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HAULING DOWN THE JOLLY ROGER: CANADA'S STAKE, OBLIGATION AND PARTICIPATION IN COUNTERING MARITIME PIRACY

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ABSTRACT

Maritime piracy is a complex problem that has existed as long as commerce has transpired at sea. In the 21st century, piracy still occurs off the coasts of Asia, South America and Africa but is most prevalent in the Gulf of Aden off the coast of Somalia. In response to the problem, and because of the potential for the impact of piracy to increase, the United Nations has issued resolutions condemning piracy; Canada has responded to the United Nations mandate by committing significant maritime force to combat the scourge. But what is Canada's stake in suppressing and mitigating the piracy problem? After all, piracy currently has a low economic impact for Canada and does not occur in Canadian waters. However, given the potential economic threat should piracy proliferate, the potential security and environmental threats, the heinousness of the crime and because of the country's commitment to the United Nations, Canada has does have a stake in countering maritime piracy.

Canada's navy is obligated to stop the piracy it encounters and, as a beneficiary of world trade, Canada is arguably morally obligated to actively deploy forces in counter piracy efforts. However, in order for Canada to continue to contribute to counter piracy efforts, the country will need to invest in the re-capitalization of its maritime forces, possibly by building modularized patrol vessels; these vessels could potentially be less expensive to build than Cold War focused conventional warships and could be adapted for a multitude of potential missions. As a self-professed internationally engaged country, Canada should invest in its maritime forces and continue to work collaboratively with other nations in mitigating piracy to an acceptable level.

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INTRODUCTION

As long as there has been maritime commerce, piracy has existed. Historically, piracy has been a challenge for the marine industry and governments alike. The piracy of the past is sometimes romanticized in books and movies, but in today's context, the majority of the world's governments, and the United Nations, consider maritime piracy a "crime against nations."[1] The significant press coverage of the bold attacks off Somalia has increased the public's awareness of the issue. The capture of Captain Richard Phillips, taken hostage by pirates, made front page news and thrust the war against piracy into the spotlight.[2] The encore attack on the same vessel, the M/V *Maersk Alabama*, on 18 November 2009, confirmed that piracy was rampant off the north eastern coast of Africa and throughout the globe as it was the 362nd recorded pirate attack worldwide in 2009.[3] The contemporary pirates that conduct these attacks use new equipment and tactics to meet the same ends as pirates of yesteryear: armed robbery at sea. Piracy is an old problem with new variants. The increased size of merchant ships, the shipping of volatile material and the use of modern weapons makes today's pirates capable of inflicting damage on a tremendous scale, posing a potential disaster to economies, the environment and security throughout the world.

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[1] Jack Gottschalk and Brian Flanagan, *Jolly Roger with an UZI* (Annapolis: Naval Institute Press, 2000), 28.

[2] Jason Straziuso, "Maersk Alabama Repels 2nd Pirate Attack with Guns," *Associated Press*, http://news.yahoo.com/s/ap/20091118/ap_on_re_af/piracy; Internet; accessed 28 November 2009.

[3] ICC International Maritime Bureau, *Piracy And Armed Robbery Against Ships Annual Report 1 January – 31 December 2009* (London: ICC International Maritime Bureau, 2009), 82.

Piracy may be a global problem but it does not occur equally in all parts of the world. Maritime piracy predominantly takes place beside weak states that lack the means to enforce law and order and also happens on the high seas, where law enforcement is virtually non-existent. In the 21st Century, piracy most frequently occurs in vicinity of Somalia, but Nigeria, Indonesia, Bangladesh and Tanzania are also high risk areas.[4] The combination of economic inequality, opportunity to seize high value targets and the lack of central authority and law enforcement make these areas ripe for pirate attacks. The global, interconnected economy of the 21st century has seen a tremendous increase in international trade, with over 45,000 ships transporting cargo worldwide.[5] These ships present opportunities for pirates, especially when transiting through narrow waterways where maritime forces are scarce or non-existent.

Pirates have proliferated in areas where they are sanctioned by local or national authorities, where they can circumvent international law or where coastal security is lax. Piracy is often more prevalent where maritime security forces are either too small or ineffectual. As well, small arms, used to inflict the violence of piracy, are readily available throughout the world, including assault rifles, knives and rocket propelled grenades. Acts of piracy generally fall into three broad categories: 'low level piracy' or robbery, often netting the perpetrators between $5,000 and $15,000, consists of robbers attacking ships in harbour or at anchor and stealing cash or high value personal items; mid-level piracy is robbery that occurs at sea and often involves injuries or deaths for the victims; high-level piracy includes the outright thefts or

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[4]Peter Chalk, "Maritime Piracy: Reasons, Dangers and Solutions," RAND Corporation, available from http://www.rand.org/pubs/testimonies/2009/RAND_CT317.pdf; Internet; accessed 23 January 2010.

[5]International Maritime Organization, "International Shipping – Carrier of World Trade", http://www.imo.org/includes/blastDataOnly.asp/data_id%3D18900/IntShippingFlyerfinal.pdf; Internet; accessed 27 January 2010.

hijacking of ships which can net the criminals millions of dollars in ill-gained profits.[6] Piracy

has a real human cost for the mariners that experience it first hand and an economic impact for

the shipping companies and countries involved.

Maritime piracy is a current and serious problem, deemed by the United Nations as

deserving of attention. To some, piracy may seem simple thievery, the pirates sometimes

idolized as Robin Hood figures, stealing from the rich merchant. But that view simply indicates

an unawareness of the vulnerability of a ship in the volatile environment of the sea. The

international authorities, the International Maritime Bureau (IMB) and the United Nations, have

concentrated their efforts to define piracy and resolve what can and should be done in response

to the global crime that piracy is. The United Nations and the International Maritime Bureau

(IMB) have carefully defined piracy, singling it out from simple robbery due to the use of

violence at sea. The legal definition, adopted by the United Nations Convention on the Law of

the Sea (UNCLOS) in 1982 states:

> Piracy consists of any of the following acts:
> (a) any illegal acts of violence or detention, or any act of
> depredation, committed for private ends by the crew or the
> passengers of a private ship or a private aircraft, and directed:
> (i) on the high seas, against another ship or aircraft, or
> against persons or property on board such ship or aircraft;
> (ii) against a ship, aircraft, persons or property in a place
> outside the jurisdiction of any State;
> (b) any act of voluntary participation in the operation of a ship or
> of an aircraft with knowledge of facts making it a pirate ship or
> aircraft;
> c) any act of inciting or of intentionally facilitating an act
> described in subparagraph (a) or (b).[7]

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[6]Peter Chalk, *The Maritime Dimension of International Security: Terrorism, piracy and Challenges for the United States,* (Santa Monica: RAND Corporation, 2008), 6.

The key components, in the UNCLOS definition, are that piracy has to occur on the high seas and has to involve at least two ships. This definition, however, is limited for the statistical purposes of the International Maritime Bureau (IMB). The IMB, the lead international agency for compiling data on pirate attacks, chooses a broader definition that includes acts committed outside of the high seas, acts within harbours and also acts of terrorism. The IMB defines piracy as "the act of boarding any vessel with an intent to commit theft or any other crime, and with an intent or capacity to use force in furtherance of that act."[8] Though the United Nations and the International Maritime Bureau (IMB) use different definitions to describe maritime piracy, they agree that the use of force at sea is fundamental to piracy. It is, also, important to note that through their use of the broader definition, the IMB includes more acts of piracy, making their statistics higher than events under the legal definition. The legal distinctions, while important for maritime forces chasing pirates and judicial systems prosecuting pirates, are perhaps less important for the attacked seafarers, who are the true victims of maritime piracy. Piracy at it base consists of armed robbers with weapons ruthlessly attacking ships where there is no escape for victims, and there is little or no law enforcement; pirates, by force, seize goods and treat the crew violently and horrifically. On 30 October 2009, the Swiss flagged bulk carrier *MV Silvretta*, while transiting about 20 nautical miles off Nigeria, was attacked by approximately nine pirates armed with automatic rifles. The pirates attacked, boarded and then opened fire on the ship; the resulting violence left nine crew members injured and three in critical condition.

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[7] United Nations, "United Nations Convention on the Law of the Sea," http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm; Internet; accessed 27 January 2010.

[8] ICC International Maritime Bureau, *Piracy And Armed Robbery Against Ships Annual Report 1 January – 31 December 2009,* 3.

The Master's fingers were broken to force compliance during the attack.[9] The methods and intensity of this one attack illustrate the violence of piracy, a historical trademark of pirates which is accentuated by the availability of powerful small arms to contemporary pirates. Maritime piracy is a heinous crime committed throughout the world. It takes advantage of the open vulnerability of the sea, a place where dominant force commands. It is in this environment that navies are needed to prevent piracy. With constant pressure and patrols, piracy can be managed; the collective international response will determine the extent to which it can be managed to a reasonable level.

In the past two years, six resolutions have been written by the UN to allow navies to prevent piracy in Somali territorial waters. A window of opportunity has been created for the world to combat the specific issue of Somali piracy. In response, Canadian naval forces have been committed to join the navies of other countries patrolling the worst affected coastal areas. In August 2008, HMCS VILLE DE QUEBEC, a Canadian Halifax Class frigate, was redeployed from the Mediterranean to the Gulf of Aden, off Somalia, in order to escort and protect World Food Program ships from the rise of pirate attacks.[10] The Canadian effort allowed much needed aid to arrive in Somalia. In fact during the past two years, Canada has contributed to counter piracy operations by deploying three individual ships, HMC Ships VILLE DE QUEBEC, WINNIPEG and FREDERICTON and a task group consisting of HMC Ships IROQUOIS, CALGARY and PROTECTEUR to the region. This force constituted Canada's largest

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[9] ICC International Maritime Bureau, *Piracy And Armed Robbery Against Ships Annual Report 1 January – 31 December 2009,* 32.

[10] Central News Network, "Canadian warship to protect food from pirates off Somalia," http://edition.cnn.com/2008/WORLD/americas/08/06/somalia.piracy/index.html; Internet: accessed 27 November 2009.

deployment of military personnel, outside of Afghanistan, during the 2008/2009 timeframe.

Canada, with a maritime force comprised of only 17 major surface combatants, has committed

significant resources to maritime security in the Gulf of Aden, specifically, to the war on piracy.

With a navy of limited numbers and aging ships, the continued naval support of the UN mandate

may be unsustainable. However, at the current time, Canada does have the forces to contribute

and is doing so both to prevent the horrific violence associated with piracy and to demonstrate

Canada's commitment to the United Nations.

With the recent increase of events off the Horn of Africa, journal and newspaper articles

relating to maritime piracy have proliferated. In terms of book length pirate accounts, many

authors, including David Cordingly's *Under the Black Flag* and Peter Earle's, *The Pirate Wars*,

have chronicled the Golden Age of piracy in the 17th and 18th centuries.[11] What is interesting,

even in these historical accounts, is that as much as people might want to romanticize piracy, at

its essence, it is violent, barbaric and a crime against humanity. In 1985, Roger Villar's *Piracy*

Today was the first to address contemporary maritime piracy. At the time, the book was the

"most comprehensive" on maritime piracy although actual statistics and recorded accounts of

piracy were difficult to acquire.[12] In 1985, the main scourge of piracy occurred in Western

Africa, particularly off the coast of Nigeria where a disgruntled population engaged in piracy

against oil bearing ships. Like others accounts of maritime piracy, *Piracy Today* chronicles the

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[11] Peter Earle, *The Pirate Wars* (New York: St. Martin's Press, 2003) and David Cordingly, *Under the Black Flag* (New York: Random House, 1996).

[12] Roger Villar, *Piracy Today* (London: Carmichael and Sweet, 1985), 7.

use of knives and firearms in the extreme violence associated with piracy. In the years since 1985, piracy was not the subject of significant academic literature until the early 21st Century.

The new century has seen a resurgence in piracy and accounts concerning the issue. In 2000, Jack Gottschalk and Brian Flanagan wrote *Jolly Roger with an Uzi*, a detailed look at piracy and its economic and security costs.[13] They argue that piracy is a problem to be taken seriously and that only military force has had a significant effect in countering piracy. Because the International Maritime Bureau had started collecting data on piracy in 1992, the book is actually quite comprehensive and includes detailed analysis of where piracy occurs. In 2002, John Burnett's *Dangerous Waters: Modern Piracy and Terror on the High Seas*, a book inspired by his experience of being a victim of a pirate attack, provided further insight into the violence of maritime piracy. Interestingly, Burnett asserts that a nexus exists between piracy and terrorism, a claim since disputed.[14] Most recently, Martin Murphy's book, *Small Boats, Weak States, Dirty Money*, published in 2009, is a very thorough account both of modern piracy and maritime terrorism. Murphy defines contemporary piracy as beginning in 1983, the year in which the International Maritime Organization's (IMO) first commented on the increased number of incidents of piracy throughout the world. [15] As well, Murphy asserts that although piracy and terrorism may be very similar in execution, the motivations behind the two are very dissimilar and there is no proven relationship, or nexus.[16] A common theme throughout the literature is

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[13] Gottschalk and Flanagan*, Jolly Roger With an UZI.*

[14] John Burnett, *Dangerous Waters: Modern Piracy and Terror on the High Seas* (New York: Penguin Group, 2002), 310.

[15] Martin Murphy, *Small Boats, Weak States, Dirty Money* (New York: Columbia University Press, 2009), 2,3.

[16] Martin Murphy, *Small Boats, Weak States, Dirty Money*, 380.

that piracy is a real concern, as opposed to a mere nuisance. The authors assert that piracy needs

to be taken seriously and addressed by the shipping industry, governments and international

organizations. What is missing in the book length literature concerning maritime piracy is the

Canadian perspective and whether or not Canada is affected by piracy or has a role in its

suppression. This gap is largely filled by journal articles in the *Canadian Naval Review*, relating

to Canada's role in maritime piracy operations, and by Canadian defence analysts such as Peter

Lennox, Ken Hansen and David Mugridge. Ken Hansen specifically notes that "the relevance of

distant pirate attacks to Canada has taken on a more human dimension than just a statistical one

concerned with the cost of shipping commodities."[17] In other words, the impact to Canada's

economy may be less important than Canada's stake in upholding the security and freedom of

the seas.

Does Canada have a stake in the suppression of maritime piracy? This question is

challenging to answer because all events of piracy recorded by the International Maritime

Bureau during the last five years and reported by the world's press happened in waters well away

from Canada, with the majority of attacks transpiring in Asian and African waters.[18] While

piracy has a regional economic and security impact, the direct impact on Canada is arguably

marginal. The world, however, is economically connected and events that happen on the

opposite side of the globe may very well affect Canada. The closure of a major trade route either

through excessive piracy, or because of an environmental disaster caused by piracy, could delay

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[17] Ken Hansen, "Piracy: How will Canada Respond to New Developments," *Canadian Naval Review*, Journal on-line; Internet; http://naval.review.cfps.dal.ca/forum/view.php?topic=52; accessed 25 February 2010.

[18] ICC International Maritime Bureau, *Piracy And Armed Robbery Against Ships Annual Report 1 January – 31 December 2009,* 7.

or increase the cost of global shipping. The effect of piracy on the global economy, and by proxy on Canada, has the potential to increase if piracy is allowed to proliferate, especially in vicinity of major trading rates.

As an importing and exporting nation Canada does have a stake in ensuring the freedom of the seas, but what are Canada's obligations to fight piracy? International law obliges navies to stop piracy whenever encountered on the high seas, but does not specifically obligate a country to deploy for counter piracy operations. To seek out piracy, a country would need to decide that doing so is either in its national interest or that a moral obligation exists compelling enough to entice the state to suppress piracy. This moral obligation can arguably be based on United Nations direction. Canada subscribes to the international treaties and conventions written under the jurisdiction of the United Nations. The United Nations, as reflected both in UNCLOS and in recent UNSCRs concerning maritime piracy off Somalia, considers maritime piracy to be a threat that should be fought because of the grave threat ongoing piracy poses to the "prompt, safe, and effective delivery of humanitarian aid to Somalia and the region, to international navigation and to the safety of commercial maritime routes, and to other vulnerable ships."[19] Not only is piracy dangerous to ships, at its base level piracy is a heinous act committed by criminals against weaker victims in an unstable environment - the sea. Accordingly, Canada has demonstrated a willingness to contribute to the United Nations efforts in countering maritime piracy through the deployment of its small blue water navy to the hostile waters where piracy is most prevalent. Canada's response shows its commitment to the United Nations and is a physical manifestation of Canada's foreign policy of being internationally engaged. However, the challenge to Canada,

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[19] United Nations Security Council, "Resolution 1897," http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/624/65/PDF/N0962465.pdf?OpenElement; Internet; accessed 16 February 2010.

given that the direct impact of maritime piracy is minimal, is to ensure that Canada's response be appropriately weighed with Canada's other security concerns and international commitments.

Canada's stake in countering maritime piracy is based on Canada's role as an internationally engaged country, Canada's role in guaranteeing safety for mariners, and Canada's role in ensuring freedom of the seas. These intangibles could be left to other nations, but Canada would be remiss in not doing its part. As a trading nation, Canada benefits from world security and has a vested interest in protecting worldwide sea lanes of communication. Canada's navy is legally obligated to stop the piracy it encounters and obligated to fight maritime piracy under international law and under United Nations Security Council Resolutions (UNSCRs) which call for all states to suppress piracy. Canada does have the authority to stop maritime piracy and is encouraged by the United Nations to do so. However, it will only be through a moral, rather than legal, obligation that Canada will deploy its maritime forces to suppress actively the pirates. The utility of navies, working collaboratively, in suppressing maritime piracy, is paramount, a fact proven throughout history. Canada has the capacity to contribute ships to countering piracy, however, the current makeup of the Canadian Navy, comprised of a small number of ships and aging equipment, means that decisions have to be made concerning employment. If Canada does believe that maritime security, and countering piracy, is important, it will have to continue to invest in its navy and ensure there is an appropriate force structure for meeting the security challenges of the 21st Century. There are challenges in using navies to fight piracy which include cost, the willingness to sustain operations, the loss of assets to other operations, and the argument that navies can only combat the symptom of piracy, not the root socio-economic causes ashore. However, in places of the world where piracy occurs, there is often a lack of

regional security, and it is only through international intervention that the injustice of piracy can be repressed.   Overall, given the potential economic threat should piracy proliferate, the potential security and environmental threats, the heinousness of the crime and because of the country's commitment to the United Nations, Canada has a stake in countering maritime piracy.

CHAPTER ONE – CANADA'S STAKE IN SUPPRESSING MARITIME PIRACY

Canada has a stake, arguably for both economic and security reasons, in suppressing piracy. Because of its investment in the global economy, the economic stake to Canada as a trading nation in mitigating piracy is real, even though the direct and measurable impact to the Canadian economy may be low. The contemporary pirate has an effect on regional economies but the direct financial impact that a Somali pirate has on a country across the globe, such as Canada, is statistically minimal.[20] In terms of piracy being a direct security threat, there has not been a recorded incident of maritime piracy in Canadian waters, even North American waters, during the 21st Century and, as reported by the IMB, only once in the past five years has a Canadian flagged vessel been afflicted by piracy.[21] However, piracy has festered throughout the world for hundreds of years, shifting and breaking out based on prevailing conditions. Even though the proliferation of piracy off the coast of Canada seems unlikely, the potential for a deteriorating situation caused by piracy does exist in other parts of the world. The possibilities that could cause such a situation include a piracy-terrorism nexus, a major environmental disaster caused by piracy or the proliferation of piracy to such extent that shipping companies would have to avoid certain trade routes. If a major shipping route shutdown, the world's economy could be strongly and negatively affected; the second and third order effects from such an occurrence would likely touch the globally-linked Canadian economy. Canada should therefore

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[20] Peter Chalk, Laurence Smallman and Nicholas Burger, "Countering Piracy in the Modern Era: Notes from a RAND Workshop to Discuss the Best Approaches for Dealing with Piracy in the 21st Century," RAND National Defence Research Institute, (Santa Monica: 2009), 2.

[21] ICC International Maritime Bureau, *Piracy And Armed Robbery Against Ships Annual Report 1 January – 31 December 2009,* 8.

help to ensure the freedom of the seas and promote the stable seaborne transportation of people and goods, regardless of whether or not Canadian citizens or Canadian flagged vessels are involved. As a trading nation, it is in Canada's interest to promote a secure global system which includes the mitigation of maritime piracy.

Contemporary piracy does not occur in Canadian waters and rarely affects Canadian citizens but a stake exists because of the vital importance of maritime transport to Canada's economy. Although piracy shifts over time, and Canada has both the geography and shipping volume that might entice maritime piracy, capable maritime security prevents piracy from proliferating in Canada. As well, the overall financial impact of maritime piracy to the global economy, although inherently difficult to measure, is assessed to be low. However, maritime shipping is vital to the world's economy, and if piracy were allowed to proliferate it could have a destabilizing effect on major shipping routes, and thus, on the global economy. Canada has a vested interest in a robust international economy and the importance of global trade is reflected in Canada's foreign policy. Economics and security are linked; secure waterways will allow goods to travel safely throughout the world and increase trade amongst nations. On a global scale, the overall economic impact of piracy will remain small so long as the associated security issues are kept in check by internationally engaged countries. Canada can work collaboratively with other countries in minimizing these security threats. Canada, as in internationally engaged country, has an interest in keeping global trade routes free from the violence associated with maritime piracy and therefore has a stake in suppressing piracy, a crime that history shows can not be eliminated, but can be managed to acceptable levels.

CONTEMPORARY MARITIME PIRACY

Piracy, although it has ebbed and flowed across the globe, has existed for thousands of years. The earliest recorded maritime piracy occurred in 800 BC and since that time has occurred in Europe, the Mediterranean, in the Americas and in Asia.[22] The 17th and 18th Centuries saw the "Golden Age" of piracy, an age glamorized in Hollywood movies, upon which some of the modern romantic views of piracy are based. However, because of the dominance of the Royal Navy, and persistent military campaigns to dampen the scourge, piracy waned during the 19th century; by 1850, piracy was stated to have become "a minor sideshow and there it remained."[23] Unfortunately, pirates are no longer a historical phenomenon. They have resurged and in the 21st century; largely because of the disruption to global shipping routes and because of the increased media attention, pirates have become a global issue.[24] The IMB's Piracy Reporting Centre, a specialised division of the International Chamber of Commerce, was established in 1992 to increase the accuracy of statistics on maritime piracy.[25] Since its formation, the IMB has documented credible reports that expose the scope of piracy attacks worldwide. In the last five years, piracy has mainly occurred off South East Asia, the Indian Sub Continent and Africa with an increase from 276 worldwide incidents in 2005 to 406 incidents in

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[22] Alfred Bradford, *Flying the Black Flag* (Westport: Praeger Publishers, 2007), xii.

[23] John Scott Cowan, "Is a War on Terror Possible? Lessons from the Long War Against Piracy," *Queen's Quarterly* 114, no. 1 (Spring 2007), http://proquest.umi.com/pqdweb?did=1285304481&Fmt=7&clientId=1711&RQT=309&VName=PQD; Internet; accessed 15 January 2010.

[24] Bradford, *Flying the Black Flag,* 190.

[25] ICC International Maritime Bureau, *Piracy And Armed Robbery Against Ships Annual Report 1 January – 31 December 2009,* 2.

2009.[26] The increase is significant; however, during this time period, there were no incidents of

piracy in North America and only three incidents in Europe. Since 2005, South East Asia has

seen incidents of piracy decrease by 50% (102 incidents in 2005 to 45 attacks in 2009); whereas,

in the Gulf of Aden and Somalia, where there are no regional maritime forces, piracy has jumped

by over 400% (45 attacks in 2005 to 196 attacks in 2009).[27] These figures show the surge in

recent attacks in the vicinity of Somalia and demonstrate the oscillating nature of piracy. Piracy

occurs where there is no significant naval presence and conditions allow the monetary reward to

exceed the risk.

Piracy tends to occur in coastal waters where authority is weak and pirates are able to

avoid naval and maritime patrols. The oceans, much of which are composed of the high seas, are

predisposed to maritime crime due to their anarchical nature.[28] The high seas belong to no

nation and no individual nation has responsibility for patrolling these waters. Without dedicated

law enforcement, the high seas offer the ideal situation by which pirates take advantage.

Arguably, even more precarious are coastal waters which offer 'safe havens' where pirates can

hide and attack ships close to shore. According to Roger Villar, opportunities for attack,

combined with poverty and a lack of law enforcement will lead to piracy.[29] Alternatively, what

pirates need for success are supply, limited detection and safe havens.[30] What is consistent is

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[26] ICC International Maritime Bureau, *Piracy And Armed Robbery Against Ships Annual Report 1 January – 31 December 2009,* 5.

[27] *Ibid*., 5.

[28] Chalk, *The Maritime Dimension of International Security…,2.*

[29] Villar, *Piracy Today*, 20.

[30] Gottschalk and Flanagan*, Jolly Roger With an UZI, 5.*

that piracy depends on geography and lax security to create a "favourable hunting ground" where reward will exceed risk.[31] In terms of geography, piracy has the potential to flourish where there is an extended coastline with 'safe havens' such as inlets or islands. Canada has 243,000 km of coastline, a significant portion of which, including much of the Gulf Islands in vicinity of Vancouver Island, is full of the natural islands that could facilitate maritime attacks.[32] Canada might also be said to have the aforementioned "favourable hunting grounds" with a supply of over 18,000 international ships arriving each year, often through choke points including the Straits of Juan de Fuca and the St. Lawrence Seaway.[33] However, geography and opportunity are not the only factors that allow piracy to flourish. Fortunately, at present, Canada possesses the necessary security forces both at sea and on land to deter pirates and make their ventures not worthwhile. However, in places of the world such as current day Somalia, where security forces have either been ill-trained, corrupt or non-existent, piracy is flourishing.

Piracy does not occur off the coast of Canada, and even with its oscillating nature, it is unlikely to spread to Canadian waters in the near future. It has been said that maritime piracy is a "global phenomenon but not a global problem."[34] In other words, piracy occurs throughout many different parts of the world but that its regional effect is greater than any international effect. However, it has also been noted that historically piracy tends to "some extent shift over

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[31] Martin Murphy, *Contemporary Piracy and Maritime Terrorism: The Threat to International Security*, Adelphi Paper 388,(London: International Institute for Strategic Studies, 2007), 14.

[32] Transport Canada, "Canada: Committed to Marine Safety, Security, Trade and the Environment - TP 14916 E," http://www.tc.gc.ca/eng/marinesafety/tp-tp14916-menu-182.htm; Internet; accessed 27 January 2010.

[33] *Ibid.*

[34] Murphy, *Small Boats, Weak States, Dirty Money*, 21.

time."[35] In other words, where it is happening today will not necessarily be where it happens

next year. The data produced by the IMB and by historical accounts support this position.

Piracy has existed and "there is little doubt that it will continue to grow."[36] Though piracy may

increase, its direct impact on Canada is likely to remain low in the near future and therefore the

direct security threat or economic impact may be limited. However, as a trading nation, Canada

still has a vested interest in keeping sea lanes open to global trade and in pushing the effect of

piracy to a marginal level.

ECONOMIC IMPACT

Over 90 percent of world trade is shipped by sea and, in 2008, it is estimated that the

industry transported over 7.7 billion tonnes of cargo.[37] Canada is an exporting and importing

nation; the total value of Canada's maritime trade was $190 billion in 2008.[38] This number is

significantly large enough to have maritime transport considered vital to Canada's economy.

There is little doubt that maritime transport will continue to be the "life blood of the global

economy" as it is still by far the least expensive way to ship goods.[39] The International Maritime

Organization (IMO) goes so far to state:

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[35] *Ibid., 177.*

[36] Villar, *Piracy Today*, 10.

[37] International Maritime Organization, "International Shipping and World Trade: Facts and Figures," http://www.imo.org/includes/blastData.asp/doc_id=8540/International %20Shipping%20and%20World%20Trade%20-%20facts%20and%20figures..pdf: Internet; accessed 20 January 2010.

[38] Transport Canada, "Canada: Committed to Marine Safety, Security, Trade and the Environment."

[39] International Maritime Organization, "International Shipping: Carrier of World Trade," http://www.marisec.org/shippingfacts/uploads/File/worldtradeflyer.pdf; Internet; Accessed 27 January 2010.

> Without shipping, it would simply not be possible to conduct intercontinental trade, the bulk transport of raw materials or the import/export of affordable food and manufactured goods – half the world would starve and the other half would freeze![40]

This statement is certainly bold and may be hyperbole but it does highlight the importance of global shipping. Economically, nations, including Canada, depend heavily on maritime trade and any entity that attacks that trade is a cause for concern. While maritime piracy does affect local shipping routes, and can affect major shipping routes, its economic impact is small compared to the overall value of maritime trade.

The exact financial cost of maritime piracy to the shipping industry and to the global economy is, unfortunately, difficult to ascertain, but an exact figure may not be necessary to determine scale. It has been estimated that maritime piracy annually costs the shipping industry anywhere from $1 billion to $16 billion a year, up to a high estimate of $50 billion.[41] Like much surrounding maritime piracy, there are reasons why the figures vary so drastically. Analysts disagree on whether to include the increased insurance premiums, additional port costs due to investigations and related delays, and salary increases that result from the rising incidents of maritime piracy. As well, many incidents of piracy go unreported, because shipping companies do not want the costs associated with the aforementioned factors. It is therefore challenging to put an exact dollar figure on the cost of maritime piracy. The high end numbers seem unlikely; yet even if valid, $50 billion is miniscule when compared to the worldwide maritime commerce estimated, in 2005, to be $7.8 trillion.[42] Therefore, even estimates at the high end have maritime

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[40] Ibid.

[41] Murphy, *Small Boats, Weak States, Dirty Money*, 50.

[42] Murphy, *Small Boats, Weak States, Dirty Money,* 51.

piracy impacting only 0.64% of world maritime commerce and at the low end it would be closer

to 0.012%. Thus, economically, piracy is a manageable problem and might be considered the

cost of doing business. The current minimal financial impact of piracy leads some in the world

and even in the shipping industry to consider piracy to be more of a "nuisance than a threat."[43]

In the Canadian context, the 0.012% of our GDP that depends on maritime shipping equates to

less than $2.5 million annually. It should be recognized that this figure is fraught with error but

it is simply meant to demonstrate that the direct impact of maritime piracy on the Canadian

economy might actually be marginal.

Though piracy may statistically have a minor effect on the world's economies, if left

unchecked, it could potentially disrupt major shipping routes and the repercussions could

become much greater. In today's context, piracy is extremely prevalent in the Gulf of Aden, a

key link between Asia and Europe that sees 21,000 ships pass through annually.[44] Because of

piracy, the insurance premium for transiting the region increased from $500 to $20,000 between

2007 and 2008.[45] However, piracy still affects less than 1% of traffic transiting the Gulf of Aden

and so the majority of shipping has not yet been "re routed as a result of piracy."[46] If piracy

were to proliferate and shipping companies decided en masse to avoid the Gulf of Aden, it would

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[43] Gottschalk and Flanagan, *Jolly Roger With an UZI*, 54.

[44] International Security Information Service Europe, "EU and NATO Efforts to Counter Piracy off Somalia: A Drop in the Ocean?" http://www.isis-europe.org/pdf/2009_artrel_332_esr46-eu-nato-counterpiracy.pdf: Internet; accessed 27 January 2010.

[45] United States Department of Transportation, "Economic Impact of Piracy in the Gulf of Aden on International Trade," http://www.marad.dot.gov/documents/HOA_Economic%20Impact%20of%20Piracy.pdf; Internet; accessed 27 January 2010.

[46] Murphy, *Small Boats, Weak States, Dirty Money*, 20.

cost at least $3.5 million of fuel per ship to alternatively transit the Cape of Good Hope.[47] These

additional costs would presumably be passed on to the consumer and could potentially increase

the cost of goods worldwide. In November 2008, the *Sirius Star*, a Very Large Crude Carrier,

carrying 2,000,000 barrels of oil, worth approximately $100 million was hijacked by pirates off

the east coast of Africa.[48] In this case, the direct market impact was measurable as the price of

oil increased by a dollar a barrel after the news of the attack.[49] *Sirius Star* carried one quarter of

Saudi Arabia's daily production of oil; this figure by itself represented only a small portion of the

world's oil supplies but, the effect on world markets was significant. The pirates were ultimately

able to garner a $3 million ransom for the return of the vessel. In 2009, over 12% of all pirate

attacks were against oil or gas carrying vessels.[50] This trend is worrying: a continued

proliferation of attacks against energy carrying ships, given both their monetary and extrinsic

value, would be devastating to the world's economy.

As part of Canada's foreign policy, it is in Canada's best interest to ensure the free

movement of commercial shipping throughout the world. This interest would include mitigating

maritime piracy to ensure that it does not close down a major shipping route. Canada's Chief of

Maritime Staff (CMS) has stated that, "Canada's economy is inextricably linked with the

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[47] United States Department of Transportation, "Economic Impact of Piracy in the Gulf of Aden on International Trade."

[48] Journal of Energy Security, "Maritime Piracy: Implications for Maritime Energy Security," http://www.ensec.org/index.php?option=com_content&view=article&id=180:maritime-piracy-implications-for-maritime-energy-security&catid=92:issuecontent&Itemid=341; Internet; accessed 27 January 2010.

[49] Nigel Hannaford, "Piracy on this Scale Must Not be Allowed to Go On," *Calgary Herald*, 18 November 2008, A14.

[50] ICC International Maritime Bureau, *Piracy and Armed Robbery…*, 3.

oceans."[51] This idea is solidified by the fact that three quarters of the nation's Gross Domestic

Product (GDP) is derived from international trade and a large percentage from maritime

shipping.[52] In other words, if the ability of Canada to export and import goods via the sea were

threatened, it could cause a significant down turn in the Canadian economy. As well, the CMS

goes on to note: "the oceans are our highways to the world's market places. They are the

backbone of the global transportation system, and as such, safe and secure navigable waters are

critical to the functioning of the Canadian economy."[53] This statement does not specify

waterways but instead is a general statement referring to the world's oceans. One trading route

that is currently threatened by maritime piracy is the Gulf of Aden. The routes that directly

supply the Canadian economy, both through the Pacific and Atlantic, are not currently affected

by maritime piracy. Regardless of the lack of a direct link between maritime piracy and the

Canadian economy, the protection of shipping routes by Canada as it relates to global commerce

is important. The Department of Foreign Affairs and International Trade (DFAIT) states that

"participation in global commerce has helped Canadians build a strong stable economy" and that

"Canada's future prosperity hinges on how well we…maintain our place as one of the world's

great trading nations." [54] It is in the national interest to be internationally engaged and mindful

of global shipping routes and, thus, Canada has a stake in suppressing the security concerns

associated with maritime piracy.

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[51] Department of National Defence, "The Future: Canada's Economic Prosperity," http://www.navy.forces.gc.ca/cms/10/10-a_eng.asp?id=295; Internet; accessed 27 January 2010.

[52] *Ibid*.

[53] *Ibid*.

[54] Department of Foreign Affairs and International Trade, "Seizing Global Advantage: A Global Commerce Strategy for Securing Canada's Growth and Prosperity," http://www.international.gc.ca/commerce/assets/pdfs/GCS-en.pdf; Internet; accessed 27 January 2010.

SECURITY CONCERNS

As difficult as it is to quantify the direct economic impact of maritime piracy for Canada, arguably it is even more challenging to quantify the security impact. Very few Canadians, or even Canadian flagged vessels, have been subjected to attacks of piracy in recent history. While there have been some cases of Canadian yachts being attacked in the Caribbean, the IMB reports only one Canadian vessel being attacked since 2005.[55] This attack involved a Canadian flagged yacht being assaulted by pirates while at harbour in vicinity of Madagascar. Four robbers boarded the yacht, cut the skipper's thumb and attempted to strangle his wife before stealing cash and escaping.[56] However, while one attack is enough to alert Canadians of the security threat that piracy poses, it certainly does not prevent shipping from reaching Canada, nor does it pose a threat to Canada on a national scale. Although the current security threat to Canada is miniscule, maritime piracy does pose a threat to the individual mariner, and as well, potential exists for the security threats associated with piracy to increase. Canada has a vested interest in reducing the threat to its citizens and preventing the threat of piracy from increasing.

Piracy has a very real human security cost worldwide. In 2009 alone, there were 1166 mariners subject to the violence associated with maritime piracy.[57] The violence includes

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[55] ICC International Maritime Bureau, *Piracy and Armed Robbery…*, 16.

[56] ICC International Maritime Bureau, *Piracy And Armed Robbery Against Ships Annual Report 1 January – 31 December 2007* (London: ICC International Maritime Bureau, 2009), 71.

[57] ICC International Maritime Bureau, *Piracy and Armed Robbery…*, 12.

assaults, threats, hostage-takings, injury and, in at least eight cases, murders.[58] These figures are

only from the reported cases of piracy and the total numbers could potentially be doubled

because of unreported cases.[59] A specific example, amongst many, occurred on 24 March 2009

off the coast of Thailand, when three pirates armed with knives and a hammer attacked a yacht,

assaulted, killed and threw the body of the skipper overboard and injured his wife.[60] Such

attacks are horrific and the after effects are more than just the injuries. Along with the physical

violence, there is also unaccounted psychological costs for both mariners who have been

attacked and mariners who have the potential to be attacked.[61] Canada has long championed the

rights of humans throughout the world to be "free from fear" and this arguably extends to the

rights of mariners to be free from the violence of maritime piracy.[62] Piracy is a criminal activity

and DFAIT professes that they remain "committed to working with our domestic and

international partners to effectively deal with the complex challenges posed by international

crime."[63] If true, it indicates that the Canadian government, and the people whose values they

espouse, would have an interest in suppressing maritime piracy throughout the world. The threat

to individual mariners is very real and should not be trivialized. It should be noted that even

though piracy can be a threat to individual mariners, it has not passed the tipping point where it

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[58] *Ibid*.

[59] Chalk p. 7

[60] ICC International Maritime Bureau, *Piracy and Armed Robbery…*, 37.

[61] Alison Kaufman, "China's Participation in Anti-Piracy Operations off the Horn of Africa: Drivers and Implications," *CNA China Studies*, http://www.cna.org/documents/Piracy%20conference%20report.pdf; Internet; accessed 28 January 2010.

[62] Department of Foreign Affairs and International Trade, "Evaluation of the Human Security Program," http://www.international.gc.ca/about-a_propos/oig-big/2003/evaluation/human_security-securite_humaine.aspx?lang=eng; Internet; accessed 28 January 2010.

[63] Department of Foreign Affairs and International Trade, "Transnational Organized Crime Overview," http://www.dfait-maeci.gc.ca/crime/index.aspx?lang=eng; Internet; accessed 28 January 2010.

A major event that could disrupt the security of the international community would be an environmental maritime disaster resulting from piracy. In the case of the *Sirius Star*, pirates could run the ship aground, either deliberately or unintentionally, causing the spill of millions of barrels of oil. A spillage of this amount of oil would cause damage to the marine environment and marine wildlife. There are numerous examples of pirates attacking ships, physically removing the crew from the bridge and leaving the ships "effectively Not Under Command."[64] A vessel not under command poses a tremendous navigational hazard, not only to the environment, but also to other ships. Piracy is often conducted in narrow straits with high traffic density, factors that enable the piracy to occur in the first place. It is therefore a real possibility for a hijacked ship, if not under command, to either run into another vessel or to run aground. On September 19, 1992, in the Malacca Strait the 27,000 ton container ship *Ocean Blessing* plowed full bore into the M/T *Nagasaki Spirit*, a 100,000-ton crude carrier.[65] Forty-four crew members were either killed in the subsequent fires, or by the pirates who had attacked both vessels, leaving them not under command and causing the collision. Fortunately, in this case, the oil spill from the *Nagasaki Spirit* was contained. However, the potential exists for a catastrophic event or

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[64] ICC International Maritime Bureau, *Piracy and Armed Robbery…*, 26.

[65] Burnett, *Dangerous Waters…*,135.

major environmental disaster to result from piracy; therefore Canada has a stake, as does the international community, in working collectively to prevent such a disaster. Similarly, Canada may have a stake in suppressing piracy because of a potential nexus with terrorism.

A potential security concern associated with maritime piracy is maritime terrorism. Maritime terrorists are ideologically motivated, distinguishing them from maritime pirates who are motivated by financial gain. The most significant example of maritime terrorism occurred in 2004 with the bombing by terrorists of the Philippine ship *SuperFerry 14* – an attack that killed 114 people.[66] There have also been reports of political extremists in South Asia boarding vessels in an apparent effort to learn how to pilot them for 9/11 style attacks.[67] While these acts were not associated with maritime piracy, and in fact no connection between maritime piracy and maritime terrorism has ever been conclusively proven, the potential exists. Pirates could aid terrorists in their nefarious endeavours by showing them how to attack ships; by attacking ships for them; or by disguising a terrorist attack as an act of piracy. Peter Chalk presents a worst case scenario that envisions pirates using their skills to hijack a liquefied-natural gas ship which could then be used as a large scale bomb in a major port city.[68] As well, there is potential for terrorists to use maritime piracy as a means of building wealth, such as Somali pirates providing funds to Al-Shabaab terrorists. It is therefore wise to combat maritime piracy in efforts to discourage terrorists from using it to their advantage. Even though the factors linking piracy to terrorism are potential, and thus difficult to quantify, Canada's stake in preventing a piracy-terrorism nexus is

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[66] Chalk, *The Maritime Dimension of International Security,* 50.

[67] *Ibid*., xiv.

[68] *Ibid*., 31.

real. It is recognized that Canada is neither large enough, nor possesses the security forces, to prevent all of the threats associated with piracy. However, Canada can work collectively with other internationally engaged countries in protecting the world's seas.

CANADA'S STAKE

With $190 billion of the Canadian economy depending on the continued freedom of the world's waterways, Canada does have a stake in ensuring the freedom of the seas, even if the extent of piracy's economic impact is challenging to quantify. This difficulty in quantifying the economic impact largely exists because the "second order effects in markets affected by piracy (are) uncounted."[69] However, regardless of the direct impact, Canada has a stake in suppressing piracy because stable sea routes will permit the global trade from which Canada is a beneficiary.[70] As stated by analyst Roy Rempel, Canada has "global responsibilities… success is ultimately tied to a stable international order."[71] In other words, if Canada wants to have a successful economy, then it should do its part in ensuring the freedom of the seas. There is a link between economics and security, in that, a stable world will allow prosperous international trade. However, "one attack on the wrong ship at the wrong time" could result in the closure of one of

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[69] John Patch, "The Overstated Threat," *United States Naval Institute Proceedings* 134, no. 12 (December 2008), http://proquest.umi.com/pqdweb?did=1610026731&Fmt=7&clientId=1711&RQT=309&VName=PQD; Internet; accessed 22 January 2010.

[70] Gottschalk and Flanagan*, Jolly Roger With an UZI*, 103.

[71] Roy Rempel,"Canada's National Interests," *Dreamland: How Canada's Pretend Foreign Policy Has Undermined Sovereignty*, (Montreal and Kingston: McGill-Queen's University Press, 2006), 155.

the strategic international waterways upon which so much of the world economy depends.[72] If

the insurance rates became prohibitively high and the risk of pirate attack became greater than

the savings in time and money, shipping companies could choose alternate and more expensive

routes. This increased cost would be passed on to all consumers, including those in Canada.

While piracy may not threaten all shipping routes, the threat of piracy or maritime piracy upon

the sea lanes of communication is a reality in parts of the world including the Gulf of Aden and

the Malacca Strait. For a country such as Canada, whose economy depends on imports and

exports, piracy may be more than just a regional concern because of the impact should major

shipping routes be threatened.[73]

Ships travelling to North America should be able to do so as inexpensively and as safely

as possible. In today's context, they are able to use both Pacific and Atlantic sea lines of

communication to North America free from piracy and it is important that the collaborative

actions of government allow this route to remain a safe passage. Internationally oriented

governments, including Canada, may be the only organizations with the financial resources and

will to attack the maritime piracy problem. As Jack Gottschalk and Brian Flanagan note in *Jolly

Roger with an Uzi*: "Whether the concern is viewed primarily as economic, human, or

environmental, collective and individual action by governments represents the only likely

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[72] Stephanie Hanson, "Combating Maritime Piracy," *Council on Foreign Relations* (journal on-line); available from http://www.cfr.org/publication/18376/; Internet; accessed 10 December 2010.

[73] Karsten von Hoesslin, "The Implications of Illegal Maritime Activities for Canadian Security and Methods of Enhancing Surveillance and Monitoring in East Asian andNorth Pacific Waters," *Conference of Defence Associations*; available from http://www.cda-cdai.ca/cdai/uploads/cdai/2009/04/hoesslin03.pdf; Internet; accessed 28 January 2010.

solution to the global piracy problem."[74] In other words, governments should work together to

push maritime piracy, and its associated violence, to the margins.

In the regions where it occurs, and to the mariners that are its victims, there are very real

costs associated with maritime piracy. The violence associated with piracy can be absolutely

terrifying. For this reason, the lead agency on compiling piracy statistics, the IMB, has been

reluctant to put a financial cost on piracy, arguably because it would detract on the less

quantifiable human and security costs.[75]   If piracy is not suppressed, there is potential for

incidents to increase, spread and become "more serious."[76] Canada should keep the world's

maritime transit points, including the Gulf of Aden, free from piracy and free from fear for

seafarers of all nationalities, however difficult the security impact might be to quantify.

Therefore, in determining an appropriate level of participation in countering piracy, it is useful to

discuss not only Canada's stake but also Canada's obligations, in collaboration with other

internationally engaged countries, in combating that which is a regionally occurring problem

with global implications.

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[74] Gottschalk and Flanagan, *Jolly Roger With an UZI,* 106.

[75] Murphy, *Contemporary Piracy and Maritime Terrorism*, 20.

[76] Murphy, *Contemporary Piracy and Maritime Terrorism,* 86.

CHAPTER TWO – CANADA'S OBLIGATION TO COUNTER MARITIME PIRACY

International law, including articles from the *United Nations Convention on the Law of the Seas* (UNCLOS), the *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation* (SUA), and resolutions drafted by the United Nations Security Council, authorizes the armed forces of nation states to combat piracy. These legal frameworks sometimes use words like 'shall' and 'the UN calls upon all states' in order to invoke nation states towards action. An invocative resolution can be construed as an obligation. However, a United Nations Security Council Resolution (UNSCR) does not necessarily obligate nations to deploy naval and air forces immediately and specifically for the purpose of resolving a conflict. This situation is because nations, declared sovereign, are free to choose their own actions. When countering piracy, there is a long way between being authorized and being obliged to seize and prosecute pirates. International law may provide the groundwork but each nation will decide how to respond, depending on its resources, its stake in the fight and its perceived moral obligations. No state, not even a superpower such as the United States, can respond militarily to all UNSCRs because resources are limited, and thus choices must be made.[77] Under international law, the Canadian Navy is obliged on the high seas to combat the piracy it encounters, but that is not the same as seeking out pirates. With a navy of limited size, Canada must decide what its true obligations are.

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[77] Jon Peppetti, "Builing the Global Maritime Security Network: A Multinational Legal Structure to Combat Transnational Threats," *Naval Law Review* Online, http://www.jag.navy.mil/documents/navylawreview/NLRVolume55.pdf; Internet; accessed 16 February 2010.

Is Canada obligated to deploy actively its small, but capable blue water navy to areas of the world where it can seek out and combat piracy in support of international organizations and laws? The answer is that Canada is not legally obliged but a more subjective, moral obligation does exist due to the human cost and the heinousness of the crime. It has been suggested that Canada has an economic stake in countering piracy with the potential for the economic impact to increase. It has also been suggested that Canada has a stake in minimizing the security concerns and potential security impact associated with piracy. There is a role for Canada to play in ensuring that the international law concerning piracy is sound, relevant and useful; there is also a co-operative role in sharing information and intelligence with other nations regarding piracy patterns and locations. Moreover, international law and the conventions created under the United Nations both authorize Canada to fight piracy and compel Canada to act. The invocations of the UN to respond to piracy, combined with the moral compulsion that arises because of Canada's stake in suppressing piracy, indicate that Canada does have an obligation to counter maritime piracy.

Canada has the constabulary ability, under UNCLOS, SUA and numerous UNSCRs, to apprehend pirates and is in fact obligated to prosecute the pirates that are captured. The legal framework allows Canada to apprehend pirates both on the high seas and, in specific circumstances, in another state's territorial waters, but only within certain limitations. Statements in UNCLOS and the applicable UNSCRs, which obligate Canada to respond, show that Canada should act in countering piracy. These conventions contain specific clauses and articles that invoke action from nation states and the military forces under their purview. Ultimately, even though international treaties indicate that Canada should act in certain ways, an

understanding of the country's moral obligations may indicate what Canada will do to counter the crime of maritime piracy.

COUNTERING MARITIME PIRACY – WHAT CANADA HAS THE AUTHORITY TO DO

Piracy has been called the first universal jurisdiction crime and, as fore mentioned, a "crime against nations."[78] Accordingly, international law, such as UNCLOS, has been written to allow nations to apprehend pirates on the high seas, an area of the earth that belongs to no individual state. Completed in 1982, UNCLOS, was designed to "promote the maintenance of international peace and security" and thus includes provisions on maritime piracy.[79] Although not ratified by the United States, UNCLOS has been ratified by 160 nation states and "is the best evidence of international law relating to the maritime regime, and is therefore binding to all nations."[80] It is, therefore, important to examine the strengths and limitations of UNCLOS in the fight against piracy. Within the UNCLOS definition, piracy must be committed on the high seas, be committed for private ends, and involve two or more vessels.[81] Article 105 authorizes nations to combat piracy:

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[78] Milena Sterio, "Fighting Piracy in Somalia (and Elsewhere): Why More Is Needed," available at http://works.bepress.com/cgi/viewcontent.cgi?article=1003&context=milena_sterio; Internet; accessed 16 February 2010.

[79] Tommy Koh, "A Constitution for the Oceans," United Nations; available from http://www.un.org/Depts/los/convention_agreements/texts/koh_english.pdf; Internet; accessed 16 February 2010.

[80] Peppetti, "Builing the Global Maritime Security Network: A Multinational Legal Structure to Combat Transnational Threats."

[81] United Nations, "United Nations Convention on the Law of the Sea," http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm; Internet; accessed 16 February 2010.

> On the high seas, or in any other place outside the jurisdiction of any
> State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken
> by piracy and under the control of pirates, and arrest the persons and seize the
> property on board.[82]

In addition, Article 107 of UNCLOS states that only a military ship or aircraft, or appropriately

marked government vessel can carry out this seizure, thus precluding vigilante justice amongst

mariners.[83] As well, Article 110 specifies that having suspicion of piracy is one of only five

reasons for which a warship may board another vessel without flag state consent.[84] The

combination of these articles clearly indicates that Canadian naval warships are authorized to

investigate and seize ships taken by piracy, within limitations.

UNCLOS allows for the apprehension of pirates but limits the circumstances and

locations as to where this act can occur. Because piracy, by definition, has to occur on the high

seas or within economic exclusion zones (EEZ), any act of piracy within territorial seas is

considered armed robbery and only the territorial nation has jurisdiction. This limitation is, of

course, restrictive because piracy often occurs next to states that are either unwilling or unable to

patrol their territorial seas.[85] States are understandably reticent to have other countries impose

on their sovereignty; thus, even the United Nations is cautious in authorizing the entry of third

party states into territorial waters except in the most severe circumstances.[86] Somali pirates were

known to use this loophole to their advantage – committing acts of piracy on the high seas and

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[82] *Ibid.*

[83] *Ibid.*

[84] *Ibid.*

[85] Murphy, *Contemporary Piracy and Maritime Terrorism,* 10.

[86] *Ibid.,* 12.

then retreating back to Somali waters in order to avoid prosecution.[87] UNCLOS allows for hot

pursuit of armed robbers, such as pirates, from territorial waters out towards the high seas as long

as continuous tracking is maintained.[88] However, the reverse is not true. If a navy ship is

pursuing pirates, once the pirates enter territorial waters, the naval ship must abandon the pursuit.

It would only be through a change in international law, or through a UNSCR, that this limitation

would be lifted. Similarly, the requirement for two vessels can be restrictive. For example, if a

group of pirates or hijackers were to stow away on an oil tanker leaving Nigeria and then

violently seize that vessel at sea, the act would not technically be piracy as only one vessel is

involved; and, therefore, the ability of a navy to respond would be restricted. Furthermore, the

UNCLOS definition determines that piracy must be for private ends.[89] So, any state affiliated

group cannot be considered pirates. Terrorists, because of their political motivation, do not

qualify as pirates under UNCLOS even though their actions in the maritime environment may

parallel those of pirates.

Another challenge, while using UNCLOS as the basis in countering maritime piracy, lies

in what to do with pirates once they are captured. If a naval vessel were to come upon two

vessels on the high seas in the midst of an act of piracy, and if the navy were able to stop this act

and apprehend the perpetrators, who were committing said act for private ends, what is to be

done with these pirates? UNCLOS states that the capturing nation may decide on the "penalties

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[87] Milena Sterio, "Fighting Piracy in Somalia (and Elsewhere): Why More Is Needed."

[88] Sam Bateman, *UNCLOS and its Limitations as the Foundation for a Regional Maritime Security Regime*, IDSS Working Paper No. 111 (Singapore: Institute of Defence and Strategic Studies, Nanyang Technological Univeristy, 2006), 25.

[89] United Nations, "United Nations Convention on the Law of the Sea."

to be imposed."[90] This statement is broad which puts the onus on a state's domestic laws to

determine the exact penalty and thus makes the consistent prosecution of pirates challenging.

As well, UNCLOS does not allow for pirates to be transferred legally to a third state for

prosecution. Arguably, this limitation has been one of the chief hurdles for navies off the coast

of Somali who have had to release Somali pirates. The limitations of UNCLOS, as it pertains to

piracy, caused the drafting of other international legal frameworks.

The *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime*

Navigation (SUA) was drafted primarily to close the loopholes that existed in international

maritime law and to bolster counter terrorist legislation.[91] SUA does not specifically use the

word piracy but does recognize that there is a "need for all States, in combating unlawful acts

against the safety of maritime navigation."[92] The following constitute offences under SUA:

> 1. Any person commits an offence if that person unlawfully and intentionally:
> (a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
> (b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or
> (g) injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).
> 2. Any person also commits an offence if that person:
> (a) attempts to commit any of the offences set forth in paragraph 1; or
> (b) abets the commission of any of the offences set forth in paragraph 1 perpetrated by any person or is otherwise an accomplice of a person who commits such an offence.[93]

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[90] *Ibid.*

[91] Robert C. Beckman, "The 1988 SUA Convention and 2005 SUA Protocol: Tools to Combat Piracy, Armed Robbery and Maritime Terrorism," in *Lloyd's MIU Handbook of Maritime Security*, ed. Rupert Herbert Burns, Sam Bateman and Peter Lehr, 187-200 (London: Taylor and Francis Group, 2009), 188.

[92] Admiralty and Maritime Law Guide, "Convention for the Suppression of Unlawful Acts Against the Safety of Martime Navigation," http://www.admiraltylawguide.com/conven/suppression1988.html; Internet; accessed 16 February 2010.

[93] *Ibid.*

It can be discerned from these statements that any maritime piracy involving violence will likely fall under the SUA definition. Thus, it provides states, such as Canada, the legal framework needed to apprehend and prosecute pirates as long as violence is involved. SUA foregoes the two ship rule, as well as the requirement for the act to be for "private ends," and creates the legal basis that allows a country to transfer captured pirates to a third state for prosecution. Under SUA, the United States' and United Kingdom's transfer of Somali pirates to Kenya for prosecution was technically legal.[94] But, as discovered with UNCLOS, there are also limitations within SUA that restrict Canada's ability to counter piracy.

Under SUA acts of piracy are not limited to the high seas. The only requirement is that a vessel needs to be either transiting to or from international waters.[95] The SUA, however, does not specifically authorize the boarding of ships nor does it provide for the entry of a third party into a sovereign state's territorial water. As well, SUA does not apply in the coastal waters of a state for vessels travelling internally. Many acts of piracy are committed against these very vessels – vessels transiting within 12 nautical miles of land within a state's territorial seas.[96] Therefore, in order to truly provide for the effective pursuit and prosecution of pirates, the United Nations has had to draft and issue Security Council Resolutions.

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[94] Milena Sterio, "Fighting Piracy in Somalia (and Elsewhere): Why More Is Needed."

[95] Admiralty and Maritime Law Guide, "Convention for the Suppression of Unlawful Acts Against the Safety of Martime Navigation."

[96] Murphy, *Contemporary Piracy and Maritime Terrorism,* 12.

The UN Security Council's resolutions concerning piracy off the coast of Somalia demonstrate both the evolution of the international commitment to fighting piracy and the legal framework necessary to authorize a response in conjunction with this commitment. Piracy, off the coast of Somalia, was first mentioned by the Security Council in 2006 in UNSCR 1676. The United Nations was concerned about the "rising incidents of piracy" but, the resolution did not authorize action contradictory to UNCLOS or SUA.[97] Concern was reiterated in the following years in resolutions, UNSCR 1772 (2007) and UNSCR 1801(2008), where nations were urged to combat piracy off of Somalia. However, these resolutions still failed to provide the additional legal framework necessary to pursue pirates inside territorial waters.[98] Resolution 1861 was the first UNSCR concerning Somali piracy written with bolder measures for combating the scourge in mind. Like the previous resolutions, it urged states operating on the high seas off the coast of Somalia to be vigilant in deterring piracy but it went further to state that navies were permitted to:

> (a) Enter the territorial waters of Somalia for the purpose of repressing acts
> of piracy and armed robbery at sea; and
> (b) Use, within the territorial waters of Somalia, in a manner consistent with
> action permitted on the high seas with respect to piracy under relevant international law,
> all necessary means to repress acts of piracy and armed robbery.[99]

UNSCR 1861 circumvented the location restrictions of UNCLOS and SUA and allowed navies to enter the territorial waters of Somalia in order to seize maritime pirates. The UN was able to do so with the permission of the Somalia Transitional Federal Government and by applying a

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[97] United Nations Security Council, "Resolution 1676," http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/343/85/PDF/N0634385.pdf?OpenElement; Internet; accessed 16 February 2010.

[98] United Nations Security Council, "Resolution 1772," http://daccess-ods.un.org/TMP/277715.2.html; Internet; accessed 16 February 2010.

[99] United Nations Security Council, "Resolution 1816," http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/361/77/PDF/N0836177.pdf?OpenElement; Internet; accessed 16 February 2010.

time constraint within the resolution. UNSCR 1861 was valid for a period of six months. In

December 2008, Resolution 1846 extended the time allotment, increasing it by twelve months.

UNSCR 1846 also thanked nations, including Canada, for their assistance in counter piracy

patrols in the vicinity of Somalia.[100] The following year, the threat of maritime piracy off the

coast of Somalia persisted and UNSCR 1897 in December 2009 extended the authorizations a

further twelve months.[101] The fact that the UN has had to renew the mandate indicates that

regardless of the authorizations, maritime piracy off the coast of Somalia has not been

eliminated, or even mitigated to an acceptable level. This continuation of piracy may indicate

that because of the conditions ashore, naval forces working off Somalia can protect shipping, but

cannot eliminate piracy. Regardless, the UN has renewed the mandate, allowing the many

diverse navies in the area to suppress piracy, even within Somali territorial waters.

It may be argued that the repeated resolutions to extend measures, which interfere with

the sovereignty of a state, are a dangerous precedent. But importantly, these resolutions were

made specific to the case of maritime piracy off the coast of Somalia and the United Nations

Security Council made it clear that they do not form the basis for changing international

customary law.[102] UNSCRs 1861, 1846 and 1897 allow for more robust measures in fighting

Somali pirates but do little for the other acts of maritime piracy transpiring throughout the world,

or for a future surge of piracy that will someday occur in vicinity of another problematic coastal

state. Overall, UNCLOS and SUA provide the basis for Canadian warships to seize pirates on

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[100] United Nations Security Council, "Resolution 1846," http://daccess-dds-
ny.un.org/doc/UNDOC/GEN/N08/630/29/PDF/N0863029.pdf?OpenElement; Internet; accessed 16 February 2010.

[101] United Nations Security Council, "Resolution 1897."

[102] *Ibid.*

the high seas and to prosecute them in Canada or, in the case of SUA, to transfer them to a third party state for prosecution. The series of UNSCRs concerning Somalia authorize Canada to enter Somalia's territorial waters to capture pirates until December 2010. It is clear then that Canada is presently authorized to seize and prosecute pirates, but it is also important to investigate the documentation indicating that it is not only authorized to, but actually should counter piracy.

COUNTERING MARITIME PIRACY – WHAT CANADA SHOULD DO

Beyond giving legal authority to act, actual international pressures, or obligations, to counter maritime piracy occur in UNCLOS, SUA and relevant UNSCRs. The clearest example is Article 100 of *United Nations Convention on the Law of the Sea,* which very clearly lays out the obligation of states to cooperate in the repression of piracy: "All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State."[103] Though compelling, the caveats to Article 100 are that it is limited to the high seas and that it uses words inherently difficult to define such as 'shall' and to the "fullest possible extent." Certainly, a Canadian warship coming across an act of piracy on the high seas would be obligated under international law to respond. But, "to the fullest extent possible" does not necessarily mean that Canada is obligated or expected to sail its entire fleet to various corners of the world to seek out and fight the problem of piracy. Individual states are obligated to respond but are free to determine the extent of that response.

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[103] United Nations, "United Nations Convention on the Law of the Sea."

The *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation* contains articles that can be construed as obligations, even though ultimately, the convention still leaves nations free to determine the level of response. The actions that constitute offences under SUA have been previously mentioned. Within Article 6 of SUA, Canada is obligated to establish jurisdiction over any offence committed:

> (a) against or on board a ship flying the flag of the State at the time the offence is committed; or
> (b) in the territory of that State, including its territorial sea; or
> (c) by a national of that State. [104]

Furthermore, Article 7 of SUA obligates Canada to take any maritime pirate found in Canada "into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted."[105]   While the obligations of Article 6 and Article 7 exist, they are of little practical use to Canada due to the lack of pirates in Canada and the lack of piracy committed in Canadian waters, against Canadian flagged ships or by Canadians themselves. The pirates that are encountered, in today's context, are on the other side of the world, presenting a difficult challenge to Canada's ability to meet the obligations of international maritime law. Article 5 of SUA compels nation states that seize pirates to punish them appropriately with "penalties which take into account the grave nature of those offences."[106]   Arguably, by occasionally releasing Somali pirates after their capture, Canada is not living up to its obligations under SUA. *The Globe and Mail* and the United States criticized Canada's "catch and release approach to countering piracy" saying that it "is at odds with other

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[104] Admiralty and Maritime Law Guide, "Convention for the Suppression of Unlawful Acts Against the Safety of Martime Navigation."

[105] *Ibid.*

[106] *Ibid.*

navies and flouts Ottawa's obligations under International law."[107] It is easy to say that Canada

is not living up to its obligations; it is much harder to provide a viable solution. Transporting the

pirates from the Gulf of Aden back to Canada for prosecution would be logistically, financially

and jurisdictionally prohibitive. Extraditing them to a third state also has it limitations. Both the

United Kingdom and the United States have extradition treaties with Kenya, but even then,

pirates have to be tried within 24 hours of capture and witness statements are not allowed –

meaning the actual witnesses have to show up in court.[108] Canada is obligated under Article 5 of

SUA to not only seize the pirates that it encounters on the high seas but also to prosecute them

appropriately. However, in practice this requirement has proven to be very difficult, even with

full United Nations support in counter piracy operations.

There are a multitude of Security Council resolutions that require states to counter

maritime piracy. These UNSCRs use words such as 'affirms', 'requests' and 'calls on' to denote

a level of obligation. A request would denote optional participation from member nations;

however, the phrase "calls on" is meant to compel states into action. The most recent UNSCR

concerning Somalia, still in effect, is the aforementioned Resolution 1897. On 30 November

2009, UNSCR 1897 set a twelve month mandate:

> [the United Nations] renews its call upon States and regional organizations that have the
> capacity to do so, to take part in the fight against piracy and armed robbery at sea off the
> coast of Somalia, in particular, consistent with this resolution and international law, by
> deploying naval vessels…[109]

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[107] Paul Koring, "Ottawa's Piracy Policy Flouts Law, Experts say," *The Globe and Mail*, May 1, 2009;
http://proquest.umi.com/pqdweb?index=0&did=1693832691&SrchMode=1&sid=2&Fmt=3&VInst=PROD&VType
=PQD&RQT=309&VName=PQD&TS=1266344161&clientId=1711; Internet; accessed February 16, 2010.

[108] Chalk, Smallman and Burger, "Countering Piracy in the Modern Era: Notes from a RAND Workshop to
Discuss the Best Approaches for Dealing with Piracy in the 21st Century," 1.

[109] United Nations Security Council, "Resolution 1897."

While applying to all states, the resolution specifically calls upon "flag, port, and coastal states, States of the nationality of victims and perpetrators" to suppress piracy.[110] This call is certainly understandable given that international law under SUA is more readily applied when one of these factors is involved. However, Canada is a state that has naval vessels capable of contributing to the fight against piracy. The resolution calls upon all States with jurisdiction under international law to ensure the proper investigation and prosecution of maritime pirates.[111] Canada, and any Canadian military ship operating off the coast of Somalia and within the Gulf of Aden, is obligated to respond under UNSCR 1897. For Canada, the question becomes one of what level of response?

COUNTERING MARITIME PIRACY – CANADA'S MORAL OBLIGATION TO RESPOND

The international legal framework in existence allows Canada to seize pirates. As well, clauses in UNCLOS, SUA and relevant UNSCRs actually obligate Canada to respond and to ensure appropriate prosecution of pirates. However, there is no legal obligation to deploy on counter piracy operations, which inherently remains a national decision. Even when the United Nations Security Council calls upon all member states to conduct a certain action, not all member states respond, and certainly they do not all respond to the fullest extent of their ability. Therefore, it is not enough to know that Canada is obliged to respond by international bodies; it is also important to decide nationally that Canada should respond. The lack of a clear legal

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[110] *Ibid*.

[111] *Ibid*.

obligation leads to the challenging realm of a moral obligation, an obligation that arguably

applies to Canada in the mitigation of world wide maritime piracy. This moral obligation falls

into three categories: an obligation to respond because Canada is engaged in the international

economy; an obligation to respond because Canada professes to believe in human security; and,

an obligation to respond as a strong supporter of the United Nations.

Canada as a trading nation benefits from secure international shipping. As a country that

greatly benefits from international trade, it can be argued that Canada not only has a stake, but in

fact is morally obligated to do its part in maintaining that trade. It is one thing to be a member of

economic coalitions such as the G8 and G20, it is another thing to work actively by committing

financial and human resources in ameliorating seaborne transit through the provision of security.

The United Nations UNCLOS website states that "the oceans are the foundation of human

life."[112] The UN makes this bold statement because so much of the world depends on the food,

resources and trade that flow from the oceans. Canada has a moral obligation to ensure the

freedom of these oceans, and this obligation includes keeping maritime piracy on the margins.

Maritime piracy has a direct impact on its victims and Canada has a moral obligation to

do its part in protecting mariners worldwide. It would be impossible to protect all peoples using

the oceans for business or pleasure; however, this challenge does not mean that Canada should

not make an effort to work multilaterally in ensuring that the world's waterways are secure.

DFAIT policy talks about Canada's desire to promote "human security" and of Canada's

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[112] United Nations, "United Nations Convention on the Law of the Sea."

"responsibility to protect."[113] It is recognized that the "responsibility to protect" doctrine came about to intervene internationally in cases of genocide or mass murder. However, the DFAIT policy goes on to note that "human security goes beyond traditional security concepts to focus instead on protecting the individual."[114] It is, therefore, logical to state that Canada, if it follows through on its policy, does have an obligation to ensure safety of life and freedom from fear where possible. It is impossible to determine when Canadian citizens or Canadian flagged vessels will be affected by piracy. Therefore, the obligation to fight piracy, based on human security, applies to all citizens, not just Canadians, and would imply that Canada should follow the United Nations request to combat maritime piracy.

Canada has a moral obligation to follow through on its commitment to the United Nations and its policies. UNCLOS, SUA and UNSCRs all fall directly under the United Nations or its affiliated organizations. Canada is a signatory to SUA and UNCLOS and was even a co-sponsor of UNSCR 1816, the first UNSCR with maritime piracy as its primary focus.[115] The Department of Foreign Affairs and International Trade states: "at the international level, Canada remains firmly committed to the United Nations as the cornerstone of the multilateral system."[116] If these words are true, and the United Nations is fully resolved to fight piracy, then Canada has an obligation to contribute in assisting and should respond to the call. After all, as noted by the Department of Foreign Affairs, the United Nations "is the indispensable global organization for

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[113] Department of Foreign Affairs and International Trade, *Canada's International Policy Statement: A Role of Pride and Influence in the World* (Ottawa: Department of Foreign Affairs and International Trade, 2005), 10.

[114] *Ibid*., 14.

[115] Paul Koring, "Ottawa's Piracy Policy Flouts Law, Experts Say."

[116] Department of Foreign Affairs and International Trade, *Canada's International Policy Statement: A Role of Pride and Influence in the World,* 9.

a globalizing world…the UN helps to preserve our sovereignty, protect our key interests and defend our values."[117]   This statement certainly denotes Canada's commitment to the United Nations and may indicate a moral, as opposed to legal obligation, to respond. It is with this moral obligation in mind that maritime piracy should be suppressed. Regarding piracy off the coast of Somalia, the United Nations has done its part in providing the legal authority and calling nations to act. There is no guarantee that the mandate will extend beyond 2010 and, therefore, it is imperative that nations seize the initiative to suppress Somali piracy now.

CANADA'S OBLIGATION TO COUNTER PIRACY

Canada has a moral obligation to counter maritime piracy and a legal obligation to both seize the pirates it encounters and ensure their prosecution. Under international law, Canada has an obligation to bring pirates to justice and therefore should continue to work in conjunction with the international community in finding a solution for captured pirates. The legal frameworks currently exist in bold UNSCRs to seize pirates in the coastal waters of Somalia. However, it needs to be remembered that piracy occurs worldwide, and where it does not exist today, it may exist tomorrow. In order to prevent piracy from spreading, it is vital that internationally engaged governments, the organizations with the resources and navies capable of suppressing piracy, combat piracy at its source.

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[117] Department of Foreign Affairs and International Trade, "Canada at the United Nations," http://www.canadainternational.gc.ca/prmny-mponu/canada_un-canada_onu/index.aspx; Internet; accessed 24 March 2010.

In spite of the legal challenges, Canada and its maritime forces should respond to the request of the United Nations and contribute to the suppression of piracy. Piracy is a widespread issue and the UNCLOS definition, the legal definition, may be too restrictive. It has been argued that a more comprehensive definition of piracy should be adopted to eliminate the loopholes that can make the pursuit and prosecution of piracy challenging. However, changing definitions will not stop pirates from committing their crimes; instead it is through the actions of governments and maritime patrols that piracy can be mitigated. Canada does have a legal obligation to stop the piracy its maritime forces encounter and has a moral obligation to follow through on United Nations resolutions. However, the decision to respond to the United Nations' call is a choice; if Canada truly wants to be seen as a committed and responsible member of the United Nations it should do its part and commit resources to counter piracy operations. This decision to respond would be in contrast to the decision to leave the suppression of the heinous crime of piracy to others, a decision that would indicate complacency. The way that Canada can act on a decision to respond to the United Nations request to suppress piracy is through the deployment of its maritime forces.

CHAPTER 3 – CANADA'S PARTICIPATION IN COUNTERING MARITIME PIRACY

Not only does Canada have a stake in the fight against piracy, it is legally obligated to stop the piracy it encounters and morally obligated to work with the international community in suppressing the scourge. These factors, however, do not indicate what an appropriate method or level of response would be for Canada. Historically, it is through naval power that piracy has been pushed to the margins. Given the small size of its military forces, the Canadian naval response will have to be in collaboration with other partners in order to have significant effect in attacking some of the factors associated with piracy. Maritime piracy has always required favourable geography for its hunting grounds, lax law enforcement and the likelihood that reward will exceed risk. Navies can provide the missing element of law enforcement and make the risk to pirates greater than any potential reward; this can occur especially when maritime forces have the authority to use adequate force at sea and captured pirates receive significant punishment when prosecuted ashore. Ideally, the maritime forces combating piracy are national and regional and thus able to fight piracy at its sources. However, when regional maritime forces are ineffectual, or non-existent, the international community may be required to assist in suppressing maritime piracy. To this effort, Canada has recently deployed elements of its maritime forces to the Horn of Africa to assist in a region that does not possess its own domestic maritime patrols.

Given the increased media awareness and the potential global ramifications of piracy, the world's nations have responded to the increased activity off the coast of Somalia. The United Nations has ratified UNSCRs authorizing the seizure of pirates. The international community

has deployed significant naval force to the region, with over 25 countries contributing assets. Canada has demonstrated a willingness to contribute to this mission; however, Canada's continued participation may be hampered by a maritime force facing the challenges of unit availability, aging equipment and modernization programs. Each naval deployment has its associated costs and must be examined closely. In fact, if Canada is dedicated to countering piracy, and in helping to ensure future maritime security, it will need to invest in its maritime forces and also build the required force structure suited to the threat. As proven throughout history, navies are required to counter piracy at sea, and if Canada is to assist in international efforts to thwart piracy, it will be through deploying maritime forces in the most economical way possible.

Deploying sufficient naval force has been effective in suppressing maritime piracy. Both the Royal Navy (RN) and the United States Navy (USN) have a history of using their collaborative might to push maritime piracy to the margins. In 2009, similar efforts to discourage piracy were made, with willing nations sending their warships to the coast of Somalia and the Gulf of Aden to counter maritime piracy; these forces have proven capable of reducing, although not eliminating, the incidents of maritime piracy. Therefore, in order to ensure the safety of merchant vessels, nations may need to contribute maritime forces for extended periods of time. Because the current and planned composition of Canada's maritime forces is numerically small and not expected to grow, the navy's ability to deploy ships across the world for counter piracy operations is limited and will be difficult to sustain long term. The challenge of few available units is not unique to Canada; in fact, the number of warships amongst Western nations has declined as countries have chosen to have fewer, more capable ships instead of larger

fleets.[118] The government and public may be understandably hesitant to pay the high financial

cost of deploying expensive conventional warships to fight pirates in small boats, especially

when the direct economic benefit is challenging to measure. However, the financial and

operational costs could potentially be mitigated if Canada were to build or purchase a fleet of

modularized patrol vessels that could be custom fitted for constabulary tasks. At this time, a re-

shaped and re-designed fleet is a possibility and not an actuality; therefore, Canada must decide

whether to contribute its few available units to combat pirates overseas. Ultimately, deploying

on counter piracy operations, or other multi-lateral overseas maritime operations signifies

Canada's role as a global player. The United Nations has called on countries with capable

maritime forces, such as Canada, to do their part in combating piracy. Arguably, because of the

international mandate, and because Canada has the capability to contribute, Canada should

continue to support the United Nations by participating in counter piracy operations.

EFFICACY OF NAVIES IN COUNTERING PIRACY

Historically, naval forces have proven capable of reducing the effect of piracy.

Gottschalk and Flanagan note that the primary peril to pirates is a warship and any solution to the

problem has to include military force.[119] This assertion was demonstrated by the pirate wars of

the early 19th century and by the significant reduction of piracy in the Malacca Strait in the 21st

Century. In both cases, the actions of naval forces successfully forced piracy to the margins. In

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[118] Norman Friedman, "Chasing the Pirates," *United States Naval Institute, Proceedings*, June 1, 2009, 90-91; http://www.proquest.com; Internet; accessed 15 April 2010.

[119] Gottschalk and Flanagan, *Jolly Roger with an UZI*, 11.

today's context, there is less piracy where the "naval presence is greater and more effective."[120] This fact is evidenced by the lack of piracy both off the coasts of North America and in the Mediterranean, where robust naval forces and coast guards ensure the protection of mariners from pirates. However, in parts of the world where a naval presence is lacking, and conditions ashore are permissive, piracy does exist. While there may be calls for stronger laws to suppress piracy, the fact remains that "covenants without swords" will not deter the pirate criminals.[121] It simply takes armed presence, and willingness to use force, to make the risk greater than the reward. For maritime piracy, navies, such as the RN and USN during the 19th century, provide the sword and the ability to combat piracy in its element.

To combat piracy in its element not only means to combat it at sea, but to combat piracy with the resolve to use force. Piracy is an act in which the dominant force at sea is superior. Both the USN and RN finally concluded to use naval force in fighting lengthy, and ultimately successful, wars against piracy in the early 19th century: one in the Caribbean and one against the Barbary pirates off the North West coast of Africa and in the Mediterranean. Similar to the modern day situation, European countries of the 19th century had the naval power to suppress piracy but they often chose to pay ransoms to the pirates instead of taking military action.[122] Likewise, the American colonies made 'peace payments,' a yearly stipend of $21,600 to the

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[120] *Ibid*., 53.

[121] Paul Johnson, "Recall the war against piracy: In the 19th century, as today, the great civilized powers acted in concert :[National Edition]," *National Post*, October 18, 2001; http://www.proquest.com; Internet; accessed February 25, 2010.

[122] Keven Baker, "The shores of Tripoli," *American Heritage*, February 1, 2002, 17-18; http://www.proquest.com; Internet; accessed February 25, 2010.

pirates for their ships to have safe passage, a significant sum in 1796.[123] The third President of

the United States, Thomas Jefferson, decided that the ongoing cost was too great, and it would be

more honourable for his nation to create justice by decreasing the crime of piracy and more

respectable to not pay bribes to the pirates.[124] He sent his recently formed navy across the

Atlantic to fight an ultimately successful war against the Barbary pirates. The American

decision to fight piracy, and the subsequent naval action, is said to have "shamed the British into

taking action."[125] Historian Paul Johnson argues that even without firing a shot, the mere

presence of the powerful navies would have allowed the Barbary Coast pirates to be

suppressed.[126] The success of the mission to the Barbary Coast demonstrated the ability of

navies, especially when working in coalition, to suppress piracy. This lesson was repeated in the

Caribbean, an area, which before the intervention of American and British navies had seen some

3000 pirate attacks between 1815 and 1823.[127] The counter piracy operations in the Caribbean

turned a "pirate infested no-man's land" into a region of the world where seaborne trade could

occur without being attacked.[128] The mission was immensely effective due to the close

cooperation between the RN and USN in ensuring the prosecution of the pirates. The West India

Squadron of the USN patrolled the Caribbean, sinking and burning pirate vessels. Americans,

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[123] Neil Reynolds, "Jefferson's war on terror," *Telegraph-Journal*, April 16, 2009; http://www.proquest.com; Internet; accessed February 25, 2010.

[124] *Ibid.*

[125] Johnson, "Recall the war against piracy."

[126] *Ibid*.

[127] Peter M. Swartz and Christine Fox, "Piracy and the United States Navy: A summary of the USN's historical record of dealings with Piracy and observations on Lessons Learned," *Canadian Naval Review* (journal on-line); available at http://naval.review.cfps.dal.ca/pdf/Schwartz-Fox_Dec08.pdf; Internet; accessed 25 February 2010.

[128] *Ibid.*

under their laws, would have been forced to send the pirates back to the United States for trial. So instead, when possible they favoured turning the pirates over to the British for execution.[129] There "was a shared multilateral effort grounded in a shared ideological conclusion that piracy had to be rooted out" and the cooperative actions of the USN and RN allowed an outcome that was particularly lethal for the pirates.[130] It was a decision to both use force at sea and enact significant prosecution ashore that made the risk to pirates greater than any possible reward.

The RN and the USN deployed lengthy distances, chased down, overwhelmed and overpowered the pirates, stopping the criminals and allowing safe shipping. Applicable to today's context, was the fact that the navies had to deploy significant distances, and work collaboratively, in order to suppress piracy and ensure the free movement of sea borne trade. The cooperation, especially in the Caribbean was particularly effective because of the use of force and the use of executions, which would have sent a very clear message. This example of a successful counter piracy operation might indicate that the navies combating piracy off Somalia need both the ability to use force at sea and governments need to ensure severe prosecution ashore. In the early 19th century, the RN was a superpower navy and had the ability to deploy to diverse areas of the world to fight piracy. In the 21st century, no navy, not even the USN, has the resources, or arguably the will, to suppress piracy worldwide. Therefore the suppression of piracy requires the efforts of other, lower ranked navies, to work collaboratively. Recently, these efforts are occurring in vicinity of Somalia, but even more effective, is the regional cooperation in the Malacca Strait.

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[129] *Ibid.*

[130] Cowan, "Is a War on Terror Possible? Lessons from the Long War Against Piracy."

Even in current times, maritime forces working collaboratively have proved effective in suppressing piracy. In 1992, Indonesian, Malaysian and Singaporean forces adopted a policy of aggressively patrolling the Malacca Strait, a policy that resulted in the virtual elimination of pirate activity.[131] However, this initiative was abandoned after 6 months because of the high cost for the governments involved. Consequently, piracy was revived and, in 2000, there were 75 recorded pirate attacks in the Malacca Strait.[132] Once again, in 2005, the three countries renewed their decision to collaborate and combat maritime piracy. The renewed aggressive patrols, commended by the IMB, reduced the reported incidents of piracy in the Malacca Strait to only two in 2009.[133] The Malacca Strait example demonstrates that regional cooperation from littoral states with a vested interest can be successful in fighting piracy, reducing its effect on a major shipping route. However, because of the focus of naval patrols on the Malacca Strait, fewer resources were available elsewhere and the "security situation in the sea lanes linking the Philippines, Indonesia and Malaysia was allowed to deteriorate."[134] Though the nations surrounding the Malacca Strait had sufficient maritime security forces to provide a regional solution to the problem, where countries lack resources, it is through international interventional that piracy can be suppressed.

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[131] Murphy, *Contemporary Piracy and Maritime Terrorism*. 17.

[132] Catherine Zara Raymond, "Piracy and Armed Robbery in the Malacca Strait: A Problem Solved?" *Naval War College Review,* Summer 2009, Vol. 62, No. 3 (journal On-line); available at http://www.usnwc.edu/getattachment/7835607e-388c-4e70-baf1-b00e9fb443f1/Piracy-and-Armed-Robbery-in-the-Malacca-Strait--A-; Internet; accessed 25 February 2010.

[133] ICC International Maritime Bureau, *Piracy And Armed Robbery Against Ships Annual Report 1 January – 31 December 2009.*

[134] Raymond, "Piracy and Armed Robbery in the Malacca Strait…"

Where the littoral states do not have the will or resources to fight piracy, as is the case in modern day Somalia, then international intervention is needed. In 2009, in response to both the extensive media coverage and UNSCRs calling for action to suppress Somali piracy, over 25 countries, including Canada, sent warships to the region to patrol an area of over 2.5 square kilometres.[135] While the number of attempted attacks continued, almost unabated, there was a significant decrease in the number of successful attacks.[136] It has been argued that the "mere silhouette of a warship on the horizon is enough to send pirates scurrying into their skiffs back to their hideouts."[137] This contention may not always be the case if pirates grow bolder. If pirates are after a sufficiently valuable target, it is conceivable that the arsenal of weapons used by pirates could expand to contain anti-ship torpedoes, or anti-ship missile systems. The sophistication of modern weaponry and its availability to pirates and terrorists with sufficient funds poses a new and greater threat to warships, making counter piracy operations potentially much more challenging and dangerous. In the case of Somalia, the mere presence of maritime forces does not seem to be a deterrent for pirates who continue to attempt attacks, perhaps indicating that the risk does yet exceed the potentially large reward. The reduced number of successful attacks does indicate that the naval patrols are effective in allowing safe passage but not in discouraging attempts. This situation of course, leads to a quandary and highlights one of the challenges in using naval presence to prevent contemporary piracy. The obvious conclusion

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[135] Hanson, "Combating Maritime Piracy."

[136] International Security Information Service Europe, "EU and NATO Efforts to Counter Piracy off Somalia: A Drop in the Ocean?"

[137] Patrick Lennox and Aaron Plamondon, "Build Ships, be Heard." *National Post,* 8 January 2009, A14; available from http://proquest.umi.com/pqdweb?did=1624668221&Fmt=7&clientId=1711&RQT=309&VName=PQD; Internet; accessed 13 January 2010.

is that mere presence and preventative measures are not enough, especially without prosecution ashore. But a decision to fight piracy in its element, that is, by authorizing navies to use force at sea might result in significant reduction of piracy. Having the correct rules of engagement, and having pirates effectively prosecuted ashore are only two of the challenges that are faced in suppressing maritime piracy.

CHALLENGES IN USING NAVIES TO COUNTER PIRACY

While historically navies have proved to be a main factor in suppressing piracy, there are disadvantages, or perhaps more accurately challenges, which must be considered. These challenges include the cost for governments of utilizing warships, the difficulty of sustaining naval operations for long periods of time and the argument that naval forces are only able to combat the symptom, not the cause of maritime piracy. It is been stated that a group of warships can do little to fight piracy, and that the solution lies ashore instead of at sea.[138] In other words, the socio-economic roots such as poverty, lack of employment and ineffectual governance would need to be addressed to fully discourage piracy. However, there is no near term solution to the shore-based problems in Somalia and naval power may be the "only tool currently available to counter pirate attacks."[139] International naval forces may be able to allow safe passage, but they are not stopping pirates from trying. This situation would indicate that if the forces leave, then piracy would flourish again, similar to the revival of attacks in the Malacca Strait in 2000.

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[138] Kaufman, "China's Participation in Anti-Piracy Operations off the Horn of Africa: Drivers and Implications."

[139] *Ibid.*

Therefore, the naval response will need to continue, an expensive proposition for all countries involved.

The universal challenge to using naval forces to counter piracy is the high financial cost. Each frigate is pegged at costing approximately $50,000 per day to operate.[140] Sustaining a 7 month deployment costs over $10 million, and therefore, ironically, it would actually be cheaper to pay a Somali pirate ransom than to deploy a single naval vessel to the Gulf of Aden. This high financial cost means that countries may be reticent to repeatedly contribute naval forces to counter piracy operations. A RAND Corporation working group on the maritime piracy problem noted that the naval response off the Horn of African may be out of proportion with the scale of the problem. The report notes that the expense of naval deployments "has caused several analysts to question the appropriateness of the current international naval response that has been deployed off the Horn of Africa."[141] There is no doubt that preventing piracy is an expensive proposition but does it mean that the money is ill-spent? Not only can naval units reduce the success of pirate attacks and protect merchant shipping but preventing crime increases justice for the individual mariner and globally demonstrates a will to fight international crime. It is a better message than complacency. American lawyer and scholar Milena Sterio contends: "Not fighting the Somali piracy signals a message of passivity and carelessness to all sorts of dangerous individuals and groups across the globe, looking to engage in similar types of criminal behaviour."[142] Simply put, the international community, including Canada, can and should send

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[140] Chalk, Smallman and Burger, "Countering Piracy in the Modern Era: Notes from a RAND Workshop to Discuss the Best Approaches for Dealing with Piracy in the 21st Century," 2.

[141] *Ibid*., 2.

[142] Sterio, "Fighting Piracy in Somalia (and Elsewhere): Why More Is Needed."

a timely and strong message that will discourage piracy and its proliferation. With the majority of contemporary piracy occurring in Africa and Asia, it is through naval force, including portions of Canada's capable maritime forces that this message can be sent.

ABILITY OF THE CANADIAN NAVY TO COUNTER PIRACY

Canada has a small, professional, blue water maritime force that is capable of contributing to current counter piracy operations. The Canadian Navy has 12 Halifax Class frigates (HCS), 3 Iroquois class destroyers, 2 replenishment ships (AORs), 4 conventional submarines and 12 Maritime Coastal Defence Vessels (MCDV). Of the 29 surface vessels, the frigates and destroyers are arguably the most capable of making valuable contributions to counter piracy operations. The Halifax Class frigates were designed and built primarily as Cold War anti-submarine warfare vessels and are very heavily armed, perhaps over-armed, for constabulary tasks.[143] However, with their full range of conventional defensive capabilities, they can not only conduct counter piracy missions, but can react swiftly to other contingency operations, even in the face of conventional threats.[144] In other words, they are capable of countering piracy, even if the pirates were to obtain larger scale weaponry. The Iroquois Class destroyers are larger and significantly older. Although 40 years old and about to become the world's oldest frontline naval combatant, their modernized systems allow them to command

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[143] Department of National Defence, "Halifax-Class Modernization (HCM) / Frigate Life Extension (FELEX)," http://www.forces.gc.ca/site/pri/2/pro-pro/Halifax-eng.asp; Internet; accessed 17 January 2010.

[144]Richard Gimblett, *Operation Apollo: The Golden Age of the Canadian Navy in the War Against Terrorism* (Ottawa: Magic Light Publishing, 2004) 30.

forces as demonstrated during command of Combined Task Force 150 in 2008.[145] Canada's

Maritime Coastal Defence Vessels (MCDVs) are smaller than the frigates and do not have the

conventional self-defence capability or speed that would be required to combat maritime pirates.

As well, their limited size makes ocean transits challenging and limits both crew numbers and

ability for prolonged operations. With the MCDVs being too small, and the frigates and

destroyers heavily armed for conventional Cold War threats, neither platform may be ideal or

economical for counter piracy operations.

At the present time, Canada does not possess dedicated patrol vessels capable of

patrolling both overseas and in harsh Canadian territorial waters. Such vessels, idealized for

constabulary maritime operations, such as counter piracy, would need to be larger than the

MCDVs but would arguably require less sophisticated command and control and weapons

systems than frigates or destroyers.[146] Military analyst Milan Vego has argued that multi-

purposed, fast and small, corvette sized ships are better suited than destroyers or frigates for

counter-terrorism patrols, sanctions enforcement, counter-piracy and counter smuggling.[147]

Alternatively, military strategist Norman Friedman has argued that a modularized ship concept,

built on larger but relatively inexpensive hulls would be ideal because "much of the time the

ship(s) simply do not need all possible capability."[148] Expensive weapons and sensor systems

would only be installed when the threat dictated their necessity. As well, with a larger hull than

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[145] Canadian Naval Review, "The Mounting Cost of Maintaining Antique Warships and their Vital Capabilities," http://naval.review.cfps.dal.ca/current.php; Internet; accessed 13 January 2010.

[146] Milan Vego, "Finding our Balance at Sea," United States Naval Institute *Proceedings Magazine* Online Vol 136. Internet; http://www.usni.org/magazines/proceedings/story.asp?STORY_ID=2165; accessed 14 January 2010.

[147] *Ibid.*

[148] Friedman, "Chasing the Pirates."

a corvette, the ship could have space for humanitarian supplies, boarding teams, fuel etc., if the situation and threat allowed. Because of the lower hull cost, there would exist the theoretical ability of a state to purchase more units, thus allowing the ships to be deployed in more areas and cover more area. In terms of piracy, this might equate to protecting more merchant ships. Regardless, ships deploying overseas will still require the ability to combat the wide range of conventional threats and weapons systems in possession of both states and non-state actors.[149] A basic self defence capability is essential to protect the ship, the sailors and provide the flexibility to respond to contingencies in hostile areas. Terrorist groups have demonstrated the ability to use anti-ship missiles and there exists the potential for terrorists, or pirates to use surface or sub surface launched anti-ship torpedoes. There would therefore be an element of risk in sending ships across the world to conduct seemingly benign counter piracy tasks, if they did not have the full range of defensive capabilities. The Navy's strategic vision, Leadmark 2020, recognizes that:

> Although many of the tasks assigned to naval forces may not require such a [conventional] capability, their probable deployment to areas of tension requires at least an ability to protect themselves in the event hostilities occur. [150]

In other words, patrol vessels could be used in counter piracy operations, but they would still require at least a basic self defence capability. A fleet of patrol vessels, modularized depending on the mission and threat level, could eventually replace, or supplement, the Canadian fleet of conventional ships. Patrol vessels could be used for low-risk constabulary tasks, including sovereignty patrols off the Canadian coast, and then add conventional systems for higher risk

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[149] Milan Vego, "Finding our Balance at Sea".

[150] Canada, Chief of the Maritime Staff, *Leadmark: The Navy's Strategy for 2020, (*Ottawa: Chief of the Maritime Staff, 2001), 11.

tasks or conventional warfare. However, the decision to build a more diversified fleet would need to be sooner, rather than later, as the Canadian navy faces the potential of even fewer available assets in the coming years.

Canada's fleet faces numerous challenges in the upcoming years that will make contributions to maritime piracy operations even more challenging. The destroyers are aging and no official project for their replacement has been announced. An AOR replacement plan, the Joint Support Ship project, has been delayed due to unforeseen costs.[151] The frigates are commencing a modernization program that will see all 12 frigates taken out of service, periodically, over the next few years.[152] The planned Arctic Offshore Patrol Ships (AOPS) will be designed to operate in Northern waters and are unlikely to be suitable for counter piracy operations off the coast of Asia or Africa. Typical shipbuilding programs take approximately ten years from conception to completion. Since no contracts have yet been awarded, it can be deduced that there will be many years before Canada's maritime forces are re-capitalized and thus, the availability of blue water platforms is expected to be limited over the next few years. Investing money in patrol vessels, which can contribute to both domestic and international constabulary duties, would give Canada more options, and arguably a less expensive option, when deploying ships for counter piracy operations. However, with no new ships on the horizon, Canada must make judicious choices when deciding where and how often to deploy the available platforms on counter piracy operations.

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[151] David Pugliese, "Why is the Joint Support Ship Delayed?" *Ottawa Citizen* Commentary Online; "http://davidpugliese.wordpress.com/2009/12/06/david-pugliese-ottawa-citizen-commentary-what-is-the-joint-support-ship-stalled; Internet; accessed 6 March 2010.

[152] Department of National Defence, "Halifax-Class Modernization (HCM) / Frigate Life Extension (FELEX)."

Though difficult to prescribe an exact deployment schedule, it does seem unlikely that the current pace of counter piracy operations will continue for the Canadian navy. In 2008, Canada deployed three ships in a task group to combat piracy and terrorism off the Horn of Africa, a deployment that included taking command of 18 ships, from different nations, within a Combined Task Force.[153] Because of the aging destroyers and the lack of near term replacement for the AORs, it has been predicted that the operation may be the last Canadian task group to deploy for a number of years.[154] In 2009, both HMCS WINNIPEG and HMCS FREDERICTON deployed to the region for counter piracy operations. With the commencement of the Halifax Class Modernization program in 2010, the number of available assets will diminish, and other tasks such as sovereignty patrols, conventional training exercises and alliance commitments need to be maintained. Therefore, deploying more than one ship annually seems unrealistic. However, conducting even one deployment yearly would be of benefit and would demonstrate Canada's ongoing commitment to countering piracy and to the United Nations; even a single annual deployment comes with challenges.

ADVANTAGES AND CHALLENGES FOR CANADA IN COUNTERING PIRACY

Although everything comes with a cost, Canada, and more so its navy, has much to gain from deploying its maritime forces to join the fight against maritime piracy. The advantages to the government include having a military unit forward deployed across the world ready to

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[153] Patrick Lennox, "End of an Era; Canada's Command of CTF 150," *Vanguard: Canada's Premier Defence and Security Magazine* (journal on-line); Internet; available at http://www.vanguardcanada.com/EndOfAnEraLennox; Internet; accessed 25 February 2010.

respond to contingencies and more importantly demonstrating Canada's role as an internationally engaged country committed to the United Nations. Having a naval unit, or naval units forward-deployed, conducting counter piracy operations in Africa, Asia, or Europe, can give the Canadian government and the Canadian navy tremendous flexibility in responding to other contingencies.

