Chapter 13

Illegal Immigration to Canada by Sea: An Integrated Marine Security Response

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13.1. Introduction

One problem with illegal immigration is that there is not a precise definition of the term, nor is there an agreed set of classifications for those persons who arrive or stay "improperly" in another country. The person might be a refugee fleeing a well founded fear of persecution, an economic migrant seeking employment, or a criminal or terrorist with anti-social motives. The terms illegal immigration, irregular migration,[1] improperly documented arrival[2] (IDA) all mean substantially the same thing. For the purpose of this contribution, illegal immigration will be the most commonly used term.

It should be stated from the outset that illegal immigration by sea is not the highest priority problem for Canada, both in terms of government activity and in the total number of persons and incidents that have occurred. That being said, the situation is analogous to marine pollution incidents. While the major source of marine pollution comes from land-based sources, a tanker accident will attract major attention from government and the media since it is a single, obvious and concentrated incident. Similarly, as will be discussed below, while the majority of illegal immigrants enter Canada by land or air, this usually occurs singly or in small groups. However, a small percentage of illegal immigrant ships[3] have garnered considerable attention and press comment. As a result, Canada has taken steps to deal with the problem, though as will be discussed, these are usually included as components of initiatives intended to deal with higher priority problems such as drug smuggling or anti-terrorism.

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[1] F. Crepeau and D. Nakache, "Controlling Irregular Migration in Canada," *IRPP Choices* 12, no. 1 (February 2006), available: <http://www.irpp.org/choices/archive/vol12no1.pdf> (retrieved 4 December 2008).
[2] A term used by the Canada Border Services Agency (CBSA) and Citizenship and Immigration Canada (CIC).
[3] Probably less than ten ships in the past 20 years. Although the number of small boats illegally crossing between Canada and the United States is unknown, it is quite large.

Canada receives approximately 90 to 100 million travellers per year across its borders.[4] The majority of these are American tourists who drive across the border and do not require visas or passports. Only two percent of entrants arrive by sea, most of these being tourists on ferries or visiting cruise ships. Canada issues approximately 800,000 visas per year for students, visitors, and temporary workers. Canada, like the United States and Australia, has a long history of actively encouraging immigration, and historically has one of the larges annual intakes, averaging 200,000 persons per year over the last ten years.[5] Canada also has approximately 40,000 refugee claimants per year.

Some of those who enter Canada do so illegally, and others violate the terms of their legal entry. It is estimated that there are approximately 200,000 illegal immigrants in Canada at any time.[6] Some of these make refugee claims in Canada, others work illegal, and others are intending to use Canada as an entry point into the United States. It is the latter two groups that are the main focus of Canada's efforts to suppress irregular migration.

13.2. Canada's Maritime Borders

Canada has two borders: One with the United States, and one with the surrounding oceans. Canada and the United States share a 5,500 km land border and a 11,400 km water border, including the Great Lakes-St. Lawrence Seaway system (3,500 km) and maritime frontiers on the Atlantic, Pacific, and Arctic ocean coasts. Canada also has one of the world's longest coastlines at 243,042

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[4] In 2001–2002, a total of 102,217,849 travellers came to Canada, of which 80,889,680 (78%) arrived by land, 19,000,000 (19%) arrived by air and 2,200,000 (2%) arrived by sea. Of this total, 50,809,257 (58%) went to the province of Ontario, which has no direct sea access. See Office of the Auditor General of Canada, *Report of the Auditor General of Canada to the House of Commons* (Ottawa: Minister of Public Works and Government Services Canada, 2003), Chapter 5, available: <http://www.oag-bvg.gc.ca/internet/English/att_20030405xe03_e_12706.html> (retrieved 4 December 2008). Since 11 September 2001, the number of arrivals has decreased slightly. In fiscal year 2006–2007, the CBSA processed more than 95 million travellers arriving by highway, air, sea and rail, with 260,300 travellers entering Canada per day.
[5] E. Simck, "Canada's Immigration Policy," *CFR Backgrounder* (2 July 2006), available: <http://www.cfr.org/publication/11047> (retrieved 4 December 2008).
[6] It is estimated that 95 percent of illegal immigrants to Canada arrive by air. See K. J. Torrance and K. Steel, "A Country for the Taking. Canada could stop the migrant onslaught but chooses not to," *B.C. Report Magazine* (1999), available: <http://www.axionet.com/bcreport/web/990927f.html> (retrieved 4 December 2008).

km. In addition to its high seas boundaries, Canada has ocean boundaries with Denmark (Greenland) and France (St. Pierre and Miquelon).

In 1996 Canada passed the *Oceans Act*, consolidating its maritime claims in accordance with the United Nations Convention on the Law of the Sea (LOS Convention). More controversially, Canada has also established straight baselines around much of the country, including the Arctic archipelago, claiming as internal waters Hudson's Bay, the Bay of Fundy, the Gulf of St. Lawrence, and the High Arctic waters of the Northwest Passage. The latter claim is not accepted by the United States among others. Nonetheless, Canada has extended its legal jurisdiction to cover these areas.

