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EFFECTIVE IMPLEMENTATION OF THE 2005 CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION

James Kraska

In 2005, the 167 member states of the International Maritime Organization (IMO) adopted the 2005 Protocol to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA). The resulting 2005 SUA Convention is a comprehensive treaty on maritime security that streamlines and integrates efforts to prevent and disrupt maritime terrorism. In the decade since its adoption, however, many states have not acceded to the new treaty, and most of those that have done so have not taken the steps the treaty requires to implement it effectively, even though the need to do so is perhaps even greater today. This article provides a road map for implementation of the 2005 SUA Convention to realize the vision for an effective global regime to combat maritime terrorism.

After the attacks of September 11, 2001, the fear was palpable that there would be follow-on catastrophic attacks in the maritime domain. Suddenly states worried about the global marine transportation system, especially its vulnerability to terrorism. Ships could be used to smuggle weapons of mass destruction or persons, conduct attacks on port infrastructure or bridges to paralyze commerce, or attack oil and liquefied natural gas tankers to attempt to produce large secondary explosions. The most recent manifestation of this heightened risk is from the Islamic State, which has examined the feasibility of mass-casualty attacks against cruise ships.¹

In response, the member states and secretariat of the IMO developed a slate of initiatives to counter these threats, including amendments to the International

Convention for the Safety of Life at Sea (SOLAS) that emerged as the 2002 International Ship and Port Facility Security (ISPS) Code.² The ISPS Code attempted to develop a culture of threat-based security throughout the maritime cargo supply chain on which the global economy depends.³

The ISPS Code is a government-industry partnership designed to make the commercial shipping industry a less attractive, or at least a more difficult, target for maritime crime. The code entered into force in 2004. Simultaneously, states took action to facilitate prevention or disruption of terrorist attacks against ships and fixed platforms on the continental shelf. In November 2001, the IMO Assembly adopted Resolution A.924(22) as a response to UN Security Council Resolution 1373 (2001), which decided that states shall take the necessary steps to prevent the commission of terrorist acts.⁴

Resolution A.924(22) called for a review of maritime security architecture and prevention of maritime terrorism.⁵ The resolution requested that the IMO Legal Committee undertake a study to determine appropriate updates to the IMO Circular on Passenger Ferry Security as well as the SUA and its Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.⁶ Thereafter, the Security Council adopted Resolution 1540 (2004), which recognized the urgent need to take more effective measures to prevent the proliferation of nuclear, chemical, and biological weapons and their means of delivery.⁷

The IMO study mandated by A.924(22) unfolded over six sessions plus several intersessional meetings from 2002 to 2005, and culminated in two draft protocols that were adopted at a diplomatic conference at IMO in October 2005. The 2005 Protocol built a comprehensive regime for counterterrorism at sea and maritime security, and the new instrument that includes the 1988 Convention as amended by the 2005 Protocol is referred to as the 2005 SUA Convention.

The 2005 SUA Convention entered into force in 2010. Now that more than ten years have passed since its adoption and more than five years since its entry into force, it may be beneficial to assess how far we have come and, more importantly, to consider how emerging threats stack up against the existing regimes. In particular, implementation of the 2005 SUA Convention has been lackadaisical, and it is unclear how well the treaty will contend with current trends and emerging threats, which include unmanned systems, lasers, and maritime cyber attacks. The remainder of this article assesses these issues and provides a way forward for states.

This article first looks at how threats from unmanned aerial, surface, and subsurface systems fall within the scope of the 2005 SUA Convention. The convention was crafted with the realization that the shipping industry would be

confronted with a proliferation of unmanned systems and a profusion of commercial, off-the-shelf technologies that could be used to endanger vessels and life at sea.

Second, the convention covers dual-use materials: those that may have civilian or commercial applications, but also may be misdirected for unlawful purposes.

Third, the convention covers asymmetric criminal activities, such as seizure of a ship by force or the use or attempted use of ships as weapons. States party to the convention will have to examine and adjust their national laws to ensure they are committed to criminal prosecution of these almost unique offenses.

Fourth, the convention requires states party to designate a “competent authority” to receive and respond to requests for decisions or assistance from other states. So far, however, most states party have not done so—leaving a gaping hole in implementation. There already exists a similar contact list for senior officials who coordinate law-enforcement counterdrug operations. This article concludes that states party to the 2005 SUA Convention should develop and publish a similar list that will facilitate implementation of their treaty obligations.

