

**CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS
AGAINST THE SAFETY OF MARITIME NAVIGATION, 2005
(2005 SUA CONVENTION)**

A CHECKLIST FOR ASSESSING IMPLEMENTATION IN NATIONAL LEGISLATION

Notes: The following checklist is based on the consolidated text of the Convention for the Suppression of Unlawful Acts against the Safety of Navigation, 1988, as amended by the Protocol of 2005. The operating assumption behind the checklist is that the formal act of ratification of the convention is not in itself sufficient to introduce all of these elements into national law. However, given the wide variation of national legal and legislative systems (as well as the fact that some States will have implemented the 1988 SUA Convention which lays a foundation for introducing the new elements of the 2005 Protocol), it is not possible in a single checklist to provide specific guidance on the most appropriate means of introducing any particular provision of an international convention into every State's national legal system. This guidance is therefore generic and must be adapted to suit the local legal circumstances.

2005 SUA CONVENTION PROVISION – SUBJECT MATTER	LEGAL IMPLICATION(S)¹	RELEVANT PROVISION(S) IN NATIONAL LAW²	NATIONAL ACTION REQUIRED
Article 1 – Definition of terms ('ship', 'transport', 'serious injury or damage', 'BCN weapon', 'toxic chemical', 'Precursor', 'Organization', 'Secretary-General' and other terms	The implications depend on the context in which each term is used. SUA 2005 is primarily a criminal law instrument based on the principle of 'prosecute or extradite', but it also contains provisions affecting, among other things, (a) State-to-State relations as they affect ships operating on the high seas and the crews on such ships, (b) non- proliferation of nuclear weapons, and (c) other anti-terrorist instruments to which the State may be a Party. Thus the definitions will need to be taken into account in the context of a number of different national laws.	Implementation will depend on whether a State can give full effect to a Convention without implementing legislation. In general, provisions of the SUA convention are not regarded as self-executing, since they require a State-Party to take additional steps under national law. Implementation may affect the	

¹ These notes should *not* be taken as legal interpretations of any of the provisions of SUA 2005. They have not been subject to review and approval by any legal authority and they do not cover every detail of the cited provision. Legal interpretations are matters for the Parties to the Convention. These notes are intended *only* to provide a broad indication of the implications to assist in identifying which areas of national law may need to be reviewed to assess whether the convention provisions have been addressed. Reference should always be made to the full text of the cited provision in the Convention.

² To some extent, in some States, the SUA convention may be introduced as self-executing law by means of a schedule attached to legislation which over-rides or otherwise automatically has the effect of amending pre-existing legislation in related areas. The comments in this column are only intended to suggest general areas of law that might need to be reviewed/ revised.

		roles and responsibilities of a number of different governmental agencies and they should all be involved in preparing any comprehensive legislation to implement the SUA Convention and/or in conducting a compressive review of a patchwork of existing relevant legislation).	
Article 2 – Ships to which the convention does <i>not</i> apply.	This article primarily concerns ships owned/operated by States for non-commercial purposes which have a special status under international law. Any legislation implementing SUA 2005 will need to take this exemption into account.		
Article <i>2bis</i> – This article concerns the affects of the Convention on other international rights and obligations. This provision was not in the 1988 Convention. It was added by the 2005 Protocol. See also article <i>3bis</i> , paragraph 2.	This is a complex article which addresses the relationship of SUA 2005 to rights and obligations under other instruments/ areas of international law which may overlap in some way with the implementation of SUA 2005. These include international human rights law, and the rights, obligations and responsibilities under the treaties concerning non-proliferation of nuclear weapons and control of biological and chemical weapons. This article must be read in conjunction with article <i>3bis</i> , paragraph 2 which excludes the transport of certain BCN-related materials from the transport offences.		
Article 3 – This article contains the	The original focus of SUA 1988 was on offences against the ship itself and against persons on board the ship and the cargo, and on acts which pose a	All the original offences must be explicitly included in the criminal	