The Great Lakes and St. Lawrence Seaway system are shared by Canada and the United States, with numerous bilateral agreements covering aspects of security, environmental protection, safety, transportation, and commerce.

13.3. Types of Illegal Immigration

For the purpose of this contribution, we can classify maritime illegal immigration into three categories depending on the nature of the transport and the terms of entry into Canada:

1. *Legitimate documentation – Legal means of transport*: This category includes those persons who possess the necessary documentation and arrive by a regular vessel in compliance with Canadian law as passenger or crew. However, once in the country, they violate the terms of their entry. This would include either crew or passengers who leave the vessel (ship jumpers) or visitors who change their minds about leaving, possibly making a refugee claim. This is a matter of internal immigration control, since it is difficult to identify the intention prior to the legal entry into the country.

2. *False documentation – Legal means of transportation*: This category includes those persons who obtain passage on a vessel under a false identity, or with forged or improperly issued visas or passports. This would include passengers or crew who enter the country under false pretences. It also includes, from a maritime perspective, persons who enter the country posing as seamen or crew ostensibly to join a foreign-flag vessel in a Canadian port. This is a matter of security and

intelligence involving documentary validation or the identification of the undesirable persons.

3. *False/no documentation – Illegal means of transportation*: This category includes those persons who have no valid documentation or visa for entry, and those who attempt to smuggle themselves into the country. This would include stowaways and illegal immigrant ships. This is both a maritime security issue, requiring identification of the ship at sea, and a port/ship security issue, dealing with the prevention and detection of stowaways.

This contribution focuses on the second and third categories of migrants.

13.4. Illegal Immigration by Sea into Canada

Part of Canada's attitude toward illegal immigration probably stems from two incidents in the first half of the 20th century that are at serious odds with Canada's present self-opinion as modern liberal and moral state. In 1914, the *Komagata Maru* incident occurred.[7] This was a ship carrying 376 Indian passengers, including 240 Sikhs, and all of whom were British subjects. The *Komagata Maru* arrived at the port of Vancouver and was held in the harbour for two months before being forced to return to India with all the passengers aboard.

The more infamous "Voyage of the Damned" incident occurred in 1939. The MV *St. Louis*, a German ship carrying 907 Jewish refugees from Nazi Germany, was denied entry into Canada[8] after both Cuba and the United States

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[7] The ship was eventually escorted out of Canadian waters by HMCS *Rainbow*, one of two naval vessels possessed by Canada at the time, and the only one on the West Coast. "Komagata Maru incident," *Wikipedia* entry, available: <http://en.wikipedia.org/wiki/ Komagata_ Maru_incident> (retrieved 4 December 2008)

[8] The passengers on the *St. Louis* had originally sailed for Cuba, however the Cuban government changed the visa requirements after public pressure, and the passengers were refused entry. Attempts to get sanctuary from the both the United States and Canada failed. The ship eventually returned to Germany, where many of the passengers eventually perished during the Holocaust. See J. Rosenberg, "The Tragedy of the *S.S. St Louis*," Jewish Virtual Library (1998), available: <http://www.jewishvirtuallibrary.org/jsource/Holocaust/stlouis.html> (retrieved 4 December 2008). In 2000, Canadian clergy members held a ceremony of public apology in Ottawa for 25 survivors. See "Canadian clergy apologize to 'Voyage of the Damned' survivors," *CBC News* (6 November 2000), available: <http://www.cbc.ca/ canada/story/2000/11/06/holocaust001106.html> (retrieved 4 December 2008).

had denied entry. Both these incidents had serious racial overtones, which still play out in Canadian immigration and refugee debates.

Over the last twenty years, Canada has experienced a series of maritime incidents involving economic migrants entering Canadian ports and waters. While the number of migrants involved was relatively small, the nature of the entries raised considerable public and political interest.

First, there were a series of illegal immigrant ship incidents. In July 1986, 155 Tamils were found drifting in a lifeboat off the coast of Newfoundland, claiming to be refugees from Sri Lanka. It was later discovered that they had been dropped off by a German-owned but Honduran-registered vessel, *Aurigae*, and that they had boarded in West Germany.

In July 1987, 173 Sikhs appeared one morning in a small Nova Scotia fishing village claiming to be fleeing India and seeking refugee status. It later transpired that they had boarded a small freighter in Rotterdam after arriving in the European Union (EU), probably by air through West Berlin.

