Chapter Two

The Maritime Dimension of International Relations
Introduction

Oceans are comparable to mountain ranges and deserts as a 'space' that separates areas of human settlement. Through the course of time, with the development of technology, ocean-space has become increasingly important both as a medium of transportation, and a repository of living and non-living resources. More than a century ago Alfred Thayer Mahan (2003: 1) had observed that,

"The history of Sea Power is largely, though by no means solely, a narrative of contests between nations, of mutual rivalries, of violence frequently culminating in war. The profound influence of sea commerce upon the wealth and strength of countries was clearly seen long before the true principles which governed its growth and prosperity were detected. To secure to one's own people a disproportionate share of such benefits, every effort was made to exclude others, either by peaceful legislative methods of monopoly or prohibitory regulations, or, when these failed, by direct violence. The clash of interests, the angry feelings roused by conflicting attempts thus to appropriate the larger share, if not the whole, of the advantages of commerce, and of distant unsettled commercial regions, led to wars. On the other hand, wars arising from other causes have been greatly modified in their conduct and issue by the control of the sea. Therefore the history of sea power, while embracing in its broad sweep all that tends to make a people great upon the sea or by the sea, is largely a military history...."

More recently Christopher Pinto (1992: 9-10) has noted that,

"It was the activities of merchantmen and naval vessels that first inspired a movement in the direction of clarifying or developing rules to govern conduct among nations. Among those nations on whom economic and political power conferred the capacity to influence emerging legal concepts, the use of the sea to carry on trade, as well as for defence and other military purposes, was part of the natural order of things, and development of the law of the sea throughout most of history, centred on transport, transit and naval activity......While the nineteenth century did see the conclusion of international agreements regulating fishing on the high sea, it was only about the middle of the twentieth century that there appears evidence of a shift from preoccupation with the rules governing navigation and the military uses of the sea to those concerned with exploration for and exploitation of living and non-living marine resources."

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The Maritime Dimension of Military Strategy

Mahan advocates the study of history, military history in particular, in order to discern principles of military strategy. In doing so he has to confront the question of the impact of scientific and technological change on military strategy and tactics. In the late 19th and early 20th century the main manifestation of this issue that he grappled with was the impact of the transition from the sailing-ship to the steam-ship on naval strategy. For him strategy constitutes, “those wider operations of war.....which embrace a whole theatre of war, and in a maritime contest may cover a large portion of the globe” (Mahan 2003: 7), and “military combinations embracing one or more fields of operations, either wholly distinct or mutually dependent but always regarded as actual or immediate scenes of war” (ibid.: 22). Naval strategy involves the proper function of the navy in the war, its true or correct objective; the point or points upon which it should be concentrated; the establishment of depots of fuel and other supplies; the maintenance of communications between these depots and the home base; the military value of commerce-destroying as a primary or secondary operation of war; the system upon which commerce-destroying can be most efficiently conducted, such as scattered cruiser ships or by holding in force some vital centre through which commercial shipping must pass. The objective of naval strategy is to “found, support, and increase, as well in peace as in war, the sea power of a country” (ibid.: 23, 89). He also distinguishes between two types of defence, passive and offensive. Passive defence strengthens oneself and awaits attack, while offensive defence is of the view that one’s own defence is best secured by attacking the enemy. The difference between an offense and an offensive defence is that in the former the object of attack is the enemy’s country while in the latter the object of attack is the enemy’s armed forces in order to defend one’s own country. The distinction between passive defence and offensive defence is important in deciding the proper role of the army and navy in the defence of a sea-coast. The army has the prerogative of the former while the navy has that of the latter (ibid.: 87, fn. 1).

The conditions or elements affecting the sea power of nations identified by Mahan are: 1) geographical position, 2) physical confirmation, 3) extent of territory, 4) number
of population, 5) character of the people, and 6) character of the government (ibid.: 28-89).

1) Geographical Position: An island location, and easy access to the high sea and oceanic trade routes would facilitate concentration of a country's naval forces for defensive as well as offensive purposes. Ports being located near to each other would promote a concentration of naval forces, which would be advantageous for regular operations. However commerce-destroying (guerre de course, in French) operations require a diffusion or dispersion of naval force, and therefore for such operations a certain amount of distance between ports would be an advantage.

2) Physical Confirmation: Numerous and deep harbours along a country's coastline will facilitate trade by sea and shipping, both commercial and military. If such harbours are also the outlets of rivers and tributaries navigable inland they will be even more advantageous for commerce because they can function as goods transportation hubs for both the internal and external trade of a country. However such harbours can also make the interior of a country more vulnerable to invasion by a hostile naval force, and therefore need to be well defended. The land transport routes of a narrow peninsula or a country separated into two or more parts by the sea would be especially vulnerable to an attack or invasion from the sea, and therefore their defence would necessitate a control of the surrounding sea.

3) Extent of Territory: A proportionate relationship between the length of a country's sea-coast and the size of its population would be conducive to sea power. That is to say, neither a short sea-coast and a large population nor a long sea-coast with a small population would be conducive to sea power. The latter situation could in fact make a country greatly vulnerable to attacks and invasions from the sea.

4) Number of Population: Apart from the crews manning ships the sea power of a country includes all those who are engaged in professions related to the sea. This aspect is
especially important in the eventuality of a drawn out series of military campaigns since it can give a country the ability to sustain a war effort despite initial losses.

5) **National Character:** The attributes or characteristics of a nation that would be most conducive to sea power are an aptitude for commercial pursuits and colonization.

6) **Character of the Government:** A government that does not restrict the tendency towards commercial pursuits and colonization among its population would be the type of government most conducive to the growth of a country’s sea power.

