to “sustain human habitation or economic life”, as required by Article 121 of UNCLOS III, the Japanese Government is already anticipating an extension of its maritime territory regardless.

Similar to the aforementioned examples, much of the vast territory recognised as being New Zealand’s EEZ and extended continental shelf is based on uninhabited outcrops and islands such as the Three Kings Islands. It is worth noting, however, that larger islands such as the Kermadec, Antipodes, Bounty, Snares, and the Auckland and Campbell Islands, while largely uninhabited, could “sustain human

⁸⁷ Yann-huei Song, "The Application of Article 121 of the Law of the Sea Convention to the Selected Geographical Features Situated in the Pacific Ocean," *Chinese Journal of International Law* 9, no. 4 (2010): 698.

⁸⁸ *ibid.*, 678.

⁸⁹ Justin McCurry, "Japanese 'Snoopy' Island Created by Volcanic Eruption," *The Guardian*, 30 December 2013.

habitation or economic life” and have done in the past. While New Zealand faces no obvious challenge to sovereignty over these far-flung islands, having a credible and legitimate presence in that space is essential for demonstrating sovereignty over maritime territory into the future. Consequently, it is clear that an on-going presence – the form of which might be security focused in nature or otherwise – both in the maritime domain and on the islands that create that territory is vital to New Zealand’s sovereignty interests.

As well as physical or geographical aspects and boundaries, sovereignty interests also captures more abstract sea lines of communication. As previously discussed, New Zealand has a clear economic interest in ensuring that sea lines of communication remain free from disruption; whether that disruption be through civil disorder, piracy, or inter-state conflict.⁹⁰ According to the Ministry of Transport, overseas export trade was worth approximately \$46 billion to the New Zealand economy during 2010/2011; or almost 30% of total gross domestic product (GDP).⁹¹ Add to this the recognition that up to 98% of that trade travels by sea and the strategic interest in ensuring undisrupted sea lines of trade and communication is clear.⁹² In this context, it is pertinent to note that New Zealand’s only undersea cable, the Southern Cross Cable critical for the country’s cyber connection with the wider world, runs through the maritime domain.⁹³

⁹⁰ New Zealand Defence Force, "Statement of Intent 2013 - 2016," 27.

⁹¹ Ministry of Transport, "Freight and the Transport Industry: Value of Freight and Overseas Merchandise Trade," Ministry of Transport, <http://www.transport.govt.nz/ourwork/tmif/ft015/>. (Accessed 20 August 2013).

⁹² Mossop, "Maritime Security in New Zealand," 58.

⁹³ Michael S Matis, "The Protection of Undersea Cables: A Global Security Threat," (DTIC Document, 2012).

With maritime terrorist attacks such as that on the USS *Cole* in 2000 and the security concerns raised by the activities of small craft off the Horn of Africa (i.e. Somali pirates), the view that non-state actors are the biggest threat to sea lines of communication has become more prevalent; with maritime terrorism and piracy becoming noticeably more sophisticated. For example, piracy, robbery or violence at sea and maritime terrorism are two of the eight threats featured in the Australian Government's *Guide to Australian Maritime Security Arrangements*; with traditional threats such as hostile incursion notably absent in that document's assessment of the threats facing Australia.⁹⁴

However, others would argue that, at its most basic level, the security environment has not changed with the strategic imperative of the protection of shipping remaining as the underlying aim.⁹⁵ For example, Christopher Rahman contends that the increased commitment of maritime military forces to combat the threats posed by terrorism and piracy is not unlike the forces earmarked to protect shipping from Soviet maritime forces in the event that hostilities had broken out during the Cold War.⁹⁶

While New Zealand is geographically far removed from potential inter-state flash-points or sources of modern piracy that could potentially disrupt its seaborne trade,

⁹⁴ Australian Border Protection Command, "Guide to Australian Maritime Security Arrangements," (Canberra: Australian Government, 2013).

⁹⁵ Stuart Kaye and Lowell Bautista, *The Naval Protection of Shipping in the 21st Century: An Australian Perspective* (Canberra: Sea Power Centre-Australia, Department of Defence, 2011), 220.

⁹⁶ Christopher Rahman, "Concepts of Maritime Security: A Strategic Perspective on Alternative Visions for Good Order and Security at Sea, with Policy Implications for New Zealand," ed. Centre for Strategic Studies (Wellington: Victoria University of Wellington, 2009), 51.

the Government remains mindful of what Geoffrey Till described as the “hum-drum tasks” of maintaining “good order at sea”.⁹⁷ To this end, military assets routinely deploy outside of the Pacific region. The most obvious example this is the deployment of Royal New Zealand Navy (RNZN) frigates and Royal New Zealand Air Force (RNZAF) maritime patrol aircraft to support multi-national anti-piracy operations in the Middle East.⁹⁸ While the overarching aim of these deployments is to enhance New Zealand’s position as a good global citizen, they come with the collateral economic benefit in that they also help keep international sea lanes open through strengthening the overall international security presence.

In other words, one of the key interests that New Zealand has in – and beyond – its maritime domain is ensuring that international sea lines of communication are open and free flowing; with the national security objectives of protecting lines of communication, strengthening international order to promote security, and sustaining economic prosperity all supported as a result.⁹⁹ However, New Zealand is certainly not in a position to actively police the world’s ocean trade routes. So it is important to caveat the above national security objectives against the definition of New Zealand’s maritime domain established in Chapter One. For example, ensuring that “international sea lines of communication are open” could arguably place the Suez Canal back in New Zealand’s maritime domain, which is clearly not the case.

⁹⁷ Geoffrey Till, "Developments in Maritime Security," in *A Maritime Nation: New Zealand's Maritime Environment and Security*, ed. Peter Cozens (Wellington: The Centre for Strategic Studies Victoria University of Wellington, 1996), 24.

⁹⁸ New Zealand Defence Force, "Combined Maritime Force," <http://www.nzdf.mil.nz/operations/combined-maritime-force/default.htm>. (Accessed 07 January 2014).

⁹⁹ Department of the Prime Minister and Cabinet, "New Zealand’s National Security System," 3.

Resources management interests

As mentioned, sustaining economic prosperity is one of the seven key objectives listed in the *National Security System*, and the priority of maritime resources management must be viewed as an integral part of that objective.¹⁰⁰ For example, the *Maritime Patrol Review* recognised that the importance of marine resources to New Zealand's economy is bound to increase, citing examples of other maritime nations where marine industry growth was at least twice that of national economic growth.¹⁰¹ Recognising this trend, it is widely accepted that the most important areas of marine resource for New Zealand and its Pacific Island Dependencies are fisheries (including aquaculture) and mineral extraction (principally hydrocarbons).

Not surprisingly, the fishing industry provides a significant portion of GDP¹⁰² for New Zealand with more than 95% of all commercial fish landed exported offshore.¹⁰³

According to the Ministry for Primary Industries, the commercial fishing industry consistently ranks as New Zealand's fourth or fifth largest export earner.¹⁰⁴ Protected under the globally respected Quota Management System, the Ministry for the Environment estimates that the asset value of New Zealand's fish stocks grew 47%

¹⁰⁰ *ibid.*

¹⁰¹ "Maritime Patrol Review," 8.

¹⁰² For instance, in 2010 primary industries accounted for around 7.1% of GDP and contributed over 50% of New Zealand's total export earnings. The Treasury, "New Zealand Economic and Financial Overview 2010 - Industrial Structure and Principal Economic Sectors," <http://www.treasury.govt.nz/economy/overview/2010/nzefo-10-3.pdf>. (Accessed 11 November 2013).

¹⁰³ McGinnis, "Ocean Governance: The New Zealand Dimension," 12.

¹⁰⁴ Ministry for Primary Industries, "Management of Nz's International Fishing Interest," Ministry for Primary Industries, <http://www.fish.govt.nz/en-nz/International/default.htm>. (Accessed 24 August 2013).

between 1996 and 2009, from \$2.7 billion to over \$4.0 billion.¹⁰⁵ Therefore, New Zealand's economic interests clearly include fisheries protection and combating illegal, unreported and unregulated (IUU) fishing both inside and outside its maritime domain. The threat posed to New Zealand by IUU fishing will be covered in greater depth in the next chapter.

Equally, New Zealand's Pacific Island Dependencies benefit economically from fisheries due to the significant fish stocks in their respective EEZs.¹⁰⁶ For instance, economics professor Rögnvaldur Hannesson pointed to the huge tuna markets in Japan in his comparison of Pacific island nations such as the Cook Islands with the oil-rich Arab states. His analogy highlighted that, in the same way that outside industrial investment made available the enormous resource wealth of the Arab oil industry, foreign fishing fleets have allowed for the exploitation of the huge Pacific fish stocks.¹⁰⁷ There are obvious concerns, however, that these resources are protected from IUU fishing and that even legitimate fishing is sustainably managed to ensure long-term viability. As a result, the New Zealand Government provides technical expertise in fisheries policy, management, monitoring, control and surveillance to Pacific island countries.¹⁰⁸

¹⁰⁵ Ministry for the Environment, "Fishing Activity: Fish Stocks - Environmental Report Card," (Wellington: Ministry for the Environment, 2010).

¹⁰⁶ Johann D Bell et al., "Implications of Climate Change for Contributions by Fisheries and Aquaculture to Pacific Island Economies and Communities," in *Vulnerability of Tropical Pacific Fisheries and Aquaculture to Climate Change*, ed. JD Bell, JE Johnson, and AJ Hobday (Noumea, New Caledonia: Secretariat of the Pacific Community, 2011), 747.

¹⁰⁷ Hannesson, "The Exclusive Economic Zone and Economic Development in the Pacific Island Countries," 889.

¹⁰⁸ Ministry of Foreign Affairs and Trade, "Developing and Protecting Marine Resources," Ministry of Foreign Affairs and Trade, <http://www.aid.govt.nz/media-and-publications/development-stories/october-2011/developing-and-protecting-marine-resources>. (Accessed 24 August 2013).

Concerns over long-term protection and sustainability are also challenges for New Zealand's prospective fisheries in the Southern Ocean. For example, the creation of a marine reserve in the Ross Sea region may protect potential migratory fish stocks that New Zealand would otherwise lay claim to, such as various species of southern ocean toothfish.¹⁰⁹ Similarly, an environmental reserve would also serve to protect New Zealand's potential mineral resource interests; of which more to follow shortly.

The current push for the creation of a marine reserve through the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) could be construed as a means by which New Zealand's claimed ocean territory is protected from commercial fishing fleets without the Government having to commit its limited resources to protecting those waters. The counterpoint to this view is that New Zealand undertakes maritime surveillance in support of CCAMLR anyway, under an annual operation dubbed Operation MAWSONI.¹¹⁰

Accepting the countering views alluded to, New Zealand has a clear and objective interest – environmental or otherwise – in the marine fisheries and other natural resources of the Southern Ocean. Many believe that Antarctica could become a centre for mineral and undersea energy exploitation.¹¹¹ Throughout the twentieth

¹⁰⁹ Radio New Zealand News, "Bid for Marine Sanctuaries Blocked," (New Zealand: Radio New Zealand, 2013).

¹¹⁰ Ministry of Foreign Affairs and Trade, "New Zealand and Antarctica". (Accessed 20 July 2013).

¹¹¹ See Dugger and Dodds. John A Dugger, "Exploiting Antarctic Mineral Resources-Technology, Economics, and the Environment," *U. Miami L. Rev.* 33 (1978): 351; Klaus J Dodds, "Sovereignty Watch: Claimant States, Resources, and Territory in Contemporary Antarctica," *Polar Record* 47, no. 03 (2011): 237-38.

century many nations (including New Zealand) made, often disputed, territorial claims in Antarctica. Under UNCLOS III, these claims could open the possibility of further territorial gains with respect to adjacent ocean areas. By way of example, in recent decades there has been an upsurge in base building in Antarctica. In 1998 the Protocol on Environmental Protection to the Antarctic Treaty came into effect. This Protocol designates Antarctica as a “natural reserve, devoted to peace and science” and confirmed a range of environmental principles for human activity in the region. Importantly, the Protocol also ensures that offshore mining and drilling will be prohibited for at least 50 years.¹¹² This 50-year period is due to expire in 2048, and it could be argued that the increase in base building in Antarctica is the result of countries positioning themselves for access to potential resources ahead of 2048. Moreover, due to their proximity to the coast, other nations’ base-building efforts could foreseeably see competing claims aimed at securing seabed and sub-floor mineral resources in the Ross Sea.¹¹³ The presence and stewardship arrangements that New Zealand should put in place to mitigate this threat to sovereignty and resources in the Ross Sea is an important consideration for the country’s wider approach to maritime security, now and in the coming decades.

Alongside fisheries, the most significant resource within the EEZ and extended continental shelf is the huge estimated value of mineral wealth that exists within the maritime domain adjoining New Zealand’s land masses and islands. When first

¹¹² Christopher C. Joyner, "The Antarctic Treaty and the Law of the Sea: Fifty Years On," *ibid.* 46, no. 01 (2010): 16.

¹¹³ For instance The United States, Germany, Italy and South Korea all have bases on the Ross Dependency. Michael Field, "Antarctic Oil Sets up Cold War," *The Press*, <http://www.stuff.co.nz/the-press/news/5644633/Antarctic-oil-sets-up-cold-war>. (Accessed 06 June 2013).

negotiating UNCLOS, the signatory nations acknowledged the enormous potential wealth that the sea bed and sub-floor offered. Moreover, there is wide recognition that the ability to exploit these resources increases proportionally as technology opens new ways to access them.¹¹⁴ Chief among New Zealand's maritime mineral income earners is the oil industry. For instance, in his policy paper on New Zealand's ocean governance, Michael McGinnis stated that in 2009 oil production represented New Zealand's fourth largest export earner.¹¹⁵ This contradicts more recent statistics provided by the Ministry for the Environment that put fisheries as the fourth largest export earner; either way the economic value of maritime resources is further demonstrated.¹¹⁶

The issue of mineral resource management in the maritime domain is not limited to New Zealand's immediate EEZ and extended continental shelf. The potential for mineral exploitation also exists in the maritime territory of New Zealand's Pacific Island Dependencies. For example, in 2013 experts assessed the presence of up to 10 billion tonnes of manganese nodules off the Cook Islands, prompting finance minister Mark Brown to predict that mining the minerals within the Cook Islands' EEZ "could increase gross domestic product a hundredfold".¹¹⁷ While some analysts are predicting a boom in mineral exploitation in the Pacific islands, others point to Nauru

¹¹⁴ Division for Ocean Affairs and the Law of the Sea, "The United Nations Convention on the Law of the Sea (a Historical Perspective)".

¹¹⁵ McGinnis, "Ocean Governance: The New Zealand Dimension," 57.

¹¹⁶ Ministry for the Environment, "Offshore Options: Managing Environmental Effects in New Zealand's Exclusive Economic Zone," (Wellington: Ministry for the Environment, 2013), 2.

¹¹⁷ Rupert Neate, "Seabed Mining Could Earn Cook Islands 'Tens of Billions of Dollars'," *The Guardian*, 5 August 2013.

as an example of what could go wrong.¹¹⁸ The economic windfall created by the strip mining of phosphates in Nauru has long since been spent, with the country virtually bankrupt and 90% of the population unemployed.¹¹⁹

According to McGinnis, the New Zealand Government has also looked to significantly expand opportunities for offshore oil extraction and marine mining within the EEZ and extended continental shelf in an effort to increase Crown revenue.¹²⁰ In 2013, the Government announced a 'block offer' of 189,000 square kilometres of offshore territory for oil and gas exploration and prospecting.¹²¹ These measures are obviously aimed at benefitting economically from the resources contained within New Zealand's maritime estate. International news media has noted the National Government's stated intentions to lift exports to 40% of GDP by 2025 and the Financial Times has specifically pointed to the petroleum industry as a way in which New Zealand could meet that ambitious target.¹²² Clearly, as the offshore oil and gas industry develops, the economic benefits New Zealand might expect represent a significant interest that must be factored into any consideration of maritime domain security.

¹¹⁸ See P D'Arcy and Kato et al. Paul D'Arcy, "The Nourishing Sea: Partnered Guardianship of Fishery and Seabed Mineral Resources for the Economic Viability of Small Pacific Island Nations," *Sustainability* 5, no. 8 (2013): 3345. Yasuhiro Kato et al., "Deep-Sea Mud in the Pacific Ocean as a Potential Resource for Rare-Earth Elements," *Nature Geoscience* 4, no. 8 (2011).

¹¹⁹ Central Intelligence Agency, "The World Factbook: Nauru," Central Intelligence Agency, <https://www.cia.gov/library/publications/the-world-factbook/geos/nr.html>. (Accessed 20 January 2014).

¹²⁰ McGinnis, "Ocean Governance: The New Zealand Dimension," 58.

¹²¹ New Zealand Petroleum & Minerals, "Oil and Gas Exploration Tender Announced," Ministry for Economic Development, http://www.nzpam.govt.nz/cms/news_media/2013/oil-and-gas-exploration-tender-announced. (Accessed 24 August 2013).

¹²² Sylvia Pfeifer, "New Zealand Encouraged by Oil Potential," *The Financial Times*, 6 January 2013.

Law enforcement interests

Closely linked to both sovereignty matters and resource management in the maritime domain are the national interests represented under the broad heading of law enforcement. This can be illustrated by the numerous Government agencies that possess legislated enforcement powers in the maritime domain; for example the six core agencies that make the most use of maritime patrol capabilities listed in the Auditor-General's 2010 Report: the New Zealand Customs Service; the Ministry of Fisheries (now part of the Ministry for Primary Industries); the Department of Conservation; the Ministry of Foreign Affairs and Trade; the New Zealand Police; and Maritime New Zealand.¹²³ In addition, one must include the New Zealand Defence Force that, more often than not, provides the assets by which surveillance and/or interdiction occurs. Each of these core agencies has, to a lesser or greater extent, law enforcement interests in the maritime domain that reflect Government national security objectives.

For instance, as previously discussed, the security of maritime shipping is vital to New Zealand's economic interests and, in recent decades, law enforcement attention has focused on the huge global shift towards the use of shipping containers. This shift represents a significant risk for border security, with larger vessels carrying more cargo, coupled with faster stevedoring at ports, creating an increased challenge for security screening. Furthermore, across the global supply system, there is concern over the "Trojan Horse" scenario were an individual or entity with nefarious intent will

¹²³ Office of the Auditor-General, "Effectiveness of Arrangements for Co-Ordinating Civilian Maritime Patrols," 10.

appropriate and/or develop a legitimate trading identity to ship illegitimate and/or dangerous goods. As a result, the Government has gone to great lengths to reassure importers in key trading partners such as the United States that shipping containers originating in New Zealand have robust security measures in place to protect them against tampering in transit.¹²⁴ The genesis for this increased focus on shipping container security lays not so much with traditional concerns over smuggling and similar criminal activity, but rather with terrorism and efforts to counter the proliferation of weapons of mass destruction.¹²⁵

Since the 9/11 terrorist attacks, international shipping law enforcement has undergone what Associate Professor Shirley Scott has described as ‘post-disaster’ regulation. Scott argues that the resultant regulatory changes to international shipping law were significant and similar in nature to the response that a natural or unintentional disaster might have provoked, but in this case caused by a deliberate act of destruction.¹²⁶ An emphasis on combating maritime terrorism has become an irrefutable aspect of maintaining good order at sea with many experts pointing to the rise in sea traffic creating a “target-rich environment” that will make terrorist attacks more likely.¹²⁷

¹²⁴ Joann Peterson and Alan Treat, "The Post-9/11 Global Framework for Cargo Security," *Journal of International Commerce & Economics* 2 (2009): 15.

