

**Contribution from the International Maritime Organization (IMO)
to the United Nations Secretary-General's Report on the Scope and Application of
Universal Jurisdiction**

SUA Convention and Protocols

1 The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 (SUA 1988) was adopted to ensure that appropriate action is taken against persons committing unlawful acts against ships. The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (SUA PROT 1988) extends the scope of application of SUA 1988 to fixed platforms located on the continental shelf. The 2005 Protocols to SUA 1988 and SUA PROT 1988 provide for the suppression of additional terrorist acts of violence. SUA 1988 and SUA PROT 1988 entered into force on 1 March 1992 and the 2005 Protocols entered into force on 28 July 2010.

Offences under the SUA Convention and Protocols

2 Article 3(1) of SUA 1988 provides that "Any person commits an offence if that person unlawfully and intentionally:

- (a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
- (b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or
- (c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or
- (d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or
- (e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or
- (f) communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or
- (g) injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).

3 In addition, article 3(2) of SUA 1988 makes it an offence to attempt or abet the commission of any of the enumerated offences.

4 SUA 1988 adopts a very broad definition of "ships", which encompasses nearly all commercial ships except those permanently attached to the seabed. In respect of geographical scope, SUA 1988 applies to all ships engaged in an international voyage operating or scheduled to operate seawards of any state's territorial sea. Thus, it applies to

not only offences committed on the high seas or in exclusive economic zones, but also offences committed in territorial seas and archipelagic waters. Moreover, potential offenders could be any person regardless of nationality.

5 For offences endangering the safety of fixed platforms located on the continental shelf, article 2 of SUA PROT 1988 adopts very similar wording to article 3 of SUA 1988. Nevertheless, article 2(1) of SUA PROT 1988 excludes offences relating to navigational facilities and communication of false information. "Fixed platform" is defined as "an artificial island, installation or structure permanently attached to the seabed for the purpose of exploration or exploitation of resources or for other economic purposes". Similarly, potential offenders could be any person regardless of nationality.

6 SUA 2005 expands the list of offences in article 3 of SUA 1988 and introduces three new categories of offences. The first category of offences stipulated in article 3*bis* (1)(a) of SUA 2005 is related to acts of maritime terrorism requiring a terrorism motive. The purpose of the acts must be to "intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act". It includes crimes where a ship is used as a weapon or as a means to carry out a terrorist attack. The second category of offences provided in article 3*bis* (1)(b) concerns non-proliferation crimes, intended to combat trafficking of weapons of mass destruction and their materials in commercial ships. The third category of offences introduced in article 3*ter* are aimed at persons who unlawfully and intentionally transport another person on board a ship knowing that the person has committed an offence under SUA 1988, SUA 2005 and other United Nations anti-terrorism treaties. In addition, pursuant to article 5*bis*, legal entities shall be held liable when a person responsible for management or control of that entity has, in that capacity, committed an offence set forth in the Convention.

7 Similarly, article 2*bis* of SUA PROT 2005 broadens the range of offences in SUA PROT 1988 and includes crimes where a fixed platform is used as a weapon or as a means to carry out a terrorist attack with the requirement of a terrorism motive. Legal entities can also be held liable under SUA PROT 2005.

Universal jurisdiction under the SUA Convention and Protocols

8 Article 6(4) of SUA 1988 and its 2005 Protocol provides that: "Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 3, 3*bis*, 3*ter* and 3*quater* in cases where the alleged offender is present in its territory and it does not extradite the alleged offender to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article."

9 This jurisdiction reflects the principle of universal jurisdiction since it can be exercised solely on the basis of the offender's presence in the territory of that State Party regardless of the lack of any other connection to the offence.

10 Furthermore pursuant to article 8*bis* (5) of SUA 2005, subject to the express authorization of the flag state, States Parties can undertake boarding and enforcement measures against any ships located seaward of the outer limit of the territorial sea where there are "reasonable grounds to suspect that the ship or a person on board is, has been, or is about to be, involved in the commission of an offence". Although flag States maintain primary jurisdiction in this respect, this article contains some elements of universal jurisdiction

considering that, for States Parties requesting boarding and enforcement measures, no connection to the offence is required.

The Status of the SUA Convention and Protocols

11 As at 19 March 2021, there are:

- 166 Contracting States to SUA 1988;
- 156 Contracting States to SUA PROT 1988;
- 51 Contracting States to SUA 2005; and
- 45 Contracting States to SUA PROT 2005