

OECS Interventions related to Maritime Security and Safety,

Maritime Security

Security issues have come to dominate the policy agenda globally and this trend is not as evident in the oceans (Leary and Chakraborty, 2005). Leary and Chakraborty (*ibid.*) go on to suggest that a core challenge for the future of the law of the sea will be managing the relationship between maritime security and the existing norms of international law. Read (2006) claims that there is a powerful argument for the regulation of maritime activity and that if enforcement of environmental legislation is to be ensured then there is no alternative to the monitoring of compliance (*ibid.*). The United Nations (2007a) has noted "an increasing awareness of the many challenges to maritime security, their inter-connectivity and the multiple effects they can have across a spectrum of disciplines" and a "critical need for a coordinated, multi-disciplinary effort to prevent and combat threats to maritime security" further noting that "at the national level, where the responsibility for various aspects of maritime security rests with different departments and agencies, it will be important to establish an effective decision-making structure and agree procedures for inter-agency coordination in order to make maximum use of available resources for coastal maritime surveillance, reporting and interdiction, and also to enable effective cooperation with other States".

Monitoring of compliance is essential to detect and correct violations, provide evidence for enforcement action and to evaluate progress by establishing compliance status (Read, 2006). That CARICOM Member States have already given this some consideration is clear since these States have agreed (CARICOM, 2000) to put in place regional management systems in relation to border control, maritime operations and intelligence and information sharing. The OECS (1994) Agreement Establishing Common Fisheries Surveillance Zones of Participating Member States of the Organisation of Eastern Caribbean States for the purpose of surveillance and the enforcement of fisheries laws provides a conceptual starting point upon which such a regional system can be based (see also Robin and Murray, 1994). This agreement in a sense anticipates, while being very much in keeping with resolution 61772 of the United Nations (2007c) General Assembly which encouraged States to "cooperate to address threats to maritime safety and security... through bilateral and multilateral instruments and mechanisms aimed at monitoring, preventing and responding to such threats."

Terrorists' acts against shipping

The 2006 United Nations General Assembly resolution (*ibid.*) also called upon States to become parties to the 2005 Protocols to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. Eastern Caribbean States are considering the extent to which it is in their best long term interest to accede to this call. The United Nations (2007a) has also noted that increasing attention has been given to ensuring the security of ships, other craft and port facilities such as cargo ships of less than 500 gross tonnage, ships not propelled by mechanical means; wooden ships of primitive build, pleasure craft not engaged in trade, fishing vessels, all types of ships not engaged on international voyages; and all port facilities serving the ships which do not fall within the scope of SOLAS and the ISPS Code. This has become the case since their operations can affect the security of ships and facilities that fall within the SOLAS/ISPS scope; hence, IMO will develop guidelines for these ships, or possible measures to enhance maritime security for use by Governments at their own discretion.

Eastern Caribbean States are maintaining a close watching brief on the development of these guidelines given that significant numbers of their domestic fleets fall within these categories.

Piracy and armed robbery

Overall, cooperative efforts of navies and coast guards have globally contributed to an overall decrease in the numbers of acts of piracy and armed robbery against ships, yet all governments have been urged to intensify and coordinate their efforts to eradicate these unlawful acts (United Nations 2007b; IMO, 2006d). Of the eight acts of piracy reported by IMO in the Caribbean during 2006 (IMO, 2006 a, b, c, 2007) all took place or were attempted in territorial waters while ships were at anchor or underway.

Illicit traffic in narcotic drugs

The United Nations (2007a) has opined that illicit traffic in narcotic drugs and psychotropic substances can cover a number of scenarios including illicit activities of crew members on commercial vessels, offload from mother ships to smaller coastal vessels, deep water drops of buoyed ~~substances~~ ~~that are recovered by shore based craft~~; and the concealment of drugs within commercial sea freight containers. The modes of transport for this criminal activity particularly favoured by syndicates are fishing vessels, pleasure and container vessels. Commercial sea freight containers continue to be a major transport medium while fishing vessels provide a means of transport for delivery of illicit drugs and medicines, ~~and other goods, as well as refuelling and provisioning for go-fast boats (ibid).~~

The United Nations (2007a) has also reminded States that heads of national law enforcement agencies world wide have ~~spoken to the need to~~

- Strengthen law enforcement cooperation at the national and international levels
- Conduct joint maritime patrols with neighbouring or regional partners and joint training of law enforcement officers
- Strengthen cooperation between border authorities both nationally and internationally in the exchange of information (for example ~~concerning maritime transportation and intelligence~~) and
- Establish the legal and procedural framework to enable coordination among all relevant law enforcement agencies at the national level and thus support an effective coordinated inter-agency response

The OECS States (in collaboration with Barbados) effect their maritime security interventions through the Regional Security System (RSS) which is an international agreement for the defence and security of the Eastern Caribbean region. The 7 member nations are:

- Antigua and Barbuda
- Barbados
- Dominica
- Grenada
- Saint Kitts and Nevis
- Saint Lucia
- Saint Vincent and the Grenadines

The purposes and functions of the System are to promote co-operation among the Member States in the prevention and interdiction of traffic in illegal narcotic drugs, in national emergencies, search and rescue, immigration control, fisheries protection, customs and excise control, maritime pollution, health, medical and other diseases, pollution control, combating threats to national security, the prevention of smuggling, and in the protection of off-shore installations and exclusive economic zones. RSS also provides training for joint land and maritime operations, disaster relief, anti-drug operations and anti-terrorism and intelligence gathering and security.

In terms of jurisdiction, the RSS agreement provides that:

1. "When service personnel of one Member State are within the jurisdiction of another Member State, they shall respect the laws, customs and traditions of that other Member State."
2. The Service Authorities of one Member State have, within another Member State or on board any vessel or aircraft of that other State, the right to exercise on board criminal and disciplinary jurisdiction over the service personnel of the first-mentioned Member State, as are conferred on the Service Authorities of that State by the laws of that State, including the right to repatriate personnel to their own state for trial and sentencing.
3. The Courts of one Member State have jurisdiction over service personnel of another Member State with respect to offences that are committed by the service personnel of that other Member State within the jurisdiction of that Member State and punishable by the law of the first mentioned member State.
4. Where the Courts of one Member State and the Service Authorities of another member State have the right to exercise jurisdiction in respect of an offence, the Service Authorities of that other Member State have the primary right to exercise jurisdiction if:
 - a. the offence is committed against the property or security of that other Member State or against the property or person of another member of the service personnel, or
 - b. the offence arises out of an act or omission occurring in the course of official duty by a member of the service personnel of that other Member State.
5. In any case other than those mentioned in paragraphs (2), (3) and (4), the Member State within which the offence is committed has the primary right to exercise jurisdiction, but where the State with the primary right declines to exercise jurisdiction, it shall notify the appropriate authorities of the other State as soon as practicable."

Maritime Safety.

The United Nations Secretary-General has called (United Nations 2007c) for the body of law related to the safety of life of people at sea to receive widespread acceptance by States and to be implemented effectively.

Seafarers and fishers

It has been pointed out that although working on board fishing vessels is recognised as a hazardous occupation, workers in the fishing sector are not protected by the Maritime Labour Convention (*ibid.*). The International Labour Conference will be, in 2007, considering the adoption of a convention concerning work in the fishing sector, which failed to be accepted in 2005. The proposed, comprehensive, convention is a consolidation of existing ILO Conventions on the fishing sector (United Nations 2007b) and aims to ensure decent working conditions for all fishers, including those paid on the basis of a share of the catch (therefore considered self-employed). In the Caribbean, most of the eastern Caribbean

International migration

The United Nations (2007a) has noted that in recent times an unprecedented number of people used the maritime route to cross international boundaries clandestinely. Whatever the mode of maritime transport used, that it is likely to be extremely perilous (*ibid.*), undermining the importance of rescue at sea. Given this, the General Assembly has called upon States to ensure that masters on ships flying their flag take the steps required by SOLAS, the International Convention on Maritime Search and Rescue (SAR), UNCLOS and the International Convention on Salvage to provide assistance to persons in distress at sea and urged States to cooperate to take all necessary measures to ensure the effective implementation of the amendments to the SAR Convention and SOLAS.

The United Nations (2007a) notes that at a high level dialogue on International Migration and Development in September 2006, it was affirmed that international migration was growing in scope and diversity, affecting all countries of the world. There is general consensus that trafficking in persons and the smuggling of migrants should be combated with urgency at all levels. Notwithstanding the necessity for effective border control, it is recognised that security and control measures alone would not eliminate irregular migration. However, measures to control irregular migration should not prevent persons fleeing persecution and other vulnerable populations from seeking international protection.

