

**PIRACY AND ARMED ROBBERY AGAINST SHIPS**

**A CHECKLIST FOR ASSESSING IMPLEMENTATION  
IN NATIONAL LEGISLATION OF TREATY PROVISIONS ON PIRACY AND  
OF THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS  
AGAINST THE SAFETY OF MARITIME NAVIGATION, 1988**

*Notes: The following checklists are based on articles 100-107 and 110 of the 1982 UN Convention on the Law of the Sea (UNCLOS)<sup>1</sup> and the text of the Convention for the Suppression of Unlawful Acts against the Safety of Navigation, 1988 (SUA Convention). 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 the 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, 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.*

**PIRACY**

<b>PIRACY ARTICLES IN UNCLOS</b>	<b>LEGAL IMPLICATIONS<sup>2</sup></b>	<b>RELEVANT PROVISIONS IN NATIONAL LAW<sup>3</sup></b>	<b>NATIONAL ACTION REQUIRED</b>
Article 100  This article establishes the duty of all States to cooperate in the repression of piracy.	This article restates the duty on all States to cooperate “to the fullest extent possible on the high seas or in any other place outside the jurisdiction of any State.”	Implementation will depend on whether a State can fulfill its obligation to cooperate without implementing legislation.  The piracy articles of UNCLOS are generally not considered to be self-executing because the articles leave to each Party how to implement them.	Enact legislation defining and providing for the punishment of the crime of piracy.

<sup>1</sup> These articles replicate nearly verbatim articles 14-22 of the 1958 Geneva Convention on the High Seas. This convention codifies the customary international law of piracy.

<sup>2</sup> These notes should *not* be taken as legal interpretations of any of the provisions of UNCLOS or SUA 1988. 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 Conventions. 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 Conventions.

<sup>3</sup> To some extent, in some States, UNCLOS and 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 or revised.

		<p>Implementation may affect the roles and responsibilities of a number of different governmental authorities and they should all be involved in preparing any comprehensive legislation to implement the piracy provisions of UNCLOS and the SUA Convention and/or in conducting a comprehensive review of a patchwork of existing relevant legislation.</p>	
<p>Article 101  This article defines piracy.</p>	<p>This article provides the international law definition of piracy by describing the acts that constitute piracy:</p> <p>“Piracy consists of any of the following acts:  (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:  (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;  (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;  (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;  (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).”</p> <p>Piracy is viewed as a crime of universal enforcement jurisdiction. Article 101 contains no limitation on the nationality of persons who may become pirates. Its geographic scope of application is limited to the high seas, exclusive economic zones (by operation of article 58(2)), and to “a place outside the</p>	<p>National legislation should specify which acts constitute piracy, and not leave the matter to judicial interpretation by reference to <i>jure gentium</i>.</p> <p>National law should include attempts and conspiracy to commit piracy, aiding and abetting commission of acts of piracy, and accessory after the fact of piracy.</p> <p>National law should refrain from applying the national law of piracy in the territorial sea, internal waters or archipelagic waters. Other offences can cover those acts which might otherwise be piratical if committed on the high seas or EEZ.</p> <p>National law may specify what nexus, if any, to the State is required for that State to have judicial jurisdiction against pirates.</p> <p>If national law on piracy includes “a place outside the jurisdiction of any State”, it should define where that is. While the meaning of this phrase today is not entirely clear, it probably means only Antarctica and perhaps the maritime areas adjacent thereto,</p>	<p>Other crimes, such as larceny, assault, battery, murder, extortion, SUA violations, hostage taking, terrorist financing, which often occur during or in connection with piracy, should be addressed in other national legislation, be applicable in all areas subject to the State’s jurisdiction.</p>

	jurisdiction of any State.”	as there are no other areas <i>terra nullius</i> .	
Article 102  This article defines the circumstances when a warship commits piracy.	If the crew of a warship, government ship or government aircraft has mutinied and taken control of the ship or aircraft, and commit acts of piracy as defined in article 101, the acts are assimilated to acts committed by a private ship or aircraft.	National law should provide for the circumstances when acts of piracy can be committed by a warship or government ship or aircraft.	
Article 103  This article defines a pirate ship or aircraft.	A ship or aircraft is considered a “pirate ship or aircraft” if it is intended by the persons in dominant control to be used for the purpose of committing a piratical act as defined in article 101.  The same rule applies if the ship or aircraft has been used to commit a piratical act, but only so long as it remains under the control of the persons “guilty” of that act.  The consequences of being or becoming “a pirate ship or aircraft” are set out in articles 104 and 105.	This article may be relevant to definitions of offenses such as attempts and conspiracy (participation) under Article 101 and the circumstances for interdiction.	
Article 104  This article provides the possibility for retention or loss of nationality of pirate ship or aircraft.	Article 104 implies that a pirate ship or aircraft does not automatically lose its nationality, even though it may be boarded by a foreign warship or government ship or aircraft without express permission of the flag State.  Article 104 states that it is for the flag State to decide the matter by law.	National law should specify whether, and in what circumstances, a pirate ship or aircraft authorized to fly its flag or registered under its laws would lose (or retain) its nationality.	
Article 105  This article provides who and where a pirate ship or aircraft may be	Article 105 authorizes every State to seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, arrest the persons on board, and seize the	Article 105 is permissive. Its exercise depends on national authorities, which may not require legislation.  National legislation should	

