

**THE IMPLEMENTATION OF INTERNATIONAL MARITIME SECURITY  
INSTRUMENTS IN CARICOM STATES**

**by ALEEZA MOSELEY**

**United Nations-Nippon Foundation Fellow 2009 - 2010**

**DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA  
OFFICE OF LEGAL AFFAIRS, THE UNITED NATIONS**

**NEW YORK, 2009**

## **ABSTRACT**

This thesis is divided into two main parts. Part I



## ACKNOWLEDGEMENTS





3.	Security and Sustainable Development	<b>56</b>
	(i) <i>Security on the Sustainable Development Agenda</i>	<b>56</b>
	(ii) <i>Conflicts of Interest Arising from Security and Sustainable Development Agenda</i>	<b>59</b>
<b>B.</b>	<b>REGIONAL MACHINERY AS A VEHICLE FOR ACHIEVING IMPLEMENTATION IN CARICOM STATES</b>	<b>61</b>
1.	Regional Processes	<b>62</b>
	(i) <i>Regional Cooperation</i>	<b>63</b>
	a) The OAS	<b>63</b>
	- Objectives and Mandate	<b>63</b>
	- Role in relation to Regional Security	<b>64</b>
	(ii) <i>Regional Integration</i>	<b>66</b>
	a) CARICOM	<b>66</b>
	- Objectives and Mandate	<b>66</b>
	- Role in relation to Regional Security	<b>68</b>
	b) OECS	<b>70</b>
	- Objectives and Mandate	<b>70</b>
	- Role in relation to Regional Security	<b>72</b>
2.	Regional Action at the Domestic Level	<b>73</b>
	(i) <i>Cooperation and Assistance</i>	<b>73</b>
	a) Mechanisms for Cooperation and Assistance	<b>74</b>
	- Inter-American Convention Against Terrorism	<b>74</b>
	- Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials	<b>75</b>

-	Inter-American Convention on Mutual Legal Assistance in Criminal Matters	<b>76</b>
-	The Inter-American Drug Abuse Commission (CICAD)	<b>77</b>
-	The Inter-American Committee Against Terrorism (CICTE)	<b>78</b>
(ii)	<i>Pooled Resources and Shared Institutions</i>	<b>79</b>
a)	Mechanisms for Pooling Resources	<b>80</b>
-	CMASCA	<b>80</b>
-	The RSS	<b>84</b>
b)	Shared Institutions	<b>85</b>
3.	Extra-regional Action within the CARICOM Region	<b>88</b>
(i)	<i>Cooperation and Assistance</i>	<b>88</b>
a)	EU/ LAC Collaboration	<b>88</b>
b)	UK/ LAC	<b>92</b>
c)	US/ CARICOM	<b>92</b>
d)	International Organisations	<b>93</b>
	<b>CONCLUSION</b>	<b>96</b>
	<b>Bibliography of sources consulted</b>	<b>104</b>







A. MARITIME SECURITY THREATS AND THE INTERNATIONAL RESPONSE

(i) *Direct Maritime Threats*

a) Transnational Organised Crime and Illicit Trafficking

*Transnational Organised Crime*

Transnational organised crime is a very old phenomenon that has evolved and intensified over the years. It has captured the world's attention in the past thirty or forty years particularly in connection with the illicit drug trade and the narcotic black market that emerged as a result of law enforcement efforts to suppress trafficking. A huge aspect of organised crime today is a network of violence and corruption perpetuated by drug cartels in order to protect their financial interests in trafficking illegal narcotics.<sup>2</sup> Organised crime typically engenders activities such as illicit trafficking in drugs, small arms and light weapons, corruption, money-laundering, prostitution, human trafficking all of which are linked to increased incidences of violent crime within national borders.<sup>3</sup> Moreover, as its name suggests, this network of violence and crime is highly organised and spans a broad global spectrum among powerful cartels and crime syndicates. The reach of power of these crime organisations has so grown over time that they are believed to have financial and other stakes in virtually all of the security threats discussed herein, including terrorism.<sup>4</sup>

Increased law enforcement action against the drug trade created a need on the part of traffickers to protect their interests in the extremely lucrative trade and to manoeuvre around legal systems. As a consequence, traffickers became more organised and savvy in terms of their operations and a clear hierarchy of power or chain of command developed within criminal organisations.<sup>5</sup> This level of organisation and development was also aided by the vast resources acquired on account

---

of the drug trade which has also cultivated a contiguous culture of violence and intimidation

organised crime through, *inter alia*, global cooperation in matters relating to confiscation of property, extradition, mutual legal assistance, and technical assistance and training. It also requires States Parties to implement domestic measures to achieve, *inter alia*, criminalisation of the various aspects of organised crime, including illicit trafficking in arms, drugs and persons; international law enforcement cooperation; the adoption of new frameworks for mutual legal assistance; extradition; and provision for technical assistance and training. Its three Protocols<sup>10</sup> make similar provision in respect of human trafficking,<sup>11</sup> smuggling of migrants at sea,<sup>12</sup> and the illicit manufacture and traffic of firearms.<sup>13</sup> The United Nations Office on Drugs and Crime (hereafter referred to as the ‘UNODC’) is the United Nations agency that works with Governments, regional organisations and civil society to achieve full and effective national implementation of CTOC and its Protocols.<sup>14</sup>

### *Drug Trafficking*

The abuse of narcotic drugs is a very old problem in human history but the issue of narcotic drug trafficking has only occupied the attention of the collective international community for about a century during which time the illicit activity has evolved at a staggering pace, forcing law enforcement techniques and mechanisms to evolve just as rapidly.<sup>15</sup>

The huge global demand for illegal drugs is the fundamental driving force behind the illicit trade.<sup>16</sup> The source of illegal drugs is typically poor farmers in developing countries for whom

---



The international community has sought to address this problem through the 1961 Single Convention on Narcotic Drugs<sup>24</sup> as amended by the '1972 Protocol Amending the Single Convention on Narcotic Drugs' and the 1988 United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Subs



of weapons peddled on the illicit market. Some of these are surplus from newly manufactured weapons while others are surplus from the cold war and therefore much older. The illicit trade

adopted in July 2001 sets out measures to be taken at the national, regional and international levels in respect of, *inter alia*, legislation; confiscated, seized or collected weapons; and technical and financial assistance to States which are otherwise unable to adequately identify and trace illicit arms and light weapons. Since 2001 there have been a number of Regional follow-up conferences regarding implementation of the PoA. In 2006, the United Nations Conference to Review the Implementation of the Programme of Action on the Illicit Trade in Small Arms and Light Weapons was held but failed to produce an outcome document due to States being unable to agree on details of the follow-up strategy. However, the PoA remains the main framework document with which many States and regions work in relation to implementing measures to address the problems of SALW.