The work of continental strategists Karl von Clausewitz (*On War*) and Antoine-Henri Jomini (*The Art of War*) on the theoretical study of war provide the groundwork for Julian Corbett’s (1988) approach to the study of maritime strategy. He takes as a key premise Clausewitz’s dictum, “war is a continuation of policy, a form of political intercourse in which we fight battles instead of writing notes” (ibid.: 18). The practical utility of such a theory of war lies in providing “a common vehicle of expression and a common plane of thought”, for conference between the political authorities and military commanders of a state, as well as between its central and local authorities/commanders (ibid.: 7-8). There are two ways of analytically classifying war, one is in terms of offense and defence, the other is in terms of unlimited and limited. The first classification can be seen in terms of how military force is to be used, while the second classification can be seen in terms of why and to what extent military force is to be used. Offense is to “wrest something from the enemy” (ibid.: 31), while defence is to “prevent the enemy wrestling some advantage to our detriment” (ibid.: 32). In preparing for an actual particular war analyzing and understanding the comparative advantages and the relative possibilities of offense and defence is a “corner stone of strategical (sic) study” (ibid.: 34). In unlimited war “the political object was of so vital an importance to both belligerents that they would tend to fight to the utmost limit of their endurance to secure it” (ibid.: 43), while in limited war “the object was of less importance, that is to say, its value to one or both the belligerents was not so great as to be worth unlimited sacrifices of blood and treasure”

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In an unlimited war no firm decision of the struggle can be reached till the war power of one of the parties to the conflict was completely overthrown, while in a limited war "you could achieve your end if you could seize the object, and by availing yourself of the elements of strength inherent in the defensive situation could set up such a situation that it would cost the enemy more to turn you out than the object was worth to him" (ibid.: 45).

Corbett places maritime strategy within an overarching context of military strategy: "since men live upon the land and not upon the sea, great issues between nations at war have always been decided—except in the rarest cases—either by what your army can do against your enemy's territory and national life or else by the fear of what the fleet makes it possible for your army to do" (ibid.: 16). Within this context he distinguishes between maritime strategy and naval strategy. Maritime strategy determines what part the fleet must play in relation to the action of the land forces, while naval strategy determines the movements of the fleet:

"By maritime strategy we mean the principles which govern a war in which the sea is a substantial factor. Naval strategy is but that part of it which determines the movements of the fleet when maritime strategy has determined what part the fleet must play in relation to the action of the land forces ....... The paramount concern, then, of maritime strategy is to determine the mutual relations of your army and navy in a plan of war. When this is done, and not till then, can naval strategy begin to work out the manner in which the fleet can best discharge the function assigned to it" (ibid.: 15, 16).

Corbett argues that the object of naval warfare is to directly or indirectly secure 'command of the sea' or to prevent the enemy from securing it. The most important value of the sea for national life is as a means of communication. Securing command of the sea involves "the control of maritime communications, whether for commercial or military purposes" (ibid.: 94). While securing the command of the sea certainly involves decisive battles with the armed fleets of an adversary, control of common maritime communications involving interdiction of seaborne trade is also of importance. The extent of control of maritime communications can be general or local. A general control will involve the "control of the whole of the common communications as the result either
of great initial preponderance or of decisive victory" (ibid.: 103), while local control will involve the control of only some of the communications. A general control is more likely to be permanent, while a local control is more likely to be temporary since as long as an adversary possesses an effective naval force local control will remain vulnerable. Command of the sea and control of maritime communication will not depend completely on actual relative strength, either physical or moral, but will be influenced by the inter-relation of naval positions and comparative convenience of their situation in regard to the object of a war. ‘Naval positions’ include not only naval bases but also “the terminals of the greater lines of communication or trade-routes and the focal areas where they tend to converge” (ibid.: 106). In a situation in which the command of the sea is in dispute the relatively stronger side is more likely to go on the offensive while the relatively weaker side is more likely to be on the defensive. In such a situation however a strategy of limited war, which permits the use of the defensive while at the same time preserving the initiative and moral exhilaration of the offensive, could be of use to the relatively weaker side.

According to Corbett, a key concern for naval warfare, as it is for all warfare, is the issue of concentration and dispersal of force. A fleet should always be kept in ‘home waters’ for defence, as a reserve, and as the core of a country’s naval force. In case of hostilities a country’s naval force should seek to maintain a hold on an adversary’s coastline. If the number of ports from which the adversary can operate is large and if they are spread along an extensive coastline a dispersion of force will be needed to maintain such a hold. If an adversary’s lines of operation cross a country’s home waters a concentration of force in the home waters is essential. In such a situation the dispersion of force for offensive action against an adversary’s distant maritime interests will depend on a country’s surplus strength since, apart from its own defence, maintaining a hold on the adversary’s coastline is absolutely crucial. If the adversary can attack the home country’s distant maritime interests ‘minor concentrations’ of force in those areas will also be needed. A flexible interplay of concentration and dispersal of force in relation to the movements of a hostile force will be important not only in concealing from it the distribution and intention of force, but also in misleading it into making moves that are to its disadvantage (ibid.: 151-2).
Corbett goes on to argue that in the conduct of naval war all operations can be divided into two broad categories. One is to obtain or dispute the command of the sea, and the other to exercise such control of communications as we have whether the complete command has been secured or not. The distinction between securing and disputing command on one hand and exercising command on the other is based on Corbett’s assertion that normally the command of the sea is in dispute (ibid.: 91, 209). When command of the sea is in dispute, while of course the struggle for complete command is of primary importance, concurrent operations for exercising whatever control that one may have would make a more effective overall use of naval force. If a country has a preponderance of strength it should attempt to ‘secure command’ through a ‘decisive battle’. However the chances are that given the country’s preponderance the adversary would avoid such a decisive battle, in which case the immediate control of communications, or in other words a ‘blockade’, would be advisable. The primary concern of some forms of military, and even commercial, blockades would be to draw an adversary into a decisive battle. If a country is relatively weaker it should attempt to ‘dispute command’ through a ‘fleet in being’ and ‘minor counter attacks’ (ibid.:164-5).

Decisive Battle: Winning a decisive battle against an opponent’s fleet is the only way of securing a permanent and general command of the sea, which is the “condition of ultimate success” (ibid.: 167) in naval war. However this does not mean that a country’s fleet should seek out an opponent’s fleet wherever it may be, since that would make it confirm to the dispositions and movements of the opponent’s fleet, enabling the latter to lead the former wherever it likes. A fleet should endeavour to secure contact with an opposing fleet in the best possible position for bringing about a favourable and definitive decision, in coordination with an overall political and military war plan.