<p>offences in the original 1988 Convention.</p>	<p>danger to safe navigation of <i>that</i> ship or <i>a</i> ship, or threatens to do so.</p> <p>The subjective element of these offences is whether the person acts ‘unlawfully and intentionally.’ No proof of motive is required.</p>	<p>code (or an equivalent statutory instrument) and possibly in the maritime code.</p>	
<p>Article 3bis –</p> <p>A new list of offences is added to the SUA Convention.</p> <p>This provision was not in the 1988 Convention. It was added by the 2005 Protocol.</p>	<p>The new focus is on offences which, though the term is not used in the body of the Convention, concern acts of terrorism³. However, a terrorist motive is not required in all of the ‘transport’ offences.</p> <p>The offences are divided into two categories which include the ‘unlawful and intentional’ elements but also require additional <i>mens rea</i> elements:</p> <p>Paragraph 1(a) generally concerns use of the ship – or threats to do so -- to serve a terrorist motive (i.e., “to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act”).</p> <p>Paragraph 1(b) concerns “transport” on board a ship of: (i) explosive or radioactive materials with a ‘knowledge’ and terrorist motive requirement; (ii) a BCN weapon with a ‘knowledge’ requirement; (iii) source material and fissionable material with a ‘knowledge’ requirement, and (iv) dual use material with an ‘intent’ requirement.⁴</p> <p>Implementation of this article must</p>	<p>All the new offences must be explicitly included in the criminal code (or an equivalent statutory instrument) and possibly in the maritime code.</p> <p>They are more complex than those in the original 1988 SUA Convention and most likely need to be covered in anti-terrorism legislation.</p>	

³ As of this writing, there is no internationally agreed single definition of terrorism; but the term is assumed to be clear enough here for discussion purposes.

⁴ It should be noted that the Conference which adopted the Convention included the following statement in paragraph 20 of the Final Act: “With reference to article 3bis (1)(b)(iv), the Conference acknowledged that States Parties, in determining whether the equipment, materials or software or related technology significantly contributes to the design, manufacture or delivery of a BCN weapon, may, if they deem it to be appropriate, use the definition of “related materials” in United Nations Security Council resolution 1540 (2004).” The reference definition reads as follows: “Related materials: materials, equipment and technology covered by relevant multilateral treaties and arrangements, or included on national control lists, which could be used for the design, development, production or use of nuclear, chemical and biological weapons and their means of delivery.”

	<p>take into account the definitions in article 1, particularly the term ‘transport’.</p> <p>Implementation must also respect the constraints of paragraph 2 (coupled with article <i>2bis</i>) which creates an exception for the transport of certain materials under provisions of the non-proliferation regime.</p>		
<p>Article <i>3ter</i> –</p> <p>This article creates two new offences.</p> <p>This provision was not in the 1988 Convention. It was added by the 2005 Protocol.</p> <p>See also the Annex which lists nine conventions and protocols concerning suppression of unlawful acts and prevention of terrorism. See also, article 21 on declarations concerning the Annex, and Article 22 on amendments to the Annex.</p>	<p>This article makes it an offence for a person to aid and abet another person (i.e., intending to assist that person to evade criminal prosecution) by transporting him or her on board a ship –</p> <p>1 ‘knowing’ that he/she has committed an offence under article 3, <i>3bis</i> or <i>3quater</i>.</p> <p>Or</p> <p>2 ‘knowing’ that he/she has committed an offence under any of the (anti-terrorism) treaties listed in the Annex to the Convention. Application of this provision may be limited by a declaration under Article 21 if a State is not a Party to one of the treaties listed in the Annex.</p>	<p>These new offences must be explicitly included in the criminal code (or an equivalent statutory instrument) and possibly in the maritime code.</p> <p>They are more complex than those in the original 1988 SUA Convention and most likely need to be covered in anti-terrorism legislation.</p>	
<p>Article <i>3quater</i> –</p> <p>This article creates additional new offences (i.e., this provision was not in the 1988 Convention. It was added by the 2005 Protocol.)</p>	<p>These may generally be understood to relate to the impact/attempt/accomplice/conspiracy/common-purpose dimensions of the basic offences defined in other articles.</p>	<p>These new offences must be explicitly included in the criminal code (or an equivalent statutory instrument) and possibly in the maritime code.</p> <p>They are more complex than those in the</p>	