Punish Trafficking in Persons, Especially Women and Children, supplementing the United

### c) Piracy and Armed Robbery at Sea

The universal crime of piracy is a very old one. Historically, areas such as the Caribbean and the Mediterranean were rife with pirate attacks on merchant ships. Such a scourge it was then that it was regarded as a *jus cogens* crime, subject to the penal jurisdiction of all States. This classification remains today but the problem has much reduced. Still, there are areas that have been identified as hotspots. The main areas are the South China Sea, the Strait of Malacca, West Africa and Somalia. Currently the greatest number of incidents of piracy and robbery at sea, and certainly the most disruptive is shown to occur off the coast of Somalia.<sup>32</sup> These crimes occurring off the coast of Somalia have occupied a great deal of media attention in recent times due to the frequency of attacks, their impact on the international shipping industry and international trade. In 2008 there were reports of 111 incidents of pirate attacks while in 2009 there were at least 130 reported. The attacks have also reportedly extended to the EEZ of the Seychelles. Many of the attacks have taken place in the Somali EEZ as it was last declared, which has complicated enforcement options of the international community given that Somalia is effectively a failed State with no central Government or overarching rule of law. As such, the nature of the piracy problem in the Gulf of Aden is one with particular surrounding circumstances thus requiring a certain approach.

Armed robbery at sea, on the other hand, must be distinguished from piracy as the definition of piracy is very narrow. The commission of an act of piracy necessarily involves the attack being launched from another ship on the High Seas and the attack must be launched for private ends. Armed robbery, however, is defined as “any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of “piracy”, directed against a ship or against persons or property on board such ship, within a State’s jurisdiction over such offences.” Accordingly, there is no requirement for the involvement of at least two ships or any limitations in respect of the motivation behind armed attacks.

The number of incidences of piracy and armed robbery at sea reported to the IMO to have taken place in April 2009 in (a) international waters was 21; (b) territorial waters was 6; (c) port area

---

---



(herein after 'the 1988 SUA') as amended by the 200

maritime security. From this perspective, BCN conventions, which focus on the destruction and monitoring of BCN as well as the peaceful usage of their precursors, have a tangible bearing on maritime security.

#### (b) Corporate Devices

The fight against maritime security threats would be greatly aided by access to information regarding the identity of beneficial owners of vessels, mainly, in two ways: firstly, knowledge of vessel ownership by known or suspected criminals would immediately draw the attention of law enforcement bodies to their maritime activities and facilitate swifter detection of maritime security threats, and secondly, the ability to easily trace illicit or suspicious maritime activities to the beneficial owners of the vessel would accelerate the conduct and conclusion of investigations and lead to more prosecutions. However, the permitted ownership of vessels by companies and other corporate entities provides a vehicle for perpetrators of illicit maritime activities to establish beneficial ownership of ships and keep their identities hidden from the public domain.

The term ‘corporate veil’ refers to the proverbial veil, created in common law jurisdictions by the ‘separate legal personality’ principle, which shields shareholders from liability in respect of the company and its assets on the basis that the company and the persons running the company possess separate legal personalities. The term ‘piercing the corporate veil’ refers to the exceptional circumstances in which shareholders may be exposed to liability. In the case of ship ownership the veil allows companies by virtue of their own legal personality to be registered as owners of ships. However, the identity of the shareholders of such companies or of their parent companies may be obscured through the use of various corporate mechanisms. These mechanisms include, *inter alia*, the issue of bearer shares to shareholders, the appointment of nominee shareholders and directors, and the use of intermediaries. Other means of thwarting identification are more institutional in nature and include ownership through private limited companies or public ones, the shares of which are not traded on the stock exchange; ownership through international business corporations (IBCs) or exempt companies; ownership by virtue of trusts; ownership via foundations; and ownership through partnerships. IBCs are primarily used to facilitate legitimate international business transactions as they are extremely easy to establish and are available in many countries specialising in off-shore services. IBCs are rarely supervised



and in most cases can be used along with all the above-mentioned mechanisms to conceal the identity of a beneficiary of illicit activities. By and large, these institutional devices and corporate mechanisms are used in tandem across a number of jurisdictions making it exceedingly difficult to trace the proceeds of crime and in particular their beneficiaries. In the context of maritime security, ownership of vessels is very often established by companies which open the door for the use of these corporate devices to shield not only criminal activities conducted by ships but also the true identities of the beneficial owners of such vessels.

A separate issue that compounds this problem is the lack of standardisation of ship registry regulatory procedures. The fact that not every flag State requires the existence of a 'genuine link' between the shipowner and the flag State contributes to the problem in that any company may own or incorporate a subsidiary within the flag State and register it as the owner of a vessel, very often without submitting detailed information on the beneficiary owner. Furthermore, the 'open registry' phenomenon in generating competition to attract shipping companies often results in the

threats but also by the fact that their transboundary nature makes it difficult for any one State to apprehend and punish perpetrators without the cooperation of all other States.

## 2. The International Response

As the major maritime security threats became more widespread and difficult to control the international community sought to address the obstacles to effective control and regulation. These were recognised as a number of significant legal loopholes that effectively ‘tied the hands’ of States with regard to the adoption of prevention, enforcement and prosecution measures. The major legal lacuna was jurisdictional in nature since prevailing fundamental principles such as State sovereignty and the exclusive jurisdiction of flag States as well as traditional principles under which States could assert jurisdiction created barriers to State action against suspected ships and perpetrators which traverse all the maritime zones and jurisdictional boundaries with relative freedom. There was also inadequate coverage of certain acts at sea, including the illicit use or transport of BCN and acts that typically constituted or were characteristic of terrorism. In addition, frontiers

a matter of fact, when all States possess the right to exercise jurisdiction over international maritime crimes. Systemically, international instruments seek to reduce the porosity of national borders that provide escape routes for criminals and avenues for the perpetuation of their illicit activities.

a) The Existence of Maritime Jurisdictional and Systemic Lacunae

At different points in time lacunae were recognised as existing in all the relevant areas of security, namely, terrorism, arms and drug trafficking, human trafficking, and piracy. Generally, this recognition would be precipitated by an event or disaster that was not adequately addressed by the relevant existing law and which required legal action by the international community to properly address the problem at hand and similar incidents that might occur in the future.

