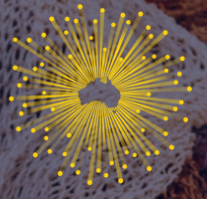




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KNOWLEDGE SHARING AND CAPACITY BUILDING

A Solution to Illegal, Unreported and Unregulated Fishing in the
Maritime Indo-Pacific



POLICY BRIEF - PAIGE LIKOS, ALEXANDRA DESAILLY, ERIN CRONIN,
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EXECUTIVE SUMMARY

Australia and the UK are vital players in the Indo-Pacific region. This is especially true where it concerns regional partnerships and the implementation of international law, both of which are imperative to the stability and prosperity of the region. Indeed, Australia and the UK are in a unique position to empower regional states to combat illegal, unreported, and unregulated fishing ('IUU fishing') through multinational engagement and cooperation. This policy brief will highlight the current deficiencies of international law in addressing IUU within the region, the importance of combating IUU and provide three recommendations aimed to address the issue, namely:

1. Effectively adopt and implement international instruments and frameworks developed by the Food and Agriculture Organization of the United Nations (FAO) by 2028;
2. Assist states to work cooperatively to address deficiencies in their legal, institutional, and operational capacity that prevent them from applying The United Nations Convention on the Law of the Sea ('UNCLOS'); and

EXECUTIVE SUMMARY CONT.

3. Develop an international database across the Indo-Pacific to capture, store, and report real-time information related to IUU by 2030.

BACKGROUND

International maritime law, principally established by the UNCLOS treaty, is inherently complicated and often criticised for its inadequacies in solving contemporary legal issues. Historically, its implementation has been frustrated by various issues including over-politicisation, underfunding, and inefficiency of international courts. These criticisms hold true in the Indo-Pacific where the maritime domain has been left particularly vulnerable due to inadequate mechanisms of legal protection and an inability to protect their maritime rights due to resourcing constraints. The region now faces a plethora of emerging concerns including resource exploitation, territorial disputes, and growing geopolitical tensions.

BACKGROUND CONT.

IUU fishing is one example which highlights the practical deficiencies of international maritime law aimed to protect the maritime domains of states. Existing international maritime law fails to address these concerns as many regional states do not have the capacity to protect their Exclusive Economic Zones ('EEZ'), thereby exposing the region to increased prevalence of IUU fishing. By identifying failings of current international maritime law and proposing policies aimed at addressing IUU fishing, Australia and the UK can contribute significantly to the stability, sovereignty, and security of the Indo-Pacific.

THE PROBLEM

IUU fishing within the Indo-Pacific region is difficult to control as it largely depends on the individual capacity of regional states to maintain and protect their maritime resources. UNCLOS enshrines the right for coastal states to have jurisdiction over their EEZ, a maritime zone extending 200 nautical miles from a States' coast [1]. Within their jurisdiction, States have the right to manage and maintain marine resources [2]. Despite these legal protections, IUU fishing in the Indo-Pacific persists due to smaller States lacking the capability and resources to effectively protect and defend their EEZ from territorial disputes, and to prevent larger States and Non-State Actors from acting in contravention of international maritime law.

THE PROBLEM CONT.

The effects of IUU fishing extend beyond the over-exploitation of resources, where its impact is felt on a local, national, and international scale. Indeed, IUU fishing also impacts local fishing communities, damages resource-based economies, is used by larger States as a method of intimidation within the region and threatens international maritime security by providing a pathway for other transnational crimes, particularly forced labour aboard IUU vessels and human trafficking.

POLICY RECOMMENDATIONS

1

Effectively adopt and implement international instruments and frameworks developed by the Food and Agriculture Organization of the United Nations (FAO) by 2028

Existing instruments and frameworks developed by the Food and Agriculture Organization of the United Nations ('FAO') should be adopted and implemented by Indo-Pacific states by 2028. These instruments include:

1. 2001 International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) [3];
2. 2016 Agreement on Port State Measures (PSMA) [4]; and

3.2017 Voluntary Guidelines for Catch Documentation Schemes (VGCDs) [5].

Adoption of these would provide a legal framework in which an information-sharing database can be developed. Stricter adherence to PSMA would also allow for the standardisation of port entry authorizations, inspections, dispute resolutions, and personnel training across the region, resulting in a uniform implementation of maritime law in the Indo-Pacific [6]. Australia and the UK will be able to leverage their status as well-developed powers and allies within the region to assist smaller, less-resourced regional states in their understanding and upholding of their legal maritime rights and responsibilities. Establishing a uniform and accepted framework throughout the region will provide stability and certainty in the international rules to be upheld and enable consistency in its implementation.