Eastern Caribbean States are beginning to give consideration, within a broader Sustainable Oceans Governance (SOOG) programme (OAS 2006), to a framework within which to develop suitable minimum safety-at-sea standards and a common approach to their implementation through technology exchange and a harmonised system of fisheries rules and regulations in relation to fishing vessels (see Murray, 2003). In general, therefore, given the imperatives related to Seafarers, fishers and international migration, safety-at-sea issues are seen as divided into (1) safe boating and (2) safe "manning" as outlined by Murray *et al.* (2004) for fishing vessels within the Caribbean Community (CARICOM); interventions should also cover (a) prevention of incidents and (b) emergency management.

References

Caribbean Community (CARICOM), 2006. **Communiqué issued by the Conference of Heads of Government of the Caribbean Community at the conclusion of the 17th inter-sessional meeting of the Conference, 9-10 February 2006, Port of Spain, Trinidad and Tobago**. Caribbean Community Secretariat.

International Maritime Organization (IMO), 2006a. Reports on Acts of Piracy and Armed Robbery against Ships. First quarterly report (January to, and including, March 2006). **MSC.4/Circ.85**. 15p.

International Maritime Organization (IMO), 2006b. Reports on Acts of Piracy and Armed Robbery against Ships. Second quarterly report (April to, and including, June 2006). **MSC.4/Circ.89**. 11p.

International Maritime Organization (IMO), 2006c. Reports on Acts of Piracy and Armed Robbery against Ships. Third quarterly report (July to, and including, September 2006). **MSC.4/Circ.93**. 6p.

International Maritime Organization (IMO), 2006d. Maritime Safety Committee (MSC), 82nd session: 20 Nov – 6 Dec 2006. <http://www.imo.org/ResolutionsMainframe.asp?TopicID=17&SubTopicID=6677> [accessed April 23, 2007]

International Maritime Organization (IMO), 2007. Reports on Acts of Piracy and Armed Robbery against Ships. Fourth quarterly report (October to, and including, December 2006). **MSC.4/Circ.97**. 13p.

Leary, D. and A. Chakraborty, 2005. New Horizons in the Law of the Sea. *Victoria University at Wellington Law Review* 38: 673– 684.

Murray, P.A., 2005. Safety at sea issues related to the waters of the Member States of the Organisation of Eastern Caribbean States. Appendix I in Report of the workshop: Safety at Sea for Small Scale Fishers, March 16-20, 2005, Marine Institute, St. John's, Newfoundland, Canada. Marine Institute, Memorial University of Newfoundland, Canada.

Murray, P.A, Terence Phillips and John Lewis, 2004. Status of fishing vessel safety in the Caribbean Community. Presented at the Regional workshop on safety of indigenous fishing vessels in the Caribbean, St Lucia, November 7 – 10 2004. International Maritime Organisation. 15p.

Organisation of Eastern Caribbean States (OECS), 1991. Agreement Establishing Common Fisheries Surveillance Zones of Participating Member States of the Organisation of Eastern Caribbean States.

Read, K., 2006. Maritime Activities – surveillance, technology and enforcement – a global perspective. Pp 247-256 in Smith, G.R. and G. Buese (Eds.), 2006. Proceedings, *Pacem in Maribus XXXI Conference*, Townsville, Queensland, 30 October – 3 November, 2006. International Ocean Institute Regional Operational Centre for Australia and the Western Pacific.

Robin, D.V. and P.A. Murray, 1994. Profile of fisheries enforcement in the Organisation of Eastern Caribbean States (OECS) sub-region. pp. 57– 60 in Report of the Global Fisheries Enforcement Workshop, October 25-27, 1994, U.S. Department of State, Washington D.C., U.S.A.

Smith, G.R. and C. Boese (Eds.), 2006. **Proceedings, Pacom in Maribus XXXI Conference, Townsville, Australia, 31 October – 3 November, 2006.** International Ocean Institute Regional Operational Centre for Australia and the Western Pacific.

United Nations, 2007a. **Resolution adopted by the General Assembly. 61/109. Sustainable fisheries including through the 1995 Agreement for the implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments.** United Nations General Assembly, Sixty-first session, Agenda item 71(b). **A/RES/61/109**, 2 p.

United Nations, 2007b. **Oceans and the law of the sea: Report of the Secretary-General. Advance and unedited text.** United Nations General Assembly, Sixty-second session, Agenda item 79(a) of the provisional agenda. 6 p.

United Nations, 2007c. **Resolution adopted by the General Assembly. 61/222. Oceans and the Law of the Sea.** United Nations General Assembly, Sixty-first session, Agenda item 71(a). **A/RES/61/222** 22p.

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