Blockade: A naval blockade will seek either to prevent an opponent’s armed force leaving port, or to bring it to action before it can carry out the purpose for which it puts to sea. The armed force can be purely naval, or it may consist wholly or in part of a military expedition. If it is purely naval the blockade will be a method of securing command, if it is purely military it is a method of exercising command. However military expeditions
are normally accompanied by a naval escort, operations to prevent their sailing are not purely concerned with the exercise of command. Naval blockade, therefore, may be regarded for practical purposes as a method securing command and as a function of battle-squadrons. Naval blockade can be subdivided into ‘close blockade’, which aims to prevent a hostile navy from putting to sea, and an ‘open blockade’, which aims to draw an opponent out to sea for battle. A commercial blockade is essentially a method of exercising command, and is mainly an affair of cruisers. Its immediate object is to stop the flow of the enemy’s sea-borne trade, whether carried in his own or neutral vessels, by denying him the use of trade communications. However a naval blockade can be carried out in conjunction with a subordinate commercial blockade, and though the immediate object of commercial blockade is the exercise of command through keeping an opponent’s commercial ports closed, its ulterior object is to secure command by forcing an opponent’s fleet to sea for battle:

“Commercial blockade, therefore, has an intimate relation with naval blockade in its open form. We adopt that form when we wish his fleet to put to sea, and commercial blockade is usually the most effective means we have of forcing upon him the movement we leave him free to attempt. By closing his commercial ports we exercise the highest power of injuring him which the command of the sea can give us. We choke the flow of his national activity afloat in the same way that military occupation of his territory chokes it ashore. He must, therefore, either tamely submit to the worst which a naval defeat can inflict upon him, or he must fight to release himself. He may see fit to choose the one course or the other, but in any case we can do no more by naval means alone to force our will upon him” (ibid.: 185).

A ‘close blockade’ can enable the securing of local and temporary command, while an ‘open blockade’ can enable the securing of general and permanent command.

A Fleet-In-Being: A navy that is too weak to secure command of the sea by offensive operations can succeed in holding the command in dispute by a “general defensive attitude” (ibid.: 209). It should not merely retreat permanently into waters difficult to access or a well fortified base, where it will become useless as a way of countering a hostile naval force, enabling the latter to gain command of the sea and assume control of sea communications. Its defence should consist of an avoidance of a decisive encounter
while at the same time actively disputing command and preventing the opponent’s exercise of control through small-scale and highly mobile operations, till enough force is gathered for a decisive encounter. Thus,

“a naval defensive means nothing but keeping the fleet actively in being - not merely in existence, but in active and vigorous life. No phrase can better express the full significance of the idea than a ‘fleet in being’, if it be rightly understood” (ibid.: 212).

Minor Counter Attacks: This is to be resorted to if a country is so inferior in strength as to be unable to utilize a ‘fleet-in-being’ strategy for disputing command. By putting a part of the opponent’s force out of action they would reduce their relative inferiority, but by itself it is unlikely to seriously affect the overall issue of disputing command (ibid.: 227).

In Corbett’s categorization methods of ‘exercising command’ include all operations not directly concerned with ‘securing command’ or with preventing it being secured by an adversary (i.e. ‘disputing command’). We engage in ‘exercising command’ whenever we conduct operations which are directed not against an adversary’s battle-fleet, but to using sea communications for our own purposes, or to interfering with an adversary’s use of them. Operations aimed at preventing his passing an army across the sea, protecting the passage of our own military expeditions, and the obstruction of his trade and the protection of our own, are concerned with the exercise of command (ibid.: 233-304).

Defence Against Invasion: When faced with an invasion by sea operations for securing command will be concerned with the opponent’s battle-fleet, that is to say with his naval force. However it will not be the concern of operations for exercising command. In an invasion the naval force of the opponent will also be transporting the military force (i.e. the army). Operations for exercising command in this case will be concerned with the military force that is being transported.
Attack and Defence of Trade: Maritime trade routes begin and end at ports. Due to the geographical confirmation of land these routes also tend to converge at certain 'focal points' or 'focal areas' (i.e. straits). The magnitude of the flow of trade, or the volume of the goods being transported, are greatest at the entry/exit areas of ports and focal points. From the entry/exit area to a port or a focal point the flow of trade will thin out into various routes till it reaches the entry/exit area of another port or focal point. Therefore it is the attack and defence of trade at the entry/exit areas to ports and focal points that is most likely to seriously affect the overall outcome of a war. This is also an issue in strategy that is most affected by technological and international legal developments.

Attack, Defence and Support of Military Expeditions: If a country is faced with a hostile military expedition over the sea, as far as the function of exercising control is concerned, the primary objective of its naval force is to attack the ships transporting the enemy's military force, as in the case of defence against an invasion. However a comparatively small expeditionary force can 'evade' the naval fleet of the defending country. Therefore the naval fleet will have to act in close coordination with a 'home army', in order to ensure that those parts of the opponents forces that evade the fleet can do no harm when they land. The defending of one's own overseas military expeditions share some similarity with defence of one's trade, especially to a friendly country, for both involve control of maritime communications to provide for a 'free passage', and the duties of the fleet end when the destination is reached. However in case of an overseas military expedition to a hostile country, from whom active resistance to the expedition can be expected, the fleet will also have to perform duties in support of the army. Such expeditions are also referred to as 'combined expeditions' and require the combination of naval and military force. The fleet would have to perform duties such as assisting in effecting a landing in the face of hostile fire and diversionary movements or 'feints' to draw the opponents attention away from the landing place. Such an overseas expedition however can only take place when the command of the sea is in dispute. If the hostile country has a working command of the surrounding sea that command will have to be broken by the naval force before the combined operations of an expeditionary force can take place.
By the late twentieth century the use of military power at sea involved spaces above and below the sea as well as the surface of the sea. That is to say it involved aircraft and submarines as well as ships. Under these conditions ‘command of the sea’, that is to say a state’s ability to completely wipe out an adversary’s ability to use military power at sea, which would be the ideal outcome of a state’s use of military power at sea, is likely to be less than absolute. Moreover a large-scale drawn-out war at sea between states with strategic nuclear weapons is unlikely, for either the conflict will be resolved before strategic nuclear weapons are used or it would not continue for long after they are used. Conflict at sea between nuclear armed states is likely to be conducted at the level of threat, manoeuvre and the limited use of force (Hedley Bull 1976: 5-6).

