

# GLOBAL CONVENTIONS ON PIRACY, SHIP-JACKING, HOSTAGE-TAKING AND MARITIME TERRORISM

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# OUTLINE

- Focus on hostage-taking and SUA Conventions
- Criminal jurisdiction at sea
- Obligations of States parties
- Offenses
- Persons liable
- Application to piracy and armed robbery at sea
- Arrest, prosecution and LE cooperation
- Conclusions

# UN Conventions

- There are more than 12 UN Conventions in which establish a cooperative regime to combat specific offenses by making them “international crimes” among the States Parties
- Three of the these conventions could be used to combat piracy and armed robbery against ships:
  - 1979 Hostage-Taking Convention
  - 1988 SUA Convention
  - 2005 SUA Convention
- Each establishes a similar cooperative scheme among States Parties

# Hostage-Taking Convention

- International Convention against the Taking of Hostages, 1979, 1316 UNTS 206, No. 21931, <http://treaties.un.org/doc/db/Terrorism/english-18-5.pdf>
- Entered into force 3 June 1983
- Has 168 parties as of 17 December 2010
- All ASEAN countries are party except Indonesia and Viet Nam
- All ASEAN countries have implementing legislation except Brunei, Indonesia, Myanmar, Philippines

Source:

[http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-5&chapter=18&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-5&chapter=18&lang=en)

# SUA Convention 1988

- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, <http://treaties.un.org/doc/db/Terrorism/Conv8-english.pdf>
- Entered into force 1 March 1992
- Has 156 parties as of 2 December 2010
- All ASEAN countries are party except Indonesia, Laos, Malaysia and Thailand
- Only Cambodia, Philippines, Singapore and Viet Nam have enacted implementing legislation

# SUA Protocol 2005

- Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation,  
[https://www.unodc.org/tldb/en/2005\\_Conv\\_Version\\_Conv\\_and\\_Prot\\_Maritime\\_Navigation.html](https://www.unodc.org/tldb/en/2005_Conv_Version_Conv_and_Prot_Maritime_Navigation.html)
- Entered into force 28 July 2010
- Has 17 parties as of 2 December 2010
- No ASEAN country is party

# Criminal Jurisdiction at Sea

- Principles differ depending on location
- Seaward of territorial sea, flag State permission required to board
  - Not changed by 2005 SUA Protocol or Hostage-Taking Convention
  - Piracy and statelessness are exceptions
- In territorial sea, no foreign State can board or arrest w/o coastal State permission

# Obligations of States Parties

- Make offenses in the Convention crimes under national law
- Establish jurisdiction over offender if offense within territory, if flag state, if offender is its national, or if offender is present in territory
- If alleged offenders are present in territory, (a) take them into custody; and (b) either seek to prosecute them or extradite them
- Provide greatest measure of assistance in connection with criminal proceedings



# Offenses under 1979 Hostages

## Offense of hostage-taking:

- the seizure or detention of, and threat to kill, injure, or continue to detain a hostage,
- **in order to compel a State, . . . a person, or a group of persons to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage**

# Persons Liable under 1979 Hostages

- Any person who
  - commits hostage-taking
  - attempts to commit act of hostage-taking
  - participates as accomplice of anyone who commits or attempts to commit act of hostage-taking

# Offenses under 1988 SUA

Offense under 1988 SUA to:

- Seize or exercise control over a ship by force or threat thereof or any form of intimidation, or
- Perform an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship

# Offenses under 2005 SUA Protocol

- Offenses under 1988 SUA continued
- New offenses include
  - Use of weapons of mass destruction
  - Transport of WMD
  - Accomplice, aiding & abetting

# Persons liable under SUA

Any person who

- commits a SUA offense
- attempts to commit a SUA offense
- participates as accomplice of anyone who commits or attempts to commit a SUA offense
- organizes or directs others to commit a SUA offense
- contributes to the commission of a SUA offense by a group w/ common purpose

# Shipboarding under 2005 SUA

- Codifies procedures and protections for obtaining flag State consent and conduct of boardings of foreign flag ships seaward of territorial sea
- Reinforces general rule requiring flag State consent

# How Hostages and SUA could apply to piracy and armed robbery

- Hijackings off Somalia are offenses under 1979 Hostages because they intend to hold the crew hostage until ransom is paid
- Hijackings of vessels off Somalia are offenses under 1988 SUA because the seizure of a ship by force is a SUA offense
- They are offenses under 1979 Hostages and 1988 SUA even if they took place in the territorial sea of another State

# Arrest and Prosecution (1)

- No authority under 1988 SUA or 1979 Hostage to board ships on high seas and seize offenders w/o flag State consent
- These conventions apply only when the alleged offenders are **present in the territory** or territorial sea of a State Party
- Once alleged offenders are present in the territory of a State Party, it is under an obligation to take them into custody, and to either (1) seek to **prosecute** them or (2) **extradite** them



# Arrest and Prosecution (2)

- Under 1988 SUA the master of a ship may deliver to any other State Party “any persons who he believes have committed a SUA offense”
- E.g., if Kenya is a party to 1988 SUA and 1979 Hostages (and it is), warships who seize pirates in the territorial sea or EEZ of Somalia can deliver them to Kenya for prosecution and trial

# Arrest and Prosecution (3)

- 1979 Hostages and 1988 SUA also have provisions which make it possible to arrest and prosecute accomplices and leaders on land
- The conventions provide that a person commits an offense if they **abet the commission of any offense** or if they are an **accomplice** of a person who commits an offense

# Law Enforcement Cooperation

- Extradition
- Mutual Legal Assistance

# Conclusions

- The 1979 Hostages and 1988 and 2005 SUA Conventions fill many of the limitations in the LOS Convention provisions on piracy
- If all the States in a region ratified and effectively implemented these three treaties they would give the international community a set of useful tools to combat piracy and armed robbery at sea
- The existing international conventions can be supplemented by bilateral treaties when necessary

# 2005 SUA Platforms Protocol

- Not discussed now
- Text at  
<https://www.unodc.org/tldb/en/consolidated-suap.html>