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A UNITED NATIONS STANDING NAVAL FORCE: ASSET OR UNNECESSARY

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Exercise Solo Flight

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For even that ocean wherewith God hath compassed the Earth is navigable on every side round about, and the settled or extraordinary blast of wind, not always blowing from the same quarter, and sometimes from every quarter, do they not sufficiently signify that nature hath granted a passage from all nations unto all?¹

The Free Sea- Hugo Grotius

Water covers almost three quarters of the earth's surface. States claim the maritime resources for their own, navigate the seas for trade, protecting and even expanding their sovereignty. Freedom of the sea was questioned and thus the concept of a territorial sea limit was developed. From the 17th century, this limit was 3 nautical miles, expanding in the 20th century to 12 nautical miles. The 20th century also saw the introduction of the exclusive economic zone, an ocean area out to 200 nautical miles where the coastal State has exclusive right of economic exploitation of the seabed and water column.² The agreed division of resources and jurisdiction was known as the Laws of the Sea. It has evolved over the centuries from accepted customary law to the current agreement, the United Nations Convention on the Laws of the Sea or UNCLOS. The convention was established following a multitude of meetings and agreements in 1984

¹ Hugo Grotius, Richard Hakluyt, William Welwood, and David Armitage. *The Free Sea*. Indianapolis, Ind: Liberty Fund, 2004, 11.

² Stephen C. Nemeth, Sara McLaughlin Mitchell, Elizabeth A. Nyman, and Paul R. Hensel. "Ruling the Sea: Managing Maritime Conflicts through UNCLOS and Exclusive Economic Zones." *International Interactions* 40, no. 5 (2014): 712.

and had since been ratified by 166 nations.³ The International Maritime Organization (IMO) manages this convention and its supporting regulations. It has developed, by consensus, with the assistance of national experts, shipping companies and classification societies, a series of conventions and regulations establishing minimum safety and environmental standards⁴. While the development of these requirements tends to be reactive to deadly or environmental failures, the safety of the sea has improved.

Under UNCLOS, states are responsible for the legislature, regulation, and enforcement of the related international standards in their coastal or sovereign water. The responsibility for infractions on the high sea, or ocean not specifically linked to a state, is not clear. Regional maritime security arrangements assist in the enforcement of UNCLOS in specified waters, and UNCLOS authorizes international tribunals to arbitrate border disputes.⁵ However, there continue to be concerns with piracy and pollution affecting the global maritime security and global environmental health, with no organization responsible for protect and enforcing the UNCLOS. Would a United Nations-led ocean peacekeeping or constabulary force be an effective means to fill this gap? It is hypothesized that despite clear advantages to an UN-led standing global maritime force, the international community is accepting of the current policies established to enforce the UNCLOS and protect their interests. This paper will approach the question by

³ *United Nations Law of Sea* website. Accessed 6 May 2017, www.un.org/depts/los/convention_agreements/convention_overview_convention.htm

⁴ *International Maritime Organization* website. Accessed 1 May 2017, www.imo.org/en/about/conventions/pages/home.aspx

⁵ *United Nations Convention Laws of the Sea*. Accessed 15 Mar 2017, http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf, 76.

considering the aspects of the UNCLOS that could be enforced by a UN Naval Force.

The existing international and regional maritime organizations will be examined along with a terminated UN initiative to establish a high readiness multinational brigade.

Finally, the benefits and weaknesses of a UN led standing maritime force will be assessed in order to ascertain the international acceptability of such a force.

BACKGROUND

The IMO's purpose is to enable cooperation between states for regulation and technical standards affecting all international shipping, maritime safety, marine pollution, and efficiency of navigation.⁶ As such, it is an administrative means of establishing processes and rules to ensure the safety, security, and environmental protection of people and the ocean. The enforcement of these regulations, in accordance with the UNCLOS, is left to the Member States by way of their own legislation and enforcement means.