According to Euan Graham (2006: 35) the outcome of the use of ‘sea power’ can be ‘command of the sea’, which is akin to an absolute state of affairs in which one’s freedom of movement on, above or under the sea is completely unchallenged, or it can be ‘sea control’, a more relative state of affairs, the corollary of which is ‘sea denial’. Sea control is of positive strategic value while sea denial is of negative strategic value. A strategy of sea denial can be especially useful to a ‘continental power’ (i.e. a state with a large army) against a ‘maritime power’ (i.e. a state with a large navy). While sea mines, submarines, aircraft and torpedoes had been invented when Mahan and Corbett were developing their ideas at the turn of the 19th and 20th centuries, the surface dimension in naval warfare was still predominant. In the first half of the twentieth century torpedoes and sea mines began to erode the predominance of the battleship and the effectiveness of the ‘close blockade’ (i.e. the blockade of an adversary’s ports) in naval warfare, and the submarine demonstrated its potential as a weapon suitable for a strategy of sea denial. Raoul Castex (1994: 30, cited in Graham 2006: 39-40), a naval officer who commanded anti-submarine patrols in the First World War (WWI), had argued that a capability for sea denial could be adequate for a continental power to protect territory from a maritime power. Bernard Brodie (1943: 84, 59, cited in Graham 2006: 41) had suggested that “the decision on the seas might go, not to the belligerent with the stronger navy, but to the one least vulnerable to interrupted communications”. He had argued that disputed sea control
has become the norm in naval warfare, because the submarine acts as an equalizer for lesser naval powers unable to vie for surface command.

**The Maritime Dimension of International Law**

Based on principles outlined by Hugo Grotius in the 17th century, especially in his treatise *Mare Librum*, much of the world’s sea- and ocean-space was regarded as the ‘high sea’ in which all states enjoyed equal freedom of navigation rights. From that time till mid-20th century, in demarcating their ‘territorial waters’ most states adhered to a ‘three-mile limit’. However a dramatic shift in the legal status of seas and oceans was initiated in the mid-20th century by the dynamic of ‘coastal states’, many of which were also newly de-colonized states, seeking to assert and extend their ‘sovereignty’ beyond the three-mile limit on one hand, and ‘Western maritime states’ seeking to preserve freedom of navigation and to maximize their access to marine resources in the water column and seabed on the other. The need to negotiate a compromise between the interests of ‘coastal states’ and ‘maritime states’ led to the United Nations Conferences on the Law of the Sea, UNCLOS I, II and III, which concluded in 1958, 1968 and 1982 respectively (Graham 2006: 51).

The 1982 United Nations Convention on the Law of the Sea (UNCLOS, also referred to as the UNLOSC or the LOSC) does not deal directly with military uses of the seas. The sort of international agreements that deal directly with military issues are those concerning ‘disarmament’ and ‘arms control’. Pinto (1992) has examined the contribution of UNCLOS to maritime security in terms of: naval mobility in time of peace; the theme of reservation for ‘peaceful purposes’; proliferation of peaceful uses; and the system for settling disputes.

The overt or covert projection of naval power at will attained the status of an attribute of state sovereignty during the formative stages of international law. The risk of particular coastal states restricting the movement of foreign navies introduces an element
of uncertainty into such power projection. An international treaty regulating naval
mobility in time of peace reduces such uncertainty. While the capabilities of states for
naval power projection differ, an agreed and uniformly applicable framework regulating
such activity is of relative value to the maritime security of all states. Moreover the major
maritime powers had been willing to recognize rights over marine resources by not so
powerful coastal states and by ‘mankind as a whole’ in exchange for rights of passage
and rights to conduct other naval operations. Provisions of the convention that deal with
this issue are those that accord warships a special status and immunity, and those that
limit by reference to specified zones, the seaward extension of coastal state jurisdiction,
while ensuring as far as possible, freedom of warships and other ships on ‘government
non-commercial service’ to traverse those zones and to conduct other lawful activities
within them (ibid.: 12-13).

On the high seas and the subjacent sea-bed warships and other ships owned or
operated by a state and used only on government non-commercial service have ‘complete
immunity’ from the jurisdiction of any state other than the flag state. In the exclusive
economic zones, on the continental shelf, and in areas subject to coastal state sovereignty
in which warships have a right of passage (such as the territorial sea, the contiguous zone,
strait and used for international navigation and archipelagic waters), they are not immune
from the ‘legislative jurisdiction’ of the coastal state. While such a ship’s flag state also
has concurrent legislative authority, it is the flag state alone which has ‘enforcement
jurisdiction’ over it. Therefore if such a ship does not comply with the laws and
regulations of a coastal state concerning ‘innocent passage’ through the territorial sea and
disregards a request for compliance therewith, the coastal is in principle entitled to do no
more than require it to leave the territorial sea immediately. If such a ship were to fail to
comply during ‘transit passage’ through straights used for international navigation with
the coastal state’s navigational safety regulations, and cause damage, it would engage the
‘international responsibility’ of the flag state. Immunity from national jurisdiction does
not imply immunity from international responsibility. The institutional mechanisms
through which a flag state may be held to be responsible by a coastal state are diplomatic
channels and agreed dispute settlement methods (ibid.: 13-15).
The scope of a coastal state's right to enact and to enforce laws in adjacent 'marine zones' diminishes as the distance from its shores increases. Its right in 'internal waters', 'archipelagic waters', and in the 'territorial sea' reflect its sovereignty over those zones and arise out of recognition of the primacy of its interests both in security and in marine resources. Its jurisdiction in the 'contiguous zone' is limited to specified law enforcement purposes, while jurisdiction over the exclusive economic zone and the continental shelf are acknowledged primarily for resource exploitation purposes. The conventions provisions for maintaining naval mobility reflect a negotiated balance between the interests of coastal states in ensuring their security from foreign interference from the sea as well as in marine resources, and the interests of all states in the use of the sea for commercial and military transport. There are several 'regimes' which govern naval mobility within the different marine zones: a) consent of the coastal state; b) innocent passage; c) transit passage; d) mixed regimes and treaty regimes in straights used for international navigation; e) regimes applicable in archipelagic waters; f) freedom of navigation and overflight in exclusive economic zones; g) regime of the continental shelf; h) freedom of the high seas; and i) regime governing the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction (ibid.: 16-31).

