

Chapter 11

Port state control

As a major shipping nation with a highly effective Port State Control regime in our own ports, Australia should now play a leading role in making Port State Control more effective in the Indian Ocean Region.¹

11.1 The Indian Ocean is a vast natural resource providing livelihood for people living around the ocean as well as for distant nations seeking to exploit the resources especially fish stock. It is also a vital thoroughfare carrying 80 per cent of the world's seaborne trade in oil.² Thus, the movement and activities of ships in the Indian Ocean is of interest to individual countries and the region as a whole. Countries bordering the Indian Ocean have particular concerns about the management of the ocean.

11.2 Each nation bordering or located within the Indian Ocean has the sovereign right to exercise control over all ships including foreign flagged vessels operating within its waters. Port state control is one way that a country can exert its authority to prevent or reduce incidences at sea that may harm the sustainability of marine resources or interfere with the transport routes through the region. In this chapter, the committee considers port state control in the Indian Ocean rim as a means of exercising effective control over illegal activities such as piracy and practices that could pose a threat to the health of the ocean and the sustainability of its resources.

Background to regional port state control regimes

11.3 Countries in the Indian Ocean rim have a strong incentive to impose robust port state control measures on foreign ships in order to ensure safe practices and to minimise the likelihood of their engagement in criminal activities in their offshore waters. There are, however, disincentives. Associate Professor Ted L. McDorman explained that ports compete vigorously in terms of costs and services for international shipping business, thus:

Strict environmental requirements and safety standards applied to visiting vessels could increase the cost of transportation and make a port less competitive.³

11.4 But, according to Associate Professor McDorman, the increasing concern about substandard vessels traversing the oceans of the world has created a demand for

1 Dr Sam Bateman, *Submission 10*, p. 7.

2 See for example, Sergi DeSilva-Ranasinghe, *Fact Sheet: the Indian Ocean Region and Australia's National Interests, Strategic Analysis Paper, Future Directions International*, 29 May 2012.

3 Ted L. McDorman, 'Regional Port State Control Agreements: Some issues of international Law', *Ocean and Coastal Law Journal*, vol. 5, 2000, p. 207.

cooperative or regional approaches to encourage port states to enhance enforcement of marine pollution and vessel safety laws against visiting vessels.⁴

Substandard ships

11.5 Substandard ships are vessels that 'fail to meet the required standards of safety and seamanship in relevant international conventions' and pose risks to maritime security, the marine environment and the lives of their crew.⁵ According to Dr Sam Bateman substandard vessels are more likely to be:

- involved in accidents at sea leading to loss of life and pollution of the marine environment;
- involved in illegal activities at sea, including trafficking in destabilizing military equipment and narcotics; and
- successfully attacked by pirates.⁶

11.6 As an example, Professor McDorman cited the shipping disaster involving the super tanker *Exxon Valdez* in March 1989, which ran aground in Alaska's Prince William Sound. The accident caused a massive oil spill and subsequent oil slick that spread over 3,000 square miles and onto over 350 miles of beaches in one of the most pristine areas of the country.⁷

11.7 Such accidents, which created an awareness of the need to regulate or manage substandard ships and their activities, resulted in the adoption of regional arrangements for port state control.

11.8 According to Dr Bateman, a Port State Control (PSC) regime is the major means of ensuring that international standards of ship safety and security are maintained. The regime is intended to prevent substandard ships from threatening maritime safety and security and posing unacceptable risks to the marine environment and to the lives of the seafarers that crew them.⁸ The key objective of each inspecting authority under a PSC regime is to apply a uniform set of standards.

Memoranda of understanding

11.9 Memoranda of Understanding or MoUs on port state control have been signed covering all of the world's oceans. The first, the Europe and the North Atlantic MoU (Paris MoU), was adopted in 1982 following a serious oil spill off the coast of

4 Ted L. McDorman, 'Regional Port State Control Agreements: Some issues of international Law', *Ocean and Coastal Law Journal*, vol. 5, 2000, p. 207.

5 Dr Sam Bateman, *Submission 10*, p. 3.

6 Dr Sam Bateman, *Submission 10*, p. 4.

7 Ted L. McDorman, 'Regional Port State Control Agreements: Some issues of international Law', *Ocean and Coastal Law Journal*, vol. 5, 2000, p. 208 and Samuel K. Skinner, Secretary, Department of Transportation and William K. Reilly Administrator, Environmental Protection Agency, *The Exxon Valdez Oil Spill, A Report to the President*, prepared by the National Response Team, May 1989, p. 1.

8 Dr Sam Bateman, *Submission 10*, p. 3.

Brittany, France, in 1978 when the *VLCC Amoco Cadiz* ran aground. This incident led to the adoption of a strengthened earlier proposed MoU. It took another decade before other regions signed up to a MoU—Asia and the Pacific (Tokyo MoU); Latin America (Acuerdo de Viña del Mar); Caribbean (Caribbean MoU); West and Central Africa (Abuja MoU); the Black Sea region (Black Sea MoU); the Mediterranean (Mediterranean MoU); the Indian Ocean (Indian Ocean MoU); and the Riyadh MoU, which covers the Gulf region.⁹ The Indian Ocean MoU was not signed until the second half of the 1990s.

Indian Ocean Memorandum of Understanding

11.10 In June 1998, on the invitation of the Government of South Africa, the maritime authorities from 15 Indian Ocean regional countries signed an Indian Ocean MoU on port state control for the region. The MoU allowed for an interim period of two years before its full function and implementation. It was kept open for signature until 22 January 1999. At the first session of the Port State Control Committee held in Goa in January 1999, Australia signed the acceptance of the MoU.¹⁰

11.11 The Indian Ocean MoU was based on the understanding that all countries have the sovereign right 'to inspect ships visiting their ports to ensure they meet International Maritime Organization (IMO) requirements regarding safety and marine pollution prevention standards and experience'. It also recognised that port state control works best when it is organised on a regional basis.¹¹ The MoU's objective was to ensure 'effective action by the port States concerned to prevent the operation of substandard ships while harmonizing inspections and strengthening co-operation'.¹² It was also intended to encourage the exchange of information:

...so that ships which have been inspected by one port State and found to be complying with all safety and marine pollution prevention rules are not subject to too frequent inspections, while ships presenting a hazard and those ships which have been reported by another port State as having deficiencies which need to be rectified will be targeted.¹³

11.12 As of December 2012, sixteen countries had become parties to the Memorandum—Australia, Bangladesh, Comoros, Eritrea, France (La Reunion Island), India, Iran, Kenya, Maldives, Mauritius, Oman, Sri Lanka, South Africa, Sudan,

9 IMO, 'Port State Controls', <http://www.imo.org/OurWork/Safety/Implementation/Pages/PortStateControl.aspx> (accessed 6 May 2013) and *Submission 10*, p. 5.

10 AMSA, *Port State Control Report 1999, Australia*, March 2000, p. 5.

11 Memorandum of Understanding on Port State Control in the Indian Ocean, http://www.imo.org/blast/mainframe.asp?topic_id=475&doc_id=1328 (accessed 6 May 2013), Australia, Bangladesh, Djibouti, Eritrea, India, Iran, Kenya, Maldives, Mauritius, Mozambique, Myanmar, Oman, Sechelles, South Africa, Sri Lanka, Tanzania and Yemen.

12 Memorandum of Understanding on Port State Control in the Indian Ocean, http://www.imo.org/blast/mainframe.asp?topic_id=475&doc_id=1328.

13 Memorandum of Understanding on Port State Control in the Indian Ocean, http://www.imo.org/blast/mainframe.asp?topic_id=475&doc_id=1328.

Tanzania and Yemen.¹⁴ Currently, the Australian Maritime Safety Authority (AMSA) is Australia's lead agency in engagement with the IMO Maritime Safety Committee on PSC measures and safety of vessels in the Indian Ocean.¹⁵

11.13 Professor Bateman suggested that the Indian Ocean PSC regime was not working as effectively as it should. He cited the Panama-flag bulk carrier *Rak*, laden with 60,000 tonnes of coal, which sank inexplicably off Mumbai in August 2011 leading potentially to a major ecological disaster. He explained:

The *Rak* was old, having been built in 1984 with a poor PSC record having been detained once in 2010 for serious safety deficiencies. Shipping accidents, such as this, tend to carry very high economic costs, due to the large asset values and the high operational risks associated with shipping, particularly the risks associated with a marine pollution incident.¹⁶

11.14 He explained further the reasons for the Indian Ocean MoU being 'clearly less effective than the Paris and Tokyo MoUs':

Some important shipping countries in the region (e.g. Pakistan, Madagascar, Myanmar and the Seychelles) are not parties to the MOU, and of the fifteen parties, four (Bangladesh, Eritrea, Maldives and Oman) did not report any inspection activity in 2010. Inspection rates are low, and just over half the total inspections reported by the MOU for the region in 2011 (2795 out of 5513) were carried out by Australia.¹⁷

11.15 This pattern of low inspections by some countries continued into 2012. Statistics for that year show that of the current 16 members, Bangladesh, Comoros, Eritrea, Maldives, Sri Lanka and the Sudan did not conduct inspections. Oman inspected 4 ships with Mauritius and Tanzania carrying out just 2 inspections each.¹⁸

Piracy

11.16 Substandard ships may also be more susceptible to 'maritime predations'.¹⁹ Member States of IOR-ARC have for a number of years expressed concerns about the incidences of piracy occurring in the region. Indeed, in 2009, 2010 and again in 2011, grave concerns were expressed about the growing instances of piracy with terms being used such as 'alarming phenomenon' and the menace of piracy reaching 'alarming

14 The Black Sea MoU, Equasis, Ethiopia, West & Central Africa MoU, the International Maritime Organisation, International Labour Organisation, Tokyo MoU, United States Coast Guard and the Riyadh MoU participate in the Memorandum as observers. Indian Ocean Memorandum of Understanding on Port State Control, *Annual Report 2012*, p. 2.

15 DRET, *Committee Hansard*, 22 March 2013, p. 15.

16 Dr Sam Bateman, *Submission 10*, p. 3.

17 Dr Sam Bateman, *Submission 10*, p. 6.

18 Indian Ocean Memorandum of Understanding on Port State Control, *Annual Report 2012*, p. 12.

19 Euan Graham, 'Shipping glut portends piracy', RSIS Commentaries, 7 October 2011, p. 2.

proportions'. The IOR-ARC has identified 'maritime security and piracy' as one of its six priority areas.²⁰

11.17 Although, the number of ships reporting attacks by Somali pirates fell in 2012 to its lowest level since 2009, the International Maritime Bureau warned seafarers to remain vigilant in the high-risk waters around Somalia, the Gulf of Aden and the Red Sea. In the first nine months of 2012, there were 70 Somali attacks compared with 199 for the corresponding period in 2011.²¹

11.18 Pirates are able to exploit the vulnerabilities of substandard ships. As an example, Dr Bateman cited the hijacking of a general cargo ship *Rak Afrikana*, by Somali pirates in April 2010 in the Indian Ocean which sank 11 months later, a few hours after being released. According to Dr Bateman, this 30-year old vessel was relatively small of 5992 gross registered tonnage, very slow with an operational speed reportedly as low as 6.5 knots and was of an age when most vessels would have already been scrapped. He noted that, while sub-standard ships were 'more likely to be hijacked than quality vessels', 'well-operated and maintained vessels may be expected to follow the best management practice guideline to avoid attacks'.²² To his mind, the *Rak Afrikana* was a substandard ship that should not have been operating in piracy-prone waters unless special, and costly, precautions had been taken. He referred to records that showed:

...the *Raf Afrikana* had not undergone a PSC inspection since 2005. This means that the ship must only have been trading to ports without effective PSC, such as those around the northeast Indian Ocean.²³

11.19 Dr Bateman noted further that the vessel was under a flag which was on the Paris MoU's 'black list' of flags with a high incidence of substandard ships.²⁴ Clearly, there is a role for port state measures to exercise an effective counter-piracy strategy. As noted earlier, Professor Bateman argued the Indian Ocean MoU is not as effective as it should be.²⁵

20 IOR-ARC, Twelfth Meeting of the Council of Ministers of IOR-ARC', *Gurgaon Communique*, p. 2.

21 International Chamber of Commerce, 'IMB reports drop in Somali piracy, but warns against complacency' October 2012, <http://www.icc-ccs.org/news/811-imb-reports-drop-in-somali-piracy-but-warns-against-complacency> (accessed 6 May 2013).

22 Sam Bateman, 'Sub-standard ships and human costs of piracy'. 2011, MaritimeSecurity.Asia, <http://maritimesecurity.asia/free-2/piracy-2/sub-standard-ships-and-human-costs-of-piracy-the-case-of-captain-prem-kumar-%e2%80%93-analysis/> (accessed 6 May 2013).

23 Sam Bateman, 'Sub-standard ships and human costs of piracy'. 2011, MaritimeSecurity.Asia, <http://maritimesecurity.asia/free-2/piracy-2/sub-standard-ships-and-human-costs-of-piracy-the-case-of-captain-prem-kumar-%e2%80%93-analysis/>.

24 Sam Bateman, 'Sub-standard ships and human costs of piracy'. 2011, MaritimeSecurity.Asia, <http://maritimesecurity.asia/free-2/piracy-2/sub-standard-ships-and-human-costs-of-piracy-the-case-of-captain-prem-kumar-%e2%80%93-analysis/>.

25 Dr Sam Bateman, *Submission 10*, p. 6.

Illegal, unreported and unregulated fishing

11.20 While countries in the Indian Ocean rim share worries about unsafe ships sailing through the region and marine pollution through inappropriate practices, they also have other common concerns about activities including illegal, unreported and unregulated (IUU) fishing.

11.21 Over recent decades there has been mounting international concern about IUU fishing and its serious consequences for the sustainability of fisheries. International and regional organisations now appreciate that IUU fishing could lead to the collapse of a fishery or severely impede efforts to rebuild depleted stocks.²⁶ As with the prevention of marine accidents and piracy, PSC measures are seen as a means of stemming or blocking the flow of IUU-caught fish. In 2009, the United Nations General Assembly recognised the need for States—individually and through regional fisheries management organisations—'to implement effective port State measures'.²⁷ A recent international workshop concluded:

The international community expects that port State measures, if used in conjunction with catch documentation schemes, will have the potential to be one of the most cost-effective and efficient means of combating IUU fishing.²⁸

11.22 A number of Indian Ocean rim countries have consistently expressed concerns about IUU fishing and the need for a broad collective effort. Indeed, in 2011 member states of IOR-ARC noted that consolidating cooperation under the association would assist in the fight against illegal fishing and minimise the use of damaging fishing techniques.²⁹

11.23 Currently there are a number of organisations that are concerned specifically with promoting the effective management of fish stocks in the Indian Ocean rim—the Indian Ocean Commission (IOC), the Indian Ocean Tuna Commission (IOTC) and the South West Indian Ocean Fisheries Commission.³⁰ Their members are becoming increasingly aware of the central role of port state measures in combating IUU fishing. They appreciate the value of achieving harmony across the region and of placing a greater emphasis on port state measures as a vital part of the monitoring, control and surveillance tool kit.

11.24 For example a 2007 meeting of the FAO, IOC and IOTC recognised that the regional adoption of harmonised and complementary port state measures would be a

26 See for example, FAO/APFIC Regional Workshop to Support the implementation of the 2009 FAO Port State Measures Agreement, April 2012.

