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EXERCISE/EXERCICE NEW HORIZON

**SHIP AHOY... WHO'S THERE**

**The Need for a Canadian Surveillance Strategy**

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**ABSTRACT**

**The world population is growing rapidly and, along with it, is the fast paced development of technology. The world's oceans, once a formidable barrier that afforded protection to maritime nations, are no longer sufficient to prevent illegal acts. Canada's vast coastal areas and maritime economic zone are now vulnerable to threats against its sovereignty and security. It is unreasonable to expect law enforcement assets to be patrolling these waters continually; particularly since budgetary cuts demand that every dollar be spent with maximum efficiency. In**

**order to ensure an effective response to transgressions within Canadian sovereign waters it is necessary to have a surveillance plan. This essay will demonstrate the requirement for Canada to develop an effective surveillance strategy in order to coordinate efforts to protect Canadian resources and security.**

**Canada's geographic position surrounded by three oceans and sharing a border to the south with the only remaining superpower in the world has provided in the past a belief of invulnerability when addressing security and sovereignty issues. Canada has in fact relied for a long time upon the vast expanse of oceans for its security. Reliance upon this geographical isolation is threatened however by the recognition that the sea no longer constitutes an inaccessible border. Furthermore, the comfortable knowledge that Canada has a powerful ally as its neighbour is no longer relevant in today's global state of affairs. Military challenges by other countries are no longer a threat to Canada; instead an indefinite challenge to national security, also known as asymmetric threat, is evolving. The focus today is on security rather than on defence.**

Concurrent to the security of Canada is the requirement to enforce its sovereign rights over its water. Under the United Nations Convention of the Law of the Sea (UNCLOS) Canada is given the sovereign rights over 200 nautical miles (nm) of sea, as part of its Exclusive Economic Zone (EEZ).<sup>i</sup> Canada "may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention."<sup>ii</sup>

In order to ensure security of the country and enforces its sovereign rights, Canada must first have an accurate picture of the maritime activities occurring within its

EEZ. Surveillance is the cornerstone to enforcing security and domestic laws within Canadian waters. Since budget and resources are limited, the emphasis must be on a coordinated approach from the various governmental branches responsible for Canada's security and law enforcement. Recent events including unexpected illegal migrants arrivals in 1999 and other unidentified activities within Canada's three oceans continue to highlight the poor surveillance and monitoring capabilities, and consequently the associated last minute response to the events.

This paper will demonstrate the importance for Canada to develop an effective and coordinated strategy for its maritime surveillance in the future.

In order to understand the need for a maritime surveillance strategy, the first step is to review what is at stake and the anticipated threats to Canada's vital interests. Then this paper will review the current governmental responsibilities towards surveillance of Canadian waters, identifying the strengths and weaknesses. Finally, this essay will demonstrate the need for a coordinated approach towards the challenges that lay ahead for the surveillance of Canada's sovereign waters.

It is necessary, before going any further, to define strategy, sovereignty and maritime surveillance in the context of this essay. Strategy at the national level is defined as: "The level where the nature and quantity of a country's resources dedicated to achieving objectives critical to the national security interest is determined by the political leadership of the country."<sup>iii</sup> In view of the commitment of resources and consequently

funding toward such objectives, strategy requires being long-term and affording a certain level of continuity, otherwise all efforts would be concentrated toward immediate goals and affect research towards future improvements.

**The 1994 Canadian Defence White Paper defined sovereignty as: “ a vital attribute of a nation-state. For Canada, sovereignty means ensuring that, within our area of jurisdiction, Canadian law is respected and enforced.”<sup>iv</sup> Peter Haydon appropriately wrote: “To be sovereign at sea a state must be able to control whatever takes place in the waters under its jurisdiction. This applies to the territorial waters within 12 nautical miles of the shore, to the waters of the 200-mile Exclusive Economic Zone (EEZ), and to the adjoining areas of the continental shelf. Not maintaining the capability to control all activities in those waters is tacit acceptance that others may use them as they please without regard or respect for the law. This is an abrogation of sovereignty.”<sup>v</sup>**

**The last term, maritime surveillance, is defined in various military contexts within several defence documents but, for the purpose of this essay, can be summed up as the close and systematic observation of areas of the ocean with the goal of detecting unusual activities and potential problems thus allowing authorities to take appropriate and timely action. With these definitions in mind, the first step is to explore the reasons why Canada needs a maritime surveillance strategy.**

What is at stakes? Several vital interests fall under the umbrella of Canadian security and sovereignty. As stated earlier, the threat of direct military action against Canada is negligible. Emerging as a concern on the other hand is the threat of illegal use and abuse of our vital maritime resources as well as illegal activities aimed at affecting our security or that of our allies. Protection against these threats is considered vital, as it would adversely affect Canada should they be left unchallenged. Clear examples of such interests are the protection of resources such as fisheries, the protection of the environment, and the protection against other types of criminal activities. But, what are exactly the threats? Let us explore the vital interests discussed above and the related threats in more details.

The Canadian fisheries industry is and has always been part of Canada's economy. Last year, Canada exported an estimated 4.2 billion dollars of fish and seafood products worldwide to over 90 countries.<sup>vi</sup> Past mismanagement and overfishing have, however, depleted some facets of the fish stocks to a state where it will take decades to recover. Conservation of Canadian fisheries and the management policies in place within the Canadian EEZ to protect it was, and continues to be challenged by foreign and Canadian vessels alike. The lack of enforcement by international bodies such as the Northwest Atlantic Fisheries Organization (NAFO) in the Atlantic led Canada to take action during the 1995 "Turbot War". Similarly, there are continued fisheries violations in the Gulf of Maine boundaries between Canada and the U.S. In order to ensure its economic future as well as good stewardship practices for its resources, Canada must continue to protect and enforce the laws over its sovereign waters to ensure that its

fisheries stocks are not depleted beyond recovery. Since we are talking of vast expanses of water and that there are far more fishing vessels than law enforcement vessels, surveillance of Canadian waters is crucial in this respect to detect illegal activity and enforce Canadian laws.

Directly related to this is the protection of the ocean environment. Again, the effect of human interaction over the fragile ocean ecosystem is poorly understood and has been abused in the past. Dumping of pollutants and oil spills are a growing concern and directly affects the efforts to protect and safeguard our resources. “Marine pollution experts believe that illegal discharges are responsible for more than 50% of all oil pollution entering the marine environment.”<sup>vii</sup> As recently as 25 February 2002, Canada prosecuted a vessel for unlawfully discharging approximately 850 litres of oily substance in Canadian waters.<sup>viii</sup> Once again, the key to the preservation of Canadian resources is vigilance and an effective surveillance policy.

Illegal activities in support of crime or terrorism constitute the other facet of the threat to Canadian security and sovereignty. Such activities take the form of illegal migrant smuggling, drug smuggling, or worse, smuggling of terrorists and, potentially, weapons of mass destruction. The RCMP estimates that over 15,000 people enter Canada each year without travel documents, some of them smuggled by professional migrant smugglers.<sup>ix</sup> Beside the obvious unlawful entry into Canada, illegal migrants threat also include the potential risks posed by the introduction of new foods, plants, organisms and diseases without the proper control. Surveillance is crucial to detect



illegal activities. The problem is well illustrated by the Chinese migrants problems that occurred on the west coast in 1999, where two of the ships were within Canadian territorial waters before being discovered.<sup>x</sup> This illegal migrant problem is unlikely to lessen in the future. The CSIS 2000 Public Report states that: “Mass migration, combined with the growth of transnational criminal activity, remains a security concern. As interstate conflicts arise, the number of displaced peoples as well as political and religious refugees grows, bringing with it social, economic, political and, therefore, security challenges. Migrant smuggling continues to be a lucrative commodity for transnational criminal groups.”<sup>xi</sup> Since recent world events have necessitated the improvement of airports security, the path of least resistance for future illegal migrants smuggling may well be through the vast, and mostly unprotected maritime borders of Canada. This is a clear example of the requirement for an effective maritime surveillance.

Drug and contraband smuggling also threatens Canadian security and sovereignty. While a lot of the smuggling activity takes place under the guise of legitimate shipping, and therefore undiscernible to maritime surveillance efforts, there is a significant portion that also occurs through motherships and small boats operations at sea. According to a 2000 U.S. Department of State report: “International drug traffickers attempt to route drug shipments, primarily heroin, cocaine and MDMA (ecstasy), through Canada to the U.S. to take advantage of the long and open Canada-U.S. border... and the lower criminal penalties compared with the U.S.” It also says that: “The RCMP estimates that between 50-100 tons of foreign marijuana, at least 100 tons of hashish (plus six tons of liquid

hashish), 15-24 tons of cocaine and at least one ton of heroin are imported into Canada each year.<sup>xii</sup> The ongoing tightening of security measures at airports and ports of entry may, just as illegal migrant smuggling, lead to the use of sea approaches for illegal trade hence reinforcing the need for maritime surveillance.

More disturbing is the possibility of smuggling of terrorists or weapons of mass destruction. In a 2000 CSIS report it was observed that: “Canada is a ‘primary venue of opportunity to support, plan, or mount’ terrorist attacks.”<sup>xiii</sup> The recent discovery in Italy of Risik Amid Farid in a shipping container bound for Canada raised the issue of terrorist smuggling.<sup>xiv</sup> While it is unclear whether Farid is a terrorist, the means by which he chose to enter Canada demonstrate the risk posed by maritime access to the country. With the tightening of security at airports, and increased level of scrutiny towards commercial shipping, there still remains the possibility that terrorists sail small boats directly to Canadian shores, perhaps with weapons of mass destruction embarked. The effect on Canadian economy should its seaways be attacked would be devastating. Evidence are mounting that terrorists now have the means to put together what is known as a “dirty bomb”, conventional explosive laced with radioactive material.<sup>xv</sup> The suggestion that a vessel could be sailed into a major Canadian port and detonated, thus effectively shutting it down along with its seaway access, is not far-fetched. The events of September 11, 2001 have precipitated this notion as a reality that can no longer be ignored. The current nature of the threat towards the United States also involves Canada and demands a serious review of security measures both immediate and for the future. Besides the efforts by its law enforcement and intelligence communities, Canada must ensure that

means are also taken to deny any future illegal entry and detect illegal activities within its sovereign waters. A critical step for such a task is the development of an effective surveillance strategy to support law enforcement efforts.

It can be seen that there are definitively threats to Canadian security and sovereignty. Canada has a right and a responsibility to protect its resources against abuse. Similarly it must ensure its security against criminal elements and the risk of global terrorism. To predict the future of these threats is an uncertain endeavor. While trying to avoid a doom and gloom scenario, future strategy must be tempered by a realistic assessment that most of these threats will continue to increase as world population grows and maritime transits become easier to undertake with evolving technologies. It is important for Canada to have the ability to conduct surveillance over its waters to ensure growth and prosperity of its resources while protecting the sovereignty and security of the country. This begs the question, who is responsible for surveillance in Canada and how does it translate into enforcing security and sovereignty?

As said in the introduction, surveillance is the cornerstone of security and law enforcement. Crickard and Haydon clearly referred to this by stating: “The gathering, collation and evaluation of large amounts of data on ocean use allows a government to be aware of changes and potential problems. By knowing what is happening in the waters under its jurisdiction, a government can respond to developing situations and take appropriate action. Thus, the ability to control what happens in its waters becomes an

essential part of the process by which a government enhances national sovereignty and safeguards national security.”<sup>xvi</sup>

In Canada, there is no clear lead department responsible for the overall surveillance of Canadian waters. “Canada’s policy for the protection of its maritime vital interests has been implemented through a blend of law, force and diplomacy. The strategy has been one of surveillance, monitoring, and enforcement.”<sup>xvii</sup> Three departments are mainly associated with enforcing Canadian sovereignty within its waters: the department of the Solicitor General, through the Royal Canadian Mounted Police (RCMP), the Department of Fisheries and Oceans (DFO), and the Department of National Defence (DND).

The department charged with the federal lead in law enforcement and national security matters is the Solicitor General.<sup>xviii</sup> The RCMP, which is Canada’s national police service, is charged with enforcing Canadian federal laws for the Solicitor General and maintaining peace, order and security.<sup>xix</sup> The RCMP has however no surveillance assets at its disposition to effectively monitor Canadian territorial waters, nor is it part of its formal mandate.<sup>xx</sup>

The department of Fisheries and Oceans Canada, mainly through the Canadian Coast Guard, is responsible for ensuring compliance with several marine related regulations. The Ocean Act and Fisheries Act are two of the major regulatory legislations with regards to conservation of resources and environmental issues.<sup>xxi</sup> Its

mandate objectives include managing and protecting fisheries resources, contributing to the protection of the marine environment, maintaining marine safety and facilitating maritime commerce and ocean development.<sup>xxii</sup> In doing so, DFO conducts air and sea patrols of Canada's east and west coasts with the primary functions of monitoring fishing activities, detecting illegal gear, and pollution monitoring. The information obtained through these surveillance patrols serves, however, a single purpose and contributes little towards achieving the goals of other departments.

The mission of the Department of National Defence "is to defend Canada and Canadian interests and values while contributing to international peace and security."<sup>xxiii</sup> While not entrusted directly with the responsibility for surveillance of Canadian waters, under the 1994 White Paper, DND is charged with making a valuable contribution in providing peacetime surveillance and control of Canadian territory and maritime areas of interests, playing a role in countering illegal activities such as illegal trade of contraband and smuggling of illegal migrants, and conducting patrols in support of fisheries and environmental protection.<sup>xxiv</sup> This broad statement has been developed further over the recent years as a concrete defence objective to conduct surveillance and control of maritime areas of jurisdiction to protect Canadian sovereignty, and mount an "immediate, effective and appropriate response for the resolution of terrorist incidents that affect, or have potential to affect, national interests."<sup>xxv</sup> In essence, since it has the assets and a resource capable of undertaking this task, DND has assumed its own responsibility for surveillance of Canadian maritime waters.

There is still no formal Canadian vision as to the future of surveillance. Each department has its own plans and priority report that is reviewed yearly by the Treasury Board for fiscal allocation. As well, each department issues its strategy for future developments within its own area of responsibility. Having one department assume de facto the lead for surveillance has its advantages. As stated earlier, the airborne and maritime assets necessary for the military mission of the defence of Canada are also well suited for surveillance and control of its maritime approaches for domestic purposes. DND has access to foreign military surveillance assets otherwise not accessible to non-military departments. Finally, the structure and command hierarchy inherent to a military system is well suited for coordinating the inputs and developing a clear picture that can be shared with the law enforcement branches of the Canadian government.

There are disadvantages to the lack of formal surveillance policy however. Firstly, this situation currently relies on the effective communication and sharing of information between all the departments for compilation of the surveillance picture of Canadian waters. Unfortunately, the different departments do not operate the same data compilation systems as the military and thus either expend a significant technological effort to be compatible or simply do not bother to report the information. Secondly, the military by nature has reservation under military security purposes to compromise its information to non-military organizations which leads to a reluctance to share freely the surveillance picture. Thirdly, the development of future policies and research in the field of surveillance is not necessarily in line within the different governments branches thus creating separate efforts and potential incompatible reporting systems. Furthermore, the

assets dedicated towards surveillance are limited; with the cut backs in material and personnel at all levels of government, as well as the increased commitments emerging for the military, there is a gap in capability that will continue to grow unless a common understanding and coordinated effort is made to optimize surveillance assets in the future. Lastly, funding of research and development is not coordinated between departments and is limited within each of the resource envelopes. The competition for funding and internal allocation of resources towards research and development therefore varies according to the priority of surveillance within each of the responsible departments. This results in limited opportunities to develop an effective and coordinated pan-governmental approach to a common goal.

To sum up, there is no clear lead department for the conduct of surveillance over Canadian maritime jurisdiction. Each department has its own requirements for surveillance and copes either using its own assets or through information exchange with another department. While the Canadian military has a self-imposed lead in the task of surveillance of Canadian waters, the contribution and future efforts of other government agencies is not necessarily in line with the military vision. The current strength of the surveillance of Canadian waters lies only in local initiative to integrate data available from various sources into the naval picture. But fiscal constraints and limited resources for the conduct of surveillance will quickly be challenged by the future development in technology and the necessary commitment to pursue surveillance goals. A coordinated approach is required.

As demonstrated earlier, the threat to Canadian vital interests is real and likely to grow in the future. The current responsibilities for surveillance of Canadian sovereign waters are uncoordinated and address only independent requirements from the various departments involved. The sharing of information and amalgamation of research and development efforts is key to an effective surveillance strategy. Canada does not have, however, a formal maritime or a security strategy to establish the foundation upon which to build a surveillance strategy. The 1994 White Paper partially filled this gap but focused on the military responsibility of defence of Canada rather than the coordination at all levels of government. Consequently the various departments' strategies do not emphasize a common development and use of surveillance assets. In order to ensure that the proper decisions and actions are made toward ensuring the future security of Canadian interests Canada must develop a surveillance strategy.

The crucial element is that a surveillance strategy cannot be developed independently or left to a single department to manage. To achieve a relevant and useful long-term strategic surveillance plan that respects all of the interests that are affected, a number of inputs must be considered. The surveillance strategy must reflect the interests of the key participants. In other words, it must not only include traditional military surveillance, but also surveillance for illegal activities, traffic density, fisheries monitoring, pollution control and so on. Certainly the military is in a key position to contribute to maritime surveillance by virtue of its equipment and mission, but the law enforcement responsibilities lie within the law enforcement branch of the Canadian government, and these branches must have full access to the surveillance product as well



as being able to contribute in the development and pooling of assets to accomplish the national goals.

An effective surveillance strategy may also result in providing fringe returns to the economy. Industries and research can benefit greatly from the surveillance data obtained. Be it for business planning or academic research the surveillance data may provide information to allow better use of Canadian resources.

Lastly, but not least, a key consideration includes the new security challenges posed by the commitment that Canada made towards the security of North America. The integral link that Canada possesses with the United States in the defence of North America has long been established through the North American Aerospace Defense Command (NORAD) in 1958. The United States have created the Office of Homeland Security in October 2001 as a response to the September 11 attacks. Its mission is “to develop and coordinate the implementation of a comprehensive national strategy to secure the United States from terrorist threats or attacks.”<sup>xxvi</sup> The close association that Canada has with the United States necessitates that a Canadian surveillance strategy be developed and takes into account the requirements of our close ally. Peter Haydon accurately predicted this by stating: “Managing the relationship with the Americans is the most important requirement of government. In maritime terms, this requires a sharing of resources, respect for each other’s boundaries, and a common approach to upholding the law in adjoining waters. In terms of national security both Canada and the United States must be careful not to cause the other concerns through its actions or inactions. If the

Americans were to believe that Canadians were negligent in the way they manage their ocean domain and this created a potentially dangerous situation for the United States, then the Americans would be tempted to intervene in any threatening situation. To avoid this, Canada must be seen by the Americans to be acting responsibly in its own waters in upholding the law and also preserving national security.<sup>»xxvii</sup>

In conclusion, this essay reviewed the vital interests and threats that will affect Canada's security and sovereign rights in the future. It explored the current responsibilities shared by various government agencies and the difficulties associated with ensuring Canada's security and sovereignty. It highlighted also the requirement for a common vision and philosophy towards maritime surveillance in order to ensure an appropriate and timely response towards these threats.

The ability to define goals and objectives sufficiently far into the future can help align the activities across a very broad spectrum. This is however easier said than done. Nevertheless, the need for a common and longer-term view is evident given the nature of policy decisions that the various departments must make. The drive to get optimum use of resources must also strive for corporate efficiencies to ensure that every dollar is spent, to the greatest degree possible, towards achieving national goals. Bullock stated in his paper on Canadian Naval Strategy: "Canada's limited resources makes the establishment of effective strategy based upon a comprehensive national security and maritime policy particularly critical."<sup>»xxviii</sup>

“Today our waters become increasingly internationalized and play such an important part of our economy, it is as important to guard against the unlawful use or abuse of those ocean areas, as it is to be watchful for military threats to national security. In this respect, the right to claim jurisdiction over specific ocean areas is accompanied by the responsibility to ensure that those waters remain free and safe for the lawful use of others... Meeting that obligation requires comprehensive ocean management and security policies in which all maritime challenges to national security, in its broadest context, can be dealt with in an appropriate and timely way.”<sup>xxix</sup>