¹²⁵ New Zealand Customs Service, "Mutual Recognition Arrangements," <http://www.customs.govt.nz/features/mra/Pages/default.aspx>. (Accessed 28 August 2013).

¹²⁶ Shirley V Scott, "Whose Security Is It and How Much of It Do We Want? The Us Influence on the International Law against Maritime Terrorism," in *Maritime Security : International Law and Policy Perspectives from Australia and New Zealand*, ed. Natalie Klein, Joanna Mossop, and Donald R Rothwell (New York, NY: Routledge, 2009), 78.

¹²⁷ The Journal of Commerce, "Security Expert Says Maritime Industry a Target for Terrorists," *The Journal of Commerce*, http://www.joc.com/maritime-news/international-freight-shipping/security-expert-says-maritime-industry-target-terrorists_20130816.html. (Accessed 31 August 2013).

Linked to this increased global asymmetric threat, counter-proliferation initiatives now play a significant role in maritime trade. Counter-proliferation is the term given to the efforts to counter the spread of weapons of mass destruction; either relevant technology or dual-use goods such as precursor chemicals.¹²⁸ The global push for enhanced, integrated counter-proliferation activity has resulted in New Zealand openly recognising the potential risk that its ports may be used as transit points for shipments of goods that could be utilised to deliver or produce nuclear, radiological, chemical or biological weapons; by both terrorist groups and countries attempting to acquire weapons of mass destruction. Evidence of New Zealand's recognition of these risks can be seen in the country's hosting of a major multi-national counter-proliferation exercise in Auckland in 2008.¹²⁹ With the potential detrimental impact that any incident might have on export trade, it is ironic that terrorist incidents offshore have done more to focus New Zealand's maritime counter-terrorism measures than those that have happened in its own waters; namely the sinking of the *Rainbow Warrior*, arguably the only terrorist incident that has ever occurred in New Zealand.¹³⁰ Despite the aforementioned focus on shipping containers, it is worth noting that the explosives used in the *Rainbow Warrior* attack were smuggled into the country by a small craft sailing from the Pacific islands.

¹²⁸ Javier Serrat, "Money Talks: The Surging Revolution in Counter-Proliferation Strategy," *The RUSI Journal* 156, no. 6 (2011): 40-41.

¹²⁹ Nanaia Mahuta, "Exercise Maru," New Zealand Government, <http://www.beehive.govt.nz/node/34731>. (Accessed 08 September 2013).

¹³⁰ James Veitch, "A Sordid Act: The Rainbow Warrior Incident," *New Zealand International Review* 35, no. 4 (2010): 9.

Every year around 650 of small craft and yachts sail into and out of New Zealand and, despite the post-9/11 changes to the modern global security environment, many of the threats created by more traditional criminal activity remain.¹³¹ For example, the very fact that New Zealand is viewed internationally as a safe, largely incorrupt nation may actually draw transnational criminal activity. Consequently, New Zealand is arguably viewed as a useful transit country for illegal activity as evidenced, for example, by instances of major drug interceptions on the hulls of merchant ships in transit through New Zealand to Australia.¹³² The Pacific is a well-known transit route for the illegal drugs trade, with newsworthy “busts” occurring frequently; often with links to New Zealand and her Pacific Island Dependences.¹³³ Despite the fact that New Zealand itself represents only a small market for the trade in illicit goods, there is a significant reputational risk to this country as more and more international criminal networks view New Zealand as a useful transshipment country into larger markets, particularly Australia.¹³⁴

Along with the proliferation of small craft, there are other changing trends in ocean travel that represent new challenges to maritime law enforcement activity. For example, the growing popularity of cruise ships brings with it the inherent risks posed by traditional smuggling in goods and people, especially as cruise ship passengers do not require a visa to enter New Zealand. Moreover, this industry represents a

¹³¹ New Zealand Customs Service, "Annual Report 2012/13," (2013): 46.

¹³² "Annual Report 2006-2007," (Wellington: New Zealand Customs Service, 2007), 6.

¹³³ ONE News, "Tongan Police Uncover Massive Cocaine Haul," (Auckland: Television New Zealand, 2012).

¹³⁴ Australian Federal Police, "Media Release: Pacific Drognet Intercepts \$370 Million Worth of Cocaine Bound for Australia," (Canberra: Australian Federal Police, 2013).

growing threat from maritime terrorists, recognising that New Zealand's cruise ship tourists come, for the most part, from affluent western nations. Furthermore, the issues pertaining to cruise ships are not limited to those transiting through the waters surrounding New Zealand's main islands. With a significant increase in cruise ships carrying tourists into the deep Southern Ocean, it may be only a matter of time before a significant event occurs in the Ross Sea – for example a pollution or SAR incident requiring New Zealand's response.¹³⁵ This risk is further exacerbated by incomplete hydrographic knowledge and understanding of many South Pacific islands and the deep Southern Ocean to Antarctica.

Another challenge to law enforcement interests is the growing trend in people smuggling activity in the Asia-Pacific region, often facilitated by sophisticated transnational criminal groups. Maritime people smuggling has been a major security issue for Australia, with experts such as Mossop predicting a similar threat may emerge for New Zealand in the next few years – a sentiment echoed by Prime Minister John Key in a statement in 2010.¹³⁶ This growing risk can be evidenced by the public recognition by Government that New Zealand has been repeatedly targeted by people smuggling syndicates in recent years, to the extent that legislative changes were considered necessary.¹³⁷

¹³⁵ Jad Mouawad, "Too Big to Sail? Cruise Ships Face Scrutiny," *The New York Times*, 27 October 2013.

¹³⁶ Joanna Mossop, "New Zealand's Challenges and Opportunities," in *Maritime Challenges and Priorities in Asia: Implications for Regional Security*, ed. Joshua Ho and Sam Bateman (New York: Routledge, 2012), 292; NZPA, "Key: NZ Not Immune to People-Smuggling," *New Zealand Herald*, 06 July 2010.

¹³⁷ New Zealand Parliament, "Immigration Amendment Bill — Third Reading," http://www.parliament.nz/en-nz/pb/debates/debates/50HansD_20130613_00000024/immigration-amendment-bill-%E2%80%94-third-reading. (Accessed 09 August 2013).

Another avenue of law enforcement risk stems from the fishing industry. With its rich fishing grounds and effective quota management system, New Zealand's fisheries attract a notable fishing fleet, with both domestic and external vessels fishing under licence in New Zealand's waters. The endurance and range of these vessels presents the risk that craft that do not have to clear Customs when leaving and entering New Zealand ports to undertake legitimate fishing activity could potentially meet up with other vessels at sea, conduct some sort of handover, and then head back to New Zealand with more than just fish on board. In the fishing industry this type of activity is known as "klondyking". Accordingly, these aforementioned issues ensure that law enforcement in the maritime domain will continue to represent a clear national interest and must be recognised in any consideration of New Zealand's maritime security arrangements.

However, this thesis contends that the national interests reflected under the broader title of law enforcement, while very important, in general terms represent only short to medium-term national interests. Obviously, the social harm created by the presence of illegally imported narcotics in New Zealand communities has long-term implications. Nevertheless, the point being made is that the long-term impact posed by law enforcement challenges such as illegal smuggling, or even a terrorist act, are not truly long-term in the sense that a fisheries species collapse through overexploitation would be.

With a comparatively short election cycle by international standards, political decision makers arguably focus on the short-term issues of the day with the intention of re-election, rather than more uncertain strategic interests into the long-term.¹³⁸

Similarly, the Government agencies – listed at the start of this section as having law enforcement interests in the maritime domain – rightly prioritise activity that will protect New Zealand in the short-to medium-term from the damaging criminal activity alluded to; after all this is what those agencies' funding baselines and performance measurement targets are matched against. Consequently, when considering New Zealand's maritime security arrangements it is inevitable that a more tangible short-term focus takes precedence over more long-term – and at times less clear – strategic considerations. Arguably this is even true for the NZDF, despite the White Paper process seeking to look ahead many decades to support the service life-span of significant procurements. However, this thesis argues that the national interests of sovereignty and resources management are long-term strategic interests that should be prioritised over and above the business as usual of law enforcement in Government decision making. This argument is further strengthened when one considers the national interests represented under the heading of environmental protection.

Environmental protection interests

Of the core Government agencies with maritime law enforcement interests listed in the Auditor-General's 2010 Report, three of the six have a specific environmental

¹³⁸ Editorial, "A Four-Year Electoral Cycle Would Be Just Right," *New Zealand Listener*, 3 September 2011.

protection mandate; namely the Department of Conservation, Maritime New Zealand, and the Ministry of Fisheries (now the Ministry for Primary Industries). While the issue of environmental protection would not have been viewed as a security matter in traditional assessments, in recent decades events in New Zealand and around the world have highlighted the importance of including environmental implications in any assessment of maritime domain security interests. This is because it is recognised that traditional imperatives such as access to resources, economic wellbeing and food security are all susceptible to adverse environmental impacts.

For example, a significant portion of fisheries revenue comes from the growing aquaculture industry. According to McGinnis, “the growth of the aquaculture industry is an economic priority supported by Government because of its potential to contribute to gross domestic income”.¹³⁹ In a 2010 statement then Minister for Economic Development, Gerry Brownlee, said that aquaculture accounts for almost 20% of New Zealand's seafood exports by revenue “generating around \$350 million annually with a target goal to reach \$1 billion in sales by 2025”.¹⁴⁰ By its very nature, the aquaculture industry is reliant on the maintenance of the marine environment. Equally, biodiversity protection within the maritime domain has both environmental and potential economic benefits. Therefore, damage to the ecosystem through selective overfishing or incidents such as the 2011 grounding of the MV *Rena* with its subsequent oil spill have the potential to significantly impact on New Zealand's maritime domain environmental and economic interests.

¹³⁹ McGinnis, "Ocean Governance: The New Zealand Dimension," 98.

¹⁴⁰ Gerry Brownlee, "Funding Boost for New Zealand Aquaculture," New Zealand Government, <http://www.beehive.govt.nz/release/funding-boost-new-zealand-aquaculture>.

Similarly, the current debate around deep-sea mineral extraction in New Zealand waters also has significant security implications. As stated, the development of a more significant New Zealand petroleum industry is viewed by the National Government as an effective way in which to increase Crown revenue. However, this push has created controversy with respect to the environmental protection of the maritime domain, with resultant implications for maritime security.

In April 2010, the United States suffered its worst environmental disaster with the *Deepwater Horizon* oil spill. Despite the significant oil industry response infrastructure co-located in the area, stemming the oil flow proved difficult. The scale of the disaster was catastrophic to the local ecosystem and the impact of the environmental damage caused could last for decades.¹⁴¹ With the prospect of similar drilling activity in New Zealand waters, there is much opposition to Government plans to extend this sector, particularly as New Zealand (unlike the United States) does not possess the capacity or equipment required to deal with a deep sea oil leak should an accident occur.¹⁴² The debate is further inflamed by contentious legislative provisions that support offshore mineral extraction if the economic benefit outweighs the potential environmental cost.¹⁴³

¹⁴¹ Jason K. Levy and Chennat Gopalakrishnan, "Promoting Ecological Sustainability and Community Resilience in the Us Gulf Coast after the 2010 Deepwater Horizon Oil Spill," *Journal of Natural Resources Policy Research* 2, no. 3 (2010): 312.

¹⁴² Maritime-Connector, "New Zealand Doesn't Have Capacity to Deal with Deep Sea Oil Leak," <http://maritime-connector.com/news/environment-and-technology/new-zealand-doesn-t-have-capacity-to-deal-with-deep-sea-oil-leak/>. (Accessed 16 September 2013).

¹⁴³ Robert Makgill, Kellie Dawson, and Nicola de Wit, "The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill 2011," *Resource Management Journal*, no. April (2012): 4.

This situation has resulted in challenges to national security arrangements that are testing the balance between environmental protection and law enforcement. In his 2013 article outlining opposition to offshore oil exploration in New Zealand, Dr Thomas O'Brien highlighted questions around legality and the right to protest following the provocative decision to use the military to prevent protest activity at sea. In 2011, military vessels, aircraft and personnel deployed to monitor, board, and ultimately interdict the protest vessels of the environmental protection motivated groups that were attempting to disrupt prospecting and surveying by the Brazilian energy firm Petrobras off the New Zealand coast.¹⁴⁴ This clearly demonstrates the blurred boundaries between traditional security considerations and the increasing importance of environmental protection.

Similarly, New Zealand's on-going commitment to CCAMLR via Operation MAWSONI ensures that the country's limited maritime surveillance and response capabilities can be re-tasked in support of that Convention rather than activity focused on national maritime security interests closer to home. For example, since 2005 there have been numerous high-profile confrontations at sea between Japanese whaling fleets and the Sea Shepherd Conservation Society. Much of this has occurred within the CCAMLR Area (including the Ross Sea) and often within New Zealand's Search and Rescue Region.¹⁴⁵ As a consequence, maritime security assets such as naval patrol craft may be withheld from normal security activity focused on national interests in order to

¹⁴⁴ Thomas O'Brien, "Fires and Flotillas: Opposition to Offshore Oil Exploration in New Zealand," *Social Movement Studies* 12, no. 2 (2012): 223-24.

¹⁴⁵ Commission for the Conservation of Antarctic Marine Living Resources, "Convention Area," <http://www.ccamlr.org/en/organisation/convention-area> (Accessed 28 December 2013).

respond to SAR events in the Southern Ocean resulting from the confrontational nature of the stand-offs between the Sea Shepherd fleet and the Japanese whalers.¹⁴⁶

For many years the New Zealand Government has vocally opposed whaling, as evidenced by New Zealand appearing as an intervening state in the case against whaling in the Antarctic at the International Court of Justice in 2013.¹⁴⁷ However, it could be argued that using New Zealand's limited maritime security capability for a safety-of-life-at-sea incident resulting from the intentionally dangerous actions of an issue-motivated environmental group is detrimental to national maritime security interests. While on one level that may be the case, one must also consider that any stand-by approach potentially adopted by the Government would not only enhance the country's standing as a good global citizen, but actually support New Zealand's national interests – particularly the key interest of environmental protection – at a more strategic level.

Accordingly, when considering the national interests around environmental protection it should be recognised that New Zealand plays something of a balancing act. While New Zealand's fisheries management system is recognised as being world-class and its attitude to whaling and wider environmental issues (its anti-nuclear stance for example) are widely acknowledged, the Government is also looking to benefit

¹⁴⁶ Olivia Wix, "Insight for 22 December 2013 - Protecting the Ross Sea," in *Insight* (New Zealand: Radio New Zealand, 2013).

¹⁴⁷ International Court of Justice, "Whaling in the Antarctic (Australia V. Japan: New Zealand Intervening)," United Nations, <http://www.icj-cij.org/docket/index.php?p1=3&p2=1&case=148>. (Accessed 28 December 2013).

economically from seabed mineral extraction (particularly oil and gas). If one accepts that security arrangements exist to ensure the protection or preservation of the interests of the state or entity that has put those arrangements in place, then some might argue that environmental protection, while important, will inevitably be a lesser consideration than economic growth when reviewing national maritime security arrangements.

When considering the national interests around environmental protection, perhaps the most significant concept to reflect upon is the idea of **stewardship** over maritime territory. While UNCLOS III allows for states to exploit natural resources within their recognised waters, it also stipulates that a subsequent duty exists to protect and preserve the marine environment.¹⁴⁸ Similar to the concept of maintaining an enduring presence in the maritime domain to ensure recognised sovereignty, the idea of stewardship also serves to enhance, or potentially to detract from, a nation's claim over ocean territory. Accordingly, the interests associated with environmental protection impacts not only on the physical well-being of ocean territory, but also potentially on the right of a coastal state to lay claim to that maritime territory at all.

If the national interest pertaining to sovereignty is New Zealand's most important interest in the maritime domain, then this thesis argues that environmental protection interests are a key enabler in ensuring that sovereignty is upheld. The idea that New

¹⁴⁸ Division for Ocean Affairs and the Law of the Sea, "The United Nations Convention on the Law of the Sea (Part XII) Protection and Preservation of the Marine Environment," United Nations, http://www.un.org/depts/los/convention_agreements/texts/unclos/part12.htm. (Accessed 22 September 2013).

Zealand can act as an 'environmental custodian' over its maritime domain – with resources management and law enforcement interests implicit therein – and subsequently enhance its sovereign rights over that territory is an important one. This thesis argues that, counter to traditional assessments and even current Government policy, the pillar of stewardship must become a central component of New Zealand's approach to maritime domain security.

Chapter 3: Securing New Zealand's maritime domain interests

What does “maritime domain security” really mean?

Natalie Klein, Joanna Mossop and Donald Rothwell have concluded that maritime security has different meanings depending on the context or who is using the term.¹⁴⁹

They recognised that threats to a state's maritime security could be military, political, economic, societal or ecological.¹⁵⁰ Similarly, in his seminal work on post-Cold War security dynamics, *People, States & Fear: The National Security Problem in*

International Relations, Professor Barry Buzan listed the “dimensions” of security as

being military, political, societal, economic and environmental.¹⁵¹ As a result, one

could consider the concept of security to refer to a state's efforts to secure its political, economic, societal or environmental interests; most obviously through military or

defence methods. Not surprisingly, therefore, these themes relate closely to the

issues that have already been discussed; namely the definition of the maritime

domain (Chapter One) and consideration of the national interests that exist therein

(Chapter Two). Accordingly, at its most basic level, “maritime domain security” simply

means the arrangements a nation must put in place to ensure that its maritime

interests are effectively secured.

In New Zealand's case, while the traditional military, political, economic, societal and ecological themes do apply, this country is unique in many respects. For instance,

¹⁴⁹ Natalie Klein, Joanna Mossop, and Donald Rothwell, "Australia, New Zealand and Maritime Security," in *Maritime Security: International Law and Policy Perspectives from Australia and New Zealand*, ed. Natalie Klein, Joanna Mossop, and Donald R Rothwell (New York, NY: Routledge, 2009), 5.

¹⁵⁰ *ibid.*, 7.

¹⁵¹ Barry Buzan, *People, States & Fear: The National Security Problem in International Relations* (Boulder: L. Rienner, 1991), 363-68.

current Government strategic outlooks indicate that military or political security is assessed as being stable over the next few decades.¹⁵² Therefore, New Zealand's challenges rest more significantly with the threats and risks raised by economic, societal and ecological issues into the foreseeable future. Nevertheless, it would be imprudent to completely dismiss threats to sovereignty in the long-term.

As a consequence, New Zealand's broad security arrangements should be founded on two key areas of focus: a continuous meaningful presence in the maritime domain, and unchallenged stewardship or custodianship into the future. Accordingly, New Zealand requires a sound knowledge or understanding of the ocean territory within which the country's interests lie, the political and social will to ensure the long-term protection of these interests, and the capacity to effectively respond to security threats as they arise. The two key areas of focus – meaningful presence and unchallenged stewardship – reflect the national long-term strategic interests highlighted in Chapter Two, more specifically the sovereignty and environmental protection interests. These key areas of focus will be considered in more detail, after a brief consideration of New Zealand's current maritime security arrangements.

The evolution of New Zealand's current maritime security arrangements

New Zealand's maritime security arrangements are, by and large, a legacy of the events of the past one hundred years. Up until well into the second half of the twentieth century, the threats that New Zealand faced to its maritime domain interests

¹⁵² Ministry of Defence, "Defence White Paper 2010," 33.

were largely security risks in a traditional sense. For example, the threat to sovereignty posed by the possibility of an invasion by Imperial Japanese Forces during the Second World War and the threat to sea lines of communication posed by German merchant raiders.¹⁵³ Moreover, the international relationships and linkages New Zealand has had during its comparatively short history have shaped the country's approach to maritime domain security as well as defence and security policy matters writ large.