There existed at one time or another, inadequate legal frameworks to properly address and prosecute certain crimes namely terrorism at sea and human trafficking. In the cases of terrorism and human trafficking there were no clear definitions of these crimes in international law and





actual seizure or forcible exercise of control over a ship or fixed platform; performance of a violent act against a person on a ship or fixed platform likely to result in the endangerment of the ship's navigation or the safety of the platform;<sup>46</sup> the transport on board a ship of explosive or radioactive material with knowledge that it is intended to cause death, damage or serious injury for the purpose of intimidating a population or compelling a government or international organisation to do or abstain from doing any act;<sup>47</sup> and the transport of any BCN weapon within the meaning provided in the Protocol(s) with knowledge that it is a BCN weapon.<sup>48</sup> In the case of the BCN conventions,<sup>49</sup> governments also pledge to refrain from engaging in activities involving the relevant BCN material and systems are established for the purpose of verifying government

boarding provisions were introduced in relation to drug interdiction and terrorism.<sup>53</sup> These ship-





outstanding. Attempts to agree on a binding legal document in respect of SALW have failed to date for while States all agree that the illicit traffic in SALW must be urgently curbed, differences in national interests and approaches among blocs of States have prevented consensus on a legally binding text. The PoA is therefore the most influential document on SALW setting out measures to be taken at the national, regional and international levels in respect of, *inter alia*, legislation; confiscated, seized or collected weapons; and technical and financial assistance to States which are otherwise unable to adequately identify and trace illicit arms and light weapons.<sup>69</sup> An Arms Trade Treaty (ATT) is also currently being negotiated.<sup>70</sup> Accordingly, with the exception of firearms, the illicit trade in small arms and light weapons is not subject to any binding legal instrument in international law. In the case of ship registration, on the other hand, the 1986 convention on ship registration was adopted but never ratified by States and is regarded as a failed convention.<sup>71</sup> Although UNCLOS makes some provision for the registration of ships, it does so from the perspective of the duties of flag States and in very basic and general terms.<sup>72</sup> UNCLOS article 94 obliges flag States to exercise administrative, technical and social jurisdiction over ships flying their respective flags but does not elaborate the particulars of the exercise of its jurisdiction beyond a duty to maintain a ship register containing the names and particulars of vessels and domestic assumption of jurisdiction over shipmasters, officers and crew.<sup>73</sup> The failure of the 1986 Convention and the inadequacy of the UNCLOS provisions has meant that no standard regulation or requirements for the registration of ships exist in international law and as a consequence individuals engaged in illicit activities have no difficulty

---





torture and some international terrorism crimes.<sup>86</sup>

Some international institutions may be established under a convention as the body charged with promoting or ensuring the implementation of the convention by States Parties; or with monitoring and evaluating State compliance; or overseeing and carrying out verification and statistical requirements; or with performing various combinations of the foregoing. The Organisation for the Prohibition of Chemical Weapons (OPCW) and the International Narcotic Control Board are prime examples as their corresponding conventions<sup>87</sup> not only prescribe certain domestic measures to be taken but they also elaborate monitoring and evaluation systems















States (SIDS), such as the Caribbean States of CARICOM are especially challenged in this regard because they are limited in respect of not only their financial resource base but also their human and natural resource bases.

At the international level, where the battle against maritime security threats is initiated, a legal framework has been developed in response to the major threats to maritime security, sealing legal and systemic lacunae that stymie effective apprehension and prosecution of suspected perpetrators. The key features of this framework include the expansion of grounds for exercising jurisdiction to allow States with an interest in prosecuting suspected perpetrators of these crimes greater reach beyond their national territories, the obligation to prosecute suspected perpetrators in their territories or alternatively extradite them to States that will do so, and the imposition of certain domestic border control measures to be taken by States. To ensure that this framework applies to every corner of the globe thereby eliminating safe havens for perpetrators of the relevant maritime crimes, it is necessary to achieve universal participation in the applicable international instruments. To this end, States Parties to the various instruments and especially international institutions which specialise in attaining security objectives and which are charged with ensuring the implementation of maritime security instruments, work towards bringing about the participation of non-States Parties in the relevant instruments.

Therefore, the said international maritime security framework, with universal participation, is poised to eliminate safe havens and significantly increase apprehension and prosecution of suspected offenders. However, without universal domestic implementation, the international legal framework cannot be translated into action and may be rendered nugatory in the context of closing jurisdictional and systemic lacunae and in effectively combating maritime threats. Domestic implementation of maritime instruments, nonetheless, has internal systemic and resource ramifications which demand a great deal of financial, human and material input as well as sufficient capacity to expand and increase domestic institutions. Therefore, the wealth and

From this perspective, Part II of this thesis will examine the ramifications for SIDS, namely CARICOM States which are characteristically developing countries with limited capacity and resources. This part will further explore the opportunities to circumvent capacity and resource deficiencies particularly through regional cooperation mechanisms and international collaborations.

## **II. ENHANCING CAPACITY FOR EFFECTIVE IMPLEMENTATION OF MARITIME SECURITY GOALS**

The international maritime security framework must be implemented nationally in order for its provisions to have any practical effect. Accommodations must therefore be made at the domestic level both legally and infrastructurally in order to properly implement international security instruments. For the States of the Caribbean



generally from over 47,000<sup>117</sup> to just under 2.7 million<sup>118</sup> with Jamaica, Trinidad and Haiti being the only of these to exceed 1 million and Haiti standing out at a population of over 7 million.<sup>119</sup> The Gross Domestic Product of these countries ranged in 2004 (in USD millions) from approximately 293 to 2886 to 9086 to 12,579.<sup>120</sup> The physical sizes of the island States vary from a minimum 102 square km to 10, 991 square km while the mainland states occupy 22,966 sq km, 27,750 sq km, 163, 820 sq km and 216,970 sq km of land.<sup>121</sup>