2

Assist states to work cooperatively to address deficiencies in their legal, institutional, and operational capacity that prevent them from applying The United Nations Convention on the Law of the Sea ('UNCLOS')

States must work cooperatively to address deficiencies in their UNCLOS requirements, with specific focus on building their legal, institutional, and operational capacity. This can be achieved by implementing measures such as:

1. Aligning national legislation to PSMA provisions [7];
2. Establishing institutional mechanisms to allow follow-up action and sanctions when illegal fishing is detected; and
3. Facilitating joint port controls and information exchanges nationally, bilaterally and regionally.

As a large middle-power in the region, and a promoter of the rules-based international system, Australia is in an appropriate geopolitical position to build closer relationships with States in the Indo-Pacific whilst simultaneously working to facilitate the implementation of these measures [8]. With the ability to provide financial aid, training and perform an advisory role, Australia and the UK can aid in facilitating regional cooperation regarding the implementation of these measures. In particular, the adoption and wide-scale implementation of Articles 5 and 6 of PSMA would lay the groundwork for increased cooperation between coastal states and relevant international organizations such as FAO [9].

3

Develop an international database across the Indo-Pacific to capture, store, and report real-time information related to IUU by 2030.

Development and implementation of an IUU fishing and vessel database across the region should be considered, with an aim of increasing intelligence-sharing between Indo-Pacific nations. A 2030 implementation of this may include features such as:

1. Live dashboard to flag suspected illegal activity in EEZ within the Indo-Pacific;
2. Real-time alerts to enable States to share knowledge related to suspected IUU activity;
3. Enable requests for maritime assistance from smaller States (i.e. requests for naval assistance from Australia and/or the UK).

Information-sharing is at the forefront of this policy recommendation as it is a tool which can be implemented by all States within the Indo-Pacific and beyond. Australia and the UK may assist with technological implementation and training, in addition to providing financial aid and resources where required [10].

The international database may be spearheaded by Interpol, which already oversees multiple international crime databases such as organized crime networks, counterfeit documents, and maritime piracy [11]. Building upon Interpol's existing international database hosting capabilities would secure further resources for training, build upon its existing capabilities and be a cost-effective and efficient solution. Interpol's vast and pre-existing data capturing capabilities would increase the monitoring of IUU in the Indo-Pacific region, whilst simultaneously assisting in the prevention of associated crimes including human trafficking and forced labour [12].

This is a practical solution due to the ease of implementation (relative to other international legal measures) and expands upon the success of information-sharing as a tool to combat IUU fishing, as demonstrated in the 2018 landmark IUU fishing case FV STS-50. In this case, Indonesia seized a highly wanted pirate vessel after it had evaded capture for over a decade by hiding behind alternative names and changing state waters. Suspected of transnational fisheries-related crimes (including illegal fishing), Indonesia was able to capture the vessel after a co-ordinated exchange of intelligence across States.

Collaboration between New Zealand, the UK, and Interpol alerted Indonesian authorities at the exact moment the vessel entered its jurisdiction, leading to immediate capture of the illegal vessel by the Indonesian Navy [13].

Given the success of information sharing in this instance, creation of a large-scale multi-national database would serve to promote the following interests in the region:

1. Increased security and stability by decreasing illegal maritime activity, including the use of IUU as a threat tactic by larger States;
2. Increased economic benefits for legitimate fisheries and trade;
3. Protection of marine ecosystems and environment by ensuring regulation of maritime activity within the EEZ; and
4. Increased relationship building between states within the Indo-Pacific.

This would protect the sovereignty of States within the Indo-Pacific, with Australia and the UK playing a pivotal role in providing the resources to enable capacity development and knowledge-sharing between Indo-Pacific nations. This would in turn empower smaller States to uphold their legal rights and responsibilities.

CONCLUSION

IUU fishing in the Indo-Pacific remains an issue affecting individuals and communities on a local, national, and international scale, with international maritime law unable to address the issue at present. By increasing national and regional capacity through the recommended policies to address IUU fishing through the means of information-sharing and capacity building, Australia and the UK can empower states to protect their EEZ and combat IUU activity within their respective jurisdictions. This will not only have immediate benefits for states in the protection of their EEZs but ensures a future for the maritime domain wherein resources can be effectively managed, and international law standards are upheld.



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The views in this Policy Brief do not represent the views of any organisations.



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