# A PRIVATE SECURITY SOLUTION TO SOMALI PIRACY?

## The U.S. Call for Private Security Engagement and the Implications for Canada

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Canada's naval response to Somali piracy has been a mixed affair. On the positive side, in recent years the Canadian Navy has successfully dedicated a significant level of resources to countering Somali piracy: the destroyer HMCS *Iroquois,* the frigates HMCS *Calgary, Ville de Québec, Winnipeg,* and *Fredericton,* and the oiler HMCS *Protecteur*. Collectively, these vessels operated effectively alongside the ships of several other navies, especially those of the U.S. Navy, that together form the various international flotillas confronting Somali pirates. The Canadian Navy's level of involvement has been no mean task, because of the great distances involved, its limited number of surface combatants, and its other responsibilities.

On the negative side, the effective handling of Somali pirates has been an ephemeral and problematic task. Despite the international naval presence, the incidence of Somali piracy has increased. In 2008 pirates attacked 122 vessels, and in 2009 the number rose to 198. In the spring of 2010, just as HMCS *Fredericton* was cruising back to Halifax, Nova Scotia, after completing a 4.5-month patrol, Somali pirates renewed their attacks following the monsoon season.[1] *Fredericton*'s captain, Commander Steve Waddell, recognized the elusiveness of overall success: "Pirates continue to attack shipping in the region. . . . [T]hey've been doing it while we are here, and they continue to do it now even as we get ready to go home."[2]

In light of the counterpiracy mission's prominence for Canada and the limited effect navies have had so far, a call by the United States for international

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*Naval War College Review, Autumn 2010, Vol. 63, No. 4*

commercial shippers to rely upon private security companies (PSCs) demands attention. For instance, Vice Admiral Bill Gortney, "double-hatted" as commander of the Fifth Fleet and Naval Forces Central Command, has advised that "companies don't think twice about using security guards to protect their valuable facilities ashore. Protecting valuable ships and their crews at sea is no different."[3] General David Petraeus, then commander of U.S. Central Command, similarly espoused the engagement of PSCs by international shippers operating near Somalia.[4] Though Canada's Chief of Defence Staff, General Walter Natynczyk, has not explicitly endorsed the U.S. call, he has argued that pirates who "see some challenge" will back off: "There's a responsibility on the shipping companies in terms of where they are routing ships and the kind of protection they take, and it's an issue they have to resolve because what we have found is that the pirates are not a bunch of courageous people."[5]

What, therefore, are the call's implications in terms of future Canadian activism and the overall effectiveness of countering Somali piracy? To answer this question, this article offers four main points. First, through initially examining the rationales supporting Canada's counterpiracy activities, it identifies the conundrum that PSC/shipper engagement presents to Canada. The call's American roots suggest boundaries on what Canada should likely expect in terms of future U.S. Navy efforts and, correspondingly, the efficacy of a counterpiracy approach stressing mostly state assets (i.e., naval ships). Second, the article compares the differences between a state naval (i.e., Canadian) counterpiracy response to that of PSCs. It finds that though PSCs can avoid many of the problems that state responses currently confront, their engagement presents some qualitative challenges. Third, the article identifies the *Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict* (to which we will refer as the Montreux Document) as an appropriate device that Canada might advance to ameliorate the maritime PSC option. Finally, the article argues that while, quantitatively, more interactions between PSCs and shippers might result through the Montreux Document's promotion, many commercial shippers do not wish to respond to the American recommendation; it upsets long-held expectations about who does what at sea. Increasing the PSC presence to such an extent that a strong public/private partnership at sea exists will be a longer-term undertaking.

## CANADIAN RATIONALES FOR COUNTERING SOMALI PIRACY

Five rationales frame the Canadian Navy's efforts in countering Somali piracy. One concerns the negative effects that piracy poses to maritime trade in both holistic and, in turn, direct ways for Canada. At the holistic level, the Canadian

Navy's 2001 guiding document *Leadmark* and the government's 2008 *Canada First Defence Strategy* set the direction for the nation's policy. They link Canada's economic prosperity as a trading nation with globalization, which in turn depends on advancing stability and limiting lawlessness abroad.[6] The Canadian Navy's assessment of important future strategic issues similarly stresses maintaining this prosperity:

> The greater interdependence of economies resulting from globalisation means that great harm can be inflicted upon the economy and people of Canada by even low-level warfare or asymmetric threats virtually anywhere in the world. . . . It is therefore in the best interests of Canada to assist in ensuring the free flow of goods and the creation and maintenance of an environment free of disruptions and threats not only to us but also to our trading partners.[7]

Likewise in a direct manner—for instance, Somali pirates seized control of the MV *Yasa Neslihan* on 29 October 2008. This Turkish-flagged bulk carrier held seventy-seven thousand metric tons of Canadian iron ore and was en route to China. Canadian naval personnel have also acknowledged the importance of the Gulf of Aden to commercial vessels bound to Canada.[8]