In June 1999, four small freighters were discovered off Vancouver Island with several hundred Chinese immigrants from Fujin province. A fifth boat was discovered empty in the same region.[9] This was believed to be part of a criminal "snake head" human smuggling ring bound for the United States.[10]

During the 1990s, a more common occurrence on the East Coast was for small groups of stowaways, mostly Romanians, to smuggle themselves into Canada in freight containers.[11] These stowaways generally originated in ports in the Mediterranean. In 1996, several Romanian stowaways were forced over the side of the Taiwanese-flagged *Maersk Dubai*, bound from Spain to Halifax. This was reported by the Filipino crew, who successfully hid another stowaway until the vessel reached Halifax. This incident resulted in a criminal enquiry and charges being brought against the Taiwanese officers.[12] In 2000 and 2001, several Chinese stowaways were found in shipping containers at the Port of

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[9] Many of the immigrants from the first vessel disappeared shortly after their release from immigration custody, probably making their way into the United States. After this, the remaining migrants were kept in custody until their hearings and subsequent deportation. This practice seemed to discourage subsequent immigrant vessels since the criminal ring leaders are only repaid for the cost of the journey once the migrants start working in the United States. Unattributable pers. comm. (15 November 2008).

[10] Unattributable pers. comm. (15 November 2008).

[11] Between 1991 and 1995, 742 stowaways are known to have entered Canada.

[12] The charges were stayed in Canada after a finding that Canada had no jurisdiction over the incident. The evidence was sent to Taiwan, as the flag state, but charges were never pursued. See B. Carty, "The cost of witness. Murder and the *Maersk Dubai*," CBC Radio Canada, a broadcast from CBC, available: <http://www.savintage.com/magellen/Maersk9.html> (retrieved 4 December 2008).

Vancouver.[13] In March 2008, four Algerian stowaways were caught attempting to board a train 100 km from Halifax after hiding in a double-decker bus being transported in an ACL container ship from Liverpool.

In September 2005, 17 Chinese nationals travelling as passengers on a cruise ship and using forged South Korean passports left the ship in Halifax posing as day tourists and boarded a train for central Canada. Four others were caught on board before they could leave. The voyage had originated in Le Havre.

The significant pattern in these cases is that on Canada's west coast most of the illegal migrants came from China, generally Fujin province, as part of organised criminal activity. On Canada's east coast, however, most of the illegal immigrants were eastern European, primarily Romanian, and boarded the vessels in EU ports.[14] While the total number of incidents is relatively small, it still raises concerns, especially when the situation exposes weakness in the maritime and port security systems.

13.5. Changes to Maritime Security Post 9/11

After 11 September 2001, Canada's position, like much of the rest of the world, changed markedly. In Canada's case, this was exacerbated by its close proximity to the United States, and the overwhelming concern with maintaining both security and trade relationships with the United States. Three key factors influenced subsequent policy decisions. First, the United States and Canada are each other's largest trading partner, with large quantities of cargo,[15] much of it transhipped, crossing the border every day. Second, large numbers of people cross the border every day. Until recently, Canadians and Americans did not require visitor's visas or passports to cross the border. Third, there was an early perception that some of the 9/11 hijackers had entered the United States through Canada.[16]

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[13] Interestingly, the containers, and presumably the stowaways, were destined for Seattle but landed in Canada after Canadian customs officers uncovered them.

[14] The decrease in Romanian stowaways may be the result of Romania's entry into the EU and the better employment prospects available there.

[15] The majority of containers landed in the ports of Montreal and Halifax are transhipped to destinations in the United States. See Port of Halifax website at <http://www.portofhalifax.ca/> (retrieved 4 December 2008).

[16] This was disproved but is still believed by some Americans. There have been, however, several other instances of suspected terrorists living in Canada, or entering the United States from Canada. See "Canada and Terrorism," Anti-Defamation League (January 2004), available: <http://www.adl.org/terror/tu/tu_0401_canada.asp> (retrieved 4 December 2008).

As a result, Canada needed to demonstrate to the United States that it was serious about keeping its part of "Fortress North America" safe, to ensure that marine security was sufficiently robust to prevent terrorists from entering Canada, and to keep weapons of mass destruction from being smuggled into the United States through Canadian ports. On its own behalf, Canada also needed to maintain its own marine security.

While Canada had developed its own plans for integrated maritime security, 9/11 brought an additional urgency. This resulted in a number of government initiatives to enhance national security in general, maritime security in particular, and as a consequence, to institute initiatives that directly or indirectly enhanced the programmes to prevent illegal maritime immigration.

Part of the response was to re-energise the process of cooperation and integration between government departments. This process had already been underway in some sectors, partially due to the government's policy to consolidate some of its departmental functions, such as the separate fleets of ships operated by the Canadian Coast Guard, Canadian Hydrographic Services, and the Department of Fisheries and Oceans. There was also the growing awareness, even prior to 11 September 2001 that there was a need to share both resources and information, since decreasing departmental budgets meant that they could no longer afford to "go it alone."

In 2004, Canada produced its first National Security Policy, "Securing an Open Society." The policy focused on three core areas:

1. Protecting Canada and Canadians at home and abroad
2. Ensuring Canada is not a base for threats to our allies
3. Contributing to international security

It also included a $308 million six-point plan to enhance marine security by

1. Clarifying and strengthening accountability
2. Establishing Marine Security Operations Centres
3. Increasing on-water presence and aerial surveillance activities
4. Securing fleet communications
5. Pursuing closer cooperation with the United States
6. Strengthening security at ports and other marine facilities[17]

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[17] Government of Canada, Public Safety Canada, *Securing an Open Society: Canada's National Security Policy* (Public Safety Canada, n.d.), available: <http://www.publicsafety.gc.ca/pol/ns/secpol04-eng.aspx> (retrieved 4 December 2008).

13.5.1. Canadian Departments with Marine Security Mandates

As with most countries, Canada has several departments and agencies responsible for maintaining the security over maritime-related activities. Each one has a unique set of capabilities and legal authority to carry out its mission. Table 13.1 sets out the key departments and agencies with marine security mandates.

Table 13.1. Canadian government departments with marine security responsibilities

Department	Role	Platform	Weapons	Maritime Surveillance Capabilities	Intelligence	Enforcement Authority
DND	Sovereignty	Ships Aircraft	Heavy	Yes, but not on Canadians	Yes	No
CBSA	Customs Immigrations Food safety	None	Side arms	No	API/PNR FOSS	Yes
DFO	Fisheries Environmental protection	Aircraft	Side arms (in fisheries role)	Yes	Yes	Yes, fisheries officers
Coast Guard	Marine Safety	Ships Helicopters		AIS LRIT MCTS	Yes	No
RCMP	Policing	Coastal (limited) RHIB	Side arms MSERT	Yes, coastal watch	Yes	Yes
TC	Marine Security	Aircraft	None	1 aircraft	PAIR	Yes, ship safety
CSIS	Security	None	None	None	Yes	No

Key: AIS – Automatic Identification System; API – Advanced Passenger Information; CBSA – Canada Border Services Agency; CSIS – Canada Security and Intelligence Service; DFO – Department of Fisheries and Oceans; DND – Department of National Defence; FOSS –Field Operations Support System; LRIT – Long Range Identification and Tracking; MCTS – Maritime Communications and Traffic Services; MSERT – Marine Security Emergency Response Team; PAIR – Pre Arrival Information Report; PNR – Passenger Name Record; RCMP – Royal Canadian Mounted Police; RHIB – Ridge Hulled Inflatable Boat; TC – Transport Canada

13.5.1.1. Department of National Defence

The Department of National Defence (DND) and the Canadian Forces comprises Canada's military, including the Navy, Army and Air Force. The Navy maintains a fleet of warship and submarines, as well as surveillance and intelligence capabilities. Under Canadian law, the Canadian Forces do not have a law enforcement role, but may be called upon to assist other government departments either under standing memoranda of understanding (MOU) or on a contingency basis.

DND, and in this specific case, the maritime forces, collect and process a wide range of information concerning the presence of vessels and activities in Canadian maritime waters. Navy ships, including submarines, and maritime patrol aircraft routinely gather information on the identity and movements of foreign warships, as well as commercial and fishing vessels. This is augmented with additional information from satellite and other electronic means and used to compile the Recognised Maritime Picture (RMP), a critical component of Marine Domain Awareness (MDA).[18] One of the key factors in gathering this information is the ability to maintain a real-time surveillance capability. Since both ships and aircraft cannot be continuously present on station, surveillance information is only as current as the last recorded observation. Several innovative programmes were undertaken post-9/11 to improve target tracking and identification ability. Two projects are elaborated on below.

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[18] See G. Reedel, *Comparative Study of Formal Knowledge Representation Enablers for the Collaborative Knowledge Exploitation Framework, Final Report* (MacDonald Dettwiler and Associates Ltd., 13 July 2007), available: <http://pubs.drdc.gc.ca/PDFS/ unc64/p527928.pdf> (retrieved 4 December 2008), A-1, pp. 17–18:

> Maritime Domain Awareness (MDA), or Maritime Situational Awareness (MSA), has to do with the effective understanding of any activity associated with the maritime environment that could impact security, safety, economy or environment. MDA comprises the contextualisation of positional and identification data with intelligence data. A NATO definition states that MDA is about all areas and things of, on, under, relating to, adjacent to, or bordering on a sea, ocean, or other navigable waterway; including all maritime related activities, infrastructure, people, cargo and vessels and other conveyances. In Canada, the MDA activity sphere includes Canada's surveillance and awareness efforts within marine zones as well as liaison and coordination with Canadian and international intelligence gathering bodies. Within this activity sphere, security efforts are guided by the principle that the greater the vulnerability, the more detailed the Government of Canada's information requirements. Key objectives include developing comprehensive knowledge of people, containers, goods and vessels from foreign points of origin to Canadian points of destination; and timely information collection and sharing among key departments through secure means. Collaboration is key to the effectiveness of domain awareness, responsiveness and safeguarding activities.

High-Frequency Surface Wave Radar (HFSWR) – This programme utilised a land-based fixed-array radar system that has the ability to track surface targets at a range of several hundred miles. The intention was to establish a series of sites along Canada's coast to provide continuous radar coverage of the entire coastline and exclusive economic zone (EEZ). Two test sites were established in Newfoundland to track vessel fishing on the Grand Banks at the edge of Canada's 200 nm EEZ. Technological problems led to the project being cancelled.

Atlantic Littoral ISR Experiment (ALIX) – This 2004 project involved the use of an unmanned aerial vehicle (UAV) or remotely-controlled pilotless aircraft (drones) and integrated intelligence surveillance and reconnaissance (ISR) architectures to conduct ocean and High Arctic patrols. The project made use of an Altair UAV equipped with radar and day/night photo imagery capabilities. The trials proved to be moderately successful, however, the system proved to have a limited capability to operate in poor weather or in the High Arctic.

13.5.1.2. Canadian Border Services Agency

The Canadian Border Services Agency (CBSA)[19] was created in 2003, and combined the enforcement and intelligence arms of what was the Canada Customs and Revenue Agency (CCRA), Citizenship and Immigration Canada (CIC), and the Canadian Food Inspection Agency (CFIA). CBSA maintains 1,200 service locations across Canada, including all border crossings with the United States, and 39 offices in other countries. It maintains detention facilities in Toronto and Kingston, Ontario, and in the port cities of Montreal and Vancouver. It also has major seaport operations in the ports of Halifax, Montreal and Vancouver. CBSA is responsible for enforcing the *Customs Act* and *Immigration and Refugee Protection Act*, as well other legislation dealing with entry of goods or persons into Canada. CBSA has no maritime surveillance capability, but maintains a number of intelligence programmes targeting both customs and immigration issues. It has the primary mandate for detecting and suppressing illegal immigration by all means, including marine.

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[19] Canada Border Services Agency website at <http://www.cbsa-asfc.gc.ca/menu-eng.html> (retrieved 4 December 2008).

Marine Programmes and Units

1. Marine Passenger Analysis Unit (MPAU) – A follow on to the Passenger Analysis Units established at airports, these units target cruise ships and ferries, as well the crew of commercial vessels.

2. Marine Container Targeting Units (MCTU) – Established in 2004 in the ports of Montreal, Halifax, and Vancouver, their primary tasking is against contraband and weapons of mass destruction, however, they also target suspected stowaway containers.

3. Vessel Targeting Units (VTU) – These teams are located in smaller ports and target vessels suspected of holding contraband or illegal immigrants.

4. Integrated Primary Inspection Line (IPIL) – Established in 2005, these units are set up at airports, and cruise ship and ferry terminals to provide disembarkation screening of passengers.

5. National Risk Assessment Centre (NRAC) – Established in Ottawa, NRAC is a 24 hour a day/7 day a week focal point for national and international intelligence and enforcement liaison.

In addition, CBSA receives marine cargo import reports that must be sent in by any vessel 24 hours prior to loading cargo bound for Canada.

1.3.5.1.3. Public Safety Canada

Public Safety Canada (PSC) (formerly Public Safety and Emergency Preparedness Canada) was established in 2003 following a major departmental reorganisation which consolidated Canadian law enforcement and security activity under a single department. The functions of the Royal Canadian Mounted Police (RCMP), CBSA, Canadian Security and Intelligence Agency (CSIS), Corrections Services Canada (CSC), and the National Parole Board were brought together under PSC. This is not unlike the US Department of Homeland Security with the exception that PSC has no mandate for maritime sovereignty operations.

13.5.1.4. Royal Canadian Mounted Police

As Canada's national police force, the Royal Canadian Mounted Police (RCMP) have the major responsibility for the enforcement of Canadian law. They are the lead enforcement arm used for the majority of non-fishing illegal maritime activities. The RCMP have several smaller vessels, primarily used for patrol on the Great Lakes, and against contraband smuggling, primarily liquor from St. Pierre and Miquelon.

The Marine Security Enforcement Teams (MSET) are a joint RCMP/Canadian Coast Guard initiative to provide three co-manned vessels for patrol on the Great Lakes and the St. Lawrence Seaway. The RCMP also provide the Marine Security Emergency Response Teams (MSERTs), which are the highly mobile and heavily-armed policing units used whenever armed force may be needed against active opposition. They are generally present for any major maritime incident requiring the armed boarding of a vessel.

The RCMP Coastal Watch Programme is a community-based initiative intended to obtain information from local residents on suspicious activities taking place in and around coastal communities. Its major targets are drug offloads, however, it also identifies illegal immigration activities.

13.5.1.5. Canadian Coast Guard

The Canadian Coast Guard (CCG) is responsible for maritime safety, including navigational aids, search and rescue, and marine environmental protection. The CCG operate the Marine Communications and Traffic Services (MCTS), which includes vessel traffic management at major ports and on waterways. The CCG is the main recipient of pre-arrival information reports (PAIR) from commercial vessels entering Canadian waters.

After the reorganisation of the Canadian government fleets, the CCG was transferred from Transport Canada to the Department of Fisheries and Oceans where it also took over the operations of Canadian fisheries patrol vessels. Unlike the US Coast Guard, the CCG is not an enforcement body, and CCG vessels are not normally armed. Coast Guard officers are not fisheries enforcement officers or peace officers. However, their vessels provide the fleet support for marine enforcement activities and will carry enforcement officers from other government departments to carry out their marine mandates.

13.5.1.6. Department of Fisheries and Oceans

The main task of the Department of Fisheries and Ocean (DFO) is the monitoring of fishing activity, which it accomplishes through the use of fishing vessel reports, fisheries patrol vessels, and fisheries surveillance flights, a major contributor to MDA. Since 1989, DFO has utilised several light aircraft, owned and operated by Provincial Airways, a small commercial airline, for aerial fisheries patrols. These aircraft have been equipped with high capability surface search radar, originally developed for military long-range patrol aircraft, as well as day/night digital photographic cameras. The aircraft are operated by the airline, which also provides the flight crew and sensor operators. DFO provides a fisheries officer who provides tactical direction and serves as the on-board enforcement authority. Vessel tracking, environmental information, and other surveillance data from these flights are provided to other government departments.

13.5.1.7. Transport Canada

Transport Canada retained the Ship Safety branch after the reorganisation of Canadian government fleets. It also has responsibility for port and vessel security under the ISPS Code. As such, Transport Canada is the main recipient of the PAIR that must be sent by vessels 96 hours prior to arriving in Canadian waters.

13.5.1.8. Canadian Security Intelligence Service

The Canadian Security Intelligence Service (CSIS) is the government agency with the primary task of collecting, monitoring, and analysing intelligence on threats to Canada's national security and conducting covert and overt operations within Canada.[20] CSIS has no enforcement mandate. However, it provides intelligence to other government departments. CSIS also operates the Integrated Threat Assessment Centre, which has been operational since 2004 on a 24/7 basis. The Centre has representation from PSC, CSIS, CBSA, the Communications Security Establishment, DND, Foreign Affairs and International Trade Canada, the Privy Council Office, Transport Canada, CSC, the Financial Transactions and Reports Analysis Centre of Canada, the RCMP,

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[20] Canadian Security Intelligence Service website at <http://www.csis-scrs.gc.ca/index-eng.asp> (retrieved 4 December 2008).

Ontario Provincial Police, and Sûreté du Québec. CSIS also links with international centres, including the Joint Terrorism Analysis Centre in Britain, the National Counterterrorism Center in the United States, the National Threat Assessment Centre in Australia, and the Combined Threat Assessment Group in New Zealand.

13.6. Integrated Responses and Planning

13.6.1. Planning Committees and Working Groups

The Canadian government has established several planning bodies to coordinate marine security activities.

13.6.1.1. Interdepartmental Programme Coordination and Review Committee

In 1991, in response to a Senate and Treasury Board recommendation calling for greater cooperation between government departments, the Interdepartmental Programme Coordination and Review Committee (IPCRC) was established with a marine security/enforcement mandate. IPCRC established regional operational sub-committees. The Atlantic Operations Sub-Committee oversaw development of CANMARNET, an intra-governmental web site for the sharing of information. IPCRC also established the Interdepartmental Concept of Operations (ICMO). IPCRC was the main federal government coordinating body for the 1995 "Turbot War" with the EU (Spain) and for the Swiss Air crash of 1998. IPCRC stood down in September 2001.

13.6.1.2. Interdepartmental Marine Security Working Group

Established in 2001, immediately after 11 September 2001, the Interdepartmental Marine Security Working Group (IMSWG) was set up under the chair of Transport Canada to coordinate the activities of 17 government departments, including DND, CBSA, and the RCMP among others. The IMSWG is charged with identifying and coordinating federal government actions and objectives for marine security. It ensures effectiveness in implementing marine security initiatives and provides strategic advice to

address marine security gaps. The IMSWG also supports several interdepartmental marine security initiatives through a dedicated Marine Security Coordination Fund.[21]

13.6.1.3. Eastern Canada Interdepartmental Marine Operations Committee

The Eastern Canada Interdepartmental Marine Operations Committee (ECIMOC) is the successor of the Atlantic Operations Sub-Committee. ECIMOC is made up of federal departments that either conduct, or have an interest in, operations in the maritime environment.[22] A key aim of this committee is identifying and developing the most practical means of applying operational resources to facilitate their joint and effective employment. Principal members include Maritime Forces Atlantic (the current chair), DFO (representatives from both the CCG Maritimes and Newfoundland and Labrador regions, as well as from various sections of Fisheries and Oceans Management), CBSA (for both customs and immigration matters), Transport Canada, and Environment Canada. Health Canada was invited to participate as a result of the *Wadi Al Arab* anthrax incident.[23] ECIMOC generally meets four times a year.

13.6.2. Intelligence and Information Sharing

Individually, and collectively, the Canadian government departments tasked with marine security gather information and develop intelligence in their field

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[21] L. Kinney, "Marine Security in Canada, Current Status, Future Directions 2007" (presentation, Transport Canada, 24 May 2007), available: <http://www.portsecure.ca/2008/program/presentations/Laureen_Kinney.pdf> (retrieved 4 December 2008).

[22] For a description of ECIMOC's mandate see Senate Committee for National Security and Defence, *Background Brief – OGD Cooperation in Atlantic Region*, available: <http://www.parl.gc.ca/37/2/parlbus/commbus/senate/Com-e/defe-e/witn-e/hickey3-e.htm> (retrieved 4 December 2008).

[23] In April 2003, the MV *Wadi al Arab* was diverted to an offshore anchorage near Halifax, Nova Scotia, after a report that a crew member may have died of anthrax. The vessel was transporting bauxite from Brazil to an aluminium smelter in Saguenay, Quebec. The crewman had died in Brazil prior to sailing and was autopsied there. Brazilian police initially reported the suspicion of a terrorist connection. The vessel was boarded by police and health authorities in Canada, where medical and forensic investigations failed to turn up any evidence of anthrax or a terrorist connection. For further information, see <http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/1051632607624_94/?hub=Canada> (retrieved 4 December 2008).

of responsibility. This intelligence may be shared under the appropriate circumstances, taking into account the legal and political constraints involved.

While the records and databases of the individual departments are accessible by the authorised agents of that department for the purpose collected, use for other purposes or sharing with other departments is subject to several considerations:

1. *The terms on which the information was collected*: Certain reports, such as customs declarations, while required under statute, can only be used for that purpose and by that department unless a legal authorisation is given for its disclosure. This is usually requires a court order or judicial warrant.

2. *Information of a personal nature*: Information on an individual may be covered by privacy, access to information, or Charter of Rights legislation.

3. *Property rights, proprietary and copyrighted information*: Information may be subject to commercial ownership, involving licensing agreements or royalties, and might not be sharable without permission or additional payment.

4. *Legal prohibitions on collection or surveillance of certain information*: There may be specific prohibitions on the collection of certain information by specific government agencies. For example, DND is not permitted to carry out intelligence gathering or surveillance on Canadians.

5. *Government policy with respect to the release and sharing of information*.[24]

13.6.3. Information Collection for Marine Security

One of the major complaints of the maritime shipping community has been the number of times that they have to report to government authorities prior to

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[24] Treasury Board of Canada Secretariat, *Government Security Policy* (1 February 2002), available <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12322&section=text#cha3> (retrieved 4 December 2008).

arriving in Canada. Much of the required information is identical and is sent to exactly the same recipient, often the CCG MCTS stations. Often the information is then sent on to other government departments for action.

In Canada, the following are some of the reports required concerning ships, crew, and passengers:

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1. CBSA – Customs Advance Commercial Information (ACI) – 24 hours before loading
2. Transport Canada – ECAREG – Marine Pollution prevention report – 96 hours before entering Canadian waters
3. Transport Canada – Marine Security – Pre Arrival Information Report (PAIR) – 96 hours before arrival in Canadian waters
4. CBSA – Passenger and Crew Information – 7 days prior to arrival
5. CBSA Passenger Name report
6. CBSA – Before Arrival Information – Cruise ships
7. CBSA – Cruise Ship Pre-Arrival Notice – 96 hours before arrival[25]

As noted above, while the information may be sent to the same recipient, the information is then passed on to the appropriate government authority. It can only be released or shared if it complies with the specified guidelines governing its handling, use, and distribution.

13.7. Integrated Marine Security Activity

13.7.1. Marine Security Operations Centres

One of the priorities under the National Security Policy and Marine Security Initiatives was the establishment of Marine Security Operations Centres (MSOCs). These were to be regional focal points where representatives of government authorities would be collocated and able to respond quickly on behalf if their department to any incident. Participants in the MSOC come from DND, the RCMP, CCG/DFO, Transport Canada, and CBSA. In addition,

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[25] The CBSA's authority to obtain and collect such information is found under section 107.1 of the *Customs Act*, S.C. 1985, c. 1 (2nd Supp.) and the *Passenger Information (Customs) Regulations*, P.C. 2003-908, 12 June 2003, and in paragraph 148 (1)(d) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, and regulation 269 of the *Immigration and Refugee Protection Regulations*, S.O.R./2002-227.

liaison officers from the US Coast Guard are assigned to each MSOC, attending meetings several times a month, as required.

The plan called for three centres: one on the Atlantic coast, in Halifax, Nova Scotia; a second on the Pacific coast, in Victoria, British Columbia; and the third on the Great Lakes (GL-MSOC) in the Niagara, Ontario, region. DND is the lead agency for the coastal MSOCs, and they are collocated with the Naval Headquarters. The lead agency for the GL-MSOC is the RCMP.

The advantage of having personnel from the different departments at the MSOC is that they can work in a common environment and bring their department's expertise and capabilities to bear on any situation. They are also able to respond to queries from their departments for tactical information from other participating departments. At the MSOC, each staff member has access to their individual intelligence databases. These are appropriately secured and access controlled, and can determine whether or not information can be shared with other departments according to their own departmental policies and directives. Since only authorised members can access departmental databases, it is necessary to ensure that no-one looks on when certain functions are being utilised. This, however, is a matter of the physical layout of the MSOC, which is designed to ensure that data systems are properly safeguarded from accidental or intentional disclosure.