New Zealand's social and economic identity has historically been based firmly on the land despite the fact that New Zealand is a maritime nation. The nation's emphasis on farming in terms of economics and the primacy given to the Army in a security sense are evidence of this. New Zealand's security and defence policy decisions can largely be explained by the country's historical circumstances. According to James Rolfe, New Zealand has always considered itself "part of a collective entity, either the 'Empire', 'Commonwealth', or 'free world' – the survival of which would determine New Zealand's own security."¹⁵⁴ Consequently, for much of the twentieth century, New Zealand's defence and security arrangements were based on the preconception that New Zealand will provide troops to support a larger contingent; be that as part of the British Commonwealth or the United Nations.¹⁵⁵

¹⁵³ W. R. J. Alexander and A. B. King, "Country Survey Xvii: New Zealand's Defence Policy," *Defence and Peace Economics* 13, no. 4 (2002): 287.

¹⁵⁴ James Grant Rolfe, *The Armed Forces of New Zealand* (Allen & Unwin, 1999), 18.

¹⁵⁵ Alexander and King, "Country Survey Xvii: New Zealand's Defence Policy," 289.

In particular, New Zealand viewed its maritime domain sovereignty and security as being ensured first by the Royal Navy in the years leading up to the Fall of Singapore in 1942, and thereafter by the United States Pacific Fleet as a member of the ANZUS Alliance. However, it is worth noting that New Zealand also played a significant role in providing its own maritime security during this time. By way of illustration, the RNZN was actually one of the world's largest navies by the end of the Second World War with over 60 ships, and it maintained a fleet that included cruisers, frigates and corvettes up until the late 1960's and early 1970's.¹⁵⁶

However, since then, New Zealand's maritime security arrangements have been significantly influenced by the repercussions of the 1985 suspension of the ANZUS agreement following the then Labour Government's decision to refuse warships that may be carrying nuclear weapons to dock in New Zealand.¹⁵⁷ Arguably, as a result of policy decisions made at a political level, New Zealand's approach to maritime domain security has shifted away from a traditional defence-centred arrangement to a more civil-maritime emphasis; not least because of the exponential cost of maintaining modern military capabilities (i.e. air and surface assets).

For example, although New Zealand has maintained a maritime 'war-fighting' naval capability – in the form of two ANZAC-Class frigates – the procurement of these vessels was fraught, with acrimonious debate coming from both ends of the political

¹⁵⁶ Torpedo Bay Navy Museum, "1945-2001," <http://navymuseum.co.nz/1945-2001>. (Accessed 01 January 2014).

¹⁵⁷ Alexander and King, "Country Survey Xvii: New Zealand's Defence Policy," 290.

spectrum.¹⁵⁸ Consequently, the Navy's aspiration of maintaining a four-frigate navy was never realised, with many opponents contesting that the cost was prohibitively expensive and that New Zealand's geographical isolation is defence enough. Similarly, around the time of this debate, the RNZAF combat aircraft capability was significantly reduced.¹⁵⁹ The debate surrounding changes to New Zealand's military capability, and the ramifications for maritime domain security, will be discussed in greater detail shortly.

As a consequence of defence policy decisions since falling out of favour with the United States in 1985, most would agree that New Zealand has become more dependent on Australia for its overall security, with analysts like Professor Keith Hartley alluding to New Zealand's "free ride" on Australia's defence investment and efforts.¹⁶⁰ However, one could argue that New Zealand's military capability decisions have been prudent, given the huge costs of maintaining modern combat capabilities and the changes to the security threats the country faces in the twenty-first century. For instance, New Zealand's defence relationship with the United States has improved significantly with the signing of the Washington Declaration in 2012.¹⁶¹ Moreover, New Zealand's relationship with Australia appears as strong as ever.¹⁶² This despite the "minimalist" defence policy decisions made by successive New

¹⁵⁸ Peter Greener, *Timing Is Everything: The Politics and Processes of New Zealand Defence Acquisition Making* (ANU E Press, 2009), 79.

¹⁵⁹ Mark Keenan and Colin Richardson, "Differences of Perspective: An Analysis of the Similarities and Differences in Australian and New Zealand Attitudes to Security," *Shedden Papers* (2011).

¹⁶⁰ Keith Hartley, "The Case for Defence," *Defence and Peace Economics* 21, no. 5-6 (2010): 423.

¹⁶¹ Robert Ayson and David Capie, "Part of the Pivot? The Washington Declaration and Us-NZ Relations," (2012).

¹⁶² Jack McCaffrie and Chris Rahman, "Australia's 2009 Defense White Paper: A Maritime Focus for Uncertain Times," (DTIC Document, 2009), 65.

Zealand Governments in the face of protest from both the United States and Australia.

Clearly, New Zealand's maritime threat environment has changed over the past century. The most evident feature of this change is that New Zealand's "formalised" maritime domain is now larger than it has ever been and yet the nation's military forces are the smallest they have been for a century. Because of the downsizing of the air and surface assets traditionally required to maintain patrol and surveillance activity, one could argue that, in the twenty-first century New Zealand does not have the resources to protect and secure its maritime domain through traditional means. But the key question is – does New Zealand need to use *traditional* means to secure its maritime domain?

What are New Zealand's current maritime security arrangements?

As mentioned, New Zealand maintains a constant presence in its maritime domain through commercial or recreational craft and the continuous habitation of some of her more distant islands and land territory. More importantly, New Zealand also maintains an on-going security presence in the maritime domain. This security presence is principally undertaken by military air and naval assets conducting both defence activity and multiagency operations and taskings (known as MAOT).

However, with respect to full spectrum of assets or capability that exists to ensure the protection or oversight of national maritime security interests, it is worth pointing out

that the New Zealand government can call upon eleven RNZN vessels, six RNZAF P-3K2 Orion aircraft, two Police launches, a Customs launch, a number of fisheries boats staffed by 100 Fisheries Officers and 80 Honorary Fisheries Officers and a number of Department of Conservation boats staffed by Department of Conservation Rangers. In addition, government agencies will often contract civilian aircraft to undertake short-range patrols as required.

Due to the more limited capabilities of the civil-craft listed, coupled with a more specific focus of coastal areas, long-range civil-maritime patrols are more often than not supported by military air and surface capabilities. Military deterrence notwithstanding, this current arrangement is arguably more focused on the short to medium-term interests of resource protection and law enforcement rather than on longer-term strategic objectives of assuring sovereignty and the environment.

By way of example, in addition to its traditional role of deterring or responding to hostile incursions, the New Zealand Defence Force is also the main provider of surveillance and interception or interdiction capability for civil-maritime security in New Zealand's waters (the MAOT tasks alluded to). This capability consists of, for the most part, the RNZAF's maritime surveillance capabilities and the RNZN's surface fleet. Despite the traditional purpose of military forces, the Ministry of Defence has specifically stated that New Zealand is "highly unlikely to face direct military threat over the next 25 years" and that instead "more pressure on maritime resources and increased illegal migration are likely"; which again highlights reasons

for the existing focus on resource protection and law enforcement.¹⁶³ Accordingly, this perceived shift in threat has been matched in recent times with a shift in military capability.

As highlighted in Chapter Two, in 2001 the Department of the Prime Minister and Cabinet released an all-of-government assessment of New Zealand's civil-military maritime security capabilities and requirements, the *Maritime Patrol Review*. More than any other assessment, the *Maritime Patrol Review* has focused thinking about the maritime domain and shaped New Zealand's current maritime security arrangements. An analysis of subsequent commentary reveals that the *Maritime Patrol Review* is a government document that polarises opinions. For example, in an article published in 2002, investigative journalist Nicky Hager highlighted many of the key findings of the Review, specifically those that reflected negatively on Defence procurement arrangements.¹⁶⁴ Hager emphasised statements within the Review that contradicted the long-held belief that the Defence Force provided a sufficient level of security in and over New Zealand's maritime domain. Specifically, he referenced the statement that there is a "widely held impression among New Zealanders that military assets provide comprehensive coverage" of the country's ocean areas, and held that this was "not the case at all".¹⁶⁵ When considering the RNZAF P-3K Orion maritime patrol aircraft, Hager emphasised that the Review found that each aircraft flew "only 5% of the year and, even then, 75% of this was for Defence's priority of training and

¹⁶³ Ministry of Defence, "Statement of Intent: 1 July 2013 – 30 June 2016," (Wellington: Ministry of Defence, 2013), 5.

¹⁶⁴ Nicky Hager, "Defence Loses Battle for Huge Spend-Up," *Sunday Star-Times*, 19 May 2002.

¹⁶⁵ Department of the Prime Minister and Cabinet, "Maritime Patrol Review," 9.

exercising for war fighting roles (although in 35 years they had never been used for this)" and that it was "a similar story" with the Navy's frigates.¹⁶⁶

Hagar's narrative of the circumstances that existed during the time period in which the *Maritime Patrol Review* was drafted paints a picture of a struggle between the Helen Clark-led Labour Government and the senior Defence leadership of the time – a familiar struggle between a progressive Government bent on the "re-orientation of defence" and a Defence "old-guard" maintaining the tradition of armed forces "existing primarily to be available for far-away wars".¹⁶⁷ While Hagar's views are often considered to be sensationalist and controversial, there is certainly substance to his assertion that a refocus in military capability caused concerns among many in Defence circles; including public opposition from two former Secretaries of Defence (Denis McLean and Gerald Hensley) and four former Chiefs and Vice Chiefs of Staff.¹⁶⁸ In a 2007 journal article, David McCraw explained the debate that followed the publication and subsequent implementation of the recommendations of the Review as one between two opposing positions: revisionists on the one hand, who considered that the Defence Force should be "structured solely for current needs"; and traditionalists who argued that the military should "allow for different needs in the future".¹⁶⁹

¹⁶⁶ Hager, "Defence Loses Battle for Huge Spend-Up."

¹⁶⁷ *ibid.*

¹⁶⁸ Francesca Mold, "Pm Fires Broadside at Critics of Defence Spending Focus," *New Zealand Herald*, 4 April 2001.

¹⁶⁹ David McCraw, "The Defence Debate in Australia and New Zealand," *Defence Studies* 7, no. 1 (2007): 107.

Regardless of the merit or otherwise of the 2001 *Maritime Patrol Review* and the political machinations that surrounded its creation, New Zealand's current maritime security arrangements are unambiguously a direct reflection of the recommendations of that Review. The implementation of the recommendations of the 2001 *Maritime Patrol Review* has created New Zealand's current maritime security arrangements. For instance, in 2002 the Ministry of Defence published the *Maritime Forces Review*, which is today seen as a direct response to the *Maritime Patrol Review*. The assessment outlined in the 2002 *Maritime Forces Review* recognised the importance of maintaining both a naval combat and patrol capability; more so perhaps than the *Maritime Patrol Review*.¹⁷⁰ However, it also confirmed some of the findings of the *Maritime Patrol Review* in accepting that there was an urgent requirement to fill "the gap" in meeting civilian agency patrol requirements around New Zealand.¹⁷¹

The main procurement programme that resulted was titled "Project Protector" and, while increasing the size of the RNZN's fleet, it represented a significant shift in capability focus away from war-fighting towards civil-maritime patrol and law enforcement. The refocus of New Zealand's military was not limited to naval craft. The RNZAF's capabilities were similarly scrutinised, resulting in the high-profile disestablishment of the air-combat force, despite concerns over the "strategic, foreign policy and military operational risks" this created.¹⁷² Moreover, around the same time, the RNZAF's anti-submarine warfare (ASW) capability was also publically questioned by Prime Minister Clark, who also alluded to apparent efforts by the

¹⁷⁰ Ministry of Defence, "Maritime Forces Review," (Wellington: Ministry of Defence, 2002), 3-4.

¹⁷¹ *ibid.*, 32.

¹⁷² "Review of the Options for an Air Combat Capability," (Wellington: Ministry of Defence, 2001), 37.

Defence Force to mislead the New Zealand public as to the necessity of maintaining an anti-submarine capability. In 2001 Clark dismissed the threat posed by foreign submarines operating in New Zealand waters, stating it was a fact that “the South Pacific is not a region of high priority for submarine activity”; while providing examples over the previous 30 years.¹⁷³

Unlike its retired counterpart – the combat-ruled A-4 Skyhawks – and even without ASW weapon systems, the maritime patrol value of the P-3K Orion aircraft was easily recognised. Although designed and procured as an ASW aircraft during the height of the Cold War, its endurance, stability, range, and comparatively low-running costs (i.e. propeller-driven aircraft are more fuel efficient than jet aircraft) resulted in the 2004 Government approval of NZ\$352 million to significantly upgrade the P-3K Orions’ sensor and navigation systems.¹⁷⁴ In other words, like the RNZN’s fleet, the realignment of the RNZAF’s capability was an even more complete shift in focus away from war-fighting towards maintaining New Zealand’s civil-maritime patrol and law enforcement objectives.

New Zealand’s conventional military effectiveness has been significantly degraded as a result of the refocusing that has occurred since 2001; however, it can justifiably be argued that the country’s civil-maritime capabilities have actually been enhanced. In broad terms, these enhanced civil-maritime capabilities are articulated by the New

¹⁷³ Helen Clark, "Misleading Information on Submarines'," New Zealand Government, <http://www.beehive.govt.nz/release/misleading-information-submarines039>. (Accessed 28 September 2013).

¹⁷⁴ Ministry of Defence, "P-3 Systems Upgrade," (Wellington: Ministry of Defence, 2004).

Zealand Defence Force as “outputs”, more specifically described as naval warfare (including littoral warfare), patrol, and support forces and airborne surveillance and response forces.¹⁷⁵

The naval warfare – or traditional ‘war-fighting’ – components refer primarily to New Zealand’s two ANZAC-Class Frigates, HMNZ Ships *Te Mana* and *Te Kaha*, with littoral warfare and support functions now being undertaken by three further non-combat replenishment or multi-role vessels. Specific naval patrol functions are the remit of the patrol fleet acquired under Project Protector; two Offshore Patrol Vessels (OPVs) and four Inshore Patrol Vessels (IPVs) all of which were acquired to mitigate the patrol gaps identified by the *Maritime Patrol Review*. Furthermore, both OPVs have strengthened hulls which enable them to venture into the Southern Ocean, enhancing New Zealand’s ability to patrol its often ice-filled southern waters.¹⁷⁶

Despite these capability gains, it is important to note that only the frigates are war-fighting vessels. That is, only the two frigates are capable of undertaking the combat operations traditionally expected of the Navy. Similarly, despite the improved capability of the upgraded airborne surveillance fleet, it is also important to recognise the significant challenges the RNZAF faces in attempting to provide over-watch for New Zealand’s entire maritime domain. As mentioned, New Zealand’s airborne surveillance and response capabilities have been significantly enhanced and the

¹⁷⁵ New Zealand Defence Force, "Statement of Intent 2013 - 2016," 40-44.

¹⁷⁶ Royal New Zealand Navy, "Media Release: New Offshore Patrol Vessel Boosts Capability," Royal New Zealand Navy, <http://www.navy.mil.nz/nap/news/media-release.htm@guid=%7Bf9351b6c-0ad5-4acb-b8d0-b708f3fdad85%7D.htm>. (Accessed 28 September 2013).

RNZAF's upgraded P-3K2 Orions are now recognised as world-class maritime surveillance aircraft; despite being almost 50 years old.¹⁷⁷ However, some of the issues identified in the *Maritime Patrol Review* around availability of aircraft to undertake maritime security operations remain, with unforeseen delays in the Orion upgrade programme cited as the cause of limited aircraft availability.¹⁷⁸ Nevertheless, New Zealand's ability to undertake surveillance in the Pacific is good, if only in terms of actual aircraft capability.

However, contrary to this assessment, the *Maritime Patrol Review* concluded that New Zealand's national aerial surveillance requirements needed "a ten-fold increase" to be effective.¹⁷⁹ During the drafting of the Review in 2001, the RNZAF maintained a fleet of six fixed-wing aircraft tasked and equipped for maritime surveillance. Despite significant improvements in the sensor and navigation systems of those aircraft, in 2013 there remains only six aircraft; with no obvious intention by Government to expand the fleet.

While attempts to meet the requirement for a "ten-fold increase" have been made with significantly more RNZAF flying hours allocated for civilian agencies' use, in many respects it is a case of "robbing Peter to pay Paul". For instance, the *Maritime Patrol Review* recommended that civil surveillance and deterrence effort warranted between

¹⁷⁷ Chris Gee, "First Orion P-3k2 Upgrade Received by Rnzaf," *KiwiFlyer*2011, 6.

¹⁷⁸ Office of the Auditor-General, "Parliamentary Paper: Public Entities' Progress in Implementing the Auditor-General's Recommendations 2012," (Wellington: Office of the Auditor-General, 2012), 14.

¹⁷⁹ Department of the Prime Minister and Cabinet, "Maritime Patrol Review," 36.

2000 and 3000 flying hours per year.¹⁸⁰ According to the Defence Force's latest *Output Plan*, a shortage of aircraft means that only 530 hours will be available for non-military tasks during 2013-2014.¹⁸¹ It is worth noting, however, that around 1800 hours have been budgeted for military tasks; raising the question highlighted by the *Maritime Patrol Review* and journalists such as Hagar whether expensive Government assets are being used to promote wider national interests or the narrow interests of the military.

Accordingly, this is one of the fundamental issues to be addressed when considering how best to focus New Zealand's approach to maritime domain security. Following the 2008 global financial crisis, New Zealand government departments have been directed to be more fiscally responsible.¹⁸² This has significant implications for maritime security, as most resources and assets come with a large price tag. For example, the capital cost for the RNZN's entire Project Protector fleet of seven vessels (including the sealift and amphibious support vessel HMNZS *Canterbury*) was around \$500 million.¹⁸³ The cost to replace just one of the ANZAC-Class frigates at the end of its operational life could be upwards of \$2 billion; begging the question

¹⁸⁰ *ibid.*

¹⁸¹ New Zealand Defence Force, "The 2013-2014 Output Plan: For the Year Ending 30 June 2014," (Wellington: New Zealand Defence Force, 2013), S3 39-40.

¹⁸² The Treasury, "Principles of Responsible Fiscal Management," The Treasury, <http://www.treasury.govt.nz/publications/guidance/publicfinance/pfaguide/12.htm> (Accessed 02 January 2013).

¹⁸³ Office of the Auditor-General, "Reporting the Progress of Defence Acquisition Projects," (Wellington: Office of the Auditor-General, 2008), 11.

of the value in maintaining warships if the Government's priority has shifted to civil-maritime tasks.¹⁸⁴

However, the argument that one frigate is worth the entire OPV/IPV patrol fleet is comparing proverbial apples with oranges. Whereas a frigate can be used to undertake civil-maritime patrol functions, an OPV for example cannot be used for to perform the functions of a warship. Conversely, it is arguably a wasted investment to use a frigate to undertake the task of a patrol craft.

New Zealand is not unique in the dilemma it faces in terms of investment in military capital. For example, in an ironic assessment of United States' military spending, former Under-Secretary of the Army, Norman Augustine, highlighted that the cost of combat aircraft has increased by a factor of four every ten years over the past one hundred years.¹⁸⁵ Taking the forecasted GDP of the United States into account, Augustine suggested that by 2054 the United States military will be able to afford just one aircraft.¹⁸⁶ "Augustine's Laws" illustrate that, from New Zealand's perspective, the rising cost of defence expenditure has made the upkeep of a broad, modern, maritime military combat capability increasingly unsustainable.¹⁸⁷ This point has been further emphasised by Keith Hartley who, in his contrast between defence investment in the United Kingdom and New Zealand, concluded that "a geographically-remote and small nation cannot afford costly high technology

¹⁸⁴ Greener, *Timing Is Everything: The Politics and Processes of New Zealand Defence Acquisition Making*, 34.