The second rationale pertains to the physical security of Canadians. The Canadian government asserts that a variety of security concerns, regardless of geographical proximity, can pose a threat. To justify the government's 2009 dispatch of HMCS *Winnipeg* to the Gulf of Aden to counter Somali piracy, Defence Minister Peter MacKay contended that "the security challenges facing Canada are real and globalization means that developments abroad can have a profound impact on the safety and interests of Canadians here." The minister's language echoed the government's stance laid out in the *Canada First Defence Strategy.*[9]

Third, in a political sense, Canadian involvement in counterpiracy efforts demonstrates a commitment to responsible and meaningful *participation* in international security endeavors. Political calculations intrude here, given the current government's desire to portray its *Canada First Defence Strategy* as reversing the decline of international activism precipitated by preceding governments. For Prime Minister Stephen Harper, the strategy "[ensures] that Canada can return to the international stage as a credible and influential country, ready to do its part."[10] In this context, Canada demonstrates leadership by "being there," which in turn helps to avert strategic marginalization felt by nonparticipants. Canada also demonstrates leadership through its seeking out and acceptance of prominent roles within international military activities.[11]

The fourth rationale is that historically the Canadian Navy has generally participated in international naval activities headed by the U.S. Navy (USN). Put differently, though the Canadian Navy certainly does not disregard independent

operations or participation in coalitional activities lacking American leadership, it does link much of its operational fortunes to the U.S. Navy. As *Leadmark*'s drafters note, "There will continue to arise any number of situations in which naval forces of medium powers such as Canada can make a difference by working in combination with the USN."[12]

Therefore, the Canadian Navy's long-standing interoperability with the U.S. Navy allows for the contemplation of a range of operations that feature the latter's involvement.[13] Equally, interoperability is recognition of the Canadian Navy's own qualitative and quantitative limitations. Interoperability permits the Canadian Navy to do more regarding both operations and the potential accruement of political credit, but it also ties the service closely to what its U.S. counterpart does.[14]

The final rationale concerns the Canadian Navy's self-preservation: there is public appeal in confronting pirates. Though Somali pirates differ substantially from the buccaneers of old or the swashbuckling figures of popular culture, counterpiracy activities have an allure that the population easily appreciates. This is no small issue, because historically the Canadian Navy has had difficulties in promoting its relevance in terms of maintaining the nation's security and prosperity.[15] If anything, this promotion has become more difficult in recent years, for four reasons: the end of the Cold War brought a reduction in strategic clarity; nontraditional threats, such as terrorism, are largely land-based phenomena; considerable media attention has focused on the Canadian Army's operations in Afghanistan; and it is difficlt to espouse to domestic political audiences measures of effectiveness that reveal the linkage between forward naval presence and globalization's economic benefits.[16] Thus, it is striking that Commander Craig Baines, commanding officer of HMCS *Winnipeg* during its counterpiracy mission, asserted that Canada's efforts garnered "a level of national and international media interest 'that is unprecedented in recent naval operations.'" Equally surprising is that the media labeled Commander Baines a "national celeb" as a result of his efforts and those of his crew in the waters off Somalia.[17]

## IMPLICATIONS OF THE U.S. CALL

Notwithstanding the importance Canada places on countering Somali piracy, the American origins of the call for PSC/shipper engagement suggest a vacillating U.S. Navy approach. On the one hand, Secretary of State Hillary Clinton has justified an initial naval, rather than land-based, approach toward Somali piracy, arguing that "[you] have to try to put out the fire before rebuilding the house."[18] More generally, American policies issued in 2005, 2007, and 2008 explicitly connect freedom of the seas with countering piracy.[19] In a congruent manner, the

2007 "Cooperative Strategy for 21st Century Seapower" identifies piracy as an irregular and transnational threat. A U.S. Navy response to these threats, it declares, "protects our homeland, enhances global stability, and secures freedom of navigation for the benefit of all nations."[20] Similarly, the current chairman of the Joint Chiefs of Staff, Admiral Michael Mullen, asserted in the past that piracy can "no longer be viewed as someone else's problem. It is a global threat to security because of its deepening ties to international criminal networks, smuggling of hazardous cargoes, and disruption of vital commerce."[21]

Yet on the other hand, the call for PSC/shipper engagement does imply limitations on the degree to which piracy is to be a U.S. Navy problem. Certainly, that service has not said that it is ending its counterpiracy work, nor has it suggested that other states stop their own efforts. But one can argue that additional U.S. Navy vessels, however necessary, will not be immediately forthcoming in countering Somali piracy.[22]

In this context, among the various transnational threats the U.S. Navy now confronts, countering Somali piracy is apparently of a lower order of concern than, for example, terrorism. As Jonathan Stevenson, of the faculty of the U.S. Naval War College, contends, "Most naval commanders do not consider the containment of the piracy problem a central military task, seeing it as a distraction from core counterterrorism, counterproliferation, deterrence and war-fighting missions."[23] Though U.S. Navy officials are consistently wary of possible linkages between Somali pirates and Islamic extremists, there is no evidence to suggest the two are connected.[24] Until such a connection is clear, antipiracy efforts will seemingly be a lesser priority for the U.S. Navy.