The theme of reservation of the sea for 'peaceful purposes' and 'peaceful use' is emphasized in several contexts, and interpretation of the theme is relevant to determining the overall effect of the convention on maritime security. The preamble declares that the convention should be an "important contribution to the maintenance of peace", that it should "promote the peaceful uses of the seas and oceans", and that the codification and progressive development of the law of the sea achieved in the convention would "contribute to the strengthening of peace, security, cooperation and friendly relations among all nations...". Article 88 contains the unqualified assertion "the high seas shall be reserved for peaceful purposes". Article 58(2) applies the theme to the exclusive economic zone. The continental shelf of a state lying beyond its exclusive economic zone would be considered subject to the regime of the high sea and thus also subject to the reservation. With regard to the area of the sea-bed and the ocean floor beyond the limits of national jurisdiction Article 141 states that: "The Area shall be open to use exclusively
for peaceful purposes by all states....". The principles governing freedom of marine scientific research generally, Article 240(a), and with respect to the Area, Article 143, and the erection of research installations, Article 147(2)(d), also contain restrictions to use for peaceful purposes. Other provisions of the convention, instead of requiring that a particular maritime activity be carried out for peaceful purposes, prohibit the 'threat or use of force'. Article 301 states the prohibition in its most general form under the heading 'peaceful uses of the seas': "In exercising their rights and performing their duties under this Convention, States Parties shall refrain from any threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the principles of international law embodied in the Charter of the United Nations". Article 19 sub-paragraph 2(a) imposes the obligation to refrain from the threat or use of force on ships in innocent passage through the territorial sea in order to safeguard the security of coastal states. Article 39 sub-paragraph 1(b) imposes the same obligation on ships in transit passage through straits used for international navigation in order to safeguard the security of states bordering such straits (ibid.: 31-32).

The phrase "....principles of international law embodied in the Charter of the United Nations" in Article 301 recalls the lawfulness of the use of force in accordance with Chapter VII of the UN Charter, in which Article 51 is on the 'right of self-defence'. Since time immemorial the sea had been used as a medium by all countries for fortification and defence of their territory, the convention could not have intended to prohibit the use of the sea for military purposes of any kind. The provisions for 'peaceful use', and the prohibition of 'threat or use of force', express the aspiration of all states party to the convention to accord some priority to maintaining peace on the seas and reserving them 'as far as possible' for peaceful use (ibid.: 32, 34-35).

The convention’s provisions on reservation for 'peaceful purposes', without precedent in any previous multilateral agreements on the law of the sea, should be seen as forming the foundation of its regulatory and institutional framework aimed at promoting the exploration, exploitation, conservation and management of marine resources in an equitable, rational and sustainable manner. These activities are facilitated by the
maintenance of peace at sea. The implementation of the convention’s numerous provisions on resource management and conservation in turn, are likely to lead in the long-run to a gradual reduction of military activity at sea:

“As the need for sea-bed minerals foreseen earlier becomes a reality, and prospecting and mining operations commence in areas of the ocean floor from the Indian Ocean to the Pacific, under the supervision of the International Sea-bed Authority; as living resource management measures provided for under the Convention, administered by competent regional and international organizations in partnership with coastal states, result in a substantial widening of participants in the harvesting of optimum sustainable yields, and the Convention’s marine technology transfer provisions succeed in augmenting the harvesting capacities of many states not currently engaged in intensive fishing efforts; and as the provisions preventing marine pollution and promoting marine scientific research bring about the active participation of increasing numbers of scientists, technicians and administrators from around the world, the Convention would have so multiplied the variety, frequency and geographical incidence of marine resource-related activity that pressures generated through the obligation to accommodate these proliferating peaceful uses, could not but result in significantly reducing both the need and the scope for military activity at sea, and would then have accomplished that aim in the most natural and effective manner” (ibid.: 36-37).

The proliferation of peaceful uses of the sea however can also increase the likelihood and frequency of disputes. As such usage of the sea increases, the chances and instances of disputes arising over issues such as the establishment of maritime boundaries in areas of high resource potential will also increase. Hence the importance of the convention’s system for settling disputes. A substantial degree of flexibility is also built into the system. Part XV of the convention offers the wide choice of settlement mechanisms provided for in Article 33 Paragraph 1 of the UN Charter. A dispute can be submitted for resolution under some other global, regional or bilateral treaty. If the parties to a dispute are unable to reach a settlement by a method chosen by themselves, the convention first directs them to “procedures not entailing binding decisions” such as, under Article 283 to exchange views regarding settlement by negotiation or other means, and under Article 284 to consider upon the request of one party implementing the conciliation procedures prescribed in Annex V of the convention. If no settlement has
been reached through such preliminary initiatives, parties to a dispute are directed to “compulsory procedures entailing binding decisions”, set forth or referred to in Section 2 of Part XV. On signing, ratifying or acceding to the convention a state may make a formal declaration choosing one or more of four mechanisms as the means by which its disputes concerning the interpretation or application of the convention would be settled. These four mechanisms are: the International Tribunal for the Law of the Sea functioning in accordance with Annex VI; the International Court of Justice; an arbitral tribunal constituted in accordance with Annex VII; and a special tribunal for specified disputes of a technical nature constituted in accordance with Annex VIII. In recognition of the possibility that some disputes can be politically sensitive there are “limitations on the applicability of procedures entailing binding decisions” and an “option to exclude certain disputes altogether from the application of procedures entailing binding decisions” (ibid.: 37-39).

Pinto (ibid.: 51-52) takes note of the fact that the convention has been criticized for the ambiguity of some of its provisions. According to him these provisions deal with politically sensitive situations relating to state security concerning which the conference was not able to adopt clear rules acceptable both to coastal states and naval powers which would reflect a ‘balance of interests’ between them. These provisions are concerned with situations in which there is a lack of trust between states. Hence they are situations in which Confidence Building Measures (CBMs) can be most helpful. He argues that a link can be drawn between CBMs as “voluntary demonstrations of benign intent” and Article 300 of the convention on “Good faith and abuse of rights”, which states that: “States Parties shall fulfill in good faith the obligations assumed under this Convention and shall exercise rights, jurisdiction and freedoms recognized in this convention in a manner which would not constitute an abuse of right”.