Under UNCLOS, the legal jurisdiction for regulation and enforcement is linked to either the Coastal or Flag State. Specifically, the Coastal State has full jurisdiction within its sovereign waters, including the territorial waters and partial jurisdiction for the seas within its economic exclusion zone. The Flag State of a ship is the State that has the responsibility to regulate and verify the technical compliance of the vessel as well as enforce laws of its country onboard. For most of the world's oceans, there is no specific state that has exclusive sovereignty and thus jurisdiction to prosecute the

⁶ Robin Warner and Stuart B. Kaye. *Routledge Handbook of Maritime Regulation and Enforcement*. Abingdon, Oxon; New York, NY: Routledge, 2016; 2015, 87.

offender. UNCLOS provides some clarification to this complication by allocating jurisdiction based on nationality, applying a Flag States laws depending on the vessel's offence.⁷ Specifically, the convention states that Flag State jurisdiction extends to the high seas, justifying intervention by warships of the associated flag state against similarly flagged vessels if they engage in piracy, slavery or without nationality. Moreover, Flag State consent will enable the stopping of ships suspected of drug trafficking by the 1988 Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention), or over fishing through the UN Fish Stocks Agreement.⁸ Therefore, the jurisdiction of the crime against the UNCLOS can complicate how a state responds to an infraction. Without timely or preauthorized consent, it is difficult for a state's warship to interdict another State's vessel. As noted later, regional organizations have established conditions that enable timely interdiction of piracy. Therefore, it is conceivable for the international community to grant a UN standing naval force interdiction jurisdiction for the purpose of maintaining security.

REGULATION AND ENFORCEMENT CONSIDERATIONS

The UNCLOS provides regulation over a wide range of maritime areas including maritime sovereignty, navigation, piracy, natural resource management (fishing and mineral/hydrocarbon resources) and the marine environment. Three specific and

⁷ *Ibid*, 13.

⁸ *Ibid*, 23.

significant UNCLOS concerns - piracy, marine pollution, and border enforcement - are considered in this paper.

Piracy

Since its establishment as a crime in the 16th century, piracy has been a maritime security issue. The response has shifted from selective poor enforcement to complete, potentially illegal, suppression. While the Royal Navy was the global maritime power, it purged the high seas of piracy, so much so that this threat had virtually disappeared. At its apex, the wide-ranging response to piracy was inadequate, as it was seen as a criminal phenomenon vice a security issue.⁹ Despite its general absence in the preceding century, it was still included in the UNCLOS, even though it was not foreseen as a continued threat. As such, UNCLOS defines piracy under Article 101 as the criminal intent to take over a vessel against the will of its mastery, including the robbery of cargo, possessions, or the ship itself for private gain.¹⁰ While a legal interpretation of the UNCLOS clarifies that a piracy attack within a state's territorial waters is actually classified as armed robbery, it is generally accepted that piracy includes both attacks against shipping within a state's territorial waters and in the high sea. This interpretation was clarified by the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.¹¹

⁹ Tamsin Phillipa Paige, "The Impact and Effectiveness of UNCLOS on Counter-Piracy Operations." *Journal of Conflict and Security Law* (2016): kr028. 2.

¹⁰ UNCLOS article 101.

¹¹ Warner and Kaye, 278.

A UN standing naval force could be well placed to respond to the international or regional threat of piracy. Under the control of the UN, it could be given the mandate from the United Nations Security Council to enforce maritime security in those areas against the threat of piracy. With this direction, and subject to legal confirmation, it could interdict threats, capture the pirates, and provide them to their own Flag State or even a designated regional Flag State with the capacity and capability to prosecute the pirates. Performing in a constabulary role, there is no requirement for a complex warship. Therefore, it is reasonable to expect that with a comprehensive control and coordination organization either at sea or on shore that a UN task force could provide a network of vessels to protect and respond to piracy events within a specific region.