For Canada and its navy, the U.S. call for PSC/shipper engagement leads one to question the nature of Canadian involvement in countering Somali piracy. The Canadian Navy can still in the future show Canada's international credentials by "being there" in the Gulf of Aden, so garnering publicity at home. However, the ultimate success of a solely state-centric approach is minimized if additional state naval resources, especially from the U.S. Navy, are not in theater. Put differently, while the Canadian Navy can still assist the U.S. Navy in confronting contemporary security threats that are of concern to Canada, Somali piracy specifically is apparently on a lower level of importance for the U.S. Navy.

In the face of these issues, might Canada work to develop a better public/private relationship beyond General Natynczyk's demand that shippers be capable at deterrence? Generally, such an approach, given Canada's rationales for engaging in counterpiracy efforts, might help to safeguard its interests *at sea* and support its interests *by sea*.[25] Canadian activism would help compensate for the quantitative limitations of a solely state-centric response at sea. It would also be in keeping with the U.S. Navy's desires to develop positive partnerships with sea

users. These desires are evident in the 2005 "thousand-ship navy"/Global Maritime Partnership and the policy directives presented in the 2007 "Cooperative Strategy," noted above. Indeed, the language employed in these cooperative frameworks is not exclusive to states.[26]

Therefore, to assess in what ways Canada might best advance the private presence as per the American call, the article now turns to the differences, vis-à-vis state naval resources, of a PSC response and the possible drawbacks of the PSC approach that require minimization.

***Public/Private Differences***

While warships of state navies off the Horn of Africa may convoy specific ships of interest, they also patrol areas of water and intercept pirates. These are difficult tasks for state navies, given the Somali coastline's size—the longest in mainland Africa—and Somali pirates' increasing brazenness and prowess. Somali pirates, using mother ships to support smaller skiffs, have attacked vessels farther than a thousand nautical miles from Somalia's shores. The mother ships provide for reach and the dispatched skiffs are stealthy and fast. Indeed, attacks often end in less than fifteen minutes. Somali pirates have even mounted attacks within the Internationally Recommended Transit Corridor—in which shippers and navies alike are to concentrate their resources—to the degree that the Gulf of Aden has been nicknamed "pirate alley."[27]

In light of these factors, state navies also emphasize reach and speed in countering Somali pirates. Canadian naval officers, such as Commander Baines, have underlined the reach and swiftness of air assets: "It cannot be overstated how critical Winnipeg's embarked Sea King was to mission success. . . . The helicopter was integral to every major piracy event that Winnipeg was involved in."[28] Commander Waddell, of *Fredericton,* similarly stressed how state navies can stretch their abilities: "It's really huge geography. You don't work side by side with other ships. . . . You spread your resources out as best you can. You extend the range of what you're looking for by using radar, helicopters and patrol aircraft."[29]

In contrast, PSCs largely avoid the coverage issues and the consequent capital requirements by concentrating on the close protection of their clients' vessels.[30] As explained by one private security company, Hollowpoint Protective Services, "vessels travelling in hostile waters require one on one protection. The seas are much too vast for governments both foreign and domestic to protect every ship that travels."[31]

In exercising this close protection, PSCs are not under international law permitted to "go after" and conduct offensive activities against Somali pirates. Article 107 of the United Nations Convention on the Law of the Sea (UNCLOS) highlights state prerogative in this regard: "A seizure on account of piracy may

be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect." What is more, only defensive measures are allowable, given UNCLOS article 101's definition of piracy as "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." Indeed, taking action beyond the mere defense of a client could itself constitute piracy.

In two particular ways, these legal limitations at sea fit well with how the PSC industry has evolved generally. One pertains to the manpower rather than capital-centric orientation of PSCs already evident in their operations on land.[32] At sea, whereas some PSCs do send their own vessels to sail alongside clients' ships, most instead offer only onboard security personnel, hired on a contractual basis.[33] Through this hiring method and by "equipping the man" rather than "manning the equipment," PSCs can avoid much of the administrative, management, investment, and infrastructure-related costs that state militaries confront. This approach also, however, removes any opportunity for a PSC to pursue and intercept pirates; a ship's master retains control of the vessel even if PSC personnel are on board.

The second way has to do with the carving out of a market niche for defensive activities. States and PSCs alike are generally keen to conflate the offensive application of violence with combat duties—that is, something that only states perform.[34] In the view of both, private commercial actors who perform offensive tasks are "mercenaries." Indeed, American officials draw the distinction between mercenaries and PSCs:

> Accusations that U.S. government-contracted security guards, of whatever nationality, are mercenaries is inaccurate and demeaning to men and women who put their lives on the line to protect people and facilities every day. . . . The security guards working for U.S. government contractors in Iraq and elsewhere protect clearly defined United States government areas, and their work is defensive in nature.[35]

In this vein, directives of the Coalition Provisional Authority in Iraq and the Joint Contracting Command–Iraq/Afghanistan restrict combat duties and law enforcement to state forces exclusively.[36] One can note comparable offensive/defensive distinctions made by British and Canadian officials. The "value added" of PSC engagement comes through allowing militaries to concentrate on combat-related tasks.[37]

Similarly, more and more firms utilize the term "private security company" rather than "private military company," so as to keep the "military" as the preserve of states. This is also true for industry associations, such as the British Association of Private Security Companies, whose membership pledges "to avoid

any armed exchange in their operations, except in self-defence."[38] Individual companies also routinely espouse their defensive credentials.[39]

Another major difference between the public and the private is that PSCs avoid the operational and legal challenges associated with bringing Somali pirates to justice. Canadian Navy crews have let suspected pirates go rather than face prosecution, a policy derided as "catch-and-release."[40] Several reasons inform this approach. Some relate to the navy's human capital, as suggested by Commodore Bob Davidson, who led Combined Task Force 150 in 2008: "We are military people, not law-enforcement people. . . . We are not trained in evidence gathering and the connection between crime and punishment."[41] Some problems relate to developing legal proxies in the region. For instance, only in 2010 did Canada initiate funding for special judicial venues in the Seychelles and Kenya to prosecute captured pirate suspects.[42] Other issues concern reluctance to bring pirates to account in Canada: first, clear evidence of an attack, rather than simply probable intent to attack, must be obtainable; second, no Canadians are likely to be directly affected by a particular pirate attack; and third, prosecutions in Canada might be ineffective and even lead to subsequent refugee claims.[43]

It is true that UN Security Council Resolution (UNSCR) 1816 "calls upon all . . . States with relevant jurisdiction under international law and national legislation, to cooperate . . . in the investigation and prosecution of persons responsible for acts of piracy and armed robbery off the coast of Somalia." The Security Council has emphasized the resolution's importance by renewing it twice through UNSCR 1846 of 2 December 2008 and UNSCR 1897 of 30 November 2009. Nevertheless, Canada's Department of Foreign Affairs and International Trade argues that Canada is not obliged to respond: "The wording of paragraph 11 of UNSCR 1816 on 'investigation and prosecution' is not cast so as to create a legally binding decision pursuant to Article 25 of the Charter of the United Nations."[44] Whatever the legal merits—some Canadian Navy personnel have grumbled about the lack of "follow through"—this is a perplexing matter that PSCs have not faced.[45]

### *Possible Drawbacks*

Though the private presence enjoys some unique and useful attributes that states and shippers alike might capitalize upon, PSC professionalism and capabilities are unclear, given current industry dynamics. There is a fear that counterpiracy work will become the next big PSC "gold rush," with all the potential for disorder the term evokes. Regarding the last "rush," by some estimates 60 percent of private security companies did not exist before 11 September 2001; they found their places in Iraq, Afghanistan, and elsewhere.[46] Similarly, start-ups can increase the pressure

for expansion into maritime operations, due to the small outlay required to get into the business, given the aforementioned emphasis on contracted manpower. Other, more established PSCs will also likely enter the maritime marketplace in search of further opportunities and service diversification. As pointed out, for instance, by Jim Cowling of the PSC Shipguard, "Iraq is being wound down, and guys are looking around and latching onto piracy."[47]

In many ways, the PSC expansion is occurring in a vacuum. Shippers, while often knowledgeable of nonlethal security measures and tactics for countering pirates, do not always have experience in managing violence; they must rely on PSC expertise. PSCs themselves, however, have varying levels of experience in maritime security. The ease of entering the marketplace has some qualitative implications, as emphasized by Neptune Maritime Security's David Rider: "Ironically, hiring armed guards for a boat is easy. What's difficult is hiring seasoned, experienced professionals at a competitive price who will ensure the security of not only the boat, its crew and cargo, but also the parent company's corporate reputation as well."[48] Disagreement among PSCs is also evident as to whether unique characteristics and understandings are required regarding maritime conditions, operations, and equipment, compared to security work on land.[49] Equally, some flag states have laws about the permissibility of arms onboard but do not have regulations governing PSCs specifically.[50]

The potential for unmanaged growth and lack of control are troubling, because even with the hoped-for target-hardening and deterrent effect of PSC employment, it is likely that private violence will be increasingly applied. Indeed, it has already happened: on 23 March 2010, in what has been termed as "the shot 'heard round the seas,'" PSC personnel for the first time killed a pirate during a thwarted attack on the MV *Almezaan*.[51]

## CANADA AND REGULATION'S POTENTIAL ROLE

There is one international regulatory mechanism that might promote responsible and effective PSC/shipper engagement: the Montreux Document. Together, the Swiss government and the International Committee of the Red Cross (ICRC) initiated the negotiations leading to the document. On 17 September 2008 Canada became one of the document's first seventeen signatories. The other states were Afghanistan, Angola, Australia, Austria, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, Ukraine, the United Kingdom, and the United States. Since September 2008, an additional seventeen states have announced their support for the document: Albania, Bosnia and Herzegovina, Chile, Cyprus, Ecuador, Georgia, Greece, Italy, Jordan, Liechtenstein, Macedonia, Netherlands, Portugal, Qatar, Spain, Uganda, and Uruguay.

In the main, these states recognize the document's two major contributions. First, it identifies "hard" international humanitarian law and human-rights law for states to follow. States are not immune from their international obligations simply because PSCs are involved. Second, the document presents seventy-three nonbinding "soft" standards—a tool kit of good practices—designed to guide states in fulfilling their legal obligations.

The Montreux Document's applicability to PSC maritime operations is threefold. First, though the document emphasizes operations during armed conflict, its drafters nevertheless espouse its broader applicability in peacetime endeavors. In particular, they devised its good practices to be germane to the wider development of responsible PSC employment independent of context. Indeed, in their explanatory comments, the drafters explicitly identify the Montreux Document's practicality and usefulness regarding PSCs countering piracy.[52]

Second, the document's language is not overly limiting or exclusive. For instance, the instrument focuses generally on firms providing services that "include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel."[53] PSC counterpiracy activities can easily fall into these categories. What is more, the document's points on state jurisdiction are apt. It defines "home states" as those in which a firm has "its principal place of management."[54] Many states that are document signatories are also the home states of private security companies offering counterpiracy services.[55] Similarly, "territorial states" are those states in which PSCs operate. The provisions can apply to flag states because of the sovereign responsibilities they are to exercise. As well, the drafters champion the document's applicability beyond relations between states and PSCs: "The good practices may be of value for other entities such as international organizations, NGOs [nongovernmental organizations] and companies."[56] Though only states can be signatories, the document's guidance for "contracting states" might be valuable for shippers that are PSC clients.

Third, acting on the good practices listed in the Montreux Document would be beneficial in handling the qualitative concerns raised earlier. The good practices are ways in which state and nonstate actors can become savvy about the PSC industry in terms of background checks, past activities, and performance requirements. The document's suggestions pertinent to quality control, personnel training, weapons systems operations, rules bearing on the use of force, and standardization for the sake of upholding international humanitarian and human-rights law are equally relevant to ensuring appropriate and effective PSC activity. Similarly, the Montreux Document identifies the elements of

international humanitarian and human-rights law that home states could incorporate into more general controls. These controls might be "corporate operating licensing" for limited time spans, "specific operating licensing" for the export of particular services, and "export authorization" that takes into account the proposed service, the client, and the operating context.[57] Additionally, the Montreux Document seeks to protect PSC employees themselves—that is, it stresses employment standards and operational safety. States can identify and underscore the particular requirements for the operations at sea of private security companies, to the benefit of clients and PSC personnel alike.

Canada could work to promote the document's applicability among states (home and territorial/flag) and commercial shippers. To be sure, Canada was instrumental in pushing forward the three-year-long negotiations leading to the document's creation. The Department of National Defence is devising policies on the selection, employment, and management of PSCs with the document squarely in mind—making Canada one of the first countries to take this step. What is more, Canadian advocacy would complement the efforts of the Swiss government to disseminate the document's good practices in forums like the United Nations, NATO, the Organization of American States, and the Organization for Security and Cooperation in Europe. Such advocacy certainly would be in line with the ICRC's expectations that signatories actively promote the document. In total, Canada could advance the document's scope even beyond its important humanitarian and human rights functions to cover PSC activities at sea.

## THE QUANTITATIVE CHALLENGE

One must recognize the challenge Canada and others who advocate the document are likely to face: qualitative improvements in PSC/shipper relationships may only lead to a limited increase in the quantitative level of these relationships. From one standpoint, some shippers and industry associations are wary about how having PSCs on board might lead to further violence, the deaths of seafarers, and even environmental disaster. As suggested by Giles Noakes, the head of maritime security at the Baltic International Maritime Council (BIMCO), "While I understand the temptation, placing armed guards on board creates a severe risk of escalation."[58] Measures undertaken by states to ensure the capabilities and professionalism of PSCs might make the relationship called for by the United States more appealing.