37
Sea Lines of Communication (SLOC)

Graham (2006: 34-62) provides a detailed analysis of the concept of Sea Lines of Communication (SLOC). According to him the term ‘sea lines of communication’ originates from an analogy drawn between overland lines of supply such as the fixed infrastructure of roads and railways used by armies to connect forces at the front with bases and production centres in the rear. These require the control or at least the neutrality of the surrounding territory. The definition of lines of communication at sea is more relative due to the different properties of water in comparison to land. Furthermore, he argues that the overlapping use of terms such as ‘chokepoints’, ‘sea lanes’, ‘strategic waterways’, ‘trade routes’, ‘focal areas’, ‘approaches’ and so on risk conflating the principles of naval strategy with those governing maritime economics. He also points out that, while on one hand sea space can be a barrier to the movement of people and separation by a large body of water can be an advantage against a large-scale invasion by ground forces, on the other the relative efficiency of waterborne transportation compared with overland transportation can be an advantage in projecting military power and conducting trade (ibid.: 35-37).

Both Mahan and Corbett had acknowledged the importance of trade routes at sea and merchant shipping from the viewpoint of military strategy. Mahan had differentiated functionally between ‘lines of communication’ for military ventures and ‘lines of travel’ for trade. Corbett had categorized maritime communications into: those required by the belligerents’ fleets for supply of fuel, stores and ammunition; communications between an army overseas and its home base; trade routes servicing the resource needs of the belligerents’ home bases; and communications interconnecting the belligerents’ overseas bases. Corbett had argued that ‘focal areas’ and ‘terminals’ of trade routes were the areas in which merchant shipping was most vulnerable, and advocated ‘flotilla guards’ (i.e. small fleets) to defend these in conjunction with the blockade of an adversary’s ports. As far as those parts of trade routes in the ‘open sea’ were concerned Corbett had advocated ‘naval patrol’ rather than ‘convoys’ (i.e. a group of merchant ships escorted by naval ships). However both Mahan and Corbett had thought that ‘commerce warfare’ (guerre
de course, literally ‘war of the chase’) could not be decisive by itself and that it was marginal within naval strategy. Corbett had thought of commerce warfare as the non-lethal seizure of merchant ships. The effectiveness of the submarine in commerce warfare during WWI however was based on the lethal targeting of merchant ships (ibid.: 35-39).

In ‘attrition-based conflict’ industrial capacity and economic stamina can be decisive factors. While Castex had acknowledged that in ‘total war’, the distinction between economic and military factors might be less marked, he had argued that a distinction could be drawn between maritime communications in times of peace and maritime communications in times of war. Maritime communication in times of war would involve those required to sustain a war economy, those requiring forces to be moved and those fulfilling internal communications under certain geographic conditions. He had stressed the importance of national geography, population and distribution of resources (energy, raw materials and food) as factors influencing the different extents to which a disruption of seaborne trade would affect states. By the 1920s oil had begun replacing coal as the primary ‘bunker fuel’ for most major navies, making it one of the most important ‘strategic commodities’. In a conflict in which economic strength can be decisive, ‘accessory concerns’ such as navy-transport bureau relations, stockpiling and austerity measures to limit import demand were recognized by Castex as integral to an overall national effort. While he too held that commerce war could not be decisive by itself, he did recognize the potential of the submarine and the aeroplane to erode the dominance of surface fleets in naval warfare, and was a keen proponent of the submarine. As a practitioner of anti-submarine warfare (ASW), with regard to measures to protect shipping against submarines, he considered ‘convoy’ to be superior to arming, diverting or independently routing merchant ships, and rejected the concept of patrolled areas as misconceived. He argued that ‘convoy’ minimized losses, returns the initiative to the defence by maximizing the potential for counter-attack, and maintains the focus on defending ‘the objects themselves rather than space’ (ibid.: 39-40).

Brodie too had recognized that in ‘total war’ the outcome depended on industrial capacity to compensate for shipping losses as much as on naval strategy. Brodie had
identified three types of defensive cover for shipping: general cover, evasive routing and direct protection. General cover refers to the indirect protection conferred through command of the sea secured through a superior naval force which is able to destroy or neutralize a hostile fleet. Evasive routing is the most basic form of protection against subsurface or air attack for merchant shipping, except near to terminals where concentration is unavoidable. Lone ships on the usual peacetime routes were the most vulnerable to merchant raiders. Of the strategies aimed at direct protection convoy presented merchant ships with greater overall security than single sailings (ibid.: 41).

According to Graham (ibid.: 41-42) arguments that were made during WW I and II against the use of convoy are: 'it is dull and unspectacular work', logistically difficult to organize and tactically flawed since it presents a concentrated target limited in speed to the speed of the slowest vessels in the group, and that it is a purely defensive form of warfare. Arguments that were made for the use of convoy are: it is only marginally easier to detect than single ships, offers the most effective means of counter-attack, and concentration of merchant shipping in convoy present the most efficient means to allocate limited resources for their protection. Graham argues that in comparison with 'patrolled sea lanes' the main strength of 'convoying' is that it protects the ships themselves rather than just the sea lanes (ibid.: 41-42).

In the context of 'total war' such as that which occurred in the first half of the 20th century, Graham (ibid.: 42-43) identifies a number of general principles pertaining to SLOC security. First, in the face of sustained military pressure convoy is the best method for the defence of shipping. Secondly, if trans-oceanic SLOC and shipping are well defended they can be a medium through which power in the form of naval, air and ground forces are projected inter-continentally, and the means through which war economies are sustained. Thirdly maritime powers which are import-dependent would be the most vulnerable to the blockade of merchant shipping, which will quickly starve their industry of the resources needed to maintain a sustained war effort. Fourthly, in the long run a blockade can be effective in degrading the fighting power of even relatively autarkic continental powers. Fifthly, counter-blockade and anti-shipping campaigns led
by submarines have the potential of being decisive and can yield results 'out of all proportion to the resources invested'.