Pollution

The UNCLOS establishes a thorough framework for the protection of the marine environment. It specifically defines international rules and requires states to establish laws to prevent and control the discharge of deleterious or noxious substances and gases. The IMO, via its Marine Environment Protection Committee, also enabled the development of International Convention for the Prevention of Pollution from Ships – MarPol 73/78. This technical regulation defines the accepted pollution limits for all ocean areas, technical safeguards for liquid and air pollution.¹² The enforcement and liability of

¹² *MARPOL Consolidated Edition 2011*, IMO Publishing, London, UK.

this Convention is required to be established in national legislation.¹³ While the existence of international convention in national legislation is a “mandatory minimum”¹⁴, the Coastal State may impose an “optional maximum”¹⁵, in that the Coastal State can impose a more stringent standard than the generally accepted international rules. Article 211(2) of the UNCLOS requires a minimum level of regulation for marine pollution.

Enforcement of the pollution aspects of the UNCLOS is the responsibility both the Flag and Coastal State through reporting of compliance and verification by in-port inspection.¹⁶ The Flag State reporting requirement to the IMO via a mandatory audit scheme allows for international verification of that state’s success at enforcing its legislation.¹⁷ This audit scheme is reactive to review of the findings and is entirely contingent on the Flag and Coastal State being proactive and comprehensive in their approach. When a concern has been found, port state control agreements, in the form of regional memorandum of understanding (MOU) for states, enable a response to the failure of a ship to rectify environmental system deficiencies by detaining a ship in port, or alternatively, to refuse that ship access to the Coastal State’s port. The Paris MOU was the first example of such an agreement, and has since been followed by eight other arrangements, resulting in almost global coverage.¹⁸

¹³ Warner and Kaye, 94.

¹⁴ *Ibid*, 179.

¹⁵ *Ibid*, 179.

¹⁶ Some sources differentiate a third jurisdiction authority in the Port State depending on the delineation of the territorial waters; hereafter, the Coastal and Port State will be considered as one and used interchangeably.

¹⁷ *Ibid*, 185.

¹⁸ *Ibid*, 186.

Similar to piracy, a UN standing naval force could provide environmental assurance in a constabulary role in the high seas. Under the purview of a United Nations Security Council resolution, a UN naval force could conduct surveillance of shipping routes and on-route verification of vessels to augment the role of the Coastal State to ensure the environmental compliance of vessels within its sovereign waters. Any infringement of the UNCLOS and the MARPOL regulations would require the subject vessel to be escorted to an appropriate port to be charged against the 'mandatory minimum' international regulation regardless of the Coastal State environmental legislation. The distance between ports make providing a comprehensive active verification role a challenge without a large naval force, even considering the defined shipping lanes between ports. Potentially roving global environmental naval task forces could assure verification by region to improve the compliance of ship-owners.

Borders

The UNCLOS provides direction of the interpretation of a nation's territorial waters and exclusive economic zones. It established an Arbitral Tribunal to rule on claims and counterclaims by affected states, considering geographical, historical, and current usage. They also consider any impact that states might be having on the local environment. Of note, the recent South China Sea ruling stipulated that China did not adhere to the maritime rights and entitlements that belonged to the Philippines and thus the Philippines won 14 of 15 issues it raised concerning infringement on its maritime rights by China. Since the ruling, China has not backed down from its claim, despite

being a signatory to the UNCLOS. As the UN does not have a military or police force to impose the ruling, the state in violation of UNCLOS must voluntarily yield.¹⁹ The current global naval power, the United States, has made diplomatic communications of the globally supported, legally binding nature of the UNCLOS tribunal decision.²⁰ Moreover, it is expected that the United States Navy will continue to exercise freedom of navigation operations in these contested areas, supporting the finding of the tribunal.²¹

The UNCLOS arbitral tribunal currently depends on both parties to respect and defer to its findings in order for it to be effective. A UN standing naval force could provide the enforcement role to ensure compliance. In some cases, this enforcement could be a simple constabulary role to ensure that both parties comply with the findings. In the case described above, where one party does not acquiesce to the ruling of the tribunal, a stronger and more capable force would be required to eject it from its position. The UNCLOS would have to be modified to give a UN standing naval force the legal ability to enforce the tribunal's finding even against non-signatory members. Moreover, where the naval power of the 'losing' party of the tribunal is greater than that of the UN standing naval force is it appropriate to engage? The role of the UN standing naval force has shifted from a constabulary role against a single ship to engagement of a state who violated international law. While the naval force could be effective against weaker

¹⁹ Amy Searight, "Impact of the South China Sea Tribunal Ruling." *Hampton Roads International Security Quarterly* (2017): 109. 1,4.