Yet from another standpoint, the very call for PSC/shipper engagement upsets long-held understandings about who should be doing what at sea. While many shippers will take precautionary measures, they will draw the line at violence employed under their auspices. For them, only navies are to possess this

potential and, in turn, bring about a degree of order on the high seas. Peter Hinchliffe, the International Chamber of Shipping's marine director, sums up this opposition:

> I think what navies are forgetting, and perhaps governments are forgetting as well, is that we are not talking about the protection of an individual ship in a piece of water. What we are talking about is the fundamental obligation of nations to provide safe passage for world trade. So, therefore, it is totally unsatisfactory for naval authorities to try to devolve that responsibility to innocent merchant ships.[59]

In this regard, a number of other maritime-related organizations oppose the usage of armed PSC personnel: BIMCO, the International Association of Independent Tanker Owners, the International Chamber of Shipping, the Oil Companies International Marine Forum, the Society of International Gas Tanker and Terminal Operators, the International Association of Dry Cargo Ship Owners, the International Group of Protection and Indemnity Clubs, the Cruise Lines International Association, the International Union of Marine Insurers, the Joint War Committee and Joint Hull Committee, and the International Transport Workers Federation.[60] Equally, the UN's International Maritime Organization and the International Maritime Bureau of the International Chamber of Commerce are nonsupportive.

It would appear, therefore, that normative matters might easily impede the ostensible functionality of security privatization. The upset resulting from security privatization in whatever form is not surprising, according to Alyson Bailes: "[The] rules, norms, disciplines, rewards and punishments have not been tailored to fit this type of actor *for a significant and habit-forming period of historical* time. It is not the intrinsic 'newness' of the private sector and . . . transnational actors that explains the difficulty; rather, it is the fact that they are *different from the recently dominant players*."[61] All the same, unless a large number of shippers embrace the U.S. call, the development of a critical mass of private security activity will be constrained. Without this mass, the PSC presence will be limited in how effectively it can counteract both the limitations of state naval activities and the increasing assertiveness of Somali pirates. Hence, it is evident that increasing the PSC presence to the point of creating a strong public/private partnership against Somali piracy will be a longer-term undertaking.

Commander Waddell summed up the state of Canada's naval efforts in the waters off Somalia as HMCS *Fredericton* prepared to return home: "My view is that the work is not complete here. . . . There will be a requirement, in my opinion, to see further deployments here to sustain the effort."[62] The extent of Canada's concern and of its past engagement leads one to contend that the Canadian

government will likely in the future decide to send naval resources to the Gulf of Aden to further this "work." This decision, however, must recognize that there is now less certainty about the growth of U.S. Navy commitment. At the same time, relations among states, private security companies, and shippers are in flux. The Montreux Document is an appropriate vehicle through which Canada and like-minded states can act in order to bring about qualitative improvements in the PSC presence at sea. But building on the American call for PSC/shipper engagement will be a challenging task. Despite the current state limitations, many shippers prefer grey hulls on the distant horizon to PSC personnel on board.

## NOTES

The views expressed in the article are those of the author; they do not necessarily reflect those of the Canadian Department of National Defence or the Government of Canada.

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20. J. T. Conway, G. Roughead, and T. W. Allen, "A Cooperative Strategy for 21st Century Seapower," October 2007, repr. *Naval War College Review* 61, no. 1 (Winter 2008), p. 15, available at www.usnwc.edu/press/.

21. Admiral Mullen made this statement when he served as Chief of Naval Operations. Admiral Mike Mullen, "Vision for a 21st Century Navy," U.S. Naval Institute *Proceedings,* 17 January 2006, available at www.military.com/.

22. While states have responded to earlier U.S. Navy calls to provide assets to counter Somali piracy, it is unlikely these states will have sufficient resources to contribute much more. A 2009 Congressional Research Service report assessed that "the number of naval ships that would be needed to completely halt piracy in the Gulf of Aden and the waters of Somalia's Eastern Coast is probably much larger than the 12 to 20 that have been operating there in recent months. As many as 60, for example, might be required to suppress piracy in the Gulf of Aden." *Piracy off the Horn of Africa,* CRS Report for Congress (Washington, D.C.: Congressional Research Service [hereafter CRS], 24 April 2009), p. 9, available at www.fas.org/. These numbers do not take into account the additional vessels required to replace those on station in order to maintain constant coverage. The inability of many other states to respond substantially stems in part from the fact that over time they have become reliant on the U.S. Navy's forward presence. In this sense, some perceive the U.S. Navy as the "global navy," providing common security functions. A recent calculation also underscores the U.S. Navy's prominence: in 2009, the U.S. Navy's total tonnage equaled that of the next seventeen navies. The "global navy" argument is evident in Tangredi, ed., *Globalization and Maritime Power.* The statistic on total tonnage is from Jeremy Black, *Naval Power: A History of Warfare and the Sea from 1500 Onwards* (New York: Palgrave Macmillan, 2009), p. 204.

