

**THE ROLE OF DEFENCE FORCES IN POLICING
THE OFFSHORE ZONES OF
AUSTRALIA AND NEW ZEALAND**

BY

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Introduction

The potential economic value of resources in our offshore zones is now regarded as an important component of national security worthy of protection and preservation. Australia has an EEZ of 1.3109 million square nautical miles and an estimated continental shelf claim of 14.9 million square kilometres with the Australian Antarctic Territory (AAT) and 11.9 million square kilometres without the AAT. New Zealand has the fourth largest exclusive economic zone in the world, covering an area of 1.2 million square nautical miles or 14.4 times the New Zealand land mass. Within this EEZ are marine and energy resources currently exploited by a combination of New Zealand and overseas companies. The area of continental shelf which New Zealand is likely to claim is 1-2.5 million square kilometres, thought to contain exploitable levels of mineral and energy resources. As resources become more scarce in other parts of the world, the incidence of illegal exploitation of Australian and New Zealand natural resources will undoubtedly rise. Already overfishing in other areas of the world is leading to exploitation of Southern Ocean fisheries by the vessels of distant water fishing nations (DWFNs) such as Norway and Japan together with flags of convenience vessels from states such as Panama, Honduras, Belize and Namibia.

The regular poaching activities of Indonesian and Taiwanese fishers in the exclusive economic zone off the Australian mainland were eclipsed in 1997 and 1998 by the highly profitable illegal fishing for Patagonian toothfish conducted by commercial fishing vessels in the remote sub-Antarctic waters off Heard and McDonald Islands and elsewhere in the Southern Ocean. During 1999, the profile of resource protection rose even higher with assaults by factory ships on orange roughy stock located on the South Tasman Rise between Australia and New Zealand and the eruption of a dispute with Japan over the resumption of its experimental fishing program for southern bluefin tuna in an area of high seas covered by a convention between Australia, NZ and Japan.

This rising threat profile offshore has led to public and political debate over the role Defence Forces should take in protecting natural resources both within and beyond national jurisdiction on the high seas. In the public debate on these issues, Defence Forces are frequently identified as one of the few public agencies with the appropriate human and physical resources to counter such threats. Defence Forces are viewed as the preferred agents for offshore law enforcement for a variety of reasons. Warships, ship-borne helicopters and maritime patrol aircraft have the capacity to operate at long range from shore facilities supported by tankers.

Defence Force personnel are trained in a range of boarding procedures and the use of force to effect apprehensions of suspected offenders in the offshore environment. In addition, the spectre of grey warships bearing down on an illegal fishing vessel has traditionally been regarded as a more powerful deterrent than a civil enforcement vessel. For many Defence Forces, however, the law enforcement role is ancillary to other primary functions such as preparation for warfighting, the maintenance of maritime embargoes and the support of land forces. Warships deployed on law enforcement operations are not always purpose built for the tasks involved and may not always be available for diversion from other important roles. My presentation will discuss the constitutional and legislative basis for the involvement of the Australian Defence Force and the New Zealand Defence Force in offshore law enforcement and those aspects of Defence strategic policy which determine the level of their involvement. I will then address some of the jurisdictional dilemmas and practical difficulties which have arisen in the Australian context from the disconnect between international and domestic law provisions on offshore law enforcement.

The Role of the Australian Defence Force (ADF) in Offshore Law Enforcement

While the Australian Constitution identifies a role for the Australian Defence Force (ADF) in maintaining and executing the laws of the Commonwealth, offshore law enforcement has to date only been recognised as an ancillary defence function in Australia's strategic policy. A 1997 Department of Defence Report on Australian Strategic Policy recognises the use of ADF assets to provide surveillance and response forces for customs, immigration, fisheries and other civil authorities off Australia's coasts as an exception to Defence core business. Under Australia's civil coastal surveillance arrangements, ADF vessels and aircraft may be called upon to assist in enforcing a range of Australian legislation which applies in Australia's offshore maritime zones. ADF involvement in offshore law enforcement is coordinated by a civilian government agency called Coastwatch and there is a regular allocation of Fremantle Class patrol boat days for fisheries enforcement patrols around the coastline. Through Coastwatch the ADF also responds to requests from other civil agencies to support law enforcement tasks including apprehension of Customs offenders at sea, support for Australian Quarantine Inspection Service and on occasion, support for the Department of Immigration and Multicultural Affairs in detaining illegal immigrants who arrive by sea.