²⁰ Brian McGarry, "Enforcing an Unenforceable Ruling in the South China Sea." *The Diplomat*. July 16, 2016. Accessed 3 Mar 2017, <http://thediplomat.com/2016/07/enforcing-an-unenforceable-ruling-in-the-south-china-sea/>.

²¹ Searight, 5.

nations, when opposing one of the ‘great’ nations or even one of the permanent members of the United Nations Security Council the success of the force could not be guaranteed.

EXISTING INTERNATIONAL AND REGIONAL ORGANIZATIONS

For the three areas of interest, only piracy has a regional focus with organizations specifically created to respond the security threat. It could be argued that the regional protection organizations were established by states to protect only their own Flagged vessels. As piracy also disrupted vessels that provided goods to their own state, it was in their economic interest to augment the oversight and provide security to all maritime vessels transiting through the area of threat. The operations in the waters off Somalia have been authorized by a “series of increasingly robust United Nations Security Council Resolutions.”²² The United Nations Security Council has recognized the value of the regional organizations that provide the increased security and stability.²³ While the actions of the regional organizations are essential, the Resolutions also enabled and recognized the actions of the UN organizations to act on the source of the problem ashore in Somalia.

Regional Forces

There are four main organizations conducting anti-piracy activities in the Middle East water space: the Combined Maritime Forces, United Kingdom Maritime Trade

²² Warner and Kaye, 279.

²³ *United Nations Security Council Resolution 2020 (2011)* dated 22 November 2011. Accessed 1 May 2017, <http://www.un.org/press/en/2011/sc10454.doc.htm>

Operations (UKMTO), the NATO Shipping Centre (NSC), and the Maritime Security Centre-Horn of Africa (MSC-HOA). The Combined Maritime Forces (CMF) is a US led, multinational force composed of 23 countries contributing forces to one of three Combined Task Forces for security and anti-piracy. This area includes three choke points (Suez Canal, Bab-el-Mandeb, and the Strait of Hormuz) and has over ten thousand ships active daily. Its role is to discourage terrorism and illicit maritime activities as well as protecting lawful shipping traffic and improving the regional navies' capabilities.²⁴ Combined Task Force 151 is focused on piracy and works closely with the aforementioned organizations.

The UKMTO was established initially to focus on UK-flagged shipping and its maritime interests, but now is a liaison between merchant shipping and coalition forces, offering a voluntary reporting scheme to track merchant ships. The NSC is similar, but directly communicates back to NATO, enabling improved communications to support maritime operations. The MSC-HOA is an EU initiative to address this issue. It maintains an active secure website to enable merchant ships to register and be tracked by nearby maritime forces, in consideration of their vulnerabilities.²⁵ This system, coupled with the establishment of international transit corridors, has enabled the dramatic reduction of successful piracy attempts through a version of convoy protection. The multinational ships that support this effort are not only NATO and EU ships through Operations ATALANTA and OCEAN SHIELD as well as Combined Task Force 151, but also

²⁴Richard Scott, "Policing the Maritime Beat." *Jane's Defence Weekly* 46, no. 17 (2009): 24, 2.

²⁵Andrew Muratore, "EU-NATO Co-Operation and the Pirates of the Gulf of Aden." *Australian Journal of Maritime & Ocean Affairs* 2, no. 3 (2010), 98.

national navies of non-affiliated countries like China, Japan, and India.²⁶ Of note, the NATO navies participating have high interoperability due to standardization agreements. Other forces, including those from the EU, must use different systems in order to respect the security requirements. These groups did resolve the communication issues through the use of a CENTRIXS software system that can protect the security regimes of all parties by controlling who has access to which sharing enclaves.²⁷ In essence, it enables the multi-national forces without compatible security permissions to communicate via unclassified means using restricted websites.²⁸ This fact is important as a UN standing naval force could initially rely on similar information sharing systems to coordinate operations.