In the second half of the twentieth century, during the Cold War, the emergence of nuclear weapons made sustained and intense naval warfare such as that which occurred in the immediately preceding era of 'total war' unlikely. In 1951 the Radford-Collins Naval Control of Shipping Agreement (NCS) was signed. It involved the United States, Great Britain, Australia and New Zealand dividing the Pacific Ocean into geographical zones of responsibility for the protection of merchant shipping through measures such as convoying, safe routing and exchange of weather information, ASW, search and rescue, and surveillance. Surveillance was the subject of another agreement in 1978. Organizations for the NCS spanning activities such as authorizing sailings, route selection, the organization of convoys, tactical diversions and movement reporting continued to be maintained even after the collapse of the Soviet Union by the United States and allies such as Australia and Singapore, manned largely by naval reservists. In the late 1980s Vice Admiral J. Blouin (1989: 56-58, cited in Graham 2006: 45) outlined four measures for securing key Pacific SLOC, involving convoy, independent sailings, defended lanes and offensive operations. In this context the notion of patrolled SLOC was revived as an 'expansion of the convoy concept':

"A protected or defended lane would involve sanitizing a geographical area against the submarine threat, followed by the installation of a barrier or protected perimeter to provide for penetration warning....Protective forces would be positioned along a transit route. Each unit of the protective force would be assigned an area of responsibility, the size of which depended upon the speed and sensors of the protective platform, perceived threat, environmental conditions and weapons involved".

The credibility of this revival of the idea of patrolled lanes was based on advances made since 1945 in ASW technology, drawing on the combined resources of air- and sea-based patrol units and a global remote surveillance infrastructure, based on a network of sound surveillance sonar system (SOSUS), sea-bed acoustic arrays, land-based high-frequency radio detection nets and dedicated naval reconnaissance satellites, providing
comprehensive optical, infra-red and signals-intelligence coverage of the oceans. Despite such technical advances the idea of patrolled SLOC continued to be criticized as too abstract a concept. A proposal to establish a private study group to examine the issue of SLOC security in the Asia-Pacific region in 1979 led to the inauguration of a series of bi-annual international conferences in 1982. Co-organized by the United States, Japan, South Korea, Australia, China, Taiwan and a number of the Association of South East Asian (ASEAN) member states, these conferences were attended by politicians, defence officials, serving military officers and representatives from shipping firms and other maritime industries. By the end of the Cold War the conference agenda had evolved into three main objectives: to arrive at a mutual understanding of SLOC defence; to agree upon the methods of SLOC defence and its necessity; and to implement practicable cooperation for SLOC defence and burden sharing (ibid.: 43-5).

With the end of the Cold War the military-focused paradigm of SLOC security based on great power conflict and defence of 'freedom of navigation' on the high seas gave way to a more comprehensive agenda, incorporating political-legal and non-military issues, such as expanding maritime sovereignty claims under the United Nations Convention for the Law of the Sea (UNCLOS), environmental problems and general issues concerning the safety of shipping. The scope of maritime threats was also broadened to include non-state actors involved in terrorism and piracy (ibid.: 46).

The present maritime transport industry has become internationalized to such an extent that a ship's registry, owner, insurer, crew and cargo can each be from a different country. This process, which has occurred as a result of increased liberalization and commercial pressures to drive down ship operators' costs, can have strategic consequences. The dwindling of national fleets can undermine state security because the dependability of international shipping firms in times of crisis can be doubtful and governments may be unable to legally compel them to sail. It can also complicate the option of blockade by raising political costs to unacceptable levels. Daniel Coulter (1997, cited in Graham 2006: 48-50) has argued that there is a need to distinguish between military principles and market principles governing contemporary maritime
transportation, particularly in relation to maritime 'chokepoints'. While military deployments may need to be made via the most direct route in the quickest possible time, the economics of navigational access through chokepoints operates under market-based rules which give the system considerable flexibility to cope with the most localized obstructions. Such obstructions can be diverted around without incurring prohibitive add-on costs as long as alternative routes are available, and spare shipping and port-handling capacity exists. Therefore chokepoints are not essential to the free flow of seaborne commerce, reflecting the fact that the choice of route is a function of market conditions. However he has acknowledged that the 'chokepoint' at the Strait of Hormuz could be a possible exception, given its monopoly over access to oil terminal in the Persian Gulf. Coulter (1998: 135-45, cited in Graham 2006: 50) has further pointed out that the upscaling trend in container shipping funnels world trade via a small number of 'hub-ports' concentrated in East Asia, which are the only ports capable of handling vessels with a capacity of 5000 Twenty-foot Equivalent Units (TEU) or above, and that these could be the points at which the maritime transportation system is currently most vulnerable. There is also the issue of marine insurance. If insurance firms sharply increase 'premiums' on traffic to certain areas considered to be volatile or extend 'exclusion zones' to those areas withdrawing insurance cover altogether, shipping firms may be unwilling or even unable to operate in those areas (Graham 2006: 48-50).

Together with military strategy and economics SLOC also involve international law. While UNCLOS, which entered into force in 1994, may have reinforced an order-based institutionalized approach to establishing a common legal framework that recognizes the sovereignty claims of coastal states while upholding rights of navigation through international straits and offshore areas, it may also have created a framework for 'creeping jurisdiction' that could lead to new restrictions on passage or tolls being levied on heavily used waterways. Most rights of navigation concerns relate to naval vessels and over-flight rights (ibid.: 51-52).