UNMANNED SYSTEMS—ARTICLE 1(1)

It has become commonplace for civil aircraft to encounter unmanned drones, especially near airports. We may expect that the regularity of drone flights and the controversy over issues of safety, privacy, and security will expand from airspace to the water. The barrier to entry for making unmanned systems has fallen, and terrorist groups and criminal organizations can develop and employ unmanned systems using commercial, off-the-shelf components.⁸ Underwater and surface vehicles provide ample standoff distance from the target, may be used to sequence attacks over time, and can be operated in swarms to overwhelm ship defenses.⁹

One of the most interesting features of the 2005 Protocol is that article 1(1) of the SUA, as revised, defines a *ship* as “a vessel of any type whatsoever not permanently attached to the sea-bed.” The definition includes “dynamically supported craft, submersibles, or any other floating craft.” This definition appears to include an unmanned underwater vehicle (UUV) or unmanned surface vehicle (USV) under “a vessel of any type whatsoever.” Similarly, the U.S. Rules of Construction Act, which dates to 1873, defines a “vessel” as any “description of water-craft or other artificial contrivance used, or capable of being used, as a means of transportation on the water.”¹⁰ In the case of *Charles Barnes Co. v. One Dredge Boat*, the U.S. federal court for the Eastern District of Kentucky held that a vessel is defined as a “navigable structure, capable of being used for transportation, regardless of intent or actual use.”¹¹ Thus, the use of either a UUV or a USV in the commission of an offense, as well as acts committed against them, would be covered under

the 2005 SUA Convention. In this respect, the 2005 SUA Convention is well positioned to address threats to or posed by unmanned vessels.

DUAL-USE ITEMS AND MATERIALS—ARTICLE 3BIS

The structure of the 2005 SUA Convention criminalizes acts that by their nature or purpose are conducted to intimidate a population or to compel a government or an international organization with high explosives or biological, chemical, or nuclear devices; the discharge of natural gas or other hazardous substances; or the use of a ship in a manner that causes death or serious injury or damage. The legal standard for “serious injury or damage” includes not only serious bodily injury or

[I]mplementation of the 2005 SUA Convention has been lackadaisical, and it is unclear how well the treaty will contend with . . . unmanned systems, lasers, and maritime cyber attacks.

death but “extensive destruction” of a public place that results in “major economic loss,” and “substantial damage to the environment.”¹²

The 2005 SUA Protocol is unique among counterterrorism

conventions in that it covers the misuse of dual-use materials—the transport on board a ship of legitimate items, products, and materials intended to cause or in a threat to cause death, serious injury, or damage.¹³ The proscription includes explosive and radioactive materials and equipment designed to process special fissionable material, when intended for use in a nuclear explosive activity that is not part of an International Atomic Energy Agency (IAEA) comprehensive safeguards agreement. Finally, the 2005 Protocol covers “any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN [biological, chemical, and nuclear] weapon, with the intention that it will be used for such purpose.”¹⁴ This provision is exceptional because it provides a means to criminalize civilian, commercial, off-the-shelf and dual-use items on the basis of their intended use and purpose.

As noted, BCN weapons are those that include biological, chemical, or nuclear devices. *Biological weapons* are “microbial or other biological agents, or toxins.” *Chemical weapons* are “toxic chemicals and their precursors,” excluding those intended for “(A) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; (B) or protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons.” Law-enforcement chemicals, such as riot-control agents, and those used for military purposes are not included within the definition of chemical weapons.¹⁵

The treaty is integrated with other international security regimes in several ways. First, the list of proscribed items includes *toxic chemicals* and *precursor*

chemicals, as those terms are defined in the Biological Weapons Convention and the Chemical Weapons Convention (CWC). The SUA also covers nuclear weapons and *nuclear explosive devices*, although radiological weapons are not mentioned specifically. Radiological “dirty bombs” are a more likely threat than nuclear bombs. Furthermore, amended article 1 also covers *toxic chemical* and *precursor* by adopting the definitions contained in the CWC. *Toxic chemical* means a substance that through “chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals.” A *precursor chemical* reacts at any stage in the production of a toxic chemical.¹⁶

The terms *place of public use, state or government facility, infrastructure facility*, and *public transportation system* are drawn from the Terrorist Bombing Convention.¹⁷ Similarly, the terms *source material* and *special fissionable material* have the same meanings in article 1(2)(b) of the SUA as they have in the statute of the IAEA (1956).¹⁸

In its construction of criminal offenses, the 2005 Protocol also leverages the offenses in the major multilateral terrorism conventions.¹⁹ This approach attempts to weave a tighter, more-integrated legal structure to counter terrorism vertically throughout the spectrum of land, sea, and air, as well as horizontally along the continuum of crime and violence from planning and conspiracy to carrying out a violent attack.