The ReCAAP (Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia), is a regional government-to-government agreement to enhance cooperation against piracy in the Asia region. It has been in force since September 2006 with twenty states parties to the Agreement. It should be noted that while there are some common global partners between regions, there is a strong regional presence in the ReCAAP. Recent evidence from the IMO, presented at the ReCAAP ISC (Information Sharing Centre) Piracy and Sea Robbery Conference April 2017 demonstrates that a global downward trend in piracy attacks of approximately 29% from 2015 to 2016 based on reports received by the IMO at actual and attempted attacks. As the level of piracy events decreased in the Somalia region, the threat independently

²⁶ Muratore, 90-91.

²⁷ Muratore, 92.

²⁸ Scott, 4.

increased in the Gulf of Guinea region.²⁹ As such, this fact indicates that the current method of enforcement and protection are generally improving the safety of merchant shipping against the threat of piracy. Through the actions of this group, the piracy threat in the Malaysia area and Strait of Malacca has been reduced.³⁰

It is through these multinational collaborations that the increased presence, coupled with other international and regional organizations naval presence that have led to a decrease in piracy attacks. Moreover, there has been an international focus on improving the land situation, including the establishment of the Djibouti Code of Conduct. This code was created by the International Maritime Organization (IMO) to join twenty countries in the region of the Gulf of Aden to cooperate to repress piracy.³¹ It has reduced the occurrence of piracy, as captured pirates are tried regionally by their home states or a compliant regional state and thus are unable to continue threatening shipping.

Private Security Contractors have been used by shipping companies, in accordance with the Best Management Practice promulgated by IMO, to provide additional protection for the ship and its crew.³² It is opined in the RAND conference that the cost of having contractors on board, considering the low probability of being attacked

²⁹ *Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (RECAAP)* website. Accessed on 6 May 2017, www.recaap.org and *International Maritime Organization presentation for ReCAAP ISC Piracy and Sea Robbery Conference 2017*. Accessed on 6 May 2017, www.recaap.org.

³⁰ IMO presentation for ReCAAP ISC

³¹ International Maritime Organization “Djibouti Code of Conduct”, *Protection of Vital Shipping Lanes*, dated 3 April 2009. Accessed www.imo.org/en/ourwork/security/piracyarmedrobbery/pages/default.aspx

³² IMO, Piracy and armed Robbery against ships in waters off the coast of Somalia: Best Management Practice for Protection against Somalia Based Piracy. MSC.1/Circ.1339, London, 14 September 2011. Accessed 6 May 2017 www.imo.org/mediacentre/hottop;ics/piracyh/documents/1339.pdf

as being too much to justify their presence.³³ Moreover, having armed guards on board a ship will affect the ability of a ship to claim the right of innocent passage, and can lead to an escalation in violence. This violence could also lead to compensation claims not covered by insurance. As such, ship-owners believe that any benefit of using Private Security Contractors is outweighed by the costs and restrictions required. Therefore, their preference is to “safeguard shipping through combined state and industry efforts.”³⁴ In essence, this statement means increased naval patrols, control and coordination in areas of known risk and the use of speedy transit corridors, increased communications and citadel/safe areas over the use of Private Security Contractors.³⁵ It is suggested that part of the preference for the increased naval patrol is that the cost is borne by Flag States vice the ship-owners paying for the contractors.

As noted earlier, this series of regional organizations and improved regional codes of conduct has been generally effective at reducing piracy globally. As such, it speaks to the question of the value added of a UN standing naval force. If a group of interested States can achieve success by focusing resources within a region to achieve a result, should not the same objective be expected of a standing UN naval force? Still, while the actions taken improve maritime security, piracy is merely a symptom of a failed local State that cannot provide its people the necessities they require.

³³ Peter Chalk, Laurence Smallman, Nicholas Burger, and National Defense Research Institute (U.S.). "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*, 2009, 5

³⁴ Chalk, Smallman, and Burger, 4, 5.

³⁵ Chalk, Smallman, and Burger 5.