seized.	<p>property on board. The ship or aircraft must be on the high seas, exclusive economic zone (pursuant to article 58(2)), or “in any other place outside the jurisdiction of any State.”</p> <p>This article does not limit the right of States to cooperate in the boarding, seizure, disposition and prosecution of suspect pirates.</p>	<p>permit full range of international cooperation in suppressing and prosecuting piracy.</p>	
<p>Article 106</p> <p>This article addresses liability for seizure without adequate grounds.</p>	<p>This article addresses the situation where a seizure on suspicion of piracy has been effected “without adequate grounds”.</p> <p>It makes the seizing State liable to the seized ship’s flag State for any loss or damage caused by the seizure.</p>	<p>National law on claims against the government should include these circumstances. National law should define what constitutes “without adequate grounds”.</p>	
<p>Article 107</p> <p>This article establishes what ships and aircraft are entitled to seize on account of piracy.</p>	<p>Article 107 limits the categories of ships and aircraft entitled to seize a ship or aircraft on account of piracy to warships, military aircraft or “other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.”</p> <p>This article does not inhibit the right of all ships to act in self-defense against pirates.</p>	<p>National legislation or regulation should identify its warships, military aircraft and other ships and aircraft authorized to be on government service. This can be accomplished in legislation implementing article 91’s requirements for establishing nationality of ships.</p>	
<p>Article 110</p> <p>This article described when a foreign warship may board a foreign flag ship on the high seas by exercising the “right of visit”.</p>	<p>Article 110 describes exceptions to the principle of exclusive flag state jurisdiction set out in article 92(1).</p> <p>On the theory that pirates are the enemies of all mankind, article 110 authorizes a warship to board a foreign flag vessel not entitled to sovereign immunity without the express permission of the flag State when there are reasonable grounds to suspect that it is, <i>inter alia</i>, engaged in piracy.</p>	<p>Unless otherwise authorized nationally, national legislation should expressly authorize warships to board, search, inspect, seize and enforce national law on the high seas and exclusive economic zones of States.</p>	

<p>Article 58</p> <p>Paragraph 2 of this article provides that articles 88 to 115 of UNCLOS also apply in the exclusive economic zone.</p>	<p>While the articles on piracy are contained in Part V on the high seas, they also apply in the exclusive economic zone. They do not apply in archipelagic waters, the territorial sea or internal waters.</p>	<p>National legislation should not limit application to the high seas.</p>	<p>This can be accomplished by defining “high seas” to include the exclusive economic zone where declared by the relevant State.</p>
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### SUA CONVENTION, 1988

1988 SUA CONVENTION PROVISION – SUBJECT MATTER	LEGAL IMPLICATIONS	RELEVANT PROVISIONS IN NATIONAL LAW	NATIONAL ACTION REQUIRED
<p>Article 1 –  Definition of “ship”.</p>	<p>The implications depend on the context in which the term is used.</p> <p>SUA 1988 is primarily a criminal law instrument based on the principle of ‘prosecute or extradite’, but it also contains provisions affecting, among other things, State-to-State relations as they affect ships operating on the high seas and the crews on such ships. Thus the definition will need to be taken into account in the context of a number of different national laws.</p>	<p>The definition of “ship” in article should be compared to the definition of that term in other national laws, to determine how best to incorporate it in national law.</p> <p>Implementation will depend on whether a State can give full effect to a Convention without implementing legislation.</p> <p>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.</p> <p>Implementation may affect the 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 comprehensive review of a patchwork of existing relevant legislation.</p>	
<p>Article 2 –  Ships to which the convention does <i>not</i> apply.</p>	<p>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 1988 will need to take this exemption into account.</p>	<p>National authorities should make clear what these ships are authorized to enforce the provisions of the SUA Convention.</p>	
<p>Article 3 –  This article</p>	<p>The original focus of SUA 1988 was on offences against the ship itself and against</p>	<p>All of these offences must be explicitly included in the criminal code (or an equivalent statutory</p>	