Terrorism-at-sea can take the form of attacks on ships, or vessels being used to deliver concealed weapons of mass destruction (WMD). Such attacks have the potential
to cause widely felt damage if they take place on a ship carrying hazardous cargo or at an important location in the maritime transportation system such as a major port or strait. Terrorists can also resort to robbing ships, which is where the line between terrorism-at-sea and piracy can get blurred. They can also operate their own ships for smuggling arms, ammunition and supplies. Hijacking and hostage taking by such groups can also be carried out at sea. Concerned international organizations and governments have initiated a number of measures to combat terrorism-at-sea. The International Maritime Bureau (IMB) has recommended that designated sea lanes used by tankers be declared 'no-go' areas for unauthorized craft, to be enforced by naval and police patrols. The Container Security Initiative of the United States requires designated port authorities to report to US Customs the contents of containers 24 hours before the ship’s departure. The US Antiterrorism Act 2002 (HR 3983) allows entry into American ports to be refused for suspect vessels, and for security assessments to be conducted in foreign ports. The governments of Hong Kong, Singapore and Malaysia are among those to have US customs inspectors stationed at their ports. The International Ship and Port-facility Security (ISPS) code, a global initiative by the International Maritime Organization (IMO), requires the mandatory installation of a Ship Security Alert System for all new vessels above 500 GRT and the designation of on-board security officers for each of the approximately 50,000 vessels in the world merchant fleet. The core of the ISPS is the mandatory development and implementation of ship security plans, which must be approved either by flag states or delegated Recognized Security Organizations. Amendments to the 1974 International Convention for the Safety of Life at Sea (SOLAS) further require the embossing of registration numbers on the hulls of ships. Both initiatives have been adopted by the IMO in December 2002 and came into effect from 1 July 2004. The IMO is also working to address the issue of port security through a Code of Practice on Security in Ports, adopted in December 2003. The ASEAN Regional Forum (ARF) Statement on Cooperation Against Piracy and Other Threats to Maritime Security, adopted in June 2003, included the warning: “the potential for terrorist attacks on vulnerable sea shipping threaten the growth of the Asia-Pacific region and the stability of global commerce”. However, large ships such as tankers are difficult to sink or to maneuver, and hazardous cargoes with the exception of liquefied petroleum gas (LPG)
are usually carried in non-volatile form. Moreover, the organization and resources needed for mounting major terrorist attacks at sea compared with the greater publicity generated by attacks on land have deterred most radical groups from attempting such operations (ibid.: 53-55).

The IMO definition of piracy derives from Article 101 of UNCLOS, which defines it as: “any illegal acts of violence or detention, or any act of depredation directed at private ships or aircraft on (or above) the high sea”. The IMB, reflecting its focus on preventing maritime crime, had adopted a more inclusive definition: “any act of boarding or attempting to board any ship with the intent to commit theft or any other crime and with the intent or capability to use force in the furtherance of that act” (J. Abhyankar 2001: 11, cited in Graham 2006: 56). The IMO’s ‘high seas only’ definition of piracy has been criticized as overly restrictive since the vast majority of illegal activities against ships (and aircraft) take place within territorial and archipelagic waters, and exclusive economic zones (EEZ). The IMB’s broader definition has also been criticized by some shipping associations as exaggerating the scale of the piracy problem by including acts of petty theft committed against ships in port. The differing definitions of the IMO and the IMB is said to have been harmonized when the IMO Assembly adopted its Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery Against Ships in November 2001. According to IMO Resolution A922(22), Article 2.2: “Armed Robbery against Ships mean any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of 'piracy’ directed against a ship or against persons or property on board such ship, within a State’s jurisdiction over such offences”. Many piracy incidents are thought to go unreported by shipping companies, which tend to weigh the slim probability of recovering stolen property and apprehending pirates unfavourably against the risk of raised insurance premiums and the prohibitive cost of charter delays incurred while port-side investigations are conducted. The IMB has identified several types of modern piracy. First, there is the practice of illegally boarding vessels under way, at night and from the rear, for the purpose of theft. Secondly, there are robberies directed at easily removable property or valuables aboard ships at anchor. Thirdly, there is a category referred to as ‘military piracy’ which involves uniformed
personnel in attacks on shipping for material gain. These uniformed personnel can belong to terrorist groups, in which case there is an overlap with terrorism-at-sea. However there have also been allegations that some such incidents have had covert or tacit governmental/military involvement. Fourthly, there are ship hijacks beyond the range of coastal law enforcement, with the intention of appropriating and offloading cargo to another vessel or at a friendly port. Such incidents can involve a high level of organization and violence. Joint coast guard patrols, international law enforcement cooperation, and targeting their activities ashore have been suggested as measures for combating piracy. In any case piracy is not considered to be a systemic threat to international shipping and trade in the way that military obstruction of SLOC or terrorism-at-sea causing mass destruction or economic damage can be (ibid.: 55-58).

The military aspect in regional contexts continues to be important. Eric Grove (1993: 169-70, cited in Graham 2006: 47) has noted that ultra-quiet conventionally-powered attack submarines (SSKs) may become an important equalizer, the means by which smaller and poorer countries can defend themselves from richer and more powerful assailants. In the event of regional maritime tensions if strong regional powers acquire submarine forces and develop doctrine to employ them against SLOC which also happen to be major shipping routes, there could be systemic consequences for international shipping and trade (Graham 2006: 47, 59-60).

According to Graham (ibid.: 61-62) there is a widespread consensus that chokepoints remain the most vulnerable segments of SLOC and concerns that regional conflicts could interrupt international shipping flows reflect the proximity of regional ‘flash-points’ to chokepoint straits where merchant shipping is concentrated. Most such waterways if used in transit could probably be bypassed at an acceptable economic cost. However the scope for diversion narrows as ships approach their terminals, and the concentration of container traffic in particular around a small number of hub-ports augment this aspect of SLOC vulnerability above others. He argues that while in ‘total war’ the distinction between ‘military’ and ‘economic’ SLOC may break down, such a
distinction could be useful since contemporary SLOC threats are likely to arise below the threshold of total war.

**Conclusion**

Thinking about ocean-space in terms of military strategy involves thinking about 'using' it by actual or threatened force, in the interest of one country or group of countries, against the interest of another country or group of countries. The UNCLOS can be thought of as an attempt to provide a set of rules aimed at peacefully 'regulating the use' of ocean-space in the interest of all countries. Greater the link between a country's 'national economy' and the 'international economy', greater will be the importance of 'economic SLOC' to it. However one needs to qualify this by pointing out that below the threshold of 'total war' a country is unlikely to exhaust its stockpiles of necessary materials for sustaining a war effort. Therefore even if a country's economy is closely linked to the 'international economy', below the threshold of 'total war' 'economic SLOC' may not be of crucial importance to a country's war effort, whereas in a condition of 'total war' 'economic SLOC' are certain to be of vital importance to such a country's war effort. Given that ships carry over 90% of international trade sea lanes are vital to the functioning of the international economy. Military strategy prescribes 'convoys' (i.e. merchant ships escorted by naval ships) and 'patrolling' as ways in which a country can secure SLOC that are important to it. However, securing SLOC for one's own country can make them insecure for another country. The UNCLOS and other related institutional mechanisms for international cooperation seek to provide a system of regulations for making sea lanes secure for all countries. Alongside inter-state conflict, terrorism-at-sea and piracy have emerged as significant threats to the security of SLOC/ sea lanes in recent years.