UN STANDING FORCE

The economics of peacekeeping, particularly since the end of the Cold War is daunting. The annual cost pre-Cold War was \$200 million US, while afterwards it has risen to an average of \$2 billion US annually. One of the reasons for this rise in peacekeeping funding, including a less acrimonious Security Council and a greater desire to intervene to maintain human security.³⁶ The cost of supporting these deployed forces is shared by all Member States of the UN. After the Cold War, there was a revitalization of the initial intent of the UN to establish a standing volunteer army that would respond as required.³⁷ A standing volunteer army was seen to be able to respond faster to arising events without requesting the assistance of Member States for their standby forces and negotiating each state's national employment caveats. According to Parai, several proposals were submitted that ranged from a 1 million personnel force, financed by no more than 0.5% GDP of all Member States to the SHIRBRIG concept discussed later. However, he asserts that the "main impediment to a UN standing force continues to be the lack of political will among Member States."³⁸ This realist perspective to have a state's own military under its own control, promoting and protecting its interest, and thus an international force might impede its own objectives. As such, Parai emphasized the benefit of standby forces vice standing forces. A UN standing force would have its own garrison cost and thus necessitate increased Member State contributions to the UN.

³⁶ Louis Parai, "A Note on the Economics of Standby Versus Standing Peacekeeping Forces." *Defence and Peace Economics* 17, no. 5 (2006), 413.

³⁷ Michael Codner, "Permanent United Nations Military Intervention Capability: Some Practical Considerations." *The RUSI Journal* 153, no. 3 (2008), 58.

³⁸ Parai, 414.

Moreover, the Member State would still want to maintain their military forces, so the overall defence cost to a nation would increase. If the UN only has to pay the deployment cost of a standby force, it is economically more effective as both the UN and the Member State can utilize the assigned resources efficiently. Specifically, dividing the cost between maintaining the force in garrison and deploying them, it is economically better for the UN to continue to only pay for the deployment cost and let the member state pay for the garrison cost.³⁹

SHIRBRIG

In part, this argument was considered in the development of a rapid response force. In the 1990s, the concept of human security was becoming more prevalent. Significant events in Rwanda and Somalia supported the premise that if a quick reaction force had been available, the situation in those countries would not have become as dire. In response to this need to make UN peacekeeping operations more effective and timely, a rapidly deployable standby peacekeeping force was required. The creation of this force was driven in part by UN Secretary-General Boutros Boutros-Ghali in his January 1992 report, *An Agenda for Peace*, wherein he stated the need for peace-enforcement units with predetermined terms of service that were imminently available for service.⁴⁰ This report reignited debate between two internal UN camps for improving the arrangements and for initiating a UN volunteer or multinational rapid response brigade. The UN

³⁹ Parai, 416.

⁴⁰ Boutros Boutros Ghali, United Nations report of the Secretary General, *An Agenda for Peace*. 17 January 1992, www.un-documents.net/a47-277.htm.

volunteer brigade was an older concept introduced in 1954 by UN Secretary-General Trygve Lie. This initial idea was for a much larger (ten thousand) unit, while the 1990's notion discussed was for a rapid, self-sufficient unit that could conduct peace-making operations for the initial period before a regular peacekeeping mission could be put in place.⁴¹

The middle powers (Canada, Netherlands, and Denmark) proposed different variations of this concept and in 1996, the Multinational Standby High Readiness Brigade for United Nations Operations (SHIRBRIG) was established.⁴² In essence, this organization was a standing planning element of thirteen officers that would expand to a brigade headquarters of 150 staff, with up to a composite multinational brigade of four to five thousand personnel, including communications, infantry, medical, and logistics trades. The ultimate solution was able to be deployed in fifteen to thirty days,⁴³ the SHIRBRIG, had twenty-three states participating at different levels of membership: ten countries at full members, six partial members and seven nations with observer status. Membership was focused on small or middle powers with peacekeeping experience and the agreement to administratively and financially support the planning headquarters and make capable units available at short notice.⁴⁴ The SHIRBRIG deployed in force only once to Ethiopia and Eritrea, although it did send small planning and headquarter teams to support the establishment of headquarters for numerous other UN missions.