<p>defines the offences in the original 1988 Convention.</p>	<p>persons on board the ship and the cargo, and on acts which pose a danger to safe navigation of <i>that</i> ship or <i>a</i> ship, or threaten to do so.</p> <p>The <i>mens rea</i> element of these offences is whether the person acts ‘unlawfully and intentionally.’ No proof of motive is required.</p> <p>Some of the SUA offences overlap with piracy, such as “seiz[ing] or exercise[ing] control over a ship by force or threat thereof or any other form of intimidation,” and the provisions on attempts and abetting.</p>	<p>instrument).</p>	
<p>Article 4 –  This is the scope of application article.</p>	<p>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).</p> <p>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.</p>	<p>The scope of application must be taken into account in any SUA-related legislation.</p>	
<p>Article 5 –  This article</p>	<p>The SUA Convention does not prescribe any specific penalties for any of the</p>	<p>The criminal code (or an equivalent statutory instrument) must provide an appropriate</p>	

<p>obligates State Parties to make all the offences punishable by appropriate penalties.</p>	<p>offences. But those penalties introduced in national legislation must ‘take into account the grave nature of those offences.’</p>	<p>penalty for each of the offences described in the Convention.</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"> <li>- As Flag State (offences on board of ships flying its flag);</li> <li>- Offences committed in its territory (including its TS);</li> <li>- Offences committed by its nationals; and</li> <li>- 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.</li> </ul> <p>A State Party <i>may</i> establish jurisdiction (art.6, paragraph 2) in the following cases:</p> <ul style="list-style-type: none"> <li>- Its nationals have been threatened, seized, injured or killed; or</li> <li>- An offence is committed in order to compel that State to do, or abstaining from doing, any act.</li> </ul> <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</p>	<p>The jurisdictional reach of the SUA Convention must be reflected in the appropriate laws.</p>	<p>The IMO Secretary-General 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>



	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 extra-territorial.		
<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 found 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, as needed, 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</p>	<p>A master of a ship of a State Party may deliver to the authorities of another State Party persons whom the master has reasonable grounds to believe committed a SUA offence.</p> <p>Other States Parties in turn have an obligation to accept delivery unless they have grounds to consider the Convention inapplicable (but may request the flag State to do so instead).</p>	<p>Consideration should also be given to expressly authorize transfer of suspects from its warships.</p> <p>States Parties should ensure that there is adequate authority to accept offenders delivered by ships, as well as adequate authority for masters to deliver offenders, if this option is exercised. Guidance to shipping companies may be useful.</p> <p>Implementation may be partly through the framework of the ISPS Code.</p>	

<p>does not apply.</p> <p>The State Party which is requested to accept delivery of an alleged offender has the right in turn to request the flag State to accept delivery.</p>			
<p>Article 9 -</p> <p>This is a savings provision regarding the relationship of SUA to international law.</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 otherwise still apply to jurisdiction which a State may have over a ship not flying its flag (such as a crime committed while the ship is in its port, or interventions permitted under UNCLOS).</p>		
<p>Article 10 –</p> <p>This article explicitly sets out the prosecute-or-extradite obligation.</p>	<p>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.)</p>	<p>This obligation may need to be reflected in any procedural regulations pertaining to extradition.</p>	
<p>Article 11 –</p>	<p>This article provides that the offences described in SUA are</p>	<p>Extradition procedures and guidelines must be reviewed to</p>	

<p>This article contains special provisions on extradition of offenders and alleged offenders.</p>	<p>‘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 be concluded between them. In the absence of a bilateral extradition treaty, the SUA Convention provides that it 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.</p> <p>The possibility of multiple requests for extradition is addressed in paragraph 5 of the article.</p>	<p>ensure they are consistent with the Party’s obligations under the SUA Convention.</p> <p>One non-SUA issue may be the standard of evidence under domestic law which must be presented to a court to support an application for extradition.</p> <p>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 (<a href="http://www.unodc.org">www.unodc.org</a>).</p> <p>Whether this provision may provide a national legal basis for extradition is a matter of domestic law.</p>	
<p>Article 12 – This article concerns mutual assistance.</p>	<p>States Parties are obligated to assist each other in connection with criminal proceedings brought in respect of SUA offences.</p>		
<p>Article 13 – This article provides for a general duty to co-operate in the prevention of offences, and to prevent undue delay in release of a ship, its passengers, crew and cargo.</p>			
<p>Article 14 –</p>			

<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 will be committed.</p>			
<p>Article 15 –  This article requires each State Party to inform the IMO Secretary-General of relevant information regarding SUA offenses.</p>	<p>This obligation is subject to compliance with the national law of the State Party.</p>	<p>National law should be clear to what extent a State Party can provide the information called for in Article 15.</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 17-22 – Final clauses</p>	<p>These articles concern such matters as the entry into force provisions, the amendment procedures and declarations, 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>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</p>

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