		original 1988 SUA Convention and most likely need to be covered in anti-terrorism legislation.	
Article 4 – This is the scope of application article.	The SUA Convention applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State or the lateral limits of its territorial sea with adjacent States. And it applies in any case when the offender or alleged offender is found in the territory of a State Party (other than the State with jurisdiction over the territorial sea through which the ship was navigating or scheduled to navigate). Essentially, this means the Convention does not apply to offences on ships which only navigate in the territorial waters of a single State – unless the alleged offender is found in the territory of another State.	The scope of application must be taken into account in any SUA-related legislation.	
Article 5 – This article obligates State-Parties to make all the offences punishable by appropriate penalties.	The SUA Convention does not prescribe any specific penalties for any of the offences. But those penalties introduced in national legislation must ‘take into account the grave nature of those offences.’	The criminal code (or an equivalent statutory instrument) must provide an appropriate penalty for each of the offences described in the Convention.	
Article 5bis – This article obligates States-Parties to take the necessary measures to enable ‘a legal entity located in its territory or organized under its laws’ to be held liable when a person responsible	This provision ensures that ‘legal entities’ (companies, corporations, partnerships, etc) are themselves held liable when an officer of that entity commits an offence. There must be sanctions which are “effective, proportionate and dissuasive”. The sanctions may be criminal, civil or administrative, and they may include monetary sanctions.	The criminal code (or an equivalent statutory instrument) must provide an appropriate penalty for each of the offences described in the Convention. Provisions may also be needed in	

<p>for management or control of that entity has committed an offence under the Convention, and to ensure those entities are subject to sanctions.</p>		<p>the laws pertaining to registration of legal entities (corporate law, etc)</p>	
<p>Article 6 –</p> <p>This article requires each State-Party to establish its jurisdiction over all of the offences described in the Convention, when the offence is committed under certain defined circumstances.</p>	<p>A State Party <i>must</i> establish jurisdiction (arts. 6, paragraphs 1 and 4) in four cases:</p> <ul style="list-style-type: none"> - As Flag State (offences on board of ships flying its flag); - Offences committed in its territory (including its TS); - Offences committed by its nationals; and - When the alleged offender is present in its territory and it does not extradite him or her to another State-party which has established jurisdiction over the offence. <p>A State Party <i>may</i> establish jurisdiction (art.6, paragraph 2) in the following cases:</p> <ul style="list-style-type: none"> - Its nationals have been threatened, sized, injured or killed; or - An offence is committed in order to compel that State to do, or abstaining from doing, any act. <p>Jurisdiction is to be established for the purpose of prosecution (or, by implication, for requesting extradition from other State-Parties)</p> <p>The potential reach of jurisdiction extends not only to offences committed in its territory, or committed on or against a ship flying its flag, but also to offences committed <i>by</i> a national of that State and to offences committed <i>against</i> nationals of that State and to offences committed to compel that State to do or abstain from doing any act. Thus, the jurisdiction is to some extent extra-territorial.</p>	<p>The jurisdictional reach of the SUA Convention must be reflected in the laws pertaining to police and judicial powers.</p>	<p>The Secretary-General of IMO is to be notified when <i>discretionary</i> jurisdiction has been established (or rescinded). This is important to allow the obligations under article 7 to be fulfilled.</p>