⁴¹ Ronald M. Behringer. *The Human Security Agenda: How Middle Power Leadership Defied U.S. Hegemony*. New York, NY: Continuum International Pub. Group, 2012, 37.

⁴² *Ibid*, 29.

⁴³ Arslan Malik, "The Beginnings of a UN Army? [Stand-by Forces High Readiness Brigade]." *Behind the Headlines* 56, no. 4 (1999), 5

⁴⁴ Behringer, 44-45.

The SHIRBRIG was terminated in June 2009. Behringer provides evidence that “there was a lack of appropriate missions for SHIRBRIG participation,” potentially due to a UN Security Council lack of interest in peacekeeping during that period, coupled with the three initiating members being focused on other priority missions.⁴⁵ Interestingly, he opines that the SHIRBRIG was disbanded not due to failure, but likely due to the change in international need for peace enforcement vice peacekeeping. Moreover, the SHIRBRIG, if employed in that increased role, would likely have required one of the permanent members of UNSC to participate, and thus would have to cede control to that higher power, which was not politically acceptable to the initiating members.⁴⁶ The development of this concept is relevant and it demonstrates the reluctance of nations to commit in an international forum, due to state caveats and considerations. A champion, in the form of the Danish Defence minister Hans Hækkerup, pushed the concept through, rallying support from the Secretary-General, while his partner nations, Canada and the Netherlands, were non-permanent members of the UN Security council at that time.

There was opposition to the SHIRBRIG initiative. Malik reports that the non-aligned movement (NAM) from the developing world believed that the SHIRBRIG gave some countries an enhanced ability to participate in peacekeeping because of their enhanced coordination capability. Moreover, even the members of the SHIRBRIG group could decline to join an operation if they deemed it too risky or unappealing for its

⁴⁵ Behringer, 48.

⁴⁶ *Ibid*, 50.

national interest.⁴⁷ Therefore, it appears that while the concept of a designated UN standby rapid-reaction brigade was valid, it had a limiting lack of acceptance. Whether this was due to a realist view that it must be beneficial to the contributing state, or to the also realist view that economic implications for the poorer states not being able to contribute and gain financial rewards, the liberal organizational response concept was not truly effective.

UN NAVAL FORCES

Background of UN Naval Operations

K. Booth describes the use of the naval forces for a three roles: military, diplomatic and policing.⁴⁸ Although this view was proposed in the heart of the Cold War (1977), it no doubt remains valid today. Recent UN peacekeeping missions have included maritime embargo support, humanitarian aid and support, transport/support to land-based peacekeepers. Indeed, there have been seven situations where the UNSC has authorized economic naval embargos since 1965. Specifically, South Rhodesia, Iraq, the former Yugoslavia, Haiti, Sierra Leone, Lebanon, and Libya have all had maritime economic sanctions by naval forces.⁴⁹ Depending on the UN charter Article described by the UNSC, the requirement, and ability to exercise maritime forces to enforce the Resolution is described. Specifically, Article 41 is employed to conduct economic enforcement

⁴⁷ Malik, 7.

⁴⁸ Ken Booth, *Navies and Foreign Policy*. Croom, Helm: London, 1977, 15-16.

⁴⁹ M. D. Fink, "UN-Mandated Maritime Arms Embargo Operations in Operation Unified Protector." *Revue De Droit Militaire Et De Droit De La Guerre = the Military Law and Law of War Review* 50, no. 1-2 (2011): 237-260, 74

measures and acts as an essential step to re-establish local and international security. Article 42 is used for military enforcement measures and includes the use of force. Both can be divided into implied and explicit maritime embargo operations. The former is more suited to an Article 41 resolution, while explicit embargo operations are clearly linked to Article 42 resolutions.⁵⁰ M.D Fink suggests that an “implied maritime embargo operation can also be characterized as maritime peacekeeping”⁵¹ whereas an explicit embargo is authorization for maritime interdiction. These distinctions are important as they clearly define the range of options and forces to be employed. Moreover, they help to clarify when a potential UN standing force could be employed and the scope of the capability required to conduct operations.