13.7.2. Canada-US Bilateral Initiatives

Canada and the United Sates have a long history of bilateral cooperation on regional security matters. This was demonstrated during and immediately after 11 September 2001 and continues to this day. Several programmes illustrate this cooperation. In December 2001, Canada and the United States issued a Joint Statement on Cooperation on Border Security and Regional Migration Issues. This called for, among other things, the establishment of Integrated Border Enforcement Teams (IBETs) to help combat cross-boarder criminal activity.

The IBET is comprised of RCMP, CBSA, US Customs and Border Protection /Office of Border Patrol, US Department of Homeland Security, US Immigration and Customs Enforcement (ICE), and US Coast Guard representatives. Teams were set up at the Detroit/Windsor and the Maine/New Brunswick borders, and on the west coast in the Lower Mainland of British Columbia. There have been a number of successful operations, including several illicit drug seizures and illegal immigrant arrests.

13.7.3. Integrated Maritime Security Operations – Ship Rider Agreement

The Ship Rider Agreement is a more controversial initiative because it involves not just cooperation, but actual reciprocal enforcement by the partner agencies. The Ship Rider Agreement involves officers from the US Coast Guard and the RCMP. So far, activity has been focused on the Great Lakes and Strait of Juan de Fuca. RCMP and US Coast Guard officers undertook several weeks of training in the law enforcement requirements of the partner country. Officers were then assigned to vessels of the other nation, where they were integrated into enforcement operations.

Several "proof of concept" trials were undertaken during 2005 and 2006 on the river between Detroit and Windsor during the Super Bowl football game, which was considered to be a potential terrorist target, and in 2007 at the Ontario-New York border near Cornwall, Ontario, and in British Columbia. In 39 separate incidents, ship rider teams contributed to 41 arrests, with six of these being made directly by the integrated marine teams.[26]

In March 2008, the Canadian Minister of Public Safety announced that a formal, permanent agreement would be negotiated.

13.8. An Exercise in Integrated Marine Security Operations

13.8.1. Illegal Immigrant Planning and Response – Operation Heave To and the MV *Cala Puebla*

In April 2007, intelligence was received that up to 180 illegal migrants of eastern European or West African origin may be bound for Halifax on the container ship MV *Cala Puebla*. The Italian-owned and Cyprus-registered ship was en route from the Mediterranean to Halifax and due to arrive in four or five days.

It was Easter weekend, but a federal interagency meeting was called immediately. CBSA was designated as the lead agency; MSOC staff were notified, as well as their departments. In addition, because there was a potential

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[26] Public Safety Canada, "Government of Canada takes action during Cross-Border Crime Forum to prevent crimes in shared waterways" (Quebec City, 19 March 2008), available: <http://www.publicsafety.gc.ca/media/nr/2008/nr20080319-eng.aspx> (retrieved 4 December 2008).

public health issue, Public Health Canada was also notified and included, although not at the beginning. United States' authorities were also notified.

The plan was to detect and interdict the vessel and process the persons on board. The intent was to

a) interdict the vessel at sea
b) ensure the safety and security of those on board
c) ensure that no-one on board posed a safety or security risk to Canada, including a public health risk

The MSOC had the task of locating the vessel. The Navy, CCG, and RCMP had the task of preparing to interdict and board the vessel at sea. CBSA had to prepare to search the vessel. Regional health officials were notified in case there was a need for use of local hospital or health facilities.

Prior to the vessel's arrival, the story leaked to the local media and soon gained national attention. Officials decided to bring the vessel along side and search it in Halifax. No stowaways were detected. However, the operation served as a "live exercise" allowing for detailed post-action analysis and lessons learned.[27]

13.9. Conclusion

Canada's marine security issues are not unique. Unlike Europe, geographical isolation from the rest of the world and close proximity to the United States bring a different set of priorities to security planning, especially as it involves illegal immigration. Canada has no close neighbours, other than the United States, from where illegal immigrants can easily come in smaller vessels. The nature of the North Atlantic and the distances involved require larger vessels. This makes the task of location and identification somewhat easier, provided, of course, that you know what you are looking for. This does not, however, mean that Canada can be complacent, since there is a strong incentive for criminal elements to exploit any weakness. If Canada is seen as the easy way to get into the United States, then smugglers will utilise it. If the United States does not consider that Canada is stopping the threat before it enters Canada, then the United States will take the necessary steps to stop the threat at the Canada-US border. The resulting effect on Canada's easy access to the United States would have serious financial, as well as social, repercussions.

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[27] S. Kempton, Public Health Agency of Canada, pers. comm. (29 November 2008).

In terms of the EU experience, while the situation on Canada's Atlantic coast is quite different, the situation on the Great Lakes and Strait of Juan de Fuca may be somewhat analogous. With shorter distances across the St. Lawrence River boundary, there is a considerable amount of cross border smuggling in small boats. The success of the Integrated Border Enforcement Teams and the Ship Rider Agreement may be worth considering by the EU as a possible model.