23. Jonathan Stevenson, "Jihad and Piracy in Somalia," *Survival* 52, no. 1 (February–March 2010), p. 31.

24. For instance, in his March 2009 testimony to the U.S. House Armed Services Committee, Vice Admiral Gortney asserted that "we look very, very carefully for a linkage between piracy and terrorism or any kind of ideology and we do not see it. It would be a significant game changer should that linkage occur. But we have not seen it." *Piracy off the Horn of Africa,* p. 12.

25. The author employs here the language used by J. R. Hill, *Maritime Strategy for Medium Powers* (Annapolis, Md.: Naval Institute Press, 1986), p. 219.

26. See, for instance, this passage from "A Cooperative Strategy for 21st Century Seapower": "Increasingly, governments, nongovernmental organizations, international organizations, and the private sector will form partnerships of common interest to counter emerging threats" (p. 10).

27. Cross, "Goods Bound for Canada Travel through 'Pirate Alley.'"

28. Cited in Woods, "Navy's Piracy Mission Troubled," p. A10.

29. Cited in Allison Cross, "Trawling for Pirates," *Montreal Gazette,* 7 March 2010, p. A7.

30. For instance, in recent years, Shipcraft A/S, International Ship Management Pte. Ltd., Biyat International, and Marsek have employed PSCs. It is difficult to determine the exact number of shippers that utilize PSCs,

because many do not wish to disclose their security arrangements. PSCs, for their part, frequently maintain client confidentiality.

31. Cited in "'Ships Need Armed Guards,' Says Security Firm Chief," *Maritime Global Net,* 20 October 2008, available at www.mgn.com/.

32. For general overviews of the PSC industry, see P. W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry,* 2nd ed. (Ithaca, N.Y.: Cornell Univ. Press, 2008), and Deborah Avant, *The Market for Force: The Consequences of Privatizing Security* (Cambridge, U.K.: Cambridge Univ. Press, 2005).

33. For instance, some PSCs, such as Xe, Espada Logistics and Security Group, Securewest International, and Hollowpoint Protective Services, advertise their own ships. In Southeast Asia, Glenn Defense Marine Asia also advertises its own vessels.

34. Sarah Percy, *Mercenaries: The History of a Norm in International Relations* (New York: Oxford Univ. Press, 2007), p. 10; Mary Lamey, "Garda Has 1,800 Workers in War Zones," *Montreal Gazette,* 15 May 2007, p. B1; "Kidnapping Clouds Garda's Year," *Prince George Citizen,* 13 June 2007, p. 22; Luke Baker, "British Firms Battle for Iraq Security Deals," Reuters, 1 October 2007, available at www.reuters.com/.

35. Cited in Alexander G. Higgins, "US Rejects UN Mercenary Report," *USA Today,* 17 October 2007, www.usatoday.com/.

36. Coalition Provisional Authority, "Memorandum Number 17: Registration Requirements for Private Security Companies (PSC)," CPA/MEM/26, 17 June 2004, pp. 7, 10–11, available at www.trade.gov/; Walter Pincus, "Contractor Hirings in Afghanistan to Emphasize Locals," *Washington Post,* 7 December 2009, www.washingtonpost.com/.

37. Andrew Mayeda, "MPs Seek Cost of Private Contractors," *Ottawa Citizen,* 26 November 2007, p. A5; Gloria Galloway, "$8-Million, No Oversight," *Globe and Mail,* 18 November 2009, p. A1; Brian Brady, "Britain Could Hire 'Mercenaries' to Guard Bases in Combat Zones," *Independent,* 6 July 2008, www.independent.co.uk/.

38. Andy Bearpark, "Why Private Security Companies Are Essential in Post-conflict Iraq," *Business Intelligence Middle East,* 2 March 2008, www.bi-me.com/.

39. See, for instance, Steve Fainaru, "Iraq Contractors Face Mounting Losses," *Washington Post,* 16 June 2007, available at www.msnbc.msn.com/, and Patrick Jerome Cullen, "Private Security in International Politics: Deconstructing the State's Monopoly of Security Governance" (unpublished doctoral dissertation, London School of Economics, 2009), p. 152.

40. Dan Lett, "Prosecution Not Necessary to End Scourge," *Winnipeg Free Press,* 23 May 2009, www.winnipegfreepress.com/.

41. Cited in Matthew Fisher, "Canadian Warships Hunt Modern-Day Pirates," *Ottawa Citizen,* 15 July 2008, p. A3. Davidson became a rear admiral in late 2008. The other significant flotillas with mandates to counter Somali piracy are Combined Task Force 151, the North Atlantic Treaty Organization's (NATO) standing maritime groups, and the European Union Naval Force Somalia.

42. The United Nations Office on Drugs and Crime, the European Union, Australia, France, Germany, and the United States also provide funding for these venues.