It is crucial that decisions affecting Canada’s security and sovereignty be taken in the context of a long-term vision since the capability to meet this vision takes years to build. A lack of long-term vision and concern only for short-term policies to address immediate problems compounds the dilemma and delays the inevitable needs to sit down together and coordinate efforts. Canada must look towards the future and decide what goals it must achieve to ensure security and prosperity. One of the first steps in that direction, and perhaps the most important, is the surveillance strategy over its sovereign waters. Without it, Canada will be ignorant of activities taking place within its waters and unable to enforce its sovereign rights.

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<sup>ii</sup> UNCLOS Part V, Article 73.

<sup>iii</sup> Canada, Chief of Maritime Staff, Leadmark: The Navy’s Strategy for 2020 (Ottawa: Directorate of Maritime Strategy, 18 June 2001). GL20.

<sup>iv</sup> Canada, Department of National Defence, 1994 Defence White Paper (Ottawa: Canada Communications Group, 1994). Chapter 4. <[http://www.dnd.ca/admpol/pol\\_docs/94wp/four.html](http://www.dnd.ca/admpol/pol_docs/94wp/four.html)>. 04 March 2002.

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<sup>v</sup> Peter Haydon, "Canadian Naval Requirements for the 21st Century." Council for Canadian Security in the 21<sup>st</sup> Century, Research Papers, Last updated 10 November 2001.

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<sup>vi</sup> Fisheries and Oceans Canada, "Another record year for Canada's fish and seafood exports." News Release No. NR-HQ-02-10E, 11 March 2002. <[http://www.dfo-mpo.gc.ca/communic/newsrel/2002/hq10\\_e.htm](http://www.dfo-mpo.gc.ca/communic/newsrel/2002/hq10_e.htm)>. 24 March 2002.

<sup>vii</sup> Fisheries and Oceans Canada, Fisheries and Oceans Canada Performance Report (Ottawa: Department of Fisheries and Oceans, 2001). 22. <<http://www.tbs-sct.gc.ca/rma/dpr/00-01/F&OC00dpre.pdf>>. 02 March 2002.

<sup>viii</sup> Transport Canada, "Transport Minister Collenette announces record penalty for prosecution of marine polluter." News Release No. A02/02, 25 February 2002.

<[http://www.tc.gc.ca/newsroom/releases/at1/2002/02\\_a002e.htm](http://www.tc.gc.ca/newsroom/releases/at1/2002/02_a002e.htm)>. 24 March 2002. The federal government successfully prosecuted the M/V Baltic Confidence, a Philippines-registered bulk carrier, for unlawfully discharging a minimum of approximately 850 litres of an oily substance in Canadian waters. As a result of the extensive investigation and prosecution efforts, the operator of the vessel pleaded guilty to the offence and was assessed a penalty of \$125,000. This is highest ever penalty issued for ship source pollution in Canadian waters. On December 22, 1999, Transport Canada initiated an investigation after the M/V Baltic Confidence was sighted by both a Canadian Coast Guard (CCG) helicopter and a private aircraft, illegally discharging an oily substance in Canadian waters approximately 85 nautical miles southwest of Halifax. This area is known to be heavily populated by seabirds during this time of the year. The vessel was observed and photographed trailing an oily slick of more than 20 nautical miles. The CCG helicopter crew recorded the incident and reported it to Transport Canada.

<sup>ix</sup> Royal Canadian Mounted Police, RCMP Fact Sheets 2000/01 (Ottawa: RCMP, Last modified 23-May-2000). Fact Sheet No. 16. <<http://www.rcmp-grc.gc.ca/html/facts-english.pdf>>. 02 March 2002.

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<sup>xxiv</sup> 1994 Defence White Paper, Chapter 4.

<sup>xxv</sup> Defence Planning Guidance 2001. Chapter 2, article 204, paragraph 4.c.

<sup>xxvi</sup> Marcus Corbin, "Organization for Homeland Security: Issues and options," Centre for Defence Information. 21 December 2001. <<http://www.cdi.org/terrorism/homelandsecurity.cfm>>. 19 March 2002.

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