27 United Nations General Assembly, GA/10899, 4 December 2009.

28 FAO/APFIC Regional Workshop to Support the implementation of the 2009 FAO Port State Measures Agreement, April 2012.

29 See chapter 3 of this report, paragraph 3.40.

30 Food and Agriculture Organization of the United Nations, *Reports of the IOC/FAO/IOTC Symposium and Workshop to Strengthen Port State Measures in the Indian Ocean*, Port Louis, Mauritius, 18–22 June 2007, FAO Fisheries Report No. 844, p. 5.

major element in the fight against IUU fishing: that it would be an important means of 'freezing out' IUU fishing vessels.³¹ It highlighted the importance of harmonizing port state measures to tackle IUU fishing in the Indian Ocean and encouraged countries 'to strive to work together for this goal'.³²

11.25 A representative from the IOC stated that it was evident that the success of the model whereby the traditional regime of management of fisheries rested with the port state instead of the flag state depended essentially on:

...its application in a large enough area to make it difficult for a fishing vessel to sail to a neighbouring country which might apply a less constraining regime.

11.26 Clearly, for port state measures to work effectively, countries must cooperate and adhere to common standards. The IOC/FAO/IOTC workshop found that:

No single country can alone combat illegal fishing as fishing vessels which find one state having an effective port state control can move to other ports in the region. It is here that the close collaboration of all states is crucial and a determining factor to fight illegal, unreported and unregulated fishing.³³

11.27 As noted previously, the Indian Ocean MoU is a key mechanism for PSC in the Indian Ocean rim. Though as noted earlier, its overall effectiveness is undermined by significant gaps in its membership and the low rates of inspections carried out particularly by developing countries.

Limited resources

11.28 Dr Bateman believed that Australia could help to redress weaknesses in the Indian Ocean PSC regime. He noted that globally, there was scope for 'improving the effectiveness of the separate regional regimes, particularly the more poorly performing ones, such as the Indian Ocean MoU, and with enhancing the global collective ability to deal with sub-standard ships'.

11.29 He conceded that it was easy to suggest that 'PSC and the role of port states in the developing world should be strengthened to ensure greater compliance with minimum international standards and to help rid the oceans of sub-standard ships'. To his mind, however, the lack of capacity in many developing countries to establish an effective national maritime administration and provide the necessary highly skilled PSC inspectors could not be overlooked. He also noted the lack of resources in the IMO to monitor the effectiveness of PSC regimes.

31 Food and Agriculture Organization of the United Nations, *Reports of the IOC/FAO/IOTC Symposium and Workshop to Strengthen Port State Measures in the Indian Ocean*, Port Louis, Mauritius, 18–22 June 2007, FAO Fisheries Report No. 844, p. 5.

32 Food and Agriculture Organization of the United Nations, *Reports of the IOC/FAO/IOTC Symposium and Workshop to Strengthen Port State Measures in the Indian Ocean*, Port Louis, Mauritius, 18–22 June 2007, FAO Fisheries Report No. 844, p. 8.

33 Food and Agriculture Organization of the United Nations, *Reports of the IOC/FAO/IOTC Symposium and Workshop to Strengthen Port State Measures in the Indian Ocean*, Port Louis, Mauritius, 18–22 June 2007, FAO Fisheries Report No. 844, p. 31.

11.30 The Department of Agriculture, Fisheries and Forestry (DAFF) described IUU fishing as 'highly organised, mobile and elusive', which undermines the efforts of responsible countries to manage their fish stocks sustainably.³⁴ Applying port state controls requires each port state authority to carry out inspections of foreign fishing vessels in its port and of their gear, equipment and relevant documents to monitor compliance with measures.³⁵ But as Dr Bateman mentioned, the developing countries struggle to mount the resources required to implement monitoring, control and surveillance activities.³⁶

11.31 Some Indian Ocean rim countries themselves have also expressed deep concerns about their capacity to conserve and manage fish stocks in the region. For example, a number of members attending the 2012 committee meeting of the Indian Ocean MoU on Port State Control in Port Elizabeth, South Africa, reported continuing difficulty implementing the objectives of the MoU because of financial constraints limiting their access to training.

Capacity building

11.32 Mr Kayzad Namdarian, DFAT, noted that port state control was an example of capacity development in the Indian Ocean rim, as it involved 'cross-pollination of skills and expertise'. Mr Namdarian suggested that officials in the Indian Ocean MoU could work with those in the Tokyo MoU to share lessons learnt and build expertise.³⁷ Officials from DRET also saw PSC as a means of capacity building which could yield very practical results for the region. Mr Retter, DRET, noted that Australia works with many governments around the world, for example in the aviation sector, on assisting Australia's interests by improving security and security outcomes in overseas locations. He noted that similar discussions and work had occurred in regards to maritime issues and suggested:

[I]f the process where we take on the chairmanship of the IOR-ARC were to provide a vehicle for another discussion and perhaps opportunities to discuss further opportunities, then that is a mechanism that we would certainly see as being useful.³⁸

34 DAFF, *Overview: illegal, unreported and unregulated (IUU) fishing*, http://daff.gov.au/fisheries/iuu/overview_illegal_unreported_and_unregulated_iuu_fishing (accessed 6 May 2013).

35 Food and Agriculture Organization of the United Nations, *Reports of the IOC/FAO/IOTC Symposium and Workshop to Strengthen Port State Measures in the Indian Ocean*, Port Louis, Mauritius, 18–22 June 2007, FAO Fisheries Report No. 844, p. 30.

36 Dr Sam Bateman, *Submission 10*, p. 7.

37 DFAT, *Committee Hansard*, 22 March 2013, p. 2.

38 DRET, *Committee Hansard*, 22 March 2013, p. 14.

11.33 At the Indian Ocean MoU meeting in September 2012, AusAID provided \$250,000 to be used to build capacity for PSC in the Indian Ocean rim.³⁹

Conclusion

11.34 Port state control is an important measure to help reduce the risk posed to the health of the marine environment by substandard ships. It is also a means to address the problem of piracy and IUU fishing. Such control measures can only be effective if applied on a regional basis and consistently to the standards required. Although an agreement already exists for the Indian Ocean, there is clearly a role for IOR-ARC to support and encourage all countries, including non-members to sign the MoU and to assist the smaller developing countries to implement the PSC measures. It would certainly align with a number of the association's priority areas—marine safety and security, fisheries management and disaster risk reduction.

11.35 Although central to preventing unsafe ships plying Indian Ocean waters and to combating piracy and IUU fishing in the region, port state control is only one part of an effective management regime to reduce or eliminate these problems. Other important components include building the capacity of countries in the region to monitor, control and supervise activities under their jurisdiction; high quality scientific research in areas such as the preservation and conservation of fish stocks; and the dissemination of data through strong communication and information sharing regional networks. Australia's support of initiatives which promote these activities has been discussed in Part II of this report.

11.36 The committee notes there is much work being done in PSC by Australia and other countries in the Indian Ocean rim working through existing MoUs. From the evidence presented, however, it appears that more could be done—particularly in building capacity and encouraging other Indian Ocean rim countries to implement PSC measures.

Recommendation 11

The committee recommends that DFAT work with other departments, including DRET and DAFF, to prioritise progress on effective and consistent port state control measures in the Indian Ocean rim as part of Australia's plan for its upcoming chair of IOR-ARC.

11.37 The committee encourages the government to examine whether IOR-ARC may be a useful forum for facilitating and linking all the initiatives on PSC now underway across the Indian Ocean rim.

39 AMSA, 'Indian Ocean MoU Committee meets in South Africa, 18 September 2012, http://www.amsa.gov.au/about_amsa/Corporate_information/Recent_Events/2012/IndianOceanMOUCommitteemeetsinSouthAfrica.asp (accessed 6 May 2013).



Operations at Port Hedland Port Authority.