43. Cross, "Canadian Warship Combating Piracy"; Bruce Champion-Smith, "Canadians Foil Pirates in Dramatic Night Chase," *Toronto Star,* 18 April 2009, www.thestar.com/; Dan Lett, "Practicalities of Pirate Prosecution Raises Questions," *Winnipeg Free Press,* 22 May 2009, www.winnipegfreepress.com/; "HMCS Winnipeg Constant Thorn in the Side of the Somali Pirates," *Winnipeg Free Press,* 24 May 2009, www.winnipegfreepress.com/; and "Canadian Sailors Uncover Biggest Weapons Haul," *Ottawa Citizen,* 25 May 2009, www.ottawacitizen.com/.

44. Cited in Paul Koring, "Ottawa's Piracy Policy Flouts Law, Experts Say," *Globe and Mail,* 1 May 2009, p. A14. Article 25 of the UN Charter states that "the Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."

45. Dan Lett, "Our Sailors Finding True Justice Elusive," *Winnipeg Free Press,* 28 May 2009, www.winnipegfreepress.com/. On the one hand, some states contend that they have

both the right and a duty to prosecute pirates. Consider, for instance, the language of UNCLOS article 100: "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." On the other hand, some states espouse that they do not have a duty; they wish to avoid the international liability if they do not exercise it in any particular case. In this sense, weakness in the development of domestic law regarding pirates "represents a tacit refusal to acknowledge a duty to prosecute pirates." Janice E. Thomson, *Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe* (Princeton, N.J.: Princeton Univ. Press, 1996), pp. 108, 187 notes 8 and 9.

46. Don Butler, "How a Nice Quebec Firm Found Itself in a War Zone," *Ottawa Citizen,* 4 June 2007, available at www.canada.com/. Peter Singer made the initial observation about Iraq being a gold rush for PSCs; P. W. Singer, "Outsourcing War," *Foreign Affairs* 84, no. 2 (March/April 2005), pp. 119–32.

47. Cited in Matthew Lynn, "Can Mercenaries Defeat the Somali Pirates?" *Spectator,* 25 April 2009, www.thespectator.co.uk/.

48. Cited in Jody Ray Bennett, "Pirates vs Private Security," *ISN Security Watch,* 14 April 2010, www.isn.ethz.ch/.

49. See, for example, ibid., and Marie Sophie Joubert, "Private Security Firms Benefit from Piracy," *France 24,* 30 November 2008, www.france24.com/.

50. The United States has taken some initiatives regarding armed teams aboard U.S.-flagged ships, though these efforts have faced some criticism. Lesley Anne Warner, "Pieces of Eight: An Appraisal of U.S. Counterpiracy Options in the Horn of Africa," *Naval War College Review* 63, no. 2 (Spring 2010), pp. 69–70.

51. Bennett, "Pirates vs Private Security."

52. *Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict,* 17 September 2008, p. 39, available at www.icrc.org/. See also pp. 5, 16, 42.

53. Ibid., p. 9.

54. Ibid., p. 10.

55. The following PSCs have advertised antipiracy security services in the Gulf of Aden: Anti-Piracy Maritime Security Solutions/Shipguard (U.K.), Bastion Services (Germany), Control Risks (U.K.), Drum Cussac (U.K.), Elite Maritime Protection Services (U.K.), Espada Logistics and Security Group (U.S.), G4S (U.K.), Gulf of Aden Transits (U.K.), Hart Security (U.K.), Hollowpoint Protective Services (U.S.), Maritime and Underwater Consultants (U.K.), Maritime Asset Security and Training (U.K.), Muse Professional Group (Ukraine), Neptune (U.K.), Phoenix Intelligence Support Services (U.S.), Secopex (France), Securewest International (U.S.), Templar Titan (U.S.), and Xe (U.S.).

56. *Montreux Document,* pp. 9, 16.

57. Ibid., p. 25.

58. Cited in Gregory Viscusi, "Mercenary Guards Jump Ship as Somali Pirates Remain Undeterred," Bloomberg, 18 December 2008, www.bloomberg.com/.

59. Cited in Alisha Ryu, "Shipping Industry Mulls Hiring Private Security to Fight Piracy," *Voice of America,* 22 October 2008, www.voanews.com/.

60. "Best Management Practices to Deter Piracy in the Gulf of Aden and off the Coast of Somalia," version 2, August 2009, available at *MLIT: Ministry of Land, Infrastructure, Transport and Tourism* [Japan], www.mlit.go.jp/.

61. Alyson Bailes, "A 'New Deal' between State and Market," in *Denationalisation of Defence: Convergence and Diversity,* ed. Janne Haaland Matlary and Øyvind Østerud (Aldershot, U.K.: Ashgate, 2007), p. 29 [italics in original].

62. Cited in Allison Cross, "Canadian Warship Keeps Watch for Shipments of Drugs, Weapons in Arabian Sea," Canwest News Service, 16 March 2010, available at www.canada.com/.