<p>Article 7 –</p> <p>This article requires a State-Party to take into custody, in accordance with its law, an offender or alleged offender who is found to be in its territory, to enable criminal or extradition proceedings to take place.</p> <p>Persons taken into custody are to be guaranteed certain rights.</p>	<p>When an offender or alleged offender is discovered to be in a State-Party’s territory, that State is required to take the individual into custody (in accordance with its own law). That individual is entitled, for example, to communicate with representatives of the State of which he or she is a national.</p> <p>The State concerned is to notify other State-Parties who have established jurisdiction over the alleged offence under Article 6. (Reference may be made to the notifications sent to the Secretary-General of IMO under article 6 and subsequently circulated to all States-Parties under Article 23.)</p>	<p>The powers of arrest must extend to this situation.</p> <p>The rights of those taken into custody must be assured.</p> <p>(Consideration should be given to providing guidance to overseas embassies and consulates who may be expected to intervene in the event a national of the State concerned wishes to exercise his or her rights under the SUA Convention to communicate with an official representative.)</p>	
<p>Article 8 –</p> <p>This article concerns the role of the master of a ship with regard to delivery of a person believed to have committed an offence.</p> <p>Also, a State Party is obligated to accept delivery of such a person, unless it has grounds to consider that the SUA Convention does not apply.</p> <p>The State-Party which is requested to accept delivery of an alleged offender has the</p>	<p>A State-Party is obligated to ensure that masters of ships entitled to fly its flag have the authority and obligation to deal with persons who the master has reasonable grounds to believe has committed an offence, including the right to deliver the individual to authorities of other States-Parties.</p> <p>Other States-Parties in turn have an obligation to accept delivery (but may request the flag State to do so instead).</p>	<p>These provisions may need to be addressed in the criminal code (or an equivalent statutory instrument) and possibly in the maritime code (master and port authority responsibilities) as well as in guidance to companies which own/operate ships and to the masters of such ships.</p> <p>Implementation may be partly through the framework of the ISPS Code.</p>	

<p>right in turn to request the flag State to accept delivery.</p>			
<p>Article 8bis –</p> <p>This is a complex article dealing mainly with boarding of ships on the high seas.</p>	<p>This article sets out the arrangements under which a ship may be boarded at sea when there are reasonable grounds for suspecting that an offence has been, is being or is about to be committed on that ship.</p> <p>An underlying principle is that the flag State must always give its consent for the boarding. This consent may be given in a number of ways (including by means of a notification to the Secretary-General of IMO setting out conditions under which a boarding may take place on ships entitled to fly its flag).</p> <p>Implementation of this article depends on a reliable channel of communication between the involved States-Parties.</p> <p>Paragraph 10 of the article sets out a long and detailed list of ‘safeguards’ which are to be in place when a State-Party takes measures against a ship under the article.</p>	<p>Laws pertaining to flag State jurisdiction should reflect the possibility of a boarding under SUA and procedures for receiving and responding to requests to board received from other States-Parties.</p> <p>Consideration should be given to issuing guidance to companies which own/operate ships and to the masters of such ships.</p> <p>Implementation may be partly through the framework of the ISPS Code.</p> <p>Each safeguard may have different implications under national legislation.</p>	<p>In addition to the <i>right</i> of a State Party to notify the Secretary-General of IMO that it consents to boardings of its ships under defined conditions, States-Parties are <i>obligated</i> to notify the Secretary-General of IMO of the designation of the authority or authorities to receive and respond to requests for assistance, for confirmation of nationality and for authorization to take appropriate measures (i.e., to give permission to board).</p>
<p>Article 9 –</p> <p>This is a savings provision regarding the relationship of SUA to international law. (This is in addition to the savings provision in article 2bis.)</p>	<p>This article provides that nothing in the SUA Convention affects the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag.</p> <p>In other words, SUA is designed for a specific set of circumstances and does not affect the operation of international law that might</p>		