The legal basis for ADF involvement in this type of law enforcement is specific empowerment of ADF members under the relevant Commonwealth legislation. In contrast to the situation on shore, where ADF members may be called out to assist civil law enforcement agencies under the Defence Force aid to the civil power provisions of the Defence

Act, 1903, Parliament has specifically included ADF members in the definition of "officers" under the Fisheries Management Act, 1991. Two of the key differences in the offshore, as opposed to the onshore law enforcement environment are that the ADF may be the only government agency with the capacity and range to enforce the laws involved and in most cases the suspected offenders are foreign nationals.

Under the Fisheries Management Act, ADF members have powers of boarding search and seizure of gear or equipment as well as detention of a vessel suspected of having committed an offence. Offshore law enforcement operations will usually involve the stopping of a suspected vessel, followed by boarding, inspection and in some cases apprehension and escort or tow to the nearest port. If a vessel is unwilling to heave to following a request to stop, RAN patrol boats may be required to undertake hot pursuit of the vessel in accordance with strict conditions to enable apprehension. In many fisheries enforcement patrols civilian fisheries officers will also be embarked and will carry out investigative functions such as questioning the master, the taking of statements and the photographing of evidence.

The Australian Defence Force already makes a substantial contribution to Australia's coastal surveillance effort with 1800 Fremantle Class patrol boat days already allocated to patrols of our EEZ and 250 hours of P3C Orion patrols of the EEZ in conjunction with patrols by civil aircraft chartered by Coastwatch. The ADF also responds to ad hoc requests from Coastwatch for assistance in enforcing Australian Customs, Quarantine and Migration legislation. Notwithstanding this considerable involvement in coastal surveillance, there was agitation by prominent figures in Australia in the first half of 1999, calling for the ADF to play an even greater role in offshore law enforcement. Despite this agitation, the results of the Prime Ministers Task Force on Coastal Surveillance established principally to review the illegal immigration problem did not devote any more Defence assets to coastal surveillance tasks than those presently deployed and did not advocate an amplified role for the Australian Defence Force in coastal surveillance operations. The Task Force did recommend, however, that a new position of Director General of Coastwatch be created which would report directly to the Chief Executive Officer of the Australian Customs Service and that position has now been filled by a senior officer of the ADF. It was also recommended that liaison arrangements between Coastwatch, Defence and other agencies be strengthened.

In an article in the Australian Defence Force Journal of Jan/Feb 99, the Chief of the Defence Force, Admiral Chris Barrie acknowledges the likely expansion of the role of military forces to include constabulary type activities as an explicit task.

Such an expansion needs to be properly resourced by the Government and appropriately prioritised with other Defence Force activities such as the conduct of humanitarian relief operations and participation in UN peacekeeping operations. Effective implementation of Australia's obligations under the UN Fish Stocks Agreement, once ratified, will require the allocation of properly equipped vessels, aircraft and personnel beyond those already dedicated to the patrolling of our own EEZ. The immediacy of threats to Australia's national security in the offshore area has already provoked a Government decision to better equip Coastwatch to combat such threats. A further reassessment of strategic priorities in the longer term could result in adjustments to ADF structure or better funding of civil law enforcement options to address the shortfall in resources for offshore law enforcement.