During summer 2008, HMCS VILLE DE QUEBEC was already deployed to the Mediterranean as part of a NATO mission. Consequently, when the United Nations requested assistance, the Canadian government was able to redeploy the ship to the higher priority World Food Program escort mission. In the aftermath of 9/11, HMCS HALIFAX was similarly operating in the Mediterranean when the Canadian government re-tasked the ship to the Persian Gulf region, demonstrating Canada's swift response, and support to the United States, in the international war against terrorism. Conversely, when tensions increased in Lebanon in 2006, Canada did not have a warship in the area, or forward deployed. A naval ship could have provided tremendous command and control to the Canadian evacuation efforts. Of note, a patrol vessel may not have been appropriate for this mission; instead, given the anti-ship missile threat, a frigate or destroyer would have been required to ensure adequate self-defence. Canada's navy is certainly not large enough to be forward deployed throughout the world, waiting to respond to any contingency. However, by sending ships on a valuable mission such as Somali counter piracy operations, it does give government the ability to respond to crises when they arise. A ship forward deployed on counter piracy operations provides Canada with political and military flexibility and maintains interoperability with other allied navies, gaining practical operational experience while fulfilling Canada's obligation to the United Nations.

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[154] *Ibid.*

By deploying its maritime forces for counter piracy operations, Canada not only contributes to the freedom of the seas, but also demonstrates a commitment to its allies and to the United Nations. Other countries have sent their navies for different reasons; France, India, China and Russia only sent ships after their flag vessels were attacked.[155] Some countries recognize that a "contribution to anti-piracy operations can bring recognition and prestige to participating nations."[156] For an internationally engaged country there may be extrinsic value to deploying ships alongside allies in protecting trade routes. It is certainly important, for nations to support the UN mandate:

> Piracy affects the trade and security interests of many nations, and thus participation in Horn of Africa anti-piracy operations has become one way for a country to signal both its willingness and its ability to cooperate in issues of international concern.[157]

This statement, although written about China, can just as readily apply to Canada, a country that has shown its willingness to participate in counter piracy operations regardless of the size of the direct economic impact. Canada's participation in counter piracy operations clearly demonstrates the willingness of the Canadian government to act on the volitions of the United Nations. Arguably, there is also a corollary benefit to the Canadian Navy. By working closely with its Allies, and under a CTF 150 or NATO umbrella, Canada's Navy, not only can achieve tangible results, as seen during both HMCS WINNIPEG's and HMCS FREDERICTON's actual

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[155] Chalk, Smallman and Burger, "Countering Piracy in the Modern Era: Notes from a RAND Workshop to Discuss the Best Approaches for Dealing with Piracy in the 21st Century," 4.

[156] Kaufman, "China's Participation in Anti-Piracy Operations off the Horn of Africa: Drivers and Implications."

[157] *Ibid.*

prevention of pirate attacks, but also gains valuable interoperability skills.[158] One of the key

skills is, quite simply, the ability to communicate with other nations. By participating as part of

a coalition, conducting counter piracy operations, Canada can gain and solidify the

communication and integration skills necessary for future collaborative, irregular or

conventional, naval operations.

PARTICIPATION

Navies have proven necessary in fighting piracy, an approach that the nations of world

are still pursuing in 2010. Canada has the naval capability to participate in this fight, but while

this participation clearly demonstrates Canada's role as an international participant, it must be

weighed against various operational and financial costs, including the small number of available

units. With the direct economic cost of maritime piracy to Canada being potentially as low as $6

million, deploying a frigate at $50,000 per day on a counter piracy operation may appear to be a

poor investment. However, Canada has a vested interest in the freedom of the seas and should

fight piracy in areas of the world that "cannot afford the personnel, equipment or organisational

resources needed to tackle the problem."[159] Deploying the Navy to contribute to counter piracy

operations demonstrates Canada's willingness to be a global actor. There is always a choice for

Canada to adopt a more isolationist foreign policy, and leave issues, such as counter piracy, to

the United States or the European Union, both entities with much larger navies. However, if

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[158] Department of National Defence, "NATO ship prevents pirate attack in Gulf of Aden," http://www.navy.forces.gc.ca/fredericton/2/2-s_eng.asp?category=147&title=4382; Internet; accessed 6 March 2010.

[159] Murphy, *Contemporary Piracy and Maritime Terrorism*, 15.

Canada is committed to its internationally engaged foreign policy, this commitment would indicate involvement in counter piracy operations and the acceptance of the costs.

When Canada deploys a naval unit on counter piracy patrols, there are both financial and operational costs. The operational cost occurs not only because the unit is not available for local sovereignty patrols, or other missions, but also because the conventionally armed frigate or destroyer is not training in conventional warfare. This cost would be mitigated if Canada were to build a fleet of modularized patrol vessels. While a future conventional threat cannot be discounted, current missions have been, and are likely to be, focused on constabulary type missions against non-state actors. A larger fleet of modularized patrol vessels would provide less expensive, but still capable ships that could be modified for diverse tasks but still fitted with appropriate self-defence weapons systems when necessary. However, currently, Canada does not have such a fleet, and unless the decision is made to purchase ships overseas, instead of building them in Canada, it will be many years before the navy is re-capitalized. Therefore, in the interim, Canada should decide to use its limited assets for overseas patrols; deploying even one unit annually in support of the United Nations will indicate Canada's continued support. The cost of deploying a frigate for a seven month counter piracy operation is approximately $10 million; but this investment is worthwhile when it demonstrates Canada's willingness to be internationally engaged. Counter piracy operations allow the navy to gain real world experience in operations, experience that is always preferable to simulation. More importantly, the deployment of Canada's navy for United Nations sanctioned counter piracy operations sends a strategic message that Canada is opposed to the heinous crime of piracy, is an internationally engaged world player, and supports the UN in making the world a safer place.

Perhaps, even more straightforward than any political goal is that the piracy problem requires a military response. This response must come not from single country, but from a coalition in order to provide the "critical mass of warships and their air assets to maintain a constant presence in the region."[160] The presence would ideally be paired with the authority to use force. Canada being off the coast of Somalia does serve to indicate Canada's support to the UN even if significant force is not nationally authorized and pirates are not prosecuted ashore; however, robust rules of engagement permitting maritime units to use significant force, paired with appropriate prosecution ashore, will allow militaries to send a strong message and may go further in discouraging piracy. Countries, including Canada, may be hesitant to contribute to counter piracy operations for extended periods because of the high cost of modern naval deployments and the challenges associated with prosecution. However, as long as maritime piracy threatens major shipping routes, and as long as the United Nations requests its assistance, Canada should continue to participate in the fight.

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[160] Patrick Lennox, "Contemporary Piracy off the Horn of Africa," Canadian Defence & Foreign Affairs Institute; available at
http://www.cdfai.org/PDF/Contemporary%20Piracy%20off%20the%20Horn%20of%20Africa.pdf: Internet; accessed 25 February 2010.

CONCLUSION

As an internationally engaged country with a stake in global commerce, Canada has an obligation to continue to participate in counter piracy operations and mitigate the associated threats. However, because piracy is a complex problem, and because the direct impact is arguably minimal to Canada, an appropriate level of participation is challenging to ascertain. In fact, Canada has the option, regardless of any request from the United Nations, to do nothing at all concerning Somali piracy. However, a decision to be complacent, and not to participate in counter piracy operations, would be contrary to Canada's internationally engaged foreign policy and stated ethos for individuals to be free from fear. Even if Canada were to use softer measures, such as working to re-write the international law concerning piracy, these measures might not hold the same weight in the international community as will contributing maritime forces. More importantly, words alone will not stop the pirates from committing their heinous acts, nor will words alone protect mariners. Instead, it is the through the collective action of internationally engaged countries, and their maritime forces, that piracy can be mitigated to an acceptable level.

In terms of piracy occurring off the coast of Somalia, the United Nations has not only requested the assistance of capable states but has also authorized robust measures, including entry into territorial waters, in efforts to reduce the impact. The UNSCRs concerning piracy off the coast of Somalia demonstrate not only the United Nation's concern, but also its determination in fighting piracy. As long as there is a UN mandate to do so, Canada can demonstrate its commitment to the United Nations by dedicating assets to assist coalition efforts in suppressing piracy. This commitment to the United Nations is important, but the effective

suppression of maritime piracy will also require the Canadian government to authorize its navy to use significant force in order to strongly deter the pirate criminals. In terms of participation, it is not suggested that Canada should dedicate its entire navy to countering piracy. However, a measured response would demonstrate Canada's willingness to work closely with allies in what the world sees as a current threat, evidenced by the world's response off Somalia. Although the direct impact of maritime piracy on Canada's economy is difficult to measure, Canadian naval vessels have had very real, tangible results in preventing ships from being attacked by pirates and have made the oceans safer for mariners, arguably, a more noble cause than merely protecting one's own commerce. Robust force authorization and effective prosecution of the pirate criminals would permit the maritime forces to suppress maritime piracy even further.

Piracy, throughout history, has been suppressed but not eliminated, and has moved throughout the globe based on changing conditions. In the current context, the decision to deploy on counter piracy operations is facilitated because the bulk of maritime piracy, almost 50 percent of the recorded incidents in 2009, occurs in one geographical area, the Gulf of Aden. Therefore, by deploying to this area of the world, and working collaboratively with allies, Canada can have a very real effect in the mitigation of piracy. The decision to deploy for counter piracy operations is similar to those of the great navies of the early 19th century. The USN and RN deployed their navies to specific parts of the world where maritime piracy was prevalent and threatened lives and legitimate shipping; the United States and Britain decided that pirates were criminals and naval force was required to bring punishment. Similar to the efforts in the Caribbean during the 19th century, the collective naval efforts off the coast of Somalia, if combined with action ashore and the effective prosecution of pirates, may eventually lead to the

suppression of piracy. But in order to conclude that piracy is worth suppressing, nations must

realise that piracy is the heinous and universal crime that those who have experienced it first

hand describe it to be. The moral obligation from such a realization might compel nations to act.

Under international law, Canada is not only authorized to seize and arrest pirates it is

actually obligated to stop the piracy that it encounters. However, the definition of piracy, as

written in UNCLOS, limits the ability to stop piracy because it does not allow one nation to enter

another nation's territorial water, the area of the world's oceans where much of maritime piracy

occurs. As mentioned, this difficulty can be resolved by UNSCRs authorizing entry into

territorial waters, but this occurrence is rare. The creation of UNSCR 1897 is one such rare

occurrence, a window created for such a time as this, a 12 month mandate to pursue pirates and

prosecute pirates. If nations do nothing, this window may close and not open again for a long

time, allowing piracy to grow and mutate to more dangerous proportions. The ideal solution is

for nations to work collectively in developing regional solutions to suppress maritime piracy.

Littoral states can potentially authorize foreign nations to enter their territorial waters when

chasing pirates. Even when regional maritime security forces are insufficient or non existent,

nations could at least sign agreements that would permit allies to enter their waters for piracy

suppression. For example, Yemen and Somali, even without a UNSCR could sign agreements

with nations such as the United States and Canada, allowing them to enter territorial waters for

the mitigation of both maritime pirates and terrorists. But, arguably, the single largest legal

issue, and challenge, facing the coalition navies attempting to suppress piracy off the coast of

Somali concerns the prosecution of captured pirates. Canada should continue to work towards a

solution to this problem that will make the risk of being caught conducting piracy greater than

any reward. However, the legal issues are not the only challenges associated with fighting

maritime piracy.

There are challenges, especially in sustaining naval operations, in the efforts to counter

piracy. These difficulties include not only the high cost of naval deployments, but also the

difficulty of maintaining the will for sustained operations. Canada is only one of many nations

who have deployed ships to the region to combat maritime piracy, some of whom may have sent

ships to the region because of a "bandwagon" effect.[161] In other words, they are there because

their allies are there. The negative aspect would be a reverse engagement. If nations begin to

exit because of the high expense, or because the mission has lost its political appeal, the effect

could influence other nations. This situation, of course, would indicate that as long as piracy

remains rampant, and the UN mandate remains in place, as a self-professed world leader in

advocating human rights, Canada should commit to doing its part in countering the complex

problem of maritime piracy.

Piracy is a complex problem. The economic impact, while large in specific regions, is

small compared to the global economy or global shipping. The security impact, while serious to

the individual victims, exists regionally but does not affect nations on a global scale. However,

the potential does exist for a deteriorating situation, whether through an environmental disaster

or piracy-terrorism nexus and therefore piracy should be mitigated. In today's context, no

individual nation has the resources, either monetary or physical, to suppress piracy alone;

therefore the response must be a collective response from internationally engaged countries.

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[161] Kaufman, "China's Participation in Anti-Piracy Operations off the Horn of Africa: Drivers and Implications."

This collective response needs to be in the form of maritime forces that can counter piracy where it occurs, at sea. With piracy occurring in large areas of water, numerous units are required to adequately patrol the waters and protect merchant shipping. The individual units within this collective response would ideally be patrol vessels, vessels optimized for constabulary tasks. In other words, if Canada is to undertake counter piracy, or other similar tasks for the long term, a force structure currently dependant on cold-war threat centred ships, needs to be diversified, and consideration should be made for purchasing large modularized patrol vessels that can be fitted with mission appropriate equipment. However, currently, Canada currently has a small fleet comprised of capable, conventionally armed ships. Even if arguably over-armed, these ships can very effectively assist in countering the odious crime of piracy and protecting the lives of mariners and the global shipping they facilitate. This participation will clearly indicate both Canada's dedication to the United Nations and Canada's willingness to be internationally engaged in the promotion of justice by forcing the hauling down of the Jolly Roger.

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