Despite generally stable social and political systems<sup>122</sup> and, for the most part, relatively well educated populations, these Caribbean territories are infrastructurally weak and exceptionally vulnerable economically, as they depend heavily on imported goods and commodities with an insufficient infrastructural and resource base to satisfy their own food and energy requirements. Their major revenue earning industries, tourism and agriculture, are also high risk and operate, in the global context, at a relatively low level. There is some industrialisation in mostly base commodities, though on a very small scale, with Trinidad and Jamaica having the largest industrial base via their respective oil and bauxite industries. Jamaica is the third largest exporter of bauxite in the world<sup>123</sup> but generally industry in CARICOM as a foreign exchange earner operates at a very small and uncompetitive scale in the global arena. As such, the export base of these nations is not highly diversified which, economically, is another high risk factor. Consequently, globalisn s71631(a)12.2432(t)-9.83758(i)0.442343(o)-3.71568(n)6.56424(s)-6978( )-37.83693(f)

islands in this context have turned to the establishment of offshore banking sectors.<sup>125</sup> However, the resource and capacity limitations of CARICOM States continue to impact their development and by extension their ability to accomplish, *inter alia*, maritime security obligations.

(ii) *Resource and Capacity Limitations*

The economic and physical reality of CARICOM States is typical of Small Island Developing States (SIDS) across the globe. In a maritime security context, their resource and capacity limitations stymie their ability to fully and swiftly satisfy the legislative, institutional and systemic requirements<sup>126</sup> for effective implementation of the international security framework.

As SIDS with small populations, human resources are limited and therefore the expansion of personnel in key institutions such as law enforcement, border control and emergency services is a significant challenge, much less finding persons with the requisite training and expertise in adequate numbers. Furthermore, limited finances and expertise, particularly in novel areas such as BCN, make it difficult to provide all the necessary training on a regular long term basis. Human resource deficiencies such as these also present challenges for designated institutions or national authorities required to carry out on-site inspections. Such deficiencies also affect the timely drafting of security legislation as understaffed Government legal offices may be unable to dedicate the time to quickly carry out the necessary assessments and draft enactments and

s t42-.1-20.04 Td 74L256299(v)-3.71693(e)-843(c)1.96325( )3.28978(b)-3.716326(n)6.0047(p)-3.71693(l)07.00



law enforcement and military forces from the perspective that training may stand the risk of falling into desuetude without the necessary equipment to reinforce it and put lessons learned into practice. The achievement of certain security goals is also frustrated by a lack of detection equipment at ports of entry and on warships and State-owned vessels; protective equipment for emergency service personnel and other personnel exposed to, *inter alia*, BCN and their precursors; and computer and data-base software for storing and disseminating information and for accessing centralised information in relation to a multiplicity of areas including law enforcement and border control, storage and transfer of chemicals, and for verification and reporting purposes.

Institutional incapacity is also a very major obstacle to full and effective implementation of the international maritime security framework. Many of the institutions required to support a viable

0.19(D(n)-3.716R5(a)1.3419877)@ch(Gat) p

## 2. SIDS and Sustainable Development

### (i) *The Special Vulnerabilities of SIDS*

This classification as SIDS highlights the special vulnerabilities faced by developing island states as a result of factors beyond their control, which typically include their small size, insularity and remoteness, disaster proneness, and environmental fragility.<sup>127</sup> Although they are afflicted by economic difficulties and confronted by development imperatives similar to those of developing countries in general, the difficulties that SIDS face in the pursuit of sustainable development are particularly severe and complex as a result of their peculiar vulnerabilities.<sup>128</sup> They not only impact on each other but they also have very far-reaching implications for the economic, social and environmental fabrics of SIDS.

#### a) Economic Vulnerabilities due to Small Size

The relatively small physical stature of SIDS creates significant economic disadvantages for them. SIDS are generally, because of their size, heavily dependent on foreign exchange earnings as a result of limited natural resource bases and low inter-industry linkages, resulting in high export content relative to GDP. Their smallness also tends to inhibit import substitution possibilities typically resulting in a protected economic environment with products of lower quality, high prices and a parallel market in forei

indivisibilities and limited scope for specialisation, resulting in high per unit costs of production,  
high costs of infrastructural construction and util



Stress on the environment arising from the process of economic development in SIDS tends to be much higher than in other countries as a result of increased demand for residential housing and industrial production, intense use of the coastal zone for tourism and marine related activities, the generation of a relatively large amount of waste, and increased demand for natural resources, some of which are non-renewable. Consequently, fast depletion of agricultural land, beaches and coastlines, non-renewable natural resources, as well as, increased pollution are real problems facing SIDS with greater potential impact than in other developing countries due to their small size.<sup>132</sup>

Apart from the pressures of economic development, SIDS also face problems associated with their geographical and natural characteristics such as their tendency to have unique and very fragile ecosystems.<sup>133</sup> Consequently their ecosystems can become endangered very easily. The issue of global warming and sea level rise is also a major environmental threat. Many SIDS, especially the low-lying coral atoll ones, are faced with the prospect of proportionately large land losses while others face complete submersion as a result of sea level rise. Erosion of their individual coastlines, which in relation to the land-mass is relatively large, is also a major problem due to high exposure of the land-mass to sea-waves and winds.

#### e) Other characteristics of SIDS

Other important characteristics of SIDS include dependence on foreign sources of finance and demographic changes. Some SIDS have a very high degree of dependence on foreign sources of finance including remittances from emigrants and development assistance from donor countries and these inflows from abroad have enabled many SIDS to attain high standards of living and to offset trade deficits. Demographically, changes in SIDS can be very pronounced due to emigration, or in the case of archipelagos, emigration from one island to another caused by

---









security is inextricably linked to at least two of

“transport and security”. In this regard, paragraph 78 *bis* provides that SIDS, with the necessary support of the international community,<sup>150</sup>

(ii) *Conflicts of Interest arising from Security and Sustainable Development Agendas*

As previously indicated, the assurance of maritime security is essential to economic stability and consequent growth,<sup>153</sup> however, other more immediately gratifying sources of revenue may reduce any rush to eliminate all the potential maritime threats. Due to the economic vulnerabilities that SIDS undergo<sup>154</sup> many SIDS, particularly in the Caribbean region and in CARICOM have turned to offshore business services which permit the incorporation of International Business Corporations (IBCs). IBCs are too often used as corporate devices<sup>155</sup> in conjunction with others<sup>156</sup> to cloak the identities of transnational criminals using ships and vessels across a number of different territories to peddle their illicit fare. Furthermore, some Registry countries, a number of which are SIDS, advertise anonymity, the use of bearer shares and other typical cloaking devices as an incentive to attract ship owners to register under their nationality. In non-registry countries, the problem arises where there are few conditions attached to the incorporation of IBCs and little regulation on their business activities thereafter. Therefore an IBC may, on account of its legal personality arising out of its incorporation in a non-registry

revenue earner and mitigating the negative security and possible economic consequences it may bring about in the long term.

Nonetheless, this issue of international business facilities versus maritime security assurance is only one manifestation of a larger issue. This is not the first and only instance where economic factors rival security aspirations although it may be unique in that the economic benefit accrues to the SIDS. Globalisation and trade liberalisation which have been touted as ultimately economically beneficial to all States, a principle which is adhered to in the context of the Mauritius Strategy,<sup>157</sup> has placed SIDS in a counter-productive position where the attainment of maritime security goals are concerned. The loss of agricultural industries such as bananas in the Eastern Caribbean<sup>158</sup> and other crops in countries such as Colombia open

Strategy, is essential to achieving this. SIDS are primarily responsible for their own implementation of the BPoA and Strategy but can also access technical and financial cooperation and assistance at the regional and international levels. From a regional perspective, more often than not neighbouring States share many of the same challenges and interests. Therefore, cooperation at the regional level can be sometimes more symbiotic in character than at the international level. As a consequence of these shared interests and concerns there tends to be some kind of regional machinery or mechanisms that allow neighbouring States to address their

even overcome some of their capacity and resource l

(i) *Regional Cooperation*

(a) The OAS

*Objectives and Mandate*

Therefore, the OAS mandate provides for the achievement and maintenance of the comprehensive security of the Americas.<sup>166</sup> The Charter and the configuration of the Organisation itself provide mechanisms for the military security of the region. Its organs provide a forum for political debates and discussions on various issues including diverging interests of



criminal activity in the Region and cooperation among countries in the Region to curb and eliminate such criminal activities.

Therefore, many of the inter-American security provisions relate to threats to maritime security either directly or indirectly. Accordingly, conventions have been adopted in relation to terrorism; extradition; trafficking in minors; mutual legal assistance in criminal matters; corruption; and firearms.<sup>170</sup> As they deal with many of the same issues, several of the inter-American conventions mirror corresponding UN conventions<sup>171</sup> though not necessarily in every respect. On the other hand, some inter-American conventions are essentially multilateral versions of treaties that are traditionally concluded bilaterally.<sup>172</sup> As a result of these conventions, provision has been made at the international level for States Parties to assume prescriptive jurisdiction in relation to certain offences and to provide technical andc784(A)r



established the Community whereas the Annex to the Treaty created and governed the CARICOM Common Market. CARICOM was established as a Regional Trade Agreement (RTA) providing for coordination and cooperation in certain areas including foreign policy, tertiary education, regional banking and so forth. The original objectives of the Community were to achieve economic integration among the Member States, coordination of foreign policies, and functional cooperation in certain common services and activities as well as areas of social, cultural and technological development. Therefore, at its inception CARICOM was intended to be an integration process for the purposes of economic growth and development within Member States. The integration process at this stage of CARICOM's development was, however, a relatively shallow one

the purpose of enhancing functional cooperation the Community is mandated to carry out more efficient operation of common services and activities for the benefit of its peoples; accelerated promotion of greater understanding among its peoples and the advancement of their social, cultural and technical development; and intensified

security or security related matters. There is no reference to or provision for a policy on regional security or a harmonised policy on international se

CONSLE, is the implementing centre of the Framework as it has primary responsibility for the implementation of the regional crime and security agenda.<sup>183</sup>

In respect of implementing the agenda, CARICOM has participated in collaborations with other States, as well as international and regional organisations for financial and technical assistance to develop projects in Member States on capacity building, drug abuse programmes, coast guard and law enforcement training and many other maritime security related matters. CARICOM also enters into such collaborations for the purpose of establishing or enhancing agencies or facilities within the Organisation. Furthermore, these agencies and facilities of CARICOM mandated to deal with particular maritime security matters very often are mandated to carry out security functions that serve all

Eastern Caribbean Common Market (ECCM).<sup>187</sup> The objects and purposes of the OECS are essentially to bring about among its members cooper





Furthermore, the OECS countries and Barbados are parties to the Treaty establishing the

assistance to take place and there are also certain

authorities.<sup>196</sup> This convention also stipulates the provision of mutual legal assistance among States Parties with respect to the prevention, investigation, and prosecution of the offences established in the said universal legal instruments,<sup>197</sup> as well as conditions for the transfer of persons in custody for purposes of identification, testimony, or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences established in the said instruments.<sup>198</sup> There is also provision for training and the promotion of technical cooperation at the national, bilateral, sub-regional and regional levels;<sup>199</sup>

Convention further includes a 'prosecute or extradite' obligation upon Parties when an alleged offender is found to be present in their respective territories and like the inter-American Convention on Terrorism it contains cooperation and capacity building provisions, namely, in relation to exchange of information,<sup>202</sup> cooperation,<sup>203</sup> exchange of experience and training,<sup>204</sup> technical assistance,<sup>205</sup> mutual legal assistance,<sup>206</sup> extradition,<sup>207</sup> and the establishment and functions of a consultative Committee on implementation.<sup>208</sup> This Convention does not correspond to the relevant Protocol to the Convention on Transnational Organised Crime

Mutual Assistance Treaties are typically bilateral. However, the Inter-American system has with

### *The Inter-American Committee Against Terrorism (CICTE)*

CICTE is responsible for the coordination of efforts to protect the Region from terrorism. It operates largely through the exchange of information amongst government officials, subject matter experts and decision makers working together to strengthen hemispheric solidarity and security. One of its major projects is the Maritime Security Programme which takes a three-pronged approach to strengthening the capacity of Member States to effectively comply with the security requirements of the IMO ISPS Code.<sup>210</sup> The three areas of approach are:

- a) Port facility security and training needs assessments, and follow-up training which entails companies experienced in maritime security contracted by CICTE to conduct port facility security training needs assessments, the results of which serve as a basis for CICTE in tandem with the contractor to tailor security training to address and mitigate identified vulnerabilities and risks;
- b) Crisis Management Exercises (CMEs) are implemented as simulation exercises at the strategic level with the objective of effectively assessing the complex nature of the response capacities and mandates of each of the entities involved in a crisis situation within a port facility, and to identifying vulnerabilities in port facilities security plans;<sup>211</sup> and
- c) Workshops on best practices in the implementation of international maritime security

coordination, cooperation, and the exchange of information and best practices among those responsible for maritime security in the region.

These are some examples of regional mechanisms for cooperation which in this instance all apply to the States of the Americas. Therefore, CARICOM States as part of this system have the opportunity to benefit from the cooperation and assistance of regional agencies and of a wide range of countries at various stages of development in relation to crucial matters such as capacity building and technical and legal assistance. However, institutions still have to be managed according to the resource limitations of SIDS and even with the assistance and cooperation of friendly States in building institutional capacity it is still more efficient and expedient for the SIDS of CARICOM to combine their available resources and access shared institutions in relation to certain aspects of maritime security.

(ii) *Pooled Resources and Shared Institutions*

States engaged in an integration process, as in the case of those engaged in a cooperative arrangement such as those of the OAS,<sup>212</sup> exercise cooperation and assistance among themselves through legal instruments and the institutions of the organisation. However, unlike the cooperative arrangement, the integrative process more typically features the creation of common institutions and mechanisms in key areas with a view to achieving certain goals at the national level.<sup>213</sup> In the case of SIDS with limited resources, this is especially crucial. Therefore, cooperation among States

facilitating this level of cooperation, such States are able to achieve certain national goals via the regional apparatus. CARICOM as well as the OECS provide examples of such mechanisms for the pooling of resources in the CMASCA, the Arrest Warrant Treaty and the RSS.

a) Mechanisms for Pooling Resources

*CMASCA*

The CARICOM Maritime and Airspace Security Cooperation Agreement (CMASCA) is essentially a multilateral ship-rider and ship-boarding agreement among the Member States of CARICOM. The CMASCA appears to draw inspiration from both the ship-boarding provisions of the SUA Convention<sup>216</sup> as well as the ship-riding and ship-boarding provisions of bilateral ship-rider agreements between individual States of the Region and the United States.<sup>217</sup> However there are some unique provisions in his agreement that may be the source of hesitation within CARICOM.

The CMASCA is more than a drug interdiction Treaty.<sup>218</sup> The interdiction operations cover “any





However, if the requested State Party does not respond to the request of the SFOs within two hours the SFOs shall assume that the claim of nationality has been refuted by the State Party.<sup>225</sup> Where the claim of nationality is assumed to have been refuted, the requesting State Party is deemed to have been authorised to board the suspect vessel for the purpose of inspecting the vessel's documents, questioning the persons on board, and searching it to determine if it is engaged in any activity likely to compromise the security of a State Party or the Region.

This provision presents somewhat of an anomaly. First if nationality is deemed to have been refuted then grounds for searching the vessel would presumably be the suspicion of statelessness pursuant to article 110 of UNCLOS which would hence apply. The SFOs would therefore be conducting a right of visit pursuant to article 110



the territory or waters of a State Party are to be disposed of according to the national laws of that Party. Where the assets are seized seaward of the territorial sea of a State disposal shall be subject primarily to a formula decided by the States Parties or in the absence of such a formula according to the laws of the seizing State Party.

A ship rider/ ship boarding agreement among CARICOM States, is practical and logical not only in the context of strengthened maritime security but also in the context of integration. Such an agreement in addition to the bilateral ship rider agreements in the region would provide better coverage of the regional waters. However, as is clear in the context of the bilateral ship riders some States are more guarded in respect of matters of sovereignty. In the Caribbean context this may also be complicated by one of the very things that unite the Member States – their proximity. The maritime space separating these countries is largely undelimited and that has been and certainly can be in the future, a source of conflict and distrust between and among neighbours.<sup>229</sup> In all the circumstances, the CMASCA will barely have any bite if the full complement of Member States is not on board. As every State in the region is party to a bilateral ship rider agreement there must be some reachable compromise that suits all involved. The text could be negotiated until a consensus document is reached or where consensus appears impossible, perhaps carefully worded reservations as to the operation of certain provisions may be permitted. The operation of such reservations would of course be governed by the 1969 Vienna Convention on the Law of Treaties (VCLT).

### *The RSS*

The OECS has one military force which serves the organisation, its member states and Barbados collectively. By Memorandum of Understanding between four of the OECS states<sup>230</sup> and Barbados the Regional Security System<sup>231</sup> (RSS) was created in 1982. The RS-9.83821(s)-1.6n5R

armed force comprising soldiers and law enforcement officers contributed by the contracting states for the purpose of providing fast-moving, non-bureaucratic defence and security upon request. The members of the force are trained together as a unit. The RSS was created during the cold war at a time when the region was seeing some shifts in the political and ideological paradigm and some feared that regional instability might ensue.

The RSS played a peace keeping role during and after the 1983 United States intervention in Grenada when the then Marxist Government imploded and anarchy ensued in Grenada. This was at the mandate of the OECS and Barbados which, along with Jamaica, agreed to invite the United States to intervene in Grenada, contrary to the vie

of the task force,<sup>233</sup>

- a) Association of Caribbean Commissioners of Police (ACCP)
- b) Caribbean National Security Conference of Chiefs (CANSEC)
- c)

led to the creation of the single domestic space and saw fast-track implementation of a number of security mechanisms that have been retained and are currently being strengthened.<sup>234</sup>

### 3. Extra-regional Action within the CARICOM Region

#### (i) *Cooperation and Assistance*

The Caribbean, due to its economic and resource challenges, has been engaged in partnerships outside the Region where these strategic partners have been in a position to render assistance or engage in trade or collaborate with Caribbean countries on issues of common interest or social value to both parties. In the area of security CARICOM maintains such relations with extra-regional States as well as organisation. The following is not an exhaustive list of these collaborations but an account of some major ones. Other contributions to Caribbean security have been made in one form or other by, *inter alia*, the governments of Canada as well as Australia, other countries in the Greater Caribbean Region and other international organisations.

#### (a) The EU/ LAC Partnership

Collaboration between the European Community and the countries of Latin America and the Caribbean (LAC) dates back to the 1960's and 70's. Certainly, the Caribbean has had political, cultural and economic ties dating well before that and since independence a cooperative and even preferential relationship<sup>235</sup> had been maintained in a number of social and economic areas. In 2006, the European Commission adopted the communication on the EU strategy for the Caribbean, which was geared towards an enhanced EU–Caribbean partnership in several overlapping areas:

- a) a political partnership based on shared values, in particular on good and effective governance as a key to the consolidation of democracy, to respect of human rights;
-



key components will include institutional support as well as the promotion of transparency and exchange of information to fight corruption as well as corporate and financial malpractices;

b)

Given the challenges faced by Caribbean countries in respect of security issues, capacity building programmes in this area as well as in relation to the Justice system contribute to the improvement of Caribbean implementation capabilities.

### *Coordination and Cooperation Mechanism on Drugs*

The Coordination and Cooperation Mechanism on Drugs between Latin America the Caribbean (LAC) and the European Union (EU) is a unique bi-regional forum for identifying new approaches and exchanging proposals, ideas and experiences in combating the challenges posed by the global drug problem.<sup>237</sup> The principles which guide this mechanism include the principle of shared responsibility, the need to take an integrated and balanced approach to the problem in conformity with national and international law, the principles of sovereignty, territorial integrity and non-intervention in the internal affairs of states, respect for all human rights and fundamental freedoms, the principles reflected in the Panama Action Plan and the commitments of the UNGASS on Drugs of 1998. Accordingly, the Mechanism is mindful and supportive of the sustainable development element of drug-related issues in Latin America and the Caribbean.

Annual Meetings of the Mechanism are held in cities of the States participating in the Mechanism and the outcome declarations pledging their further cooperation on agreed priorities are referred to by the names of the cities in which they were concluded. The relevant declarations to date are the Declarations of Panama City (Panama, 1999), Lisbon (Portugal 2000), Cochabamba (Bolivia 2001), Madrid (Spain 2002), Cartagena de Indias (Colombia 2003), Dublin (Ireland 2004), Lima (Peru 2005), Vienna (Austria 2006), Port of Spain (Trinidad 2007),

a) EU-LAC Intelligence Sharing Working Group the objective of which is to help Latin

three main components: demand reduction, capacity building for law enforcement agencies and IMPACS.

(b) United Kingdom/ CARICOM

Given historical and colonial ties the UK has maintained strong links with the countries of CARICOM. In addition, most of CARICOM are members of the Commonwealth. As a Member of the EU and one of the key partners in the EU/LAC partnership the UK has also contributed to development and capacity building in the Caribbean Region. The two meet at regular summits to discuss and pledge attention to a variety of issues including security. To this extent, UK and Caribbean Ministers resolved to work closely together to address security threats, including terrorism, drug trafficking and organised crime, and to develop and support the regional institutions necessary to combat them. They have also recognised the benefits of enhancing the legislative framework in the fight against crime and prioritised this as a matter to pursue through their national parliaments where this has not already been done. The UK has provided technical and financial assistance towards social economic and security programmes.

(c) United States/ CARICOM

The United States has also provided assistance in areas of maritime security through, *inter alia*, U.S. agencies or its embassies. The US State Department has been involved through the OAS to coordinate and fund projects to improve maritime security. The United States Coast Guard (USCG) is also involved in the Region through its International Port Security Program to assess the effectiveness of implemented anti-terrorism measures in other countries. In particular, the Coast Guard monitors the implementation of ISPS Code requirements in Caribbean countries and provides them with best practices to help them improve port security. U.S. Customs and Border Protection has provided training assistance to a number of Caribbean nations and is also operating its Container Security Initiative (CSI) in the Bahamas, the Dominican Republic, Honduras, and Jamaica. Under the CSI, Customs and Border Protection staff are placed at foreign seaports to screen containers for weapons of mass destruction. In relation to the security of containers in ports, the U.S. Department of Energy also has efforts under way in the Caribbean Basin related to its Megaports Initiative, which provides equipment to scan containers



use of sentencing options and alternatives to custodial sentences for drug addicts. Supporting partners in this project included the European Commission, UNAIDS, and CICAD.

UNODA projects include the Firearms Policy and Legal Planning Caribbean Assistance Package the focus of which was public security. The project targeted mainly Antigua & Barbuda, Jamaica and Trinidad & Tobago given increasingly high rates of murder and violent crime in these countries. The objectives of the project were to strengthen the long-term, self-sustaining national capacities of policy-makers in combating illicit firearms trafficking and implementing firearms instruments through:

- a) increasing national capacities for the effective implementation of firearms instruments;
- b) strengthening multi-sectoral coordination when combating illicit firearms trafficking; and
- c) assisting in the harmonisation of national legislation with international firearms instruments.

Another project involved Maritime Border Control in the Caribbean and was aimed at Caribbean States generally. Its objectives were to generate information from a Maritime Border Control perspective on the current firearms situation in Caribbean States; promote standardisation of law enforcement training throughout the Caribbean; and strengthen the national capacities and expertise of Caribbean States to tackle micro and macro challenges in dealing with increased armed violence and crime. This project also took into heavy consideration the findings of the Regional Task Force in 2002. In respect of these issues, UN-LiREC had been developing and offering assistance initiatives to help strengthen the infrastructure and coordinated response by Caribbean States to curb illicit firearms trafficking and protect the security and well-being of their citizens.

## *INTERPOL*

CARICOM's most notable collaboration with INTERPOL was during the Cricket World Cup event. In assisting CARICOM with its preparation to receive thousands of patrons from across

the globe all at once, INTERPOL was heavily involved in training of law enforcement officers and also introduced technology and mechanisms that have remained since World Cup 2007. For the World Cup, the Caribbean was introduced to INTERPOL-developed technology called Mind/Find that allows law enforcement officers at airports and seaports to instantly check passports against

## **CONCLUSION**

While regional processes may serve as facilitators of the implementation of the international maritime security framework, there is only so much that regional bodies can do. Effective implementation takes place at the national level and therefore follow through must ult.702 -24(n)i16.56424(



Regions.<sup>244</sup> For example, in 1999 the OECS Secretariat consulted with the OPCW on the incorporation of chemical weapon enabling provisions into model legislation that was being drafted for the expansion of pesticides regulation in OECS Member States. The result was a jointly sponsored OPCW/ OECS workshop in 2000 conducted for OECS Member States on the model legislation that came out of those consultations.<sup>245</sup>

Within CARICOM there is the Legislative Drafting Facility. This Facility, *inter alia*, manages an electronic communication forum enabling the sharing of information among Attorneys General. [legis@caricom.int](mailto:legis@caricom.int)

An examination of relevant model legislation and an evaluation of national legal provision on the relevant subject matter should be undertaken in order to plan a legislative strategy. The

provision of adequate material resources, continuous training for human resource development, intra-institutional systems that foster effective performance and extra-institutional systems that allow for swift implementation of capacity building and other initiatives. As such, the absence of any one of these elements in a given institution can result in the frustration of capacity building efforts. Lack of coordination of initiatives can lead to situations where, for example, specialised training programmes are obtained and provided to personnel in institutions which lack the appropriate material resources to put the training into practice. In such a scenario, the training may fall into desuetude, rendering the investment in human resource enhancement useless to the institution and inconsequential to the broader scheme of capacity building and greater maritime security.

Institutions to be established or enhanced for the purposes of maritime security include port facilities and border control zones, coast guard, military and law enforcement institutions, health and emergency response institutions, national authorities possibly with varying configurations and functions, and executive administrative departments such as government Ministries. Building capacity to achieve effective operation of all these institutions is in fact a colossal task. Therefore, major assistance measures must be undertaken in order to accomplish it. Again, international or715(i)-9.80-9.83821( )-W22(o)-3.8(s)-1.63761(3.9969(f)4.0432( )-19211.96262(l)0.441715(l)0.-

receive training from overseas but there their domestic institutions lack mechanisms for harnessing the information and passing it on to other members of the institution.

Governments may overcome this by mandating persons who receive specialised training to hold seminars for colleagues and other agencies showcasing what was learned. Governments could also, depending on the subject matter of the training, include or develop mechanisms for including educational institutions in training programmes so that they may model courses for the benefit of their students in the region. The UWI, the University of Guyana, the Anton de Kom University of Suriname, and the University of Haiti as well as community colleges could be utilised to a greater extent to further training and development of CARICOM citizens in some aspects of maritime security.

Besides working towards implementation of the established international maritime framework, CARICOM should also seek to address other security concerns are within its security interests but left unresolved in the international arena. The issue of corporate transparency and the registration of ships is one such area of great importance to CARICOM States, since a significant number of them engage in the offshore industry and others are ship registry countries. On one hand, CARICOM security may be jeopardised if these industries continue to operate unchecked and on the hand, if a major incident occurs beyond CARICOM as a result of lax corporate and registry procedures, CARICOM registry and corporate procedures could suffer under the ensuing pressure and possibly draconian measures of other States.<sup>247</sup>

CARICOM States could work towards negotiating among themselves compromises to strike a balance between ensuring security and earning foreign exchange derived from these industries. It is recommended that in the case of improving corporate security Governments should consider one or more of the following options:

- 1) mandating the disclosure of beneficial ownership of corporate vehicles to authorities responsible for the establishment or incorporation phase and imposing an obligation to update this information in a timely manner when changes take place;

---

- 2) imposing an obligation on corporate intermediaries to obtain and verify records of the beneficial ownership and control of corporate entities that they establish and administer, or for which they provide fiduciary duties; and/ or
- 3) relying on an investigative system where authorities could obtain through compulsory or court-issued mechanisms information on beneficial ownership and control for security and law enforcement purposes.<sup>248</sup>

Likewise in the area of ship registration the report of the OECD recommends that a compromised could be reached by promoting confidentiality rather than anonymity. This means that as an alternative to anonymity ship registries would promise non-disclosure of the owners' identities except at the request of law enforcement authorities in the course of their duties. In this way, legitimate ship owners would not be entirely put off and security standards are maintained.

The report also recommends that, *inter alia*:

- 1) ship registers have proper procedures in place for identification of persons seeking to register ships;
- 2) personnel should be trained in procedures and provided with adequate resources to identify beneficial owners or ships;
- 3) the registration of ships whose beneficial owners cannot be adequately identified should be avoided;
- 4) ship-owning arrangements involving foreign corporate vehicles , particularly from jurisdictions that promote anonymity, should be carefully scrutinised;
- 5) nationality requirements should be carefully monitored;
- 6) the use of bearer shares in the owner ship of vessels should be avoided and the use of nominee directors, office holders and shareholders should be eliminated or strictly regulated;

- 7) information should be made available to competent authorities when appropriate; and
- 8) a substantive local presence in the jurisdiction should be required of the ship owner.

CARICOM States should at least address this issue with a view to resolving security risks.



## **Bibliography of sources consulted.**

### **Books and Articles**

*Caribbean Integration within the CARICOM Framework: The Socio-Historical, Economic, And Political Dynamics of a Regional Response to a Global Phenomenon*, Christopher P. Malcolms, Law and Business Review of the Americas (Winter, 2004) 10 *Law & Bus. Rev. Am.* 35

*CARICOM, The Myth of Sovereignty, and Aspirational Economic Integration*, Karen E. Bravo, North Carolina Journal Of International Law & Commercial Regulation (Fall, 2005) 31 *N.C.J. Int'l L. & Com. Reg.* 145

*Enforcing International Law Norms Against Terrorism*, Andrea Bianchi and Yasmin Naqvi, 2004

*Illicit Arms Trafficking, Corruption, and Governance in the Caribbean, Fourteenth International Symposium on Economic Crime Corruption: The Enemy Within: Excerpts from the Symposium held at Jesus College Cambridge, September 8-13, 1996*, Ivelaw L. Griffith, Dickinson Journal of International Law (Spring, 1997), 15 *Dick. J. Int'l L.* 487

*Implementing Resolution 1540: The Role of Regional Organizations*, edited by Lawrence Scheinman, United Nations Institute For Disarmament Research, Unidir/2008/8

*International Crimes: "Jus Cogens" and "Obligatio Erga Omnes"*, M. Cherif Bassiouni, Law and







<http://www.icc-ccs.org/>

<http://www.imo.org/>

<http://www.jamaica-gleaner.com/>

<http://www.oas.org/en/default.asp>

<http://www.oecd.org>

<http://www.oecs.org/>

<http://www.opcw.org/>

<http://www.opbw.org/>

<http://www.un.org/en/>

<http://www.unescap.org/epoc/>

<http://www1.voanews.com/english/news/>