The Role of the New Zealand Defence Force in Offshore Law Enforcement

Resource protection tasks were acknowledged as a key role for the New Zealand Defence Force (NZDF) in the 1997 White Paper, **The Shape of New Zealand's Defence (SONZ97)**. The White Paper affirmed as one of the pillars of Defence policy the need to defend New Zealand against low level threats to security such as incursions into its exclusive economic zone (EEZ) including illegal use or exploitation of natural resources New Zealand's jurisdiction. The Defence Assessment on which SONZ97 was based determined that there would be a continuing demand on the NZDF to assist with surveillance of NZ's own EEZ as well as those of the Cook Islands, Niue and Tokelau. In addition there was a broad security requirement for the NZDF to assist with the surveillance of the Southern Ocean to support the Government's policy objectives in Antarctica. References to the resource protection task were more explicit in SONZ97 than they had been in the 1991 White Paper, **The Defence of New Zealand (DONZ91)**. This change in strategic thinking reflects a more comprehensive notion of national security which recognises the linkage between economics and security and the potential value of resources contained in New Zealand's marine environment. It is also tied to the strengthening of international law in relation to marine resources, in particular the coastal state's jurisdiction over living and non-living resources within its 200 nautical mile EEZ under the 1982 UN Law of the Sea Convention. Protection of New Zealand's vast exclusive economic zone was also identified as one of two key priorities for the NZDF in the Defence Beyond 2000 report issued by a key Parliamentary Defence Planning Committee in late August 1999.

The NZDF already plays an important role in deterring and detecting illegal fishing and apprehending offenders within NZ's own EEZ. Under a 1992 Intergovernmental Agreement between the NZDF and MFish both agencies cooperate in the provision of surface and aerial surveillance of

New Zealand's fisheries. Under the Fisheries Act (s.76(2)), every officer in command of any vessel or aircraft of the New Zealand Armed Forces is deemed to be an officer for the purposes of the Fisheries Act. An officer under the Fisheries Act has very wide powers to board, search and detain a vessel suspected of having committed an offence including questioning the master and requiring the master to take the vessel to a particular port. In practice, NZDF members have generally acted in assistance to the civil power in such cases by conveying fisheries officers to the scene of a suspected offence rather than by exercising those powers themselves.

The requirement for the NZDF to operate in the Southern Ocean in a resource protection role is a more recent one. The increased illegal and unregulated fishing of Patagonian toothfish in the Southern Ocean over the past three years has led to public and political debate about the role which the NZDF should take in protecting natural resources, not just inside NZ's EEZ, but beyond it as well. The practical outcome of this debate was Operation Mawsoni conducted from mid January 1999 to mid March 1999 and aimed at detecting and deterring illegal fishing in New Zealand's Southern Ocean area of interest. The RNZAF flew twelve patrols into the area using Dunedin as a base and the time on task ranged from four hours to just one hour. During February 1999, HMNZS Te Kaha was deployed into the area, where it remained on task for five days, and ventured as far as 63E south. The total direct cost of the operation was \$NZ700,000. Despite the fact that no illegal fishing vessels were detected, Operation Mawsoni can be seen as a demonstration that New Zealand has both the will and capability to protect resources within its own area of interest. The conduct of Operation Mawsoni in the Southern Ocean has also created a precedent, and possibly an expectation, that such operations will be continued.

By comparison with Australia, New Zealand Defence policy statements reveal a more ready acceptance of the role of the NZDF in offshore law enforcement. Resource protection is seen as an important component of New Zealand's national security and one in which the NZDF has a legitimate role to play. The relegation of the resource protection role in Australian strategic policy to an ancillary status must be seen in the light of the variety of tasks the ADF is expected to perform in the national interest and the already substantial contribution of the ADF to maritime surveillance and offshore law enforcement. Australia's Defence priorities are determined against a much more complex strategic environment which places greater demands on ADF resources.