	otherwise still apply to jurisdiction which a State may have over a ship not flying its flag (such as a crime committed by a crew member while the ship is in its port, or interventions permitted under UNCLOS).		
Article 10 – This article explicitly sets out the prosecute-or-extradite obligation.	Every State-Party is obligated, when an offender or alleged offender is in its territory, to submit the case without delay for prosecution, if it does not extradite the individual concerned. (Fair treatment of any individual taken into custody is to be guaranteed under paragraph 2 of this article.)	This obligation may need to be reflected in the criminal laws, and in any procedural laws pertaining to extradition.	
Article 11 – This article contains special provisions on extradition of offenders and alleged offenders.	This article provides that the offences described in SUA are ‘deemed to be included’ in any extradition treaty that exists between States-Parties. In effect, the SUA Convention automatically extends the scope of any existing extradition treaty that already exists between the States-Parties. If such a treaty does not exist, then States-Parties are obligated to include such offences in every extradition treaty that may concluded between them. In the absence of a special extradition treaty, the SUA Convention may be considered to be the legal basis for extradition. A grant of extradition may be subject to other conditions as set out in the law of the ‘requested’ State-Party. (The possibility of multiple requests for extradition are addressed in paragraph 5 of the article.)	Extradition procedures and guidelines must be reviewed to ensure they reflect the SUA Convention arrangements. A major issue will be the standard of evidence which must be presented to a court to support an application for extradition. Reference may be made to the UNODC Model Treaty on Extradition and the UNODC Model Law on Extradition both of which are available on the UNODC website (www.unodc.org)	
Article 11 <i>bis</i> – This article concerns offences which might be characterized as political in nature.	This article provides that none of the offences described in the SUA Convention are to be regarded, for purposes of extradition, as a political offence or is inspired by political motives, and consequently, a request for extradition cannot be refused on	Extradition procedures and guidelines must be reviewed to ensure they reflect this stipulation.	

	the sole grounds that it concerns a political offence or is inspired by political motives.		
Article 11 <i>ter</i> – This article provides protection from discrimination on certain grounds.	There is no obligation to extradite if the requested State-Party ‘has substantial grounds for believing’ that the request has been made for the purpose of prosecuting or punishing a person “on account of that person’s race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with the request would cause prejudice to that person’s position for any of these reasons.” (It may be noted that a refusal to extradite on these grounds does not remove the requested State’s obligation to refer the case for prosecution.)	Extradition procedures and guidelines must be reviewed to ensure they reflect this stipulation.	
Article 12 – This article concerns mutual assistance.	States-Parties are obligated to assist each other in connection with criminal proceedings brought in respect of SUA offences.		
Article 12 <i>bis</i> – This article concerns transfer of witnesses	This article is intended to facilitate prosecution of an offence in one State-Party by ensuring that witnesses who are in the custody of another State-Party can be made available of the purpose of giving testimony. The transfer is discretionary, but the State to which an individual is transferred has a number of obligations.	A special law allowing for such transfer under the SUA Convention may be needed.	
Article 13 – This article provides for a general duty to co-operate and to prevent undue delay in release of a ship, its passengers, crew and cargo.			
Article 14 –			

<p>This article provides a general obligation on States-Parties to communicate with other States-Parties which may have jurisdiction, when they have reason to believe a SUA offence may be committed.</p>			
<p>Article 16 – This article contains the dispute settlement provisions.</p>	<p>This article sets out a dispute settlement process that mandates referral to the International Court of Justice in the event the dispute cannot be settled by other means. However, a State-Party can make a declaration that it does not consider itself to be bound by this provision.</p>		
<p>Articles 16bis to 24 – Final Clauses</p>	<p>These articles concern such matters as the entry into force provisions, the amendment procedures and declarations (including those relating to the Annex), and the duties of IMO as the depositary.</p>	<p>Implementation of the final clauses depends in part on the treaty law and practice of each State.</p>	<p>A State must be Party to the 1988 SUA Convention in order to become a Party to the 2005 SUA Protocol. Ratification or acceptance of both conventions can be accomplished in the same instrument submitted to IMO as the depositary.⁵</p> <p>To a large extent, national legislation must already be in place by the time the SUA Convention comes into force for the State Party concerned since the</p>

⁵ Consideration should also be given to ratification of the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf as amended by the Protocol of 2005.

			obligations of the Convention are immediately effective as of that time.