¹⁸⁵ Norman R Augustine, *Augustine's Laws* (AIAA, 1997), 105.

¹⁸⁶ *ibid.*, 107.

¹⁸⁷ Alexander and King, "Country Survey Xvii: New Zealand's Defence Policy," 287.

equipment (e.g. combat aircraft)", and it must be content that its military forces provide only a limited range of capabilities.¹⁸⁸

Recognising this fact, and given the limited range of its capability, New Zealand's military investment could be more narrowly focused on a utilitarian combination of surface patrol craft and aerial surveillance capabilities – a coastguard to all extents and purposes. Furthermore, many would argue that the future of New Zealand's maritime surveillance lies with an investment in drone technology or the use of unmanned aerial vehicles (UAVs) – rather than conventional aircraft like the P-3K2 Orion – to support the surface patrol fleet.¹⁸⁹ The counter-argument is that, while being a sensible approach to combat illegal activity and resources protection, any further dilution of the effectiveness of the military jeopardises New Zealand's ability to prevent and deter hostile incursions into its maritime domain in the future – despite the fact that this has probably not occurred since the Second World War (arguments about submarines and electronic surveillance vessels aside).

Regardless of the ever-present resource allocation challenges, one must recognise that it is unrealistic to expect any coastal nation with a significant maritime domain to be able to monitor all of its ocean territory all of the time. For example, Australia clearly has difficulties in maintaining comprehensive maritime domain awareness despite a significant investment in surveillance and response capability; the situation

¹⁸⁸ Keith Hartley, "The Case for Defence," *ibid.* 21, no. 5-6 (2010): 409.

¹⁸⁹ Brian Oliver, "Could Uavs Improve New Zealand's Maritime Security?," *Master of Philosophy Thesis, Massey University* (2009).

being well demonstrated by that country's difficulties in dealing with the unauthorised maritime arrivals of large numbers of asylum seekers in recent years.

Although a controversial issue, it is arguable that the mass arrival of maritime asylum seekers in Australian territorial waters is not a security issue at all; but rather a humanitarian problem that the Government and people of Australia have an obligation to respond to under the *United Nations Convention Relating to the Status of Refugees*.¹⁹⁰ Nevertheless, the security issues surrounding maritime people smuggling provides a useful model.

The RNZN fleet consists of eleven ships to undertake the full range of civil-military maritime tasks; these are supported in their domestic law enforcement duties by two Police launches and one Customs' craft. The Royal Australian Navy (RAN), on the other hand, has a fleet of 56 vessels with more in production.¹⁹¹ While not all of these assets are involved in countering maritime people smuggling, according to official information at any one time *at least* seven RAN patrol boats support the eleven Australian Customs and Border Protection Service vessels committed primarily to countering the mass maritime arrival of asylum seekers in the north of Australia.¹⁹² Furthermore, Royal Australian Air Force (RAAF) AP-3C Orion maritime patrol aircraft actively support this surface fleet along with specifically contracted civilian aircraft and

¹⁹⁰ Natalie Jackson, "Enter at Own Risk: Australia's Population Questions for the 21st Century – Edited by Suvendrini Perera, Graham Seal and Sue Summers," *Geographical Research* 50, no. 2 (2012): 223.

¹⁹¹ Royal Australian Navy, "The Fleet," Australian Defence Force, <http://www.navy.gov.au/fleet>. (Accessed 14 October 2013).

¹⁹² "Resolute," Australian Defence Force, <http://www.navy.gov.au/operations-and-exercises/resolute>. (Accessed 14 October 2013).

commercial satellite imagery.¹⁹³ Despite this matrix of surveillance over a relatively confined ocean space (i.e. between the ports in South East Asia from which the boats typically originate and Australian sovereign territory), over 700 boats have arrived in Australia since 2009.¹⁹⁴

Moreover, as the toll of drowned asylum seekers testifies to, many of these arrivals are evidently undetected by Australian authorities until the boats are well within Australian territorial waters or a call for help is made inside the Australian Search and Rescue Region. Consequently, despite the investment in resources, even a regional power such as Australia struggles to maintain complete awareness of the limited area of its northern approaches; much less its entire maritime domain.

In other words, given the difficulties in maritime surveillance and response capability that the comparatively well-equipped Australians face in dealing with only one specific challenge to sovereignty within their maritime domain, New Zealanders must surely recognise the limitations of the air and surface assets that underpin this country's current maritime security arrangements. The limitations created by the modest capabilities of the Defence Force in undertaking patrol and surveillance activity at sea – coupled with the sheer size of the maritime domain – means that New Zealand must look to operate much more effectively with the limited resources that are available. Arguably, the first step is to focus activity and resources to the long-term

¹⁹³ Australian Border Protection Command, "Surveillance and Response Assets: Management," Australian Government, <http://www.bpc.gov.au/site/page5788.asp>. (Accessed 14 October 2013).

¹⁹⁴ Parliament of Australia, "Boat Arrivals in Australia since 1976," Commonwealth of Australia, http://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/bn/2012-2013/boatarrivals. (Accessed 14 October 2013).

strategic interests of sovereignty and environmental protection rather than prioritising short-term law enforcement as is currently the case.

One way in which New Zealand has already worked to mitigate its comparative lack of resources is through technology. While response or interdiction activity at sea will almost always involve surface assets, such as patrol craft, aerial or wide-area surveillance does not necessarily have to be undertaken by aircraft. Furthermore, though a necessity to any coastal state's response capabilities, typically maritime surveillance aircraft are notoriously expensive to maintain and operate.

Consequently, as with many other nations, New Zealand has looked to other methods to assist with maritime domain awareness. One example of this was New Zealand's implementation of a nationwide vessel Automatic Identification System (AIS) in 2009.¹⁹⁵

In 2004 an amendment to the International Maritime Organization's *Safety of Life at Sea Convention* (SOLAS) made it a requirement that all ships engaged in international voyages with a gross tonnage of 300 tons or more, and all passenger ships regardless of size, be fitted with AIS for navigation safety reasons.¹⁹⁶ This system allows for the real-time automated tracking and identification of nearly all legitimate international shipping, electronically providing New Zealand authorities

¹⁹⁵ Harry Duynhoven, "Automatic Identification System (Ais) Network Launch," New Zealand Government, <http://www.beehive.govt.nz/node/34265>. (Accessed 15 October 2013).

¹⁹⁶ International Maritime Organization, "International Convention for the Safety of Life at Sea (Solus)," [http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-\(SOLAS\),-1974.aspx](http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-(SOLAS),-1974.aspx). (Accessed 15 October 2013).

details such as a vessel's speed, position, course, size, and so on.¹⁹⁷ As a result AIS has become an abundant and cost effective method of gathering maritime surveillance information providing significant benefits for national maritime security, safety, law enforcement, resource and environmental protection.¹⁹⁸

Similarly, New Zealand has also implemented a Vessel Monitoring System (VMS) to monitor fishing activities in New Zealand's waters.¹⁹⁹ This system requires that commercial fishing vessels operating within New Zealand's fisheries must fix a transponder on-board allowing authorities access to specific information to ensure that they are not engaged in illicit fishing activity. New Zealand's smart use of technology to support its law enforcement activity and resource and environmental protection measures has become world renowned, with overseas maritime experts citing this country's fishing net monitoring devices as an example other nations should follow.²⁰⁰

Despite the maritime surveillance efficiency gains provided by technology, it is important to recognise that these types of systems are reliant to a large degree on compliance. Both AIS and VMS only work if the system is turned on, and so the crew of a craft that does not wish to be seen can simply switch these systems off –

¹⁹⁷ Duynhoven, "Automatic Identification System (Ais) Network Launch".

¹⁹⁸ Feixiang Zhu, "Mining Ship Spatial Trajectory Patterns from Ais Database for Maritime Surveillance" (paper presented at the Emergency Management and Management Sciences (ICEMMS), 2011 2nd IEEE International Conference on, 8-10 Aug. 2011 2011), 772.

¹⁹⁹ Land Information New Zealand, "Mfish - Vessel Monitoring Systems (Vms)," Land Information New Zealand, <http://www.linz.govt.nz/geospatial-office/blog/mfish-vessel-monitoring-systems-vms>. (Accessed 15 October 2013).

²⁰⁰ Sara Monteiro, Xavier Vázquez, and Ronán Long, "Improving Fishery Law Enforcement in Marine Protected Areas," *Aegean Review of the Law of the Sea and Maritime Law* 1, no. 1 (2010): 105.

although that act in itself could be a trigger to attract the attention of law enforcement agencies.

Furthermore, small craft and yachts are not obligated to use vessel tracking systems (although many choose to with systems such as YOTREPS).²⁰¹ Consequently, as with many other nations around the world, New Zealand has also harnessed the capabilities of its wider intelligence community to support all-of-government efforts to improving maritime domain awareness.²⁰²

Arguably, one of the most significant improvements in New Zealand's maritime security arrangements in recent years has been the establishment of the National Maritime Coordination Centre (or NMCC). Another improvement that came out of the recommendations of the *Maritime Patrol Review*, the NMCC is responsible for managing New Zealand's maritime security surveillance and patrol capabilities on behalf of all government civil agencies.²⁰³ Consequently, the collaborative approach created by the NMCC means that New Zealand government agencies with a security remit can better share resources, expertise and avoid duplication of effort.²⁰⁴ The NMCC concept is not unique to New Zealand, however. As with most things, New

²⁰¹ Refer to "Yotreps," Pangolin, http://www.pangolin.co.nz/ocean_passages. (Accessed 10 January 2014).

²⁰² New Zealand Intelligence Community, "Protecting and Advancing Our National Security: National Security Challenges and the Nzic's Response," New Zealand Government, <http://www.nzic.govt.nz/about-us/securing-new-zealands-future/>. (Accessed 15 October 2013).

²⁰³ New Zealand Customs Service, "Other Organisations: National Maritime Coordination Centre (Nmcc)," New Zealand Customs Service, <http://www.customs.govt.nz/about/profile/otherorganisations/Pages/default.aspx>. (Accessed 02 January 2014).

²⁰⁴ Martyn Dunne, "New Zealand Customs Service: Changes over the Last Decade and into the Future," *World Customs Journal* (2007): 43.

Zealand looked to the Australian model in the first instance in its quest for a suitable template to adapt to New Zealand's needs and resources. Accordingly, an overview of Australia's maritime security arrangements is a useful basis for developing a sharper perspective on New Zealand's maritime security regime.

Chapter 4: Australian 'solutions' to the challenges of maritime domain security

Australia's maritime security arrangements

Before considering Australia's security arrangements as a model for comparative analysis, it is first appropriate to provide the rationale for using New Zealand's much larger neighbour as a point of comparison. New Zealand and Australia, while their geostrategic location is similar, are different in many respects. Australia is effectively a continental regional-superpower, with maritime borders that abut Southeast Asia; historically an unstable region. New Zealand, on the other hand, is an isolated archipelago. Likewise, in contrast to New Zealand, Australia has a much larger military (air, surface, and sub-surface – both combat and patrol), civil-maritime, and merchant presence in its maritime domain. In many respects comparing New Zealand's maritime security arrangements with any other country could be considered pointless due to the uniqueness of New Zealand's size, population and setting. However, when seeking a point of comparison for New Zealand, no other coastal state shares the same threats as closely as Australia.

For example, the United Kingdom's has stated that its maritime security priorities (or objectives) are: To promote a secure international maritime domain and uphold international maritime norms; To develop the maritime governance capacity and capabilities of states in areas of strategic maritime importance; To protect the UK and the Overseas Territories, their citizens and economies by supporting the safety and security of ports and offshore installations and Red Ensign Group (REG)-flagged passenger and cargo ships; To assure the security of vital maritime trade and energy

transportation routes within the UK Marine Zone, regionally and internationally; To protect the resources and population of the UK and the Overseas Territories from illegal and dangerous activity, including serious organised crime and terrorism.²⁰⁵

While Norway's priorities have been listed as being: Fisheries management and control; Offshore petroleum activity; Protection of the marine environment; Maritime transport; Shipbuilding and maritime equipment; Tourism; A maritime policy for the High North; Coastal management; and Research and maritime expertise.²⁰⁶

The Australian Federal Government, on the other hand, has listed its maritime security priorities as being: Illegal activity in protected areas; Illegal exploitation of natural resources; Marine pollution; Prohibited imports and exports; Irregular maritime arrivals; Compromise to biosecurity; Piracy, robbery or violence at sea; and Maritime terrorism.²⁰⁷ So while there is overlap between the maritime security priorities of all of the above mentioned nations, the stated government maritime security priorities of Australia and New Zealand are more or less identical. Consequently, considering Australia's security arrangements as a model for comparative analysis for New Zealand's approach to maritime security is appropriate.

Australia has put in place a very effective operating model to meet its maritime security requirements. Developed and tested repeatedly over a demanding period

²⁰⁵ Ministry of Defence, "The UK National Strategy for Maritime Security," ed. Ministry of Defence (London: UK Government, 2014), 18.

²⁰⁶ Government of Norway, "Norwegian Contribution to the Green Paper on a European Maritime Policy," <http://www.regjeringen.no/en/sub/europaportalen/nyhetsarkiv/2006/Norwegian-contribution-to-the-Green-Paper-on-a-European-Maritime-Policy.html?id=409557>. (Accessed 09 February 2014).

²⁰⁷ Australian Border Protection Command, "Guide to Australian Maritime Security Arrangements."

during which non-traditional threats to maritime security became a Government priority. Australia's current maritime security arrangements are a very good example of interagency coordination. Consequently, the Australian model is one that this thesis argues New Zealand's own security arrangements should replicate.

Geographically, Australia is the sixth largest country in the world with one of the largest maritime jurisdictions.²⁰⁸ For instance, Australia's EEZ is the world's third largest, covering 8.2 million square kilometres. Additionally, the EEZ extending from Australia's Antarctic claims adds a further 2.2 million square kilometres.²⁰⁹ Like New Zealand, Australia's maritime security arrangements are a legacy of past events and that nation's history.

For example, unlike New Zealand (which only had to contend with the effects of enemy minelaying activities and surveillance), Australian sovereignty was directly challenged by the Japanese during the Second World War with the bombing of Darwin and Broome, submarine attacks on Sydney, and the capture of offshore territory such as Christmas Island. In contrast to New Zealand's war-time Government, the Australian Government made the decision to recall much of its military forces fighting in Europe and the Middle East back to the Pacific to defend the Australian mainland from the Japanese threat. These events remain within living memory and – together with the proximity of its Asian neighbours and Australia's self-

²⁰⁸ Department of the Prime Minister and Cabinet, "Strong and Secure: A Strategy for Australia's National Security," (Canberra: Australian Government, 2013), 7.

²⁰⁹ Derek Woolner, "Drowned by Politics: Australia's Challenges in Managing Its Maritime Domain," *Security Challenges* 9, no. 3 (2013): 65.

perception as a regional power, as well as its close alliance with the United States – have arguably resulted in maritime defence and security issues being elevated to a higher level of importance within the Australian psyche when compared with New Zealand.²¹⁰

However, Australia's approach to maritime security is not dissimilar to New Zealand's, in that it has a shared interagency approach focused on a core number of national priorities. According to the principal reference document outlining the Australian Federal Government's approach to maritime domain security, the *Guide to Australian Maritime Security Arrangements*: "Australia's national objective for maritime security is to deter or prevent illegal activity from occurring in Australia's maritime jurisdiction and where necessary to interdict and enforce Australian laws".²¹¹ Accordingly, Australia's maritime security emphasis appears to focus on law enforcement.

However, it is important to note that of the eight specific threats prioritised within Australia's maritime security arrangements, four relate specifically to environmental protection measures (i.e. illegal activity in protected areas, illegal exploitation of natural resources, marine pollution, and compromise to biosecurity). Moreover, of the remaining four, three of the threats covered are arguably threats to sovereignty (i.e. irregular maritime arrivals, prohibited imports and exports, and maritime terrorism). One of these perceived sovereignty threats in particular has shaped Australia's

²¹⁰ Department of the Prime Minister and Cabinet, "Strong and Secure: A Strategy for Australia's National Security," ii; Keenan and Richardson, "Differences of Perspective: An Analysis of the Similarities and Differences in Australian and New Zealand Attitudes to Security". 13.

²¹¹ Australian Border Protection Command, "Guide to Australian Maritime Security Arrangements," 3.

approach to maritime domain security in recent times; euphemistically titled ‘irregular maritime arrivals’, but better known to the Australian public as “the boat people problem”.

The mass arrival of maritime asylum seekers

Since 1976 almost 40,000 “boat people” have made the journey to Australia.²¹²

Consequently, for four decades the unauthorised mass maritime arrival of asylum seekers has been a major political and electoral issue for successive Australian Governments; and arguably none more so than the John Howard-led Coalition Government of 2001. In August 2001, the MV *Tampa*, a Norwegian-flagged cargo vessel, arrived at Christmas Island carrying 433 “irregular immigrants” on board.²¹³

The *Tampa*’s arrival prompted the Australian Government to respond with an uncompromising maritime border protection policy.²¹⁴ This policy initiated a controversial interagency operation focused on maritime security, the aim of which was to deter and prevent further boatloads of asylum seekers from entering Australian waters (officially designated Operation RELEX).²¹⁵ Arguably, this response has shaped Australia’s entire approach to maritime domain security ever since. Consequently, much of the unified interagency arrangements that characterise

²¹² Janet Phillips and Harriet Spinks, "Boat Arrivals in Australia since 1976," ed. Department of Parliamentary Services (Canberra: Parliament of Australia, 2013), 23.

²¹³ Note: references to 438 asylum seekers being on board include the five man crew of the *Palapa*; the craft that originally carried the asylum seekers before breaking down and sinking.

²¹⁴ Stuart Kaye, "Tampering with Border Protection," in *Protecting Australia's Maritime Borders: The Mv Tampa and Beyond*, ed. Martin Tsamenyi and Chris Rahman (Wollongong: University of Wollongong, 2002), 78-80.

²¹⁵ Rear Admiral Geoffrey Smith quoted in United Nations High Commissioner for Refugees, "Australia," in *2002 UNHCR Statistical Yearbook Country Data Sheet* (2002), CIM 447. <http://www.aph.gov.au/hansard/senate/commtee/s5411.pdf> (Accessed 26 March, 2012).

Australia's current maritime security regime owe their effectiveness to procedural changes implemented as a result of the difficult lessons identified in response to the "boat people problem".

In the decades leading up to 2000, Australia had already been subject to several notable asylum seeker "waves" resulting from geopolitical turmoil in the wider region; refugees fleeing from the Cambodian–Vietnamese War and the rise of the Taliban in Afghanistan are examples. By 2001 there were three government departments responsible for protecting Australia's maritime border from the threat posed by illegal immigration: the Australian Federal Police, the primary law enforcement agency with a significant investment in intelligence gathering activity particularly offshore; the Australian Customs Service, responsible for the surveillance and security of the coastline and maritime domain; and the Department of Immigration and Multicultural Affairs, managing the movement of people into and deportations out of Australia as required.²¹⁶ These three agencies were supported by nine other government departments, most significantly the Australian Defence Force (ADF).