The Incorporation of International Law into Domestic Law

Effective Defence Force support to offshore law enforcement depends initially on a sound domestic legislative base which incorporates international law developments in a timely fashion and provides specific

powers for Defence Force members. The provisions of UNCLOS established the limits of coastal state jurisdiction and the areas in which offshore activities could be regulated. Under UNCLOS, Australia and New Zealand acquired vast exclusive economic zones and continental shelves with rights to extract resources and commensurate enforcement obligations. Since the adoption of UNCLOS in December 1982, Australia and New Zealand have also become party to an array of multilateral regimes which govern ocean areas beyond national jurisdiction. The traditional freedoms of the high seas set out in Article 87 of UNCLOS, are now overlaid with a network of conventional international law provisions which seek to regulate a wide range of criminal activity, the taking of resources and environmental despoliation occurring beyond national jurisdiction.

The tempo of international regulation of ocean space is extremely high and rarely matched by coastal state capacity to implement enforcement of new regimes. In addition to limited resources, there are frequently deficiencies in the domestic legislative regimes which underpin maritime law enforcement. Recent operations conducted by the ADF in support of Fisheries and Customs have highlighted discrepancies between Australia's rights and obligations under international law and their incorporation in the relevant Commonwealth statutes such as the Fisheries Management Act 1991 and the Customs Act 1901. In this section of my presentation, I will consider some areas of offshore law enforcement which are undergoing legislative reform to take full advantage of coastal state rights and obligations under international law.

The Australian High Court affirmed in the 1995 decision of *Minister of State for Immigration and Ethnic Affairs v. Ah Hin Teoh* that Australia's ratification of, or accession to an international covenant does not automatically create legal obligations under Australian municipal law. Although the court caveated that statement by commenting that there was "a legitimate expectation" that Australia would act in conformity with the provisions of an international covenant, the Keating Government introduced legislation to reverse the High Court decision on this point and the Howard Government has indicated its intention to introduce similar legislation. Under the Australian Federal system, therefore, considerable domestic legislative activity, often involving both Commonwealth and State legislation, must occur before rights and obligations under an international treaty become incorporated in Australian law. A treaty such as UNCLOS provides a solid foundation for law enforcement in defined offshore zones but requires detailed supplementation in domestic law statutes before practical enforcement regimes can be introduced. The gulf between Australia's potential rights and obligations under UNCLOS to enforce its laws in offshore zones and the inchoate domestic legislation which supports such operations was identified as a limiting factor in operations conducted by the ADF in support of civil agencies during 1997

and 1998. Remedial action to correct these deficiencies is currently occurring with the introduction into the Australian Parliament this session of the Fisheries Legislation Amendment Bill and the Border Protection Bill which will amend the Customs and Migration Acts.

The Doctrine of Hot Pursuit

For navies engaged in enforcing domestic laws within national offshore zones, the international law doctrine of hot pursuit enables them to extend the jurisdictional nexus onto the high seas provided contact is maintained with the suspect vessel. The pursuit must be continuous and commence within the relevant coastal state zone. The writer, Nicholas Poulantzas dates the origins of the doctrine to the 19th century, however, it has been codified for modern usage in Article 111 of UNCLOS. Under international law, the right of hot pursuit is subject to a number of conditions articulated in Article 111 of UNCLOS which must be adhered to for the pursuit to be justified.

While the right to conduct hot pursuit from Australia's 200 nautical mile fishing zone is explicitly provided for in Section 87 of the Fisheries Management Act 1991, the absence of any explicit provision on hot pursuit in the Customs Act 1901 has resulted in a situation where an international law doctrine of considerable longevity which has been codified in UNCLOS may not be relied upon in offshore operations to counter drug infiltration. The Border Protection Bill currently in Parliament will amend the Customs Act to enable the hot pursuit of a foreign ship whose master has not complied with a request to board in the 12 nautical mile territorial sea or 24 nautical mile contiguous zone to any location outside the territorial sea of a foreign country.

Under the parallel New Zealand statutes governing fisheries and customs enforcement there is no specific power to exercise the right of hot pursuit. The right to pursue vessels from the territorial sea, contiguous zone or exclusive economic zone is considered to be a prerogative power under domestic law. The validity of the power to conduct hot pursuit has not been tested, however, in any New Zealand court since the entry into force of UNCLOS on 16 November 1994.

The Doctrine of Constructive Presence

The allied international doctrine of constructive presence enables the apprehension of a mother ship on the high seas which is directing the illegal operations of other vessels within national jurisdiction. Such ships hover outside a coastal state's maritime zones directing the operations of smaller vessels within the zones either by despatching their own boats or rendezvousing with boats from the coastal state. A paper given at the World Customs Conference earlier this year by a representative of the

Australian Customs Service notes the increased use of motherships in drug importations into Australia during 1997 and 1998. Motherships are also a feature of the illegal fishing operations in the Southern Ocean.

In Australia, neither the Fisheries Management Act nor the Customs Act contains provisions implementing the doctrine of constructive presence. The Fisheries Legislation Amendment Bill and the Border Protection Bill currently before the Australian Parliament both contain provisions implementing the doctrine of constructive presence. In the case of the Fisheries Bill negotiations between the responsible department and the Parliamentary draftsman have resulted in a limited application of the doctrine of constructive presence to fisheries enforcement operations. A mother ship or support ship may be boarded searched and detained at the conclusion of a hot pursuit commenced within the Australian Fishing Zone (AFZ) or at the conclusion of a hot pursuit from the AFZ of a boat which is supported by the mothership. The amendments to Australia's Customs Act in the Border Protection Bill include a more expansive interpretation of the doctrine of constructive presence which does not tie the boarding of a mothership beyond Australia's territorial sea and contiguous zone to a hot pursuit of that vessel or its associated boats. New Zealand legislation on offshore law enforcement does not contain any explicit provision on mothership apprehension but a preliminary view from New Zealand Defence Legal Services suggests that the doctrine of constructive presence is an integral part of the doctrine of hot pursuit and may be relied upon in enforcement operations without incorporation into New Zealand domestic law.

Use of Force

The use of force is the most controversial issue confronted by Defence Forces involved in offshore law enforcement. While the capacity to use force is seen as a necessary attribute in the law enforcement role, the level of force to be employed in particular operations is contentious. In every offshore law enforcement operation the deterrent value of using force must be balanced against the risk to human life on board the pursued vessel or the apprehending vessel if particular modes of force are employed. Early international law cases such as the *Red Crusader* and the *I'm Alone* suggest that the use of necessary and reasonable force to compel a vessel to stop and submit to boarding is permissible under international law but that every device, including harassment by navigational means, must be employed and for a sufficient time before force is justified. A problematic issue for Defence Forces involved in offshore law enforcement is whether direct fire at or into a vessel should be used as a last resort where the pursued vessel refuses to stop. Analysing this issue in his book *The Influence of Law Upon Seapower*, D.P O'Connell concludes that fire should not be opened until every other tactical expedient to effect arrest or resist threat has been tried and patiently pursued in vain and that even then,

only the minimum degree of firepower is to be used. In an attempt to forestall the need to use force, navies have developed a battery of non lethal alternatives such as water cannon and propeller entrapment devices together with the usual escalatory warning signals using visual and auditory devices and culminating in warning shots across the bows. Where non lethal alternatives fail to halt a fleeing vessel, however, the question remains whether the Australian Government should endorse the use of direct fire as a last resort. To date, the Australian Fisheries Management Act has not provided for any use of force in fisheries enforcement operations but the Fisheries Legislation Amendment Bill includes provision for the use of propeller entrapment devices and for the use of reasonable force including direct fire at or into a vessel to compel a vessel to stop.

Under the New Zealand Fisheries Act, there is no provision relating to the degree of force which may be used in exercising powers under the Act. In the absence of explicit statutory provision, the ordinary criminal law standard would seem to apply, namely the use of "such force as may be reasonably necessary to overcome any force used in resisting the arrest." The New Zealand Crimes Act (s.62) provides that "Everyone authorised by law to use force is criminally responsible for any excess owing to the nature and quality of the act that constitutes the excess." The definition of what is reasonably necessary force is predicated upon the circumstances of the case. Using disabling fire, which by definition involves a real risk of killing crew members, could only be justified in a truly extraordinary situation. In 1976, NZ Armed Forces were used to seize and detain the Korean fishing boat 'KIN NAN', which included the firing of warning shots across the bow by the patrol craft Taupo and subsequently RNZAF A4 Skyhawks. The seizure of the KIN NAN was treated by the Court as an exercise of prerogative and the Court did not allow argument on the issue of the legality of that seizure to affect the issue of guilt or innocence on the unlawful fishing charges.

With the risk to life posed by inaccurate gunnery from unstable platforms at sea, the question of retaining direct fire as a last resort in the offshore law enforcement arsenal remains a difficult policy question to be considered at the highest political levels. During the deliberations of the Prime Minister's Task Force on Coastal Surveillance earlier this year, there was a distinct reluctance to have customs vessels and personnel armed for any purpose other than self defence which indicates that the Australian Navy will remain the preferred agent for compelling a fleeing vessel to stop for some time to come. As D. P. O'Connell opines in *The Influence of Law Upon Sea Power*: "Politicians expect navies to resolve the political predicament by decisions that they themselves are reluctant to take; navies know that if the decision is politically wrong heads will fall."

Future Challenges Beyond National Jurisdiction

The high seas as an arena for maritime law enforcement poses new challenges for Defence Forces charged with implementing cooperative regimes. In the order of national priorities, enforcement of legislation within a State's offshore zones will naturally take precedence over regimes devised to regulate the high seas. As this paper has attempted to illustrate, effective surveillance and enforcement regimes within Australia's own offshore zones are still dependent on further implementation of international law in the domestic legal framework. Nevertheless as national offshore resources deplete and marine environmental protection of high seas areas assumes greater importance for coastal states, the imperative to regulate the last frontier of ocean space has become more urgent. Future enforcement of multilateral regimes beyond national jurisdiction is likely to involve regional navies or dedicated maritime security forces.

Domestic legislative measures to implement the Agreement for the Implementation of the Provisions of the 1982 United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks ("the UNIA Agreement") are at an advanced stage in Australia and New Zealand with Bills to implement the UNIA Agreement in both national Parliaments. The UNIA Agreement aims to ensure the long term conservation and sustainable use of straddling and highly migratory fish stocks beyond areas of national jurisdiction by implementing the relevant provisions of UNCLOS. The Agreement is unique in that it provides a limited regulatory regime for the high seas beyond national jurisdiction. The other unique feature of the Agreement is in the establishment of regional and sub-regional arrangements to ensure that fish stocks are conserved, including by establishing cooperative mechanisms for monitoring, control, surveillance and enforcement. This allows the government vessels of one state to board and inspect the vessels of other states within the regional arrangement. The Agreement also requires flag States to enforce conservation and management measures for straddling and highly migratory fish stocks against their own vessels irrespective of where violations occur. Implementation of the UNIA Agreement will be a complex undertaking requiring regional or sub-regional fisheries management organisations to establish reciprocal boarding and inspection procedures amongst member States, an effective surveillance network and highly skilled maritime response forces with the capacity to operate at long range from shore facilities.

New Zealand is at a more advanced stage than Australia in accepting and planning for the role of the NZDF in enforcing the UNIA Agreement. When the Agreement enters into force, possibly in late 2000, the NZDF may be required to conduct fisheries surveillance and enforcement in areas

outside, but adjacent to, New Zealand's EEZ. This means that fisheries enforcement operations will have to be sustained at greater distances from base, but once deployed, RNZAF or RNZN units anticipate no major differences between protecting straddling stocks and protecting intra-EEZ fish species. The amendment to the NZ Fisheries Act will appoint all fisheries officers as high seas fisheries officers able to conduct enforcement beyond the NZ EEZ. Particular locations where both New Zealand and Australia may have obligations under the Agreement are the South Tasman Rise area 235 nautical miles south east of Tasmania and the Macquarie Ridge area which extends southwest from the bottom of New Zealand. Fisheries in our region which are already covered by regional fisheries management regimes and likely to be the subject of UNIA enforcement are the Southern Bluefin Tuna, the Indian Ocean Tuna, the Patagonian Toothfish, other species such as krill covered by the Convention on the Conservation of Antarctic Marine Living Resources and possibly orange roughy.

Clearly effective protection of fisheries in areas beyond national jurisdiction will continue to rely to a large extent on the development of regional infrastructure to enforce the relevant regimes. There must also be strong national incentives for such regional cooperation to occur, such as the gradual extinction of a valuable fishery. Within Australia and New Zealand's immediate region, there is ample scope for development of regional maritime security forces to regulate illegal fishing and tackle other encroachments on regional and national security such as drug trafficking and illegal population flows. Their establishment, however, will entail substantial investment by regional states in capital equipment and reliance on regional navies to conduct initial training of personnel.

Conclusion

As ocean uses both within and beyond Australia's and New Zealand's national jurisdiction encroach on national security, both Governments will need to periodically reassess their national security priorities and the available resources to combat such threats. There is the potential for the ADF and the NZDF to play a greater role in enforcing the growing body of international and domestic law which regulates Australia's and New Zealand's offshore areas as well as the multilateral regimes which apply beyond national jurisdiction. As my presentation has attempted to demonstrate the role of the ADF in offshore law enforcement has to date only been considered as a subsidiary strategic priority in comparison to its principal warfighting role. In contrast the role of the NZDF in resource protection both within and beyond national jurisdiction has been acknowledged as a key strategic priority for New Zealand in recent years. This divergence in defence policy can be explained by the more demanding strategic environment currently facing the Australian

Government and the already substantial contribution of the ADF to the surveillance effort.

Recent incidents in the Southern Ocean and on the South Tasman Rise illustrate that effective surveillance and enforcement of Australia's own offshore zones and resource interests beyond those zones requires the allocation of additional dedicated maritime security forces with purpose built equipment and the appropriate training. In addition, the domestic legal framework to support offshore law enforcement has not kept pace with developments in international law which extend Australia's offshore jurisdiction and the efficacy of enforcement measures. Further development of our domestic legal infrastructure and the maritime resource security base is necessary if Australia is to take full advantage of international law developments in offshore law enforcement. Although the incorporation of international law into New Zealand domestic law has not been as problematic in New Zealand's case, full scale participation in enforcing the UNIA Agreement will entail substantial redirection of NZDF or other Government resources to this effort.

In tackling the protection of resources beyond national jurisdiction, the catalyst for further development will be national interest when threats to our economic security emerge from high seas areas. A precursor to high seas fisheries protection by multilateral enforcement bodies is likely to be regional cooperation in maritime surveillance and cross vesting of national jurisdiction within offshore zones. There are already embryonic examples of this with the Niue Treaty on Cooperative Maritime Surveillance in the South Pacific and a fledgling treaty on Fisheries Cooperation in the Southern Ocean between Australia and France. It seems inevitable that the ADF and the NZDF will continue to play a role in the protection of fisheries for the foreseeable future in view of their particular capabilities and their capacity for long range and high endurance operations. In the longer term however, the threat profile offshore stemming from illegal fishing and other criminal activities, may justify the establishment of dedicated maritime security forces equipped to operate both within and beyond national jurisdiction.