

THE IMPLEMENTATION OF INTERNATIONAL MARITIME SECURITY INSTRUMENTS IN CARICOM STATES

The United Nations Nippon Foundation Fellowship Programme 2009-2010

Aleeza Moseley

November 20, 2009

Global Maritime Security Threats

- Transnational Organised Crime
 - Illicit Drug Trafficking
 - Illicit Traffic in Small Arms and Light Weapons (SALW)
 - Human Trafficking
- Terrorism
- Piracy and Armed Robbery at Sea

Global Maritime Security Threats (Cont'd)

- Aggravating and Facilitative Factors
 - Biological, Chemical and Nuclear Weapons (BCN)
 - Untraceable Beneficial Ship-owners

The Global Response

- The conclusion of conventions and other instruments that require parties to effectively seal:
 - Jurisdictional gaps that allow perpetrators of international crimes to escape law enforcement by taking refuge in countries that otherwise lack jurisdiction to act, and
 - Gaps in national maritime border control policies and procedures which allow offenders to move around easily, smuggle their contraband into or even commit a destructive crime on State territory
- The Gaps
 - Inadequate legal framework to properly address and prosecute certain crimes namely terrorism at sea, human trafficking and robbery at sea
 - Inadequate legal framework for the regulation of BCN
 - Impediments to interdiction of suspicious vessels on the High Seas as a result of exclusive flag State jurisdiction
 - Inability of States to exercise enforcement jurisdiction over particular crimes due to an insufficient nexus between the State and the crime, that would invoke the exercise of its jurisdiction
 - Porous borders with insufficiently tight customs policies and controls to adequately address security threats

The Global Response (Cont'd)

■ The Glue

■ Conventions and other international instruments:

- requiring States Parties to criminalise certain unlawful acts –
 - The 2005 SUA Convention
 - The TOC Convention on Human Trafficking and its 3 Protocols
 - BCN Conventions: CWC BWC, NPT
- requiring States Parties to take all domestic measures necessary to assume jurisdiction over the prosecution of alleged offenders on the bases of physical presence in their territories, the accused being a national, and other less traditional grounds for exercising jurisdiction. Also establishment of **duty to prosecute or extradite**.
 - SUA, TOC Convention and Protocols
- Providing for interdiction of foreign vessels on the high seas by warships of States Parties upon receiving the consent of the flag State thereby getting around exclusive flag State jurisdiction.
 - SUA 2005
 - 1988 Convention on Trafficking in Narcotics
- requiring States Parties to take measures including enactment of legislation to prohibit and/ or regulate the manufacture, proliferation, use, and transfer of BCN and their precursors
 - CWC
 - BWC
 - NPT
- Requiring States to take certain measures to secure borders to prevent smuggling of contraband material
 - UNSCR 1540
 - ISPS Code (IMO SOLAS)
 - SUA

The Global Response (Cont'd)

- The ideal result is for all States to implement the key conventions and instruments on maritime security thereby creating *de facto* universal jurisdiction over maritime crimes.
- However there will be no actual sealing of legal or jurisdictional gaps until States effectively implement the international legal framework on the national level.

The Caribbean and CARICOM States

- Where do the Caribbean region and CARICOM States fit into this picture?

The Caribbean and CARICOM States (Cont'd)



The Caribbean and CARICOM States (Cont'd)



CARICOM Integration Process

- At present – Antigua and Barbuda; The Bahamas; Barbados; Belize; Dominica; Grenada; Guyana; Haiti; Jamaica; Montserrat; ST. Kitts and Nevis; St. Lucia; St. Vincent and the Grenadines; Suriname; and Trinidad and Tobago.
- Process has been deepening and evolving since 1973
- Single Market i.e. one economic space
- Freedom of movement of goods, services and capital
- Right of establishment
- Harmonised legislation and social security systems
- Common or shared institutions
 - University of the West Indies (UWI)
 - Caribbean Court of Justice (CCJ)
 - Caribbean Development Bank (CDB)
 - Many more

CARICOM States

- Small Island Developing States (SIDS)
- Small economies with little diversification
- Limited resources (human, material, institutional, financial)
- Limited capacity
- As SIDS, extremely vulnerable to natural disaster which could potentially cause serious devastation to already vulnerable economies
- Foreign investment and tourism are key sources of revenue for the vast majority

SIDS and Sustainable Development

- Special vulnerabilities of SIDS require special action at national, regional and international levels
- Require cooperation and assistance in key cross-sectoral areas including capacity building and human resource development; institutional development; cooperation in transfer of environmentally sound technologies; trade and economic diversification; and finance.
- Declaration of Barbados 1992 containing Barbados Programme of Action (BPOA)
- Mauritius Strategy (Follow up to implementation of (BPOA))

Challenges

- These are major challenges to CARICOM implementation of international security instruments
- Ironically, (criminal) maritime security is not treated as a priority area in the context of SD. It seems that it is addressed separately and SD and capacity building is considered within the context of security.

Solutions?

- How do we address capacity concerns and other challenges in order to forge ahead with implementation of the international legal framework?

Cooperation and Assistance

- Regional Machinery
 - CARICOM Integration Process
 - Organisation of American States (OAS) Mechanisms
- Collaborations with States outside the Region and International Organisations

Cooperation and Assistance (Cont'd)

■ CARICOM

- Joint Regional Communication Centre (JRCC)
- Regional Intelligence Fusion Centre (RIFC)
- CARICOM Maritime and Airspace Security Cooperation Agreement (CMASCA)
- CARICOM Arrest Warrant Treaty (CAWT)

■ OAS

- CICAD
- CICTE
- Rio Treaty
- A number of Regional conventions relating to firearms, terrorism, weapons of mass destruction

■ Other States

- Collaborations and Projects with the EU and certain EU countries individually *et al*
- The United States conducts training in, *inter alia*, ISPS compliance and coast guard operations
- UK, Canada and Australia also provide assistance in the region

■ International Organisations

- OPCW
- OPBW
- UNODC
- IMO

Other Solutions?

- Changes in attitudes toward security issues
 - This has started in recent years; previously not a priority because security issues with the exception of organised crime was not seen as something that affected CARICOM States which had more pressing internal issues to resolve
 - At Regional level CARICOM added Security as its fourth pillar
- Reconciling economic interests with security measures
 - The issue of IBCs and piercing the corporate veil needs to be looked at more closely but for many CARICOM States this is a great source of vital revenue.

Conclusions and Comments

- A great deal is being done in various areas towards implementation of international maritime security instruments
- However, there is a sense that it is not being done as part of a planned and cohesive implementation framework
- CARICOM States are progressing with implementation at the national level very slowly and, even so, at different paces and coordinated planning is needed
- CARICOM itself may need to engage its member States in a coordinated exercise to implement measures at a national level from the drafting of legislation to capacity building projects
- National follow through on regional and international projects is also desperately needed. Very often projects are started and completed internationally but the follow-through or implementation at the national level takes a long time to occur.

THANK YOU