According to Dr Derek Woolner, in 2001 the coordination between government departments was ill-defined, with operational management driven by a series of interdepartmental committees.²¹⁷ Generally, government agencies worked collaboratively to protect Australia's national maritime interests. However, it was an

²¹⁶ Fiona David, "Human Smuggling and Trafficking: An Overview of the Response at the Federal Level," *Research and Public Policy Series 24* (2000): 26-33.

²¹⁷ Derek Woolner, "Australia's Maritime Border Protection Regime," in *Protecting Australia's Maritime Borders: The Mv Tampa and Beyond* ed. Martin Tsamenyi and Chris Rahman (Wollongong: University of Wollongong, 2002), 13-16.

“*ad hoc* arrangement” created out of necessity, rather than one based on strategic guidance.²¹⁸ Though the interagency coordination system worked in many respects, the arrangement in place was inefficient with much duplication of effort and scope for failure.²¹⁹

The catalyst for change, the “Tampa Affair” as it became known, started when a small craft carrying some 433 would-be asylum seekers left Indonesia heading for the Australian territory of Christmas Island. Within a day it had broken down and was drifting without power.²²⁰ The Australian Federal Police were aware of the vessel’s departure due to its intelligence network in Indonesia and a RAAF aircraft was deployed to track its progress.²²¹ When it became clear that the vessel was drifting aimlessly, a search and rescue operation was initiated. Aware of the human cargo and the fact that the stricken vessel was still inside Indonesia’s Search and Rescue Region, Australia’s Rescue Coordination Centre pressured its Indonesian equivalent to take responsibility; indeed there is still debate as to which country actually coordinated the rescue.²²² Nevertheless, an emergency request was made to merchant ships in the area to provide assistance to which the MV *Tampa* was in the best position to respond. The master of the *Tampa*, Arne Rinnan, accordingly changed course. With the asylum seekers’ boat beginning to sink, Rinnan’s crew

²¹⁸ Steve Forrest, "Towards a National Security Strategy for Australia," *The Australian Army Journal* V, no. 1 (2008): 69.

²¹⁹ United Nations High Commissioner for Refugees, "Australia," Executive Summary, xxxvii.

²²⁰ David Marr and Marian Wilkinson, *Dark Victory* (Crows Nest: Allen & Unwin, 2004), 4-10.

²²¹ *ibid.*, 10-15.

²²² For conflicting views refer to Peter Mares, *Borderline: Australia's Response to Refugees and Asylum Seekers in the Wake of the Tampa* (Sydney: UNSW Press, 2002), 121. and ; Frank Brennan, *Tampering with Asylum: A Universal Humanitarian Problem* (St Lucia: University of Queensland Press, 2003), 41. versus ; Kaye, "Tampering with Border Protection," 60.

was able to physically lift every person on-board onto the *Tampa*.²²³ With so many unplanned passengers, Rinnan was unable to carry on with his intended route. Under significant pressure from the asylum seekers not to head to the closer Indonesian port (i.e. with threats of self-harm), Rinnan set course for nearby Christmas Island; despite the protests being made by the Australian Government.

At this point it is important to recognise that the maritime security threat posed by boatloads of asylum seekers was – and remains to this day – a significantly political issue in Australia. For decades Australia has been a destination for asylum seekers, with over 100,000 arriving between 1993 and 2001.²²⁴ While many point to the fact that the vast majority of asylum seekers arriving in Australia (around 85%) arrive by air, it has consistently been the 15% minority who have arrived by boat that provoked the most public interest.²²⁵ In late 2001, Australia was experiencing a marked increase in the number of unauthorised maritime arrivals.²²⁶ Accordingly, the Government made responding to these growing numbers a political priority.

With the arrival of the *Tampa* outside of Australian territorial waters, the Government immediately imposed a no-entry policy. It is important to note that this tough policy was generally very popular with the Australian public, and many credit the Howard

²²³ Marr and Wilkinson, *Dark Victory*, 23.

²²⁴ United Nations High Commissioner for Refugees, "Australia." <http://www.unhcr.org/414ad5690.html>. (Accessed June 29 2011).

²²⁵ Janet Phillips and Harriet Spinks, "Boat Arrivals in Australia since 1976," ed. Department of Parliamentary Services (Canberra: Parliament of Australia, 2011).

²²⁶ Cecilia Bailliet, "The "Tampa" Case and Its Impact on Burden Sharing at Sea," *Human Rights Quarterly* 25, no. 3 (2003): 745; Clive Williams, "Australia's Evolving Maritime Border Threat Environment," in *Protecting Australia's Maritime Borders: The Mv Tampa and Beyond* ed. Martin Tsamenyi and Chris Rahman (Wollongong: University of Wollongong, 2002), 2.

Government's subsequent re-election as being due in large part to its asylum seeker position. After a delay of a few days hoping for some sort of diplomatic resolution, Rinnan entered Australian territorial waters despite the threat made by Australian authorities that he would be prosecuted for people smuggling if he did so.²²⁷ At once the *Tampa* was intercepted by the ADF – controversially armed soldiers were used – and both the vessel and all those on board were detained.²²⁸ Subsequently, the asylum seekers were all transferred to a troopship and within a month were interned in an Australian-run facility in Nauru, under the Government's "Pacific Solution".²²⁹

In the days following the Tampa Affair, Australia began a significant overhaul of interagency maritime security arrangements; with the primacy of Australian maritime border protection shifting to the ADF.²³⁰ Moreover, an interagency People Smuggling Taskforce (PST) was established to coordinate the whole-of-government response.²³¹ The aim of these measures was to prevent unauthorised vessels entering into Australian territorial waters and deter would-be asylum seekers from attempting to reach Australia in the first place.²³² In real terms, this meant that Australian authorities would intercept boats entering Australian territorial water without permission and either escort, tow, or turn them back to where they had embarked

²²⁷ Mares, *Borderline: Australia's Response to Refugees and Asylum Seekers in the Wake of the Tampa*, 121-24.

²²⁸ Michael Herd, *Calling out the Troops: The Australian Military and Civil Unrest* (Leichhardt: The Federation Press, 2009), 79.

²²⁹ Department of Foreign Affairs and Trade: Media Release, "Mou on Asylum Seekers Signed with Nauru," http://www.dfat.gov.au/media/releases/foreign/2001/fa177_01.html. (Accessed July 01, 2011).

²³⁰ Department of the Senate, "Select Committee for an Inquiry into a Certain Maritime Incident" (Canberra: Parliament of Australia, 2002), Chapter 1, 3-6.

²³¹ *ibid.*, Chapter 1, 7-8.

²³² *ibid.*, Chapter 2, 13-14.

from; most often Indonesia.²³³ Given the poor condition of the asylum seeker vessels, conducting such a policy raised significant legal questions, particularly Australia's obligations under *the International Convention for the Safety of Life at Sea*.²³⁴

Over the following weeks, Australian officials intercepted three more Suspected Illegal Entry Vessels (or SIEVs) attempting to reach Australia, classified as SIEVs 1, 2, and 3 respectively.²³⁵ However, according to later findings, the operational coordination of Australia's response arrangements began to be hampered by the high-level involvement of Government officials outside of the operational sphere; particularly the PST, the Canberra-based interdepartmental committee headed by the Australian Department of the Prime Minister and Cabinet.²³⁶ As has been highlighted, Australia's response to this "wave" of arrivals was driven by political imperatives, and it is important to note that both the 9/11 terrorist attacks on the World Trade Centre and Australia's 2001 federal election occurred during this time; intensifying the public's attitude towards national security issues.²³⁷

Much of the subsequent negative fallout from the Australian Government's response to irregular maritime arrivals in 2001 came from the fact that all media coverage of its

²³³ Ruth Balint, *Troubled Waters* (Crows Nest: Allen & Unwin, 2005), 132.

²³⁴ Jessica Howard, "To Deter and Deny: Australia and the Interdiction of Asylum Seekers," *Refuge: Interdiction at the Expense of Human Rights* 21, no. 4 (2003): 45.

²³⁵ Department of the Senate, "Select Committee for an Inquiry into a Certain Maritime Incident " Appendix III - Siev Event Matrix.

²³⁶ *ibid.*, Chapter 1, 7.

²³⁷ Clive Schofield, Martin Tsamenyi, and Mary Ann Palma, "Securing Maritime Australia: Developments in Maritime Surveillance and Security," *Ocean Development & International Law* 39, no. 1 (2008): 95.

response activity was controlled by the Government. As a consequence, the credibility of the entire response was detrimentally affected.²³⁸ This fact came to particular prominence following what became known as the “Children Overboard Incident” when the Government inaccurately reported that asylum seekers had thrown their children into the ocean to force Australian authorities to rescue them.²³⁹ In actual fact, SIEV 4 (the boat involved) sank and *all* of its passengers had to be fished from the water by ADF personnel.²⁴⁰ The inaccuracy of the Government’s statements regarding this matter did not emerge until after the election, prompting allegations of a cover-up. These allegations were further enhanced when the details emerged of the SIEV X tragedy.²⁴¹

During October 2001, 352 people drowned when an overloaded boat full of asylum seekers sank on its way to Australia.²⁴² Despite the fact that Australian authorities were aware of the vessel, it was never given a classifying number and is therefore known today as SIEV X.²⁴³ There is much controversy surrounding SIEV X and the culpability of Australian authorities for the loss of life. Subsequently, the effectiveness of Australia’s intelligence, surveillance, and SAR operations were seriously questioned. The resulting Senate Select Committee commented that it was extraordinary that a major human disaster could occur under an intensive Australian

²³⁸ Balint, *Troubled Waters*, 139.

²³⁹ Marr and Wilkinson, *Dark Victory*, 251.

²⁴⁰ Department of the Senate, "Select Committee for an Inquiry into a Certain Maritime Incident " Chapter 3.

²⁴¹ Sam Bateman, "Securing Australia’s Maritime Approaches," *Security Challenges* 3, no. 3 (2007): 117.

²⁴² Howard, "To Deter and Deny: Australia and the Interdiction of Asylum Seekers," Appendix 1: Summary of SIEV Incidents in 2001.

²⁴³ Department of the Senate, "Select Committee for an Inquiry into a Certain Maritime Incident " Chapter 8, 1.

surveillance operation and remain undetected “without any concern being raised within intelligence and decision making circles”.²⁴⁴ Australian intelligence networks were all aware of the vessel.²⁴⁵ However, SIEV X did not feature on any surveillance matrix until after it had sunk.²⁴⁶ The subsequent enquiry found that this was the result of a communication breakdown across Government agencies and was evidence of “systemic problems with the intelligence system”.²⁴⁷ The lesson was clear, that the *ad hoc* maritime security arrangement in place during Operation RELEX was not capable of managing the vast interagency effort now directed at a single maritime security issue.

Operation RELEX ended in December 2001 because the boats stopped coming.²⁴⁸ With subsequent analysis, a number of failings within Australia’s maritime security regime were identified. Principally that the coordination between Government departments was not capable of managing the vast interagency effort directed at illegal immigration, much less Australia’s wider maritime security needs. Consequently, since then, along with excising its offshore islands under a suite of tough border legislative changes, Australia has completely restructured its maritime security regime.

²⁴⁴ *ibid.*, Chapter 9, 288.

²⁴⁵ Marr and Wilkinson, *Dark Victory*, 300-01.

²⁴⁶ Mares, *Borderline: Australia's Response to Refugees and Asylum Seekers in the Wake of the Tampa*, 201.

²⁴⁷ Department of the Senate, "Select Committee for an Inquiry into a Certain Maritime Incident " Chapter 8, 213-14.

²⁴⁸ Phillips and Spinks, "Boat Arrivals in Australia since 1976," 20.

Border Protection Command

In March 2005 the Australian Government established the Joint Offshore Protection Command (JOPC) to coordinate national awareness and response efforts to protect Australia's sovereignty and fisheries interests within the maritime domain.²⁴⁹ In 2007 the responsibilities the JOPC were expanded beyond illegal fishing and immigration, and it was reorganised and re-titled as Border Protection Command (BPC); responsible for coordinating the whole-of-government approach to maritime security.²⁵⁰ A permanent multiagency operational department, BPC is the central coordination taskforce for all of Australia's maritime domain security activities; directly controlling all relevant government assets (both civil and military).²⁵¹ It is staffed by personnel from the ADF and the Australian Customs and Border Protection Service along with embedded liaison officers from the Australian Fisheries Management Authority, the Australian Quarantine Inspection Service, and other stakeholder entities as appropriate.²⁵²

Though supporting Government outputs, BPC is able to conduct operations without political micro-management.²⁵³ In addition, BPC provides the focal point for the collation of relevant intelligence across agencies, ensuring that the "complete

²⁴⁹ Border Protection Command, "Homepage," Australian Government, <http://www.bpc.gov.au>. (Accessed 06 January 2014).

²⁵⁰ Donald Rothwell and Cameron Moore, "Australia's Traditional Maritime Security Concerns and Post-9/11 Perspectives," in *Maritime Security: International Law and Policy Perspectives from Australia and New Zealand*, ed. Natalie Klein, Joanna Mossop, and Donald Rothwell (New York: Routledge, 2010), 43.

²⁵¹ Australian Customs and Border Protection Service, "Siev 221 Internal Review," (Canberra: Australian Government, 2011), 10.

²⁵² Chief of Navy, "Australian Maritime Doctrine-Ran Doctrine1-2010," (2010): 53.

²⁵³ Lee Corder, "Securing Australia's Maritime Domain," The University of Sydney, <http://www.australianreview.net/digest/2008/08/corder.html?referer=www.clickfind.com.au>. (Accessed June 29, 2011).

common operating picture” is visible to co-located operational planners.²⁵⁴

Accordingly, security sector analysts such as Mark Farrer have stated that “BPC is a success story, and the proof of what good public policy choices by government can achieve”.²⁵⁵

Over the past decade Australia’s maritime security arrangements have been significantly tested and evidence of the effectiveness Australia’s restructured maritime security arrangements has been clearly demonstrated. For example, between 2008 and 2009 Australian authorities managed the maritime arrival of over 1000 asylum seekers. Between 2010 and 2012 authorities had to deal with between 5000 and 7000 asylum seekers per year. In the calendar year 2012-2013, over 25,000 maritime asylum seekers attempted the journey.²⁵⁶ The fact that these huge increases in numbers year upon year was effectively managed, including numerous incidents where timely response saved the lives of many who would have otherwise drowned, is clear evidence of the effectiveness of the system.

Furthermore, operational improvements have not been limited to only one aspect of maritime security, with BPC also having notable success in preventing illegal fishing in Australia’s northern waters. Between 2005 and 2008 BPC was able to put in place a surveillance and response regime that significantly reduced illegal fishing inside

²⁵⁴ Peter Cozens, "Maritime Security and Oceans Policy," in *Maritime Security: International Law and Policy Perspectives from Australia and New Zealand*, ed. Natalie Klein, Joanna Mossop, and Donald Rothwell (New York: Routledge, 2010), 161.

²⁵⁵ Mark Farrer, "Good Operations and Bad Government Policy-Australia's Border Protection," *Asia-Pacific Defence Reporter* (2002) 37, no. 2 (2011).

²⁵⁶ Phillips and Spinks, "Boat Arrivals in Australia since 1976," 23.

Australian waters, with similar success in Australia's Southern Ocean fisheries.²⁵⁷

Moreover, BPC has developed and implemented the Australian Maritime Identification System (or AMIS), a multi-level secure, global ocean surveillance system that has significantly enhanced the border protection, fisheries, and maritime counterterrorism capabilities of Australian authorities.²⁵⁸ The AMIS system is viewed by many within the sector as a major force multiplier, providing significant situational awareness. Consequently, the system allows BPC's intelligence functions to know what constitutes normal activity in the maritime domain; enabling the more effective use of its resources by focusing on unusual or suspicious activity.²⁵⁹

An important element of BPC's success has been the support it has received from the participating agencies, not least the ADF. It is significant that of the eight threats prioritised by BPC within the *Guide to Australian Maritime Security Arrangements*, threats that lie traditionally with the military – such as hostile incursion – are notably absent.²⁶⁰ While BPC's mission includes eliminating the "risk posed by all security threats", BPC is not responsible for maritime defence in a traditional sense.²⁶¹ That responsibility remains with the ADF.

In order to demonstrate the relationship between BPC and the ADF, it is important to understand how the structure and capability of one fits into the other. By way of

²⁵⁷ Farrer, "Good Operations and Bad Government Policy-Australia's Border Protection."

²⁵⁸ Catherine Zara Raymond and Arthur Morriën, "1 Security in the Maritime Domain and Its Evolution since 9/11," *Lloyd's MIU Handbook of Maritime Security 3* (2008): 244.

²⁵⁹ Farrer, "Good Operations and Bad Government Policy-Australia's Border Protection."

²⁶⁰ Australian Border Protection Command, "Guide to Australian Maritime Security Arrangements."

²⁶¹ "Border Protection Command Overview," (Canberra: Australian Government, 2011), 3.

illustration, the operational component of Australia's military capability is commanded by the Chief of Joint Operations, currently a "three star" Lieutenant General.²⁶² Commander BPC (always a "two star" RAN Rear Admiral) is a direct subordinate of the ADF's Chief of Joint Operations. Consequently, although BPC is an independent entity, its operational capability lies within the chain of command of the ADF (i.e. BPC is classified within the Defence organisational structure as Joint Taskforce 639).²⁶³ In other words, while the ADF retains its traditional responsibility to "raise, train and sustain" military capabilities for the defence of Australia, some of those capabilities – in the form of ADF assets such as naval vessels and aircraft – are permanently assigned to the Commander BPC to use to ensure that national multiagency maritime interests are protected.²⁶⁴ This is an important point that deserves some emphasis and one that this thesis argues New Zealand's own security arrangements should replicate.

²⁶² Department of Defence, "Chief Joint Operations: Lieutenant General Ash Power, Ao, Csc," Australian Government, <http://www.defence.gov.au/leaders/cjops/bio.htm>. (Accessed 06 January 2014).

²⁶³ Australian Border Protection Command, "Border Protection Command Overview," 2.

²⁶⁴ Chief of Navy, "Australian Maritime Doctrine-Ran Doctrine1-2010," 53.

Chapter 5: Focusing New Zealand’s maritime security arrangements

Command vs Coordination

As described in Chapter Four, Australia’s maritime security arrangements have been significantly enhanced over the past decade as a result of the non-traditional threats that Australian authorities have been required to deal with in recent years. Arguably, the most significant improvement has been the establishment of BPC, which now provides an overarching maritime security regime on behalf of all government agencies.²⁶⁵

BPC’s strength is that it utilises interagency cooperation to further what has been agreed as Australia’s most significant national maritime security interests.

Accordingly, this cooperation mitigates the negative effects that can be created by departmental “patch protection” or instances where the competing priorities of state or federal agencies reduce the overall effectiveness of the whole maritime security sector. Importantly, BPC has benefited from the considerable level of support provided by the participating agencies, as well as the strong level of bi-partisan political will committed to ensuring that the arrangement succeeds.

In terms of participating agency support, as highlighted, the assignment of assets by the ADF and the Australian Customs and Border Protection Service to BPC is critical and an effective model New Zealand could replicate. For example, as mentioned already, participating agencies – and particularly the ADF – are responsible for

²⁶⁵ *ibid.*

maintaining the assets and personnel that actually undertake security operations on and above Australia's maritime domain (i.e. raise, train and sustain). However, once those assets and personnel are fit for operations they are formally attached to BPC, which retains operational control of those assets until they are returned to the ADF establishment and replaced with a like asset on a rotational basis.

This is an important point, as it highlights the fact that BPC commands those assets in undertaking operations in accordance with priorities set against national all-of-government objectives; not just the objectives of the military, which remain the remit of the ADF. Hence BPC's title, *Border Protection Command*. New Zealand's equivalent is the National Maritime *Coordination* Centre; the emphasis highlighting an important distinction.

Before continuing, it is worth considering the concepts of command and coordination and the differences between them in the context of maritime security. Command refers to an entity having authority or control over something; while coordination refers merely to the process of organising, to ensure that a group or system works together effectively. By having a mandate of command over the tools and assets used to provide for Australia's maritime security, BPC has direct authority and control over those assets to use as it sees fit to ensure that national priorities are met. In contrast, New Zealand's NMCC can only coordination use of the tools and assets that are made available to it. Ultimately, actual command of the assets rests with the agency that they come from; most often the NZDF. This means that while the NMCC

might identify a tasking requirement or effect on behalf of civil agencies, the decision whether or not to actually undertake the task rests with the military. This weakness of the NMCC will be discussed in further detail shortly.

As described in Chapter Three, the key outcomes of the 2001 *Maritime Patrol Review* were an upgraded squadron of maritime patrol aircraft, the Project Protector surface patrol fleet, and perhaps most importantly the establishment of the NMCC. These outcomes represent a significant improvement to civil-maritime security capability in New Zealand's maritime domain.²⁶⁶ However, although New Zealand's security arrangements have been enhanced the system is not without its faults. This has been illustrated by the Office of the Auditor-General's 2010 report "*Effectiveness of arrangements for co-ordinating civilian maritime patrols*".²⁶⁷ This audit examined how effectively civil-maritime patrols were coordinated to support New Zealand's many maritime interests. It concluded that: improved strategic guidance for the NMCC was needed; a clarification of the mandate for separate patrol co-ordination arrangements was required; and better patrol planning and effectiveness measurement tools were necessary.²⁶⁸

The first of these recommendations, arguing for improved strategic guidance for the NMCC, will be considered shortly. The third broad finding – looking for ways to measure the effectiveness of patrol planning and activity – while eminently sensible,

²⁶⁶ Mossop, "Maritime Security in New Zealand," 74.

²⁶⁷ Office of the Auditor-General, "Effectiveness of Arrangements for Co-Ordinating Civilian Maritime Patrols."

²⁶⁸ *ibid.*, 9.

is outside of the scope of this thesis. However, the second recommendation is pertinent and deserves explanation at this juncture.

With respect to the second recommendation, the actual text of the review states that:

3. We [the Office of the Auditor-General] recommend that the National Maritime Co-ordination Centre and government agencies using maritime patrols review whether separate patrol co-ordination arrangements are still needed. Where separate co-ordination arrangements are still needed, the rationale and mandate for these should be recorded.

*4. We recommend that the National Maritime Co-ordination Centre monitor any separate patrol co-ordination arrangements and report on their effectiveness to the Officials Committee for Domestic and External Security Co-ordination to help ensure that these arrangements do not lessen the effectiveness of patrol co-ordination.*²⁶⁹

Arguably, what is being alluded to in these statements is that there appear to have been civil-maritime patrol activities undertaken by Defence Force assets that have not been coordinated through the NMCC. In other words, government agencies have directly approached the NZDF requesting maritime patrols in support of the requesting agency's specific priorities; and have therefore by-passed the NMCC, the mechanism specifically established to coordinate all-of-government civil-maritime activity. The risk with this arrangement is that by circumventing the NMCC, national-level priorities and interests could become relegated to second place if a specific asset has already been tasked to undertake maritime patrol activity due to a bilateral agreement outside of NMCC patrol planning. Moreover, another fundamental risk is that by circumventing the NMCC, coordination mechanisms are directly challenged and weakened.

²⁶⁹ *ibid.*, 7.

Prior to the establishment of BPC and the lessons learned largely as a result of the asylum seeker issue, Australia's approach to maritime security was similar to that described above where civil agencies approached the military directly for patrol and surveillance assets, and it was described by Dr Sam Bateman as one of "muddling through".²⁷⁰ In 2012 the Auditor-General undertook a follow-up review that found little had changed with New Zealand's arrangements since the 2010 audit was conducted.²⁷¹ While Australia has recognised the shortcoming of that method of asset allocation and has made significant changes its civil-maritime tasking regime, it would appear that New Zealand remains guilty of "muddling through". Consequently, this thesis argues that, on the basis of the findings of the Auditor-General's review, New Zealand's maritime domain security arrangements are in a similar state of disarray to those of Australia a decade ago.

However, there may be a singular solution to the New Zealand issue of "muddling through". In the Australian system, the problem caused by a single agency pursuing its own justifiable priorities – at the expense of the all-of-government BPC patrol matrix – has been resolved by giving BPC command of its own assets. For example, the circumstance whereby the ADF could task a patrol craft assigned to BPC to undertake an operation on behalf of another agency – at odds with BPC's own requirements – is unlikely due to the fact that BPC has command of that vessel until it is rotated back into the ADF's establishment and replaced with another. This is not

²⁷⁰ Bateman, "Securing Australia's Maritime Approaches," 110.

²⁷¹ Office of the Auditor-General, "Parliamentary Paper: Public Entities' Progress in Implementing the Auditor-General's Recommendations 2012," 13-18.

the case for New Zealand, as the NMCC commands nothing. The NMCC merely coordinates patrol, surveillance and response activity, effectively subject to the goodwill of the participating agencies – most significantly the NZDF which, in the realm of agency maritime security assets, is clearly *primus inter pares*.

For instance, the 2010 Auditor-General's review specifically stated that the "NZDF decides how much patrol time is allocated for civilian purposes" rather than the NMCC.²⁷² Moreover, it highlighted that there is a gap between the "estimated civilian requirements (i.e. the collective requirements of the civilian agencies) and what the NZDF has planned for, even when additional capacity from NZDF's new and upgraded ships and aircraft is taken into account".²⁷³ This arrangement would seem to add weight to the arguments of journalists such as Hagar – discussed in Chapter Three – who have suggested that expensive Government assets procured to support whole-of-government requirements are being used to promote the narrow interests of the military rather than wider national interests.

Such arguments gain credence from the fact that civil-maritime aircraft surveillance and deterrence efforts have been estimated to require between 2000 and 3000 maritime patrol flying hours per year but that only 530 hours will be available for non-military tasks during 2013-2014; compared with around 1800 hours have been

²⁷² "Effectiveness of Arrangements for Co-Ordinating Civilian Maritime Patrols," 17.

²⁷³ *ibid.*, 29.

budgeted for military tasks, the type of which the Orion aircraft have not been used for in decades.²⁷⁴

These figures are somewhat misleading, however and they paint an inaccurately poor picture of the relationship between the NZDF (as the provider of operational assets), the NMCC (as the coordinator of their use), and other government agencies with responsibilities within the maritime domain. For example, the *New Zealand Defence Force Annual Report 2013* highlights that “The vast majority (upwards to 90%) of tasks allocated by the NMCC were completed by the NZDF”.²⁷⁵ However, the NZDF report is at odds with the findings of the Auditor-General’s 2012 follow-up review, and this begs the question of the other agencies and how often they are submitting patrol and surveillance requests to the NMCC in the first place.

Nevertheless, a performance assessment undertaken jointly by the State Services Commission, the Treasury, and the Department of the Prime Minister and Cabinet found that during 2010-2011 the NMCC met 100% of civilian demand for the provision of patrol and surveillance assets and achieved 100% satisfaction with the responsiveness, transparency and prioritisation of its coordination tasking”.²⁷⁶

However, one could argue that the demand itself may be low, perhaps reflecting that some agencies are not very adept at making the right level of demand and are

²⁷⁴ Department of the Prime Minister and Cabinet, "Maritime Patrol Review," 36; New Zealand Defence Force, "The 2013-2014 Output Plan: For the Year Ending 30 June 2014," S3 39-40.

²⁷⁵ "The 2012-2013 Annual Report: For the Year Ended 30 June 2013," (Wellington: New Zealand Defence Force, 2013), 26.

²⁷⁶ State Services Commission, the Treasury, and the Department of the Prime Minister and Cabinet, "Performance Improvement Framework Ormal Review of the New Zealand Customs Service (Customs)," (Wellington: New ZealandGovernment, 2012), 29.

potentially neglecting their maritime security responsibilities or alternatively have looked to other sources of patrol and surveillance due to the unavailability of limited NZDF assets (examples include VMS and the use of civilian contractors to undertake short-range air surveillance). Be that as it may, although the way in which agencies articulate and prioritise demands could be improved, the relationship between agencies would seem to be generally very collaborative. Nevertheless, the circumstances outlined thus far clearly indicate that there is a pressing need to sharpen the focus of New Zealand's operational maritime security arrangements and in so doing to draw appropriate lessons from the demonstrated successes of the Australian system.

As a small nation, one of New Zealand's advantages rests in its ability for joint multiagency efforts to be undertaken collaboratively. Unlike some overseas partners with single agencies are larger than the entire New Zealand public sector (the United States' Department for Homeland Security for example), it is not difficult for government agencies coordinate their activities with one another, and there are numerous examples of agencies working collaboratively together to focus on significant issues; the transnational-organised crime focused Organised and Financial Crime Agency New Zealand (OFCANZ) being just one example. With its smaller and arguably more easily-connected public sector, an interdepartmental communication failure such as the Australian SIEV X tragedy is perhaps less likely in New Zealand.²⁷⁷ Consequently, the maritime security system would be further enhanced if

²⁷⁷ Mossop, "Maritime Security in New Zealand," 74.

the NMCC were given greater powers and restructured into a New Zealand version of BPC.

In many respects, such a move would not result in too great an upheaval for New Zealand's maritime security sector. For example, unlike BPC, the NMCC is physically located within the NZDF's Joint Force Headquarters (HQJFNZ) and is therefore already integrated to the Defence Force's operational command centre and related infrastructure. However, the challenge would likely rest with the reallocation of the Defence Force's limited assets away from the NZDF's control. Again Australia provides a potential solution.

Rear Admiral (ret'd) James Goldrick has made the point that, following a survey of maritime security arrangements from around the world, evidence of the success and/or failure of each system led to a number of principles that demonstrated best practice. These principles underpin Australia's Border Protection Command construct.²⁷⁸ The position of Commander BPC sits jointly within the chains of command of both the ADF and the Australian Customs and Border Protection Service, and is accountable to both the Minister for Defence and the Minister for Immigration and Border Protection.²⁷⁹ Furthermore, Commander BPC is always a Rear Admiral seconded from Defence who has operational control of both the ADF

²⁷⁸ James Goldrick, "People Smuggling: Four Principles for Maritime Security," *The Interpreter* (2013), <http://www.lowyinterpreter.org/post/2013/10/23/Four-principles-for-maritime-security-arrangements.aspx>. (Accessed 23 October 2013).

²⁷⁹ Australian Border Protection Command, "Border Protection Command Overview," 4.

and Australian Customs and Border Protection assets that have been assigned to civil-maritime security operations.

In New Zealand, a similar arrangement between the NZDF and the NMCC would arguably benefit the all-of government awareness of the former while at the same time enhancing the standing and authority of the latter. Although the existing NMCC structure is hosted within the New Zealand Customs Service, any realignment to a joint-host agency model would not be too difficult, with little if any impact on the service NMCC provides during any period of transition. These suggested changes reflect the strengths of Australia's BPC system, which could arguably be put in place here in New Zealand quite easily. However, these are largely administrative and organisational improvements rather than operational capability gains. In this respect, it is important to recognise the constraints New Zealand faces as a much smaller nation than Australia.

What level of maritime domain security is acceptable?

When considering the civil-maritime security arrangements of Australia, it is difficult not to reflect on the huge financial costs involved; costs that New Zealand could not conceivably afford. Notwithstanding this fact, it is sensible to consider what – if any – additional expenditure might reasonably be a necessary prerequisite for New Zealand to attain an adequate level of maritime domain security. Or to put it more succinctly, what level of maritime domain security – and insecurity – is acceptable to New Zealand?

As discussed, Australia considers itself to be a regional power and consequently invests significantly in Defence. For example, in the 2013-2014 Budget, the Australian Government announced that it had provided AUS\$113.1 billion to Defence.²⁸⁰ By way of comparison, for the same period New Zealand's Defence appropriations totalled just under NZ\$2.874 billion for the 2013/14 financial year.²⁸¹ While Australia's outlay on Defence does not relate to maritime security investment in isolation, a substantial amount does. For example, a significant investment has been allocated to enhance the RAN's amphibious capability in the form of two Canberra-Class Amphibious Assault Ships (or LHDs); a class of vessel larger than an aircraft carrier.²⁸² Likewise, the Australian Government is set to significantly expand its submarine fleet, undertaking what has been described as the largest and most complex acquisition process ever undertaken by the Department of Defence.²⁸³

Accordingly, in recent times there has been considerable debate – styled in some quarters as “Naval navel gazing” – over the future structure of Australia's Navy; a debate described by Peter Layton as being “across the three poles of sea denial, sea

²⁸⁰ Stephen Smith, "Minister for Defence – Budget 2013-14: Defence Budget Overview," Australian Government, <http://www.minister.defence.gov.au/2013/05/14/minister-for-defence-budget-2013-14-defence-budget-overview/> (Accessed 07 January 2014).

²⁸¹ The Treasury, "The Estimates of Appropriations 2013/14: Vote Defence Force," (Wellington: New Zealand Government, 2013), 66.

²⁸² Royal Australian Navy, "Amphibious Assault Ship (Lhd)," Australian Defence Force, <http://www.navy.gov.au/fleet/ships-boats-craft/lhd>. (Accessed 12 November 2013).

²⁸³ Department of Defence, "Defending Australia in the Asia Pacific Century: Defence White Paper 2009," (Canberra: Australian Government, 2009), 64; Stefaan J R Simons et al., "Could Australia's Future Submarines Be Nuclear-Powered?," *Green Paper* (2013), <http://www.ucl.ac.uk/australia/files/could-australias-future-submarines-be-nuclear-powered>.

control and power projection".²⁸⁴ Moreover, there is speculation in the media of apparent plans by the Australian Government to spend up to AUS\$3 billion on surveillance UAVs for the ADF specifically to counter maritime people smuggling.²⁸⁵ This would be in addition to the huge outlay Australia has already invested in over-the-horizon surveillance; such as the Jindalee Operational Radar Network (or JORN).²⁸⁶

Although on a much lesser scale, similar debates on Defence spending have occurred in New Zealand. As mentioned earlier, New Zealand's military capability has been the subject of much debate in recent decades and, with respect to the maritime domain, this has arguably resulted in a shift in focus away from war-fighting towards maintaining New Zealand's civil-maritime objectives. This thesis has argued that New Zealand's maritime domain should be defined as being those stretches of ocean over which the country has a clear strategic interest; but that it also has, or *should* have, the direct ability to influence (Chapter One). If, as has been argued, New Zealand's strategic maritime domain interests consist of sovereignty, resources management, law enforcement and environmental protection, then New Zealand's maritime domain security lies in its ability to project influence into that ocean territory to safeguard those interests.

²⁸⁴ Peter Layton, "What's the Best Kind of Navy for Us?," *Australian Strategic Policy Institute Blog*, no. 14 November (2013), http://www.aspistrategist.org.au/what-is-the-best-kind-of-navy-for-us/?utm_source=rss&utm_medium=rss&utm_campaign=what-is-the-best-kind-of-navy-for-us. (Accessed 14 November 2013).

²⁸⁵ News.com.au, "Australia to Stock up on Us Drones," News Limited, <http://www.news.com.au/technology/science/australia-to-stock-up-on-us-drones/story-fn5fsgyc-1226644838899>. (Accessed 07 January 2014).

²⁸⁶ Department of Defence, "Jp 2025 - Jindalee Operational Radar Network (Jorn)," Australian Government, <http://www.defence.gov.au/dmo/esd/jp2025/jp2025.cfm>. (Accessed 01 October 2013).

Traditionally, projecting influence into ocean territory has been the responsibility of the military. However, arguably the most credible method of projecting influence into the maritime domain lies with New Zealand's on-going ability to demonstrate that it has a meaningful multi-faceted presence in its maritime domain; rather than the existence of a naval fleet in a traditional sense. The question of what a meaningful presence might mean, in the context of security, is therefore an important one. For example, following its holistic assessment of the country's interests and resultant surveillance requirements, the 2001 *Maritime Patrol Review* found that, in order to protect its national interests, a multi-layered approach to maritime security is essential for any coastal or island state.²⁸⁷ The Review also noted that: "In practice elsewhere, maritime security has moved well beyond the traditional concepts of naval or military threat although, of course, the protection of sovereign interests against military force remains a fundamental issue for any Government".²⁸⁸

This view is supported by Goldrick, who has stated that maritime security tasks are not, "except in the very smallest and the very largest of nations, a purely military or a purely civil problem. The best value for money lies in a careful combination of the two". Furthermore, he contends that: "The decision as to whether a capability should be operated by the military or by the civil agency depends upon where its allocation provides the most options for governments".²⁸⁹ Accordingly, New Zealand's security

²⁸⁷ Department of the Prime Minister and Cabinet, "Maritime Patrol Review," 5.

²⁸⁸ *ibid.*, 3.

²⁸⁹ Goldrick, "People Smuggling: Four Principles for Maritime Security". (Accessed 23 October 2013).

arrangements must reflect this dual focus of traditional military capability alongside civil-maritime requirements.

In his analysis of the current Australian debate on the future structure of its Navy, Graeme Dobell has emphasised the complex mix of interested parties involved; specifically the combination of “experts both civil and military ... with ministers and manufacturers and even the odd puzzled taxpayer”.²⁹⁰ This mix highlights what Dobell has termed his first commandment for strategic naval force-structure planning: “It is always about the money”. In other words, the capability of whatever arrangement has been put in place to ensure maritime security must reflect the best cost benefit to the Government and the country at large. For a small country like New Zealand, this poses some difficult questions. How should New Zealand’s maritime security arrangements be structured in order to protect maritime domain interests in a manner that reflects the best cost benefit to New Zealand?

Many would argue that the NZDF’s role in the maritime domain has become more and more constabulary in nature over the past 30 years, with no indication that this is likely to change any time soon.²⁹¹ Consequently, similar to the now disestablished air-combat force, there is a strong case for a shift away from combat-capable warships. This is an issue that the Government has already had to consider as New

²⁹⁰ Graeme Dobell, "Naval Navel Gazing (Part 2)," *Australian Strategic Policy Institute Blog*, no. 26 November (2013), <http://www.aspistrategist.org.au/naval-navel-gazing-part-2/>. (Accessed 26 November 2013).

²⁹¹ Ministry of Defence, "Statement of Intent: 1 July 2013 – 30 June 2016," 5; Keenan and Richardson, "Differences of Perspective: An Analysis of the Similarities and Differences in Australian and New Zealand Attitudes to Security". 12.

Zealand's two ANZAC-Class Frigates, HMNZ Ships *Te Mana* and *Te Kaha*, approach the end of their service lives.²⁹² However, do two frigates constitute an assurance of sovereignty?

The fact that a single modern warship comes with a price-tag many times that of a whole patrol fleet will not assist the case being made to retain the frigate's war-fighting capabilities. However, the argument for adequate levels of maritime patrol capability should stand on their own and not be dependent on a coincident negation of military capability needs. In this respect it is important to recognise that a focus on civil-maritime patrol activity should not supersede traditional military defence capabilities; and consequently there remains a strong case to replace the frigates with a like-capability when they come up for decommission.

The debate on the best approach to ensure the defence of New Zealand, in a traditional military sense, is a subject well visited by academics and policy makers; and it is not the intention of this thesis to attempt to suggest what the war-fighting capability of the NZDF should consist of. The conclusion of the 2001 *Maritime Patrol Review* that "the protection of sovereign interests against military force remains a fundamental issue for any Government" cannot be disputed.²⁹³ What New Zealand's protection against military incursion should consist of, is clearly out of scope for this thesis.

²⁹² Royal New Zealand Navy, "Combat Force Mid-Life Refurbishment," Royal New Zealand Navy, <http://www.navy.mil.nz/mtf/fsac/combat-force-midlife-refurbishment.htm>. (Accessed 19 September 2013).

²⁹³ Department of the Prime Minister and Cabinet, "Maritime Patrol Review," 3.

Nevertheless, this thesis analyses New Zealand's approach to maritime domain security and, in so doing so, seeks to address the issue of whether or not New Zealand's maritime domain security capabilities should be changed. As a consequence, there is an inevitable area of overlap that is intrinsic to the ubiquitous "guns versus butter" trade-off. The solution to this point lies perhaps with Goldrick's conclusion that a capability should be obtained and operated in a way in which its cost and allocation provides the best and most useful options for the Government.²⁹⁴ In other words, an acceptable level of maritime domain security is one where the cost does not outweigh the benefit.

By way of illustration, as has been highlighted New Zealand's offshore fisheries are a significant strategic resource that in broad terms actually falls under all of the four national interests described in Chapter Two: sovereignty, resources management, law enforcement, and environmental protection. Moreover, fisheries contribute significantly to New Zealand's economy and the Quota Management System under which fisheries resources are protected is recognised internationally. Consequently, New Zealand spends many millions of dollars on fisheries protection activity.

However, when considering cost versus benefit, it is worth recognising that although the catch of a single IUU fishing boat may be worth many hundreds of thousands of dollars, one might argue that the overall cost of a RNZN Southern Ocean patrol

²⁹⁴ Goldrick, "People Smuggling: Four Principles for Maritime Security". (Accessed 23 October 2013).

attempting to catch it will be many millions of dollars.²⁹⁵ In other words, the cost of the patrol is not worth the cost of the fish in a purely economic sense. While this hypothetical example is somewhat disingenuous, given that if there were no patrols there would likely be more IUU fishing boats, the point being made is that the benefit must outweigh the cost. In other words, New Zealand's maritime security efforts must not just be a case of carrying on the *status quo* simply because that is what has always been done; rather New Zealand must look to operate more innovatively in protecting its maritime domain interests into the future.

Using the fisheries example, New Zealand employs a technological solution to the surveillance of the commercial fishing fleet in its waters; the Vessel Monitoring System or VMS discussed in Chapter Three. This system is viewed as a cost-effective method of ensuring the commercial fleet operates within the law.²⁹⁶ It is largely policed by NZDF maritime patrol aircraft to ensure compliance far out to sea.

Given the significant existing level of compliance within the commercial fleet, an alternative to costly aircraft patrols could be the installation of live-feed cameras on board the fishing vessels, transmitting to shore based officials to ensure no IUU activity is occurring. Synchronised with a vessel's fishing equipment (net winches for instance) and linked with VMS, a system such as this – mandated through regulation – could negate the requirement for many hundreds of costly aircraft flying hours.

²⁹⁵ U. R. Sumaila, J. Alder, and H. Keith, "Global Scope and Economics of Illegal Fishing," *Marine Policy* 30, no. 6 (2006): 699; Press Release: New Zealand Government, "Hmnzs Otago Leaves for Southern Ocean". (Accessed 27 December 2013).

²⁹⁶ Land Information New Zealand, "Mfish - Vessel Monitoring Systems (Vms)". (Accessed 15 October 2013).

Such a regime would still be supported by maritime patrol, however, comparatively reduced aircraft flying hours could be used and the cost benefit of the RNZAF Orion fleet improved.

Moreover, some of the flying hours saved could be utilised to cover the gaps in civil-maritime patrol as highlighted by the critical 2010/2012 audits. While the example being used may be basic, the point being made is that traditional maritime patrol and security operations are expensive and therefore New Zealand must look for ways to improve the effectiveness of its maritime security arrangements in a way in which the best cost benefit is realised. Arguably, given New Zealand's comparatively small size – with respect to its population and economy – the most effective method of ensuring that the country's maritime domain security arrangements reflect national strategic interests lies in the development of a sector – or system – approach.

Creating a maritime security sector

Efforts to sharpen the focus of New Zealand's approach to maritime domain security are constantly challenged by the vastness of the domain and the many and varied entities with interests therein. As has been discussed, many security-focused government departments have a mandate for ensuring New Zealand's maritime sovereignty, resources management, law enforcement and marine environmental protection. Notwithstanding this, there are also numerous other groups with interests in New Zealand's maritime domain that do not necessarily rest within the traditional

bounds of what one might term maritime security – various entities focused on marine safety, scientific research, commercial activity, and such like.

Dr Scott Bremer and Professor Bruce Glavovic contend that New Zealand's oceans management is spread across at least fourteen different agencies and seven different spatial jurisdictions.²⁹⁷ Clearly, therefore, one could argue that by focusing only on agencies with a traditional security remit, New Zealand is missing an opportunity to benefit from its wider presence in the maritime domain.

Operationally, New Zealand's civil-maritime security arrangements have already been brought together under the coordination of the NMCC. While this system could be improved, New Zealand has undertaken the first positive steps in creating something of a recognised maritime security sector. This is an important development which, in the long-term, will benefit the overall security of the maritime domain. For instance, in another hypothetical example, a Customs patrol aimed at the fleet of yachts and small craft that sail to and from New Zealand each year will focus principally on the law enforcement risks posed by people and goods such as illegal drugs or weapons. However, even though the patrol might be Customs-focused, it will also undertake biosecurity protection measures, which obviously lie outside of the Customs Service's remit.²⁹⁸ Moreover, though the patrol ostensibly has nothing to do with fisheries, any suspicious fishing activity noted will be fed into the intelligence functions of the NMCC

²⁹⁷ Scott Bremer and Bruce Glavovic, "Exploring the Science–Policy Interface for Integrated Coastal Management in New Zealand," *Ocean & Coastal Management* 84, no. 0 (2013): 109.

²⁹⁸ New Zealand Customs Service, "Tall Ships Make Waves in Bay of Islands," New Zealand Customs Service, <http://www.customs.govt.nz/news/stories/Pages/Tall-ships-make-waves-in-Bay-of-Islands.aspx>. (Accessed 02 January 2013).

and potentially dealt with by the same patrol. This hypothetical example highlights again the collaborative approach taken by government departments with maritime security responsibilities. In other words, although it could arguably be strengthened, using the cross-government resources available, New Zealand does have the potential to mobilise a fairly robust maritime security sector.

At this point, however, it is important to reflect upon the argument made around national interests in Chapter Two. More specifically, that the national interest pertaining to sovereignty is New Zealand's most important interest in the maritime domain, and that environmental protection interests represents a key enabler in ensuring that sovereignty is upheld. Furthermore, the national interest relating to law enforcement is arguably a more short-term interest but one that, by its very nature as a current and tangible threat, assumes the greatest share of maritime security focus. As a result, law enforcement appears to be the principal effort of New Zealand's current maritime security sector, rather than the more long-term strategic interests of sovereignty assurance and environmental protection.

However, it is worth recognising that there are also other significant players in the maritime domain, the various entities focused on marine safety, scientific research, commercial activity, etc. mentioned already. This thesis contends that the activities of these entities also serve New Zealand's maritime domain security interests. In fact one could argue that the activities of the scientific community (strategic in their very nature) better serve the long-term strategic interests of New Zealand in the maritime

domain than almost all of the traditional law enforcement activities currently undertaken by this country's recognised maritime security sector.

By way of illustration, if New Zealand's principal national long-term interest in the maritime domain is sovereignty assurance, then law-enforcement focused surveillance of vessels coming into and out of New Zealand ports arguably does little to protect that long-term interest (debates around public safety aside). Despite this fact, a significant amount of expensive maritime patrol effort is used in this way.²⁹⁹

Concurrently, for reasons largely unrelated to security, the New Zealand Government has made scientific marine research a strategic funding priority.³⁰⁰ For example, as mentioned, the Government's Ocean Survey 20/20 initiative aimed at providing New Zealand with better knowledge of its ocean territory by way of hydrographic survey across the maritime domain.³⁰¹ Though a scientific research endeavour, the underlying intention of Oceans 20/20 is to demonstrate sovereign rights over the oceans around New Zealand including the Ross Sea Region.³⁰² It is worth noting, however, that the Oceans 20/20 programme is effectively moribund due to the shifting government priorities that will be discussed shortly. Nevertheless, it is important to consider that two of the three Ocean Survey 20/20 surveys that were completed (the Chatham / Challenger Biodiversity and Seabed Habitat Project and Census of

²⁹⁹ New Zealand Defence Force, "The 2012-2013 Annual Report: For the Year Ended 30 June 2013," 142.

³⁰⁰ Bremer and Glavovic, "Exploring the Science–Policy Interface for Integrated Coastal Management in New Zealand," 113.

³⁰¹ National Institute of Water and Atmospheric Research, "Ocean Survey 20/20 - Coastal and Marine Data Portal".

³⁰² Land Information New Zealand, "About Ocean Survey 20/20".

Antarctic Marine Life Project) both project New Zealand's presence out to the limits of the extended continental shelf and the Ross Sea respectively.

In May 2013 Prime Minister Key and the Minister of Science and Innovation announced the Government's ten National Science Challenges to tackle some of the biggest science-based issues and opportunities facing New Zealand. Of the ten challenges, two relate specifically to New Zealand's maritime domain: "sustainable seas" aimed at enhancing the use of marine resources within environmental and biological constraints, reflecting the current Government's focus on economic development; and "the deep south" focused on improving understanding of the role of the Antarctic and the Southern Ocean in determining climate and the future environment.³⁰³ While being largely unrelated to maritime domain security, one could argue that scientific research initiatives such as these actually enhance New Zealand's security objectives in the long-term for reasons to be explained shortly.

It should be recognised that scientific research and national security objectives have long been considered two sides of the same coin. With respect to New Zealand's own history, James Cook, the explorer credited with New Zealand's rediscovery, was first and foremost a Royal Navy officer. Furthermore the expeditions that he led, while scientific in nature (the Royal Society commissioned two of Cook's three voyages) were resourced by the Admiralty in line with British national security priorities of the time. Similarly, HMS *Beagle*, the vessel upon which Charles Darwin

³⁰³ Steven Joyce, "Budget 2013: National Science Challenges Announced - Budget Boost of \$73.5m," New Zealand Government, <http://www.beehive.govt.nz/release/budget-2013-national-science-challenges-announced-budget-boost-735m>. (Accessed 13 January 2013).

undertook his seminal expedition was a naval vessel tasked with undertaking hydrographic surveys of the coastline of South America. Despite their principal function as a means of ensuring security objectives, the use of naval craft to further scientific research continues today with a recent example being the HMNZS *Otago*'s 2013 Southern Ocean patrol.³⁰⁴

Conversely, there is no reason why New Zealand craft undertaking scientific or economic activities in New Zealand maritime domain could not support the country's national security priorities. For instance, it is in the interest of the commercial fishing fleet to act as overseers of New Zealand's deep-sea fisheries; effectively self-policing. If the full spectrum of assets available to oversee national maritime security interests consists of only eleven RNZN vessels, six P-3K2 Orion aircraft, two Police launches, a Customs launch, a number of fisheries boats to cover a maritime area approximately 11.5 million square kilometres, then any addition to the surveillance matrix should be encouraged.

It is also important to note one highly capable, ice-strengthened government owned vessel is often omitted from the list of assets available to oversee national maritime security interests, RV *Tangaroa*.³⁰⁵ Maintained by NIWA, RV *Tangaroa* is New Zealand's only deep-water research vessel and, along with the two RNZN OPVs, is capable of venturing far into the Southern Ocean and Ross Sea. Although it operates

³⁰⁴ NavalToday.com, "Hmnzs Otago Keeps Close Watch on Millions of Ocean Miles," <http://navaltoday.com/2013/03/15/hmnzs-otago-keeps-close-watch-on-millions-of-ocean-miles/>. (Accessed 12 January 2013).

³⁰⁵ National Institute of Water and Atmospheric Research Ltd, "Rv Tangaroa," <http://www.niwa.co.nz/vessels/rv-tangaroa>. (Accessed 15 January 2013).

independently of any security driven or focused activity, the very nature of the scientific research activities it undertakes will often see it working in the same waters that require surveillance or patrol of one form or another.

Accordingly, one could argue that the traditional composition of New Zealand's maritime security sector should be reviewed to take better advantage of other elements operating within the maritime domain. Rather than looking to those agencies and activities that have traditionally protected the country's maritime interests in the past, New Zealand now needs to have a more comprehensive approach to its future maritime security needs.

Chapter 6: Changing New Zealand's approach to maritime domain security

Managing future threats and opportunities

Given the large size of its ocean territory and the comparative scarcity of resources to ensure that national interests in the maritime domain are protected, New Zealand needs a holistic – yet clearly focused – approach to its future maritime security needs. This approach should include more than just the traditional security sector, and must focus on more than just the arguably short-term interests represented under law enforcement.

By way of illustration, as discussed in Chapter One, the ocean territory represented under New Zealand's EEZ and extended continental shelf areas are fairly recent acquisitions; obtained under the provisions of LOSC in 1996 and 2008 respectively.³⁰⁶ Therefore New Zealand's claim to this territory, while supported in theory by the 166 signatory nations of the Convention, has never been tested.³⁰⁷ For instance, as suggested earlier, with concerns over growing international food shortages, how would New Zealand react to the presence of a military escort to foreign fishing vessels illegally fishing within New Zealand's EEZ? Furthermore, as a result of the vast economic, societal, and ecological potential that this enormous ocean space represents, it is a national long-term strategic interest for New Zealand

³⁰⁶ Commission on the Limits of the Continental Shelf, "Summary of the Recommendations of the Commission on the Limits of the Continental Shelf (Clcs) in Regard to the Submission Made by New Zealand 19 April".

³⁰⁷ Division for Ocean Affairs and the Law of the Sea, "Chronological Lists of Ratifications of, Accessions and Successions to the Convention and the Related Agreements as at 29 October 2013," United Nations, https://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm. (Accessed 13 January 2013).

that sovereign rights over this territory are assured into the future.³⁰⁸ In the twenty-first century, the assurance of sovereignty does not rest solely with defence and security motivated efforts, but rather with a total approach that supports New Zealand's claims through a sound demonstration of presence and stewardship.

As highlighted, given the exponential increases in cost, the assurance of national sovereignty over maritime territory for small island states such as New Zealand is no longer achieved through the existence of a naval fleet in a traditional sense.³⁰⁹ Instead, New Zealand is reliant on the international rules-based system of which it is part. In this respect, New Zealand's sovereignty over its ocean claims lies with its ability to demonstrate the country's constant, credible and legitimate presence in its maritime domain. Consequently, one can justifiably argue that the continuous long-term presence of government entities such as the Department of Conservation and Antarctica New Zealand, while established for scientific and environmental protection purposes, also enhances New Zealand's maritime claims; arguably far more so than traditional maritime security patrols.

To support the argument that marine scientific research and environmental protection activity significantly enhances New Zealand's sovereignty over its maritime claims, the example provided by fisheries is again instructive. For instance, Article 56 of UNCLOS III sets out the "rights, jurisdiction and duties of the coastal State in the EEZ" in that the claimant state has exploitation rights but also responsibilities to

³⁰⁸ Klein, Mossop, and Rothwell, "Australia, New Zealand and Maritime Security," 7.

³⁰⁹ Cozens, "Some Reflections on the Security of Sea Lines of Communication," 37-43.

protect the ocean area it has laid claim to.³¹⁰ Obviously, fisheries fall under Article 56. However, fisheries also fall under Article 62, which deals with the utilisation of living resources and holds that, if a nation state is unable to harvest its fisheries resources, then that resource must be made available to foreign fishing nations.³¹¹ This practice has occurred in the wider Pacific, where tuna fleets have operated under licence within the EEZs of smaller Pacific island nations.³¹²

However, with globally declining fish stocks and projected increases in world population, the time may come when fishing fleets may look to use Article 62 as a means by which to gain access to fisheries the sovereign nation of which has chosen to protect.³¹³ After all, New Zealand's maritime claims are completely disproportionate to its size, both in terms of geographic territory and population. In other words, if New Zealand were to implement a policy to preserve fish stocks by reducing fishing activity, would the stock not being used need to be made available to a foreign fleet under Article 62? By demonstrating a sound understanding of the marine ecosystems within its ocean territories, the decisions New Zealand makes regarding the use of its maritime domain is less liable to external challenge: ergo the assurance of maritime domain sovereignty is enhanced.

³¹⁰ Division for Ocean Affairs and the Law of the Sea, "Part V: The Exclusive Economic Zone," United Nations, http://www.un.org/depts/los/convention_agreements/texts/unclos/part5.htm (Accessed 19 July 2013).

³¹¹ *ibid.*

³¹² Hannesson, "The Exclusive Economic Zone and Economic Development in the Pacific Island Countries," 887.

³¹³ Daniel Pauly et al., "Towards Sustainability in World Fisheries," *Nature* 418, no. 6898 (2002): 693-94.

While this hypothetical example may be somewhat convoluted, the point being made is that New Zealand must exercise its sovereignty in its maritime domain and, most importantly, be seen to do so by the international community. By demonstrating the country's investment in ensuring a greater understanding of the biodiversity within its maritime domain, New Zealand would to an extent be validating its claim to that ocean territory. With its on-going and internationally respected scientific marine research programme, much of which has a fisheries focus, New Zealand can demonstrate a credible investment in improving maritime domain awareness and marine understanding – in other words, presence and stewardship. Consequently, New Zealand's non-security focused effort in its maritime domain enhances claims of sovereignty over this ocean territory, and must therefore be factored into the country's multi-faceted maritime domain forward-looking security matrix.

New Zealand's on-going, multi-faceted presence within, and stewardship over, its ocean territories will become more and more important in the future. It has been widely predicted that the repercussions of global changes in climate and the impending increase in world population, both issues outside New Zealand's control, will impact upon the country's maritime security.³¹⁴ For example, irregular migration is already a regional security issue for Australia and many South East Asian nations, and it is arguably only a matter of time before New Zealand is similarly affected.

Predictions over "climate change refugees" in the Pacific could also impact upon New

³¹⁴ Chris Rahman, "The Implications of Climate Change for Maritime Security Forces," *Climate Change and the Oceans: Gauging the Legal and Policy Currents in the Asia Pacific and Beyond* (2012): 172.

Zealand.³¹⁵ In addition to climate change, experts believe that human activity such as over-fishing, pollution and the destruction of marine habitats are “emptying the oceans” and changing maritime ecosystems.³¹⁶

The potential impending collapse of fishing industries around the world will only increase instances of IUU fishing, already estimated at between 10% and 22% of global catch per year.³¹⁷ Food security will likely become a significant issue in the future and New Zealand, with its vast disproportionately-sized maritime domain, will have to be in position to meet this growing threat. Moreover, IUU vessels – profit driven in their very nature – could be ill-equipped to deal with the difficult conditions of New Zealand’s Southern Ocean territory. The sinking of a fishing boat and consequent oil spill in the Ross Sea could be severely damaging to the delicate Antarctic ecosystem. Consequently, a comprehensive approach to security will be required to meet the many and varied threats that New Zealand may face.

Security sectors by their very nature tend to focus on threats or risks, rather than on opportunities. In advocating a change in philosophy and a holistic approach to maritime domain security, it is pertinent to take stock of the many opportunities that future changes might bring to the value New Zealand attaches to its maritime domain.

³¹⁵ John Campbell, "Climate Change and Population Movements in Pacific Island Countries," in *Climate Change and Migration: South Pacific Perspectives*, ed. Bruce Burson (Wellington: Institute of Policy Studies, 2010), 44-45.

³¹⁶ Alan B Sielen, "The Devolution of the Seas the Consequences of Oceanic Destruction," *FOREIGN AFFAIRS* 92, no. 6 (2013).

³¹⁷ David J Agnew et al., "Estimating the Worldwide Extent of Illegal Fishing," *PLoS One* 4, no. 2 (2009): 2.

For example, marine farming, or aquaculture, is a burgeoning industry. New Zealand has always positioned itself as a food-producing nation, so with food scarcity and a globally increased market anticipated in coming years, marine farming may become a thriving sector; obviously with environmental protection security implications.³¹⁸ Furthermore, it has been predicted that New Zealand could become an exporter of water in the coming decades; with some analysts even suggesting that Milford Sound could become one of New Zealand's busiest ports.³¹⁹ Likewise, there are growing developments in alternative energy production. The potential energy producing capacity of wind power is reasonably well established with large offshore wind farms already operating in Europe and China.³²⁰ Moreover, wave and tidal energy production is also becoming more and more viable. Accordingly, in New Zealand's case, advances in technology are likely to enable better access to the potential opportunities the maritime domain presents.

A farsighted appreciation of how future changes in climate, global geopolitics or technology will impact upon New Zealand's maritime domain interests is therefore very important. However, such farsightedness is contrary to the existing government philosophy, according to analyst Andrew Morgan, who contends that New Zealand's approach to oceans governance represents a failure in central government strategic planning.³²¹ As mentioned, New Zealand is often guilty of adopting a short election

³¹⁸ McGinnis, "Ocean Governance: The New Zealand Dimension," 48.

³¹⁹ Graham Keeley, "Barcelona Forced to Import Emergency Water," *The Guardian*, 14 May 2008.

³²⁰ One example being London Array Limited, "The Project," London Array Limited, <http://www.londonarray.com/the-project/>. (Accessed 14 January 2014).

³²¹ Andrew David Morgan, "Perspectives on Effects-Based Management of New Zealand Exclusive Economic Zone Resources," *Ocean & Coastal Management* 54, no. 9 (2011): 653.

cycle-type approach to security issues. Even the country's more long-term security appreciations tend not to focus beyond the service life of strategic assets such as the frigates; and even then the military has often been accused of preparing for the last war rather than looking to the future. As a result of the many and varied threats and opportunities New Zealand will face in the future, this thesis argues that New Zealand's approach in protecting its maritime domain interests must reflect the wide range of issues – both positive and negative – that will likely come about over the next century.

A holistic approach to ensure maritime domain security in the long-term

The suggested changes that could be made to New Zealand's maritime security arrangements described in Chapter Five focused on largely operational improvements. Any operational improvements, while obviously beneficial in their own right, must also reflect New Zealand's long-term maritime security interests; arguably even as far out as the next hundred years. This is a difficult proposition, given that operational activity exists in the short-term. The solution may be the formulation of a centralised maritime focused policy entity and the development of a national maritime strategy that drives both current operational activity and directs future investment. Considering Australia's approach to formulating a maritime security strategy, Justin Jones has highlighted that the debate has been "overwhelmingly defence-centric". He contends that what is required is a national maritime strategy or "grand strategy"

encompassing a “joint, whole-of-government, whole-of-nation” school of thought.³²²

The notion of creating a “whole-of-nation” maritime strategy is not a new one, however.

In 1998, the Australian Government published its landmark *Australia’s Oceans Policy*, an attempt by the Government to create an overarching oceans governance framework to provide strategic direction to maritime domain activity.³²³ The Policy attempted to set out an effective strategy to anticipate, mitigate or prevent future threats.³²⁴ One of the Policy’s principal aspirations was the establishment of an integrated oceans planning and management arrangement.³²⁵ However, the challenge of creating a truly comprehensive strategy proved significant, with Cozens describing the final result as dysfunctional.³²⁶

Indeed, Rahman labels the entire concept of a comprehensive maritime strategy as dubious.³²⁷ Nevertheless, *Australia’s Oceans Policy* remains extant and continues to guide, in some measure, Australia’s arrangements within its maritime domain to this day. For instance, the greatest emphasis within *Australia’s Oceans Policy* reflects the

³²² Justin Jones, "A Maritime School of Strategic Thought for Australia," *The Interpreter* (2013), <http://www.lowyinterpreter.org/post/2013/10/23/A-maritime-school-of-strategic-thought-for-Australia.aspx>. (Accessed 23 October 2013).

³²³ Joanna Vince, "Ten Years of Implementing Australia’s Oceans Policy: From an Integrated Approach to an Environmental Policy Focus," *Maritime Studies* 159 (2008): 1.

³²⁴ Department of the Environment, "Australia’s Oceans Policy," (Canberra: Australian Government, 1998).

³²⁵ Robin M Warner, "Australia's Maritime Challenges and Priorities: Recent Developments and Future Prospects," in *Maritime Challenges and Priorities in Asia: Implications for Regional Security*, ed. Sam Bateman and Joshua Ho (Abingdon: Routledge, 2012).

³²⁶ Cozens, "Maritime Security and Oceans Policy," 159.

³²⁷ Rahman, "Concepts of Maritime Security: A Strategic Perspective on Alternative Visions for Good Order and Security at Sea, with Policy Implications for New Zealand," 43-44.

country's marine environmental protection interests; and traces of the 1998 Policy are clearly reflected in the current *Guide to Australian Maritime Security Arrangements*.³²⁸

The Policy itself has been the subject of much analysis, with many contesting that the difficult challenges faced during its creation resulted in a narrowing of scope. For instance, Bateman has made a case that *Australia's Oceans Policy* is only about preserving and protecting the marine environment and the creatures therein rather than protecting Australia's maritime interests in a security sense.³²⁹ However, *Australia's Oceans Policy*, while not being the complete product that was initially envisaged, at least exists and is something that can now be built upon. Similar efforts to create an Oceans Policy in New Zealand have ended largely in failure. Mossop has described the abandonment of New Zealand's Oceans Policy development as a missed opportunity.³³⁰ She concluded that a result of this failure is that New Zealand's oceans management, including maritime security, "remains fragmented"; a view that supports the assertion that New Zealand's current approach to maritime security as one of "muddling through".

Despite initial efforts across the relevant government departments, many perceive that the reason behind the failure of New Zealand's Oceans Policy development lay with the contentious debate over Māori rights to coastal and marine resources in

³²⁸ Australian Border Protection Command, "Guide to Australian Maritime Security Arrangements."

³²⁹ Sam Bateman, "Revisiting Australia's Oceans Policy," *The Interpreter* (2013), <http://www.lowyinterpreter.org/post/2013/11/04/Revisiting-Australias-oceans-policy.aspx>. (Accessed 04 November 2013).

³³⁰ Mossop, "Maritime Security in New Zealand," 74.

2003.³³¹ McGinnis goes further by stating that a lack of political will and leadership also contributed.³³² Cozens contends that, like the Australian Policy, the development work that went into New Zealand's Oceans Policy was subsumed into the Ministry for the Environment.³³³ Consequently, while New Zealand has many strategies relating to maritime matters – *Oil Spill Response Strategy*, *Strategy for Managing the Environmental Effects of Fishing*, and so on – it possesses no overarching strategic maritime plan, security or otherwise. Indeed one could argue persuasively that an Oceans Policy is the rubric under which all of the points raised in this thesis could be comprehensively and logically addressed.

The creation of an overarching maritime strategy, reflecting New Zealand's long-term strategic interests and encompassing a joint, whole-of-government, whole of nation school of thought, would significantly enhance New Zealand's maritime security. If New Zealand's activities in its maritime domain, both security and non-security, are guided by a unified long-term strategic approach, then New Zealand will be better able to protect its interests.

By way of illustration, while New Zealand's sovereignty over its maritime domain – more specifically its EEZ and extended continental shelf – has not been challenged, that is not to say that it will not be tested at some point in the future. For instance, an example worth considering is the on-going dispute between Columbia and Nicaragua

³³¹ Michael McGinnis, "Greening Aotearoa's Marine Policy," *Policy Quarterly* 8, no. 1 (2012): 21; Joanna Vince and Marcus Haward, "New Zealand Oceans Governance: Calming Turbulent Waters?," *Marine Policy* 33, no. 2 (2009): 412.

³³² McGinnis, "Greening Aotearoa's Marine Policy," 21-22.

³³³ Cozens, "Maritime Security and Oceans Policy," 170.

over ocean territory in the Caribbean Sea. With the ratification of UNCLOS III, the ocean territory surrounding the San Andrés and Providencia archipelagos in the western Caribbean Sea became part of Columbia's EEZ. Since 1912, the islands have been under the administration of Columbia. Therefore, Columbia would claim that it has owned the area of ocean surrounding the islands for over a century. However, given the islands' closer proximity to Columbia's Central American neighbour, Nicaragua has challenged Columbia's sovereignty over the EEZ created by the archipelagic chains.³³⁴ Consequently, a ruling by the International Court of Justice in November 2012 concluded that, although Columbia should retain sovereignty over the actual island groups, the roughly 50,000 square miles of ocean surrounding them are part of Nicaraguan maritime territory.³³⁵ This includes the lucrative fish stocks and potential mineral wealth of the area. Columbia has subsequently declared the Court's ruling as inapplicable, although it has yet to provide any legal grounds for this challenge, and has refused to cede the ocean territory in question.³³⁶

This dispute is worth considering because of the possible similarities to parts of New Zealand's maritime domain. For example, parts of New Zealand's EEZ and extended

³³⁴ The Economist, "Territorial Disputes: A Sea of Troubles," (2013), <http://www.economist.com/blogs/americasview/2013/09/territorial-disputes>. (Accessed 12 September 2013).

³³⁵ The International Court of Justice, "Nicaragua Institutes Proceedings against Colombia with Regard to Alleged "Violations of Nicaragua's Sovereign Rights and Maritime Zones Declared by the Court's Judgment of 19 November 2012," The International Court of Justice [http://www.icj-cij.org/docket/files/155/17806.pdf#view=FitH&pagemode=none&search=%22San Andres archipelago%22](http://www.icj-cij.org/docket/files/155/17806.pdf#view=FitH&pagemode=none&search=%22San%20Andres%20archipelago%22). (Accessed 27 November 2013).

³³⁶ Steven Cohen, "Nicaragua Takes Maritime Territory Dispute with Colombia to the Un," (2013), <http://colombiareports.co/nicaragua-takes-maritime-territory-dispute-colombia-un/>. (Accessed 01 October 2013).

continental shelf boundaries have been created by the existence of small island chains. In the case of the Kermadec Islands, the extended continental shelf boundaries that project northwards into the Pacific are much closer to Fiji and Tonga than they are to New Zealand (refer to Figure 2, Chapter One). Moreover, this ocean territory lies across a tectonic plate boundary; often the source of valuable sub-floor mineral deposits. The point being made is that New Zealand, with its disproportionately large maritime domain, may be challenged in the future. Who knows whether or not a belligerent Fiji, debt burdened by offshore investors, might not successfully challenge New Zealand's maritime sovereignty at some point over the coming decades?³³⁷ Consequently, New Zealand's approach to maritime domain security must be strategic and holistic in order to best serve the nation's interests over the long-term.

Accordingly, New Zealand needs to position itself to protect its maritime domain interests over the next century. New Zealand's paramount interest is the assurance of sovereign rights over its maritime claims into the future. As has been argued, this could be achieved through New Zealand's constant, credible and legitimate presence in its maritime domain in the form of both security-focused activities and more general undertakings aimed at the stewardship of the marine estate – for example continued scientific research.

³³⁷ Fergus Hanson and Mary Fifita, "China in the Pacific: The New Banker in Town," *Policy Brief* (2011), http://www.lowyinstitute.org/files/pubfiles/Hanson_and_Fifita%2C_China_in_the_Pacific_web.pdf.

Instead of investing in an increasingly unattainable modern naval fleet, New Zealand will be better placed demonstrating a meaningful security presence coupled with an investment in developing a deeper understanding of its maritime domain. In this respect, the concepts of presence and stewardship are critical. If over the next century New Zealand has demonstrated effective protection measures with respect to its environment, resources, and maintenance of good order at sea, then, under a rules-based international order, New Zealand will have a sound basis for claiming sovereign rights over its massive ocean area.

Conclusion

There is a compelling argument that New Zealand's approach to maritime domain security needs to be refocused. It must shift away from the arguably short-term interests that are currently prioritised, towards a more strategic approach that seeks to protect New Zealand's less tangible – but more important – forward looking long-term interests. As has been argued here, there is a level of ambivalence towards the maritime domain that is reflected in New Zealand's approach to national security. Consequently, the mechanisms by which New Zealand's maritime security is realised need to be reconsidered; away from a traditional model, towards a more comprehensive approach.

At its most basic level, maritime domain security simply means the arrangements that the nation must put in place to ensure its maritime interests are effectively secured. In New Zealand's case, as evidenced, this simple construct is confused by the fact that there is debate over what this country's maritime domain actually is and the resultant interests that lie therein.

As highlighted, New Zealand's maritime domain should be defined as being those stretches of ocean over which the country has a clear strategic interest; but that it also has, or should have, the direct ability to influence. More specifically, New Zealand's EEZ and extended continental shelf, the Southern Ocean including the Ross Dependency and its EEZ, and the wider Pacific including the waters of Tokelau, Niue and the Cook Islands. While New Zealand has clear interests in ocean territory

outside of these areas – international maritime chokepoints for example – it would be misleading to define them as part of New Zealand’s maritime domain with the implied security responsibilities that this would entail.

Similarly, as identified, New Zealand’s maritime domain security interests can be classified under four broad headings: sovereignty interests, resources management interests, law enforcement interests, and environmental protection interests. Despite the fact that direct challenges to this country’s maritime sovereign rights seem unlikely under the current rules-based international system, the national interest pertaining to sovereignty remains New Zealand’s most important interest in the maritime domain. As has been argued, maintaining a continuous, credible and legitimate presence – security or otherwise – is essential for demonstrating sovereign rights over maritime claims into the future. This presence is enhanced by the security arrangements in place to ensure other national interests are protected; not least resources management (principally fisheries and mineral extraction) and maritime law enforcement activity. Moreover, the idea that New Zealand can act as an environmental custodian over its maritime domain and subsequently enhance its sovereignty over that territory is an important one. As a consequence, the concept of stewardship must become a central component of New Zealand’s approach to maritime domain security.

In general terms, New Zealand’s security arrangements are similar to many other coastal states; not least its larger neighbour, Australia. However, while the traditional

military, political, economic, societal and ecological themes do apply, this country is unique in many respects. As a consequence, New Zealand's maritime security arrangements are, by and large, a legacy of its relatively short history. In particular, New Zealand's maritime security arrangements have been significantly influenced by the repercussions of the 1985 suspension of the ANZUS agreement. Arguably, since then, New Zealand's approach to maritime domain security has shifted away from a traditional defence-centred arrangement to a more civil-maritime emphasis. This has been evidenced by the implementation of the recommendations of the 2001 *Maritime Patrol Review* and the maritime security arrangements that have since been put in place. While many of these changes reflect an improvement in civil-maritime capability (i.e. an upgraded squadron of maritime patrol aircraft, the Project Protector surface patrol fleet, and the establishment of the NMCC), it has also represented a shift in focus away from traditional military capabilities towards maintaining civil-maritime patrol and law enforcement objectives.

When considering New Zealand's existing maritime security arrangements, Australia serves as a useful comparison model. As described, Australia's approach to maritime security has been significantly influenced by the non-traditional threats that Australian authorities have been required to deal with in recent years; not least the asylum seeker issue. Arguably, the most significant improvement to Australia's maritime security regime has been the establishment of BPC, which provides an overarching maritime security administration on behalf of all government agencies. The pressing need to sharpen the focus of New Zealand's operational maritime

security arrangements could draw considerably from the demonstrated successes of the Australian system.

However, given the substantial costs involved, any investment or changes to New Zealand's maritime security arrangements must be matched against the level of maritime domain security – and insecurity – that will be acceptable to New Zealand. As highlighted, maritime security capability should be obtained and operated in a way in which its cost and allocation provides the best and most useful options for the Government; ever mindful that the cost does not outweigh the long-term benefits. Therefore, New Zealand's maritime security efforts must not just be a case of carrying on the *status quo* but rather look to operate more innovatively in protecting maritime domain interests into the future. As demonstrated, given New Zealand's comparatively small size – with respect to its population and economy – the most effective method of ensuring that the country's maritime domain security arrangements reflect national strategic interests lies in the development of a sector approach. This sector must represent the numerous groups with interests in New Zealand's maritime domain that do not necessarily rest within the traditional bounds of what one might term maritime security – the various entities focused on marine safety, scientific research, commercial activity, and such like. Furthermore, New Zealand's security sector must reflect the dual focus of traditional military capability alongside civil-maritime requirements. Instead of investing in an increasingly unattainable modern naval fleet, New Zealand will be better placed demonstrating a meaningful security presence coupled with an investment in developing a deeper

understanding of its maritime domain; notwithstanding the recognition that civil-maritime patrol capability should stand on its own and not be dependent on a coincident negation of military capability.

This thesis contends that, in many respects, efforts outside of the traditional security sector better serve New Zealand's long-term strategic maritime domain interests. Arguably, much more so than traditional short-term law enforcement activities currently prioritised by this country's recognised maritime security sector. Such a change would represent a more holistic approach to maritime security needs and must therefore be factored into a forward-looking multi-faceted maritime domain security matrix.

New Zealand's on-going, multi-faceted presence within, and stewardship over, its ocean territories will become more and more important. A farsighted appreciation of how changes in climate, global geopolitics or technology will impact upon New Zealand's maritime domain interests will likely become more and more important. However, such farsightedness appears to be contrary to the existing government philosophy, focused largely on arguably short-term objectives. As a consequence, the focusing of New Zealand's approach to maritime domain security must also reflect long-term maritime security interests; even as far out as the next hundred years. Such an approach will be dependent on the development of an overarching oceans governance framework to provide strategic direction to maritime domain activity. However, there are clearly many challenges in developing such a framework.

As noted, *Australia's Oceans Policy*, while not the complete product that was initially envisaged, is something that can now be built upon. Similar efforts to create an Oceans Policy in New Zealand have ended largely in failure and this, according to many, represents a missed opportunity. The creation of an overarching maritime strategy, reflecting New Zealand's long-term strategic interests and encompassing a joint, whole-of-government, whole-of-nation school of thought, would significantly enhance New Zealand's maritime security. If New Zealand's activities in its maritime domain, both security and non-security, are guided by a unified long-term strategic approach, then New Zealand will be better able to protect its interests.

New Zealand, with its disproportionately large maritime domain, may be challenged in the future. Consequently, New Zealand's approach to maritime domain security must be strategic and holistic in order to best serve the nation's interests over the long-term. Accordingly, New Zealand needs to position itself to protect its maritime domain interests over the next century. In this context, the concepts of presence and stewardship are vital. If, in one hundred years, New Zealand has demonstrated a continuous credible presence, effective protection measures with respect to its environment and resources, and has worked towards ensuring the collective maintenance of good order at sea, then, under a rules-based international order, New Zealand will have a sound basis for claiming sovereign rights over its massive ocean area into the future.

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