ASYMMETRIC MARITIME CRIME—ARTICLE 3BIS

The 2005 SUA Convention avoids the thorny issue of defining “terrorism,” instead simply creating three separate groups of offenses. The first category comprises unlawful and intentional acts of violence against ships or persons on board ships. This category includes seizure of a ship or exercise of control over a ship by force or threat of force, acts of violence that endanger the safe navigation of a ship, destruction of a ship or its cargo, emplacement of a weapon on board a ship, destruction of navigational facilities, or communication of false information that endangers a ship.²⁰

The second category encompasses acts of transport of certain dangerous materials or weapons on board a ship for the purpose of intimidating a population, government, or international organization.²¹ This category includes transporting aboard a ship explosive devices or radioactive material, with the intent to cause death or serious injury or damage; a BCN weapon; fissionable material; or dual-use material.²²

The third category includes acts of commission through a conspiracy, acts as an accomplice, or attempts to commit crimes included in the prior two categories.²³

The stable of new offenses offers a flexible definition focused on the intention of the act or the conduct of violence, rather than murky political motivations. The

offenses were designed broadly to cover emerging and new threats, and it bears consideration whether the use of a laser against a ship imperils the vessel or its crew to the extent that it falls under articles 3, *3bis*, and *3quater*. However, it is unclear where the line is drawn for certain new or emerging acts of intimidation such as a cyber attack against a ship's navigation or communications systems or the aforementioned direct action against a vessel using a laser.

In the case of a cyber attack, article 3(1)(e) proscribes any unlawful and intentional act that "seriously interferes with" maritime "navigational facilities" and that is "likely to endanger the safe navigation" of a ship. Consequently, cyber crimes that endanger a ship are included within the scope of criminal conduct in the 2005 SUA Convention.

It is less certain, however, whether other asymmetric attacks are included in the definition. In particular, does the use of a laser against the pilothouse of a vessel constitute an "act of violence" against a person on board a ship that is "likely to endanger the safe navigation" of the ship?²⁴ This issue turns on the definition of what constitutes an "act of violence." Violence in the law generally is considered to be "moving, acting, or [conduct] characterized by physical force, especially by extreme and sudden or by unjust and improper force."²⁵ This focus on "reproaches produced or effected by physical force" raises the question whether use of a laser against a ship constitutes an "act of violence." The Israeli Penal Act of 1977 is more circumspect; it defines an "act of violence or terror" as "a crime that causes harm to a person's body or that endangers him for death or for severe injury."²⁶ The use of lasers opens a lacuna in the definition of what constitutes an "act of violence" that states should address in implementing legislation. The IMO may serve as a fusion point for governments' views on this issue to facilitate uniformity.

COMPETENT AUTHORITY—ARTICLE 8BIS

Article *8bis* of the 2005 SUA includes a comprehensive framework to facilitate boarding of suspect vessels at sea. In particular, the new provision seeks to ensure better coordination during incidents at sea between a warship attempting to board a suspicious vessel and the flag state that exercises jurisdiction over that vessel. Generally, the flag state has exclusive authority to authorize boarding of one of its ships, but in the past states have not always responded to such requests in a timely fashion. Article *8bis* requires states party to "co-operate to the fullest extent possible to prevent and suppress unlawful acts covered by this Convention . . . and . . . respond to [boarding] requests . . . as expeditiously as possible."²⁷

The boarding regime does not change the existing international law of the sea or infringe on exclusive flag-state control or traditional rights and freedoms of

navigation. The boarding regime provides a framework for expedited decision making that states party may adopt to facilitate coordination.

The 2005 SUA Convention sets forth a process for cooperation and procedures for boarding a ship flying the flag of another state party when the requesting party has “reasonable grounds” to suspect that the ship or a person on board the ship is, has been, or is about to be involved in the commission of an offense under the convention.