Naval Task force

The flexibility of a warship to adapt to a diverse set of roles and expectations is its strength. Peter Haydon defined five phases of maritime crises management: 1. Prevention of conflict at sea, 2. enforcing sanctions, 3. crisis containment, 4 maritime intervention, and 5. peacekeeping.⁵² While different warships types are stronger than others at conducting each role or phase, a mixed task group has the flexibility to succeed in any phase. For enforcement of UNCLOS regulations and even when used in support of a UN operations, a UN warship would have to have capability in all five phases. Based on the

⁵⁰ Fink, 76.

⁵¹ *Ibid*, 79.

⁵² Peter Haydon, “Navy and Air Force Peacekeeping Role: an Expanded Role.” *The Changing face of Peacekeeping. CIIS*, 1993, 90

aforementioned analysis, much of the role of a UN standing force would be constabulary, conducting maritime intervention, and crisis containment. As such, many nations could provide warships that are capable policing in these phases of maritime crises management.

Standing Naval Force

As SHIRBRIG was terminated in part due to an ability to respond with the appropriate level of force, would there be greater appetite for standing or even standby naval force? A standing naval force would be employed primarily in a constabulary role to enforce the UNCLOS and the associated findings of its tribunal. While allowing nations to continue to patrol and administer national law within its territorial water, the UN standing naval force would act in international waters to enforce UNCLOS, thus ensuring maritime and environmental security. This role is in keeping with a peacekeeping role and thus is not foreign to the United Nations. However, it may require additional training for ship's officers to ensure that they apply the UNCLOS appropriately in the enforcement role, particularly as an appropriate state would consider infractions to the UNCLOS as stated by the capturing warship.

A constraint to the establishment of a UN standing naval force is the existing number of warships available around the globe. There are 1233 warships, of which 838 are destroyers, frigates, and corvettes; the US Navy ships account for 133 of that total.⁵³

⁵³ "Chapter Ten Country Comparisons - Commitments, Force Levels and Economics." *The Military Balance* 115, no. 1 (2015): 486-492.

Even if 10% of the total destroyers, frigates, and corvettes were offered by the international community, only 84 ships would be available. The Somalia anti-piracy operation with the four organizations uses approximately twenty ships, or one quarter of the available standing naval force. Considering that there are other anti-piracy regions in Western Africa and Malaysia, the available ships for UNCLOS enforcement other than anti-piracy operations is dramatically reduced, particularly considering the distances involved between regions. Moreover, for an enforcement of a border dispute finding, a larger, more capable force would be required. Considering the availability and naval presence challenges that the US Navy experiences, it is doubtful that a UN standing naval force would be present where required without compromises to its role.

Furthermore, warships are a highly expensive national asset. Currently, when ships are attached to regional naval associations like NATO or CTF 151, the state can and has redeployed the ship in accordance with national interests. As such, a UN naval force may have its assigned assets revoked due to changing state requirements, or if its warship must impose international law for an infraction on a friendly state. A realist view of the employment of a state's warship to enforce international law on all states pessimistically suggests that they will act in their state's political interests. This fact is corroborated by the dissolution of the SHIRBRIG. While nations should work in concert with the liberal organization for the betterment of the global state, each nation continues to reinforce its own needs over those of others.

CONCLUSION

Therefore, while it is viable to use an UN standing naval force to regulate and enforce international law on the high seas, it is impractical for several reasons. To conduct effective operations a much larger naval force would be required to provide adequate coverage to enforce maritime security, border disputes, and pollution monitoring. Additionally, the political interest of each state may influence the effectiveness of enforcing high sea regulations on other States, and thus not reach the lofty expectations of such a force within the United Nations. Despite the immense distance between regions, there are common trade routes, thus aberrations due to maritime security or pollution will be noticed. With regional organizations already providing maritime security in the areas of commercial concern, and states providing surveillance and security for their sovereign waters, perhaps the current solution is adequate for the described threats of piracy, marine pollution, and border disputes. Instead of focusing on improving the response to symptoms to the problems ashore, more attention should be given to resolving the regulation and enforcement problems at the source.

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