States have a general obligation to cooperate “to the fullest extent possible” among the states party and to respond to requests from other states party “as

The provision is exceptional because it provides a means to criminalize civilian, commercial, off-the-shelf and dual-use items on the basis of their intended use and purpose.

expeditiously as possible.”²⁸

Requests for boarding should be accompanied by, inter alia, the name of the vessel, its IMO ship identification number, and its port of registry.²⁹

Article 8*bis*(3) is a reminder that it is often impossible to conduct a thorough inspection of either a small craft or a large commercial vessel at sea, and often the best course of action is to bring the ship into port to facilitate the inspection. This provision requires the boarding state to consider the particular “dangers and difficulties” involved in boarding a ship under way.

Article 8*bis*(4) provides a mechanism whereby a state party with reasonable grounds to suspect that an offense delineated in article 3, 3*bis*, 3*ter*, or 3*quater* has been, is being, or is about to be committed “involving a ship flying its flag” may request the assistance of other states party.³⁰ The requesting party that encounters beyond the territorial sea a ship of another country that is suspected of an offense under article 3, 3*bis*, 3*ter*, or 3*quater* must follow the steps set forth in the new article. The flag state should confirm the nationality of the vessel, and if nationality is confirmed the flag state has four options: (1) it may authorize the requesting state authority to board; (2) it may conduct a boarding and search with its own forces; (3) it may conduct a boarding with its forces working in tandem with the boarding forces of the requesting state; or (4) it may decline the requesting state permission to board.³¹

When the requesting party boards a foreign-flagged ship and finds evidence of offenses under article 3, 3*bis*, 3*ter*, or 3*quater*, the flag state may authorize the requesting party temporarily to detain the ship, cargo, and persons on board, pending receipt of further instructions from the flag state. In any case, the requesting party must inform the flag state of the results of the boarding, search, and detention, including discovery of evidence of a violation of article 3, 3*bis*, 3*ter*, or 3*quater* or illegal conduct that is not a subject of the convention.³²

These interactions between the flag state and the requesting state are facilitated through the designated “competent authority” of the flag state, and the success of cooperation hinges on responsive and iterative engagement. States party agree to designate within one month of becoming a party an official authority (or authorities) to serve as a liaison with other nations on time-sensitive issues arising under the treaty, such as receiving and responding to requests for assistance, confirmation of vessel nationality, and seeking authorization to take appropriate law-enforcement measures.³³

Each state is to make the designation to the IMO secretary-general, who promulgates it among member states.³⁴ However, out of forty states, such notification has been made by only four: Latvia, San Marino, Sweden, and the United States. Latvia has designated the Naval Forces Coast Guard Service as the appropriate authority to receive requests for assistance, and the Security Police and Prosecutor General’s Office as the points of contact for confirmation of nationality and authorization to take appropriate measures. Similarly, Sweden has designated the Swedish Coastguard Regional Command as the authority to receive and respond to requests for confirmation of ship nationality, and the Ministry of Justice as authority for requests to take measures against Swedish vessels. San Marino and the United States have a single point of contact each, the Civil Aviation and Maritime Navigation Authority and the U.S. Coast Guard Liaison Office to the U.S. State Department, respectively. This low rate of compliance for designation of a competent authority risks atrophy of the 2005 SUA Convention, and remedial action by states party is required.³⁵

The Vienna Drug Convention offers a clear model for effective coordination of maritime interdiction and boarding at sea or in port. Under article 17 of the convention, states party are obligated to cooperate to suppress illicit drug trafficking by sea. States party that have reasonable grounds to suspect a vessel flying a foreign flag is engaged in illicit traffic may notify the flag state and request confirmation of registry and authorization to take appropriate measures against the suspect ship. In such a case, the flag state may authorize boarding, search, and seizure of evidence in accordance with agreements or arrangements between the two states. States party “shall respond expeditiously” to inquiries, and states that take action against a foreign-flag ship shall “promptly inform the flag State.”³⁶

To facilitate these interactions and ensure efficient and effective communications and decision making, the United Nations Office of Drugs and Crime (UNODC) has produced a *Directory of Competent National Authorities*.³⁷ The directory provides points of contact and decision-making authorities for requests for extradition, mutual legal assistance, and cooperation against illicit traffic by sea, including the smuggling of migrants and firearms.³⁸ The IMO and member states should develop a similar directory of competent authorities to facilitate

requests made pursuant to the 2005 SUA Convention, with the goal of perhaps combining the points of contact for maritime interdiction under article 17 of the UNODC directory with the IMO directory to render a comprehensive volume on government points of contact and decision making for maritime matters.

After the United Nations Convention on the Law of the Sea (UNCLOS), the 2005 SUA Convention has the potential to become one of the most important instru-

The 2005 Protocol attempts to weave a tighter, more-integrated legal structure to counter terrorism vertically throughout the spectrum of land, sea, and air, as well as horizontally along the continuum of crime and violence from planning and conspiracy to carrying out a violent attack.

ments for maritime security, on the order of SOLAS. However, there is no question that, for now, it is woefully under-subscribed and underutilized. The slow implementation of the 2005 SUA Convention is reminiscent of that for the 1988 Convention, which,

while widely accepted (with some 150 states party), has been used only once (as far as I know) to assert jurisdiction over a suspected criminal.

In that case, *United States v. Shi*, the U.S. government asserted jurisdiction over the defendant, whom U.S. Coast Guard officers picked up sixty nautical miles off the coast of Hilo, Hawaii, from the F/V *Full Means No. 2*, a Taiwan ship registered in the Seychelles.³⁹ Shi was a Chinese crew member who killed the captain and first mate of the ship after they beat him severely and demoted him from cook to deckhand. Subsequently, Shi was overpowered by the crew and held captive until turned over to the Coast Guard and the Federal Bureau of Investigation. Shi's conviction by the federal district court in Hawaii was upheld by the U.S. Ninth Circuit.⁴⁰

The United States asserted jurisdiction over Shi under 18 U.S.C. § 2280(b)(1) (C), the U.S. implementing legislation for the 1988 SUA Convention.⁴¹ That legislation was adopted to assert U.S. jurisdiction in accordance with the convention, which requires states party to extradite or prosecute offenders regardless of where the offenders' acts occurred. Title 18 U.S.C. § 2280 authorizes federal jurisdiction over any offender "later found" in the United States, and the district court found that it had jurisdiction over Shi.⁴² Congress's authority to establish jurisdiction by statute is granted in the "offense clause" of the Constitution, which empowers Congress to "define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations."⁴³

The *Shi* case is remarkable and important today for two reasons. First, the United States used its implementing legislation for the 1988 SUA Convention to establish jurisdiction over Shi, and this action did not require any liaison or

correspondence with other nations involved: neither the flag state of the ship nor the authorities of Shi's nationality (China) nor those of the nationalities of his two victims (Taiwan and Chinese). The successful prosecution underscores the successful operation of implementing legislation to prosecute crimes committed under the 1988 Convention. Second, the *Shi* case is the only known example of a criminal prosecution under the 1988 Convention, underscoring the gulf that lies between what legal realists might say is "law on the books" and "law in action."⁴⁴

In crafting and adopting the 2005 SUA Convention, the member states of the IMO and the IMO secretariat have advanced the program of the rule of law in the oceans and furthered the goal of greater maritime security. The convention is a cornerstone instrument for bringing the rule of law to the oceans, but it is only a first step. As with much of international law, the success of the 2005 convention lies in its implementation, not merely its adoption at the international level. States must integrate their IMO commitments into effective national action that includes domestic rules, interagency resources and authorities, and mechanisms for real-time collaboration. Toward this end, states might explore how to approach new threats and define new crimes based on unmanned systems, dual-use materials, and asymmetric attacks on ships, as well as ensure they have built out "backroom" procedural and logistical mechanisms, such as designation of competent authorities to facilitate international collaboration to enforce maritime security measures.

NOTES

- This article is adapted from James Kraska, keynote presentation ("Conference on Piracy, Refugees, War Risks, and Sanctions: The Impact on Maritime Trade," held at the International Maritime Organization, London, 2 June 2016).
1. Larisa Brown, "ISIS's Next Target Could Be Cruise Ships in the Med: Top NATO Commander Says Jihadists' Spread into Libya Casts an 'Uncomfortable Shadow,'" *Daily Mail*, 29 January 2016, www.dailymail.co.uk/news/.
 2. Resolutions of the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea 1974, adopted 12 December 2002, Conference Resolution 2 Annex: International Code for the Security of Ships and of Port Facilities.
 3. See generally Thomas A. Mensah, "The Place of the ISPS Code in the Legal International Regime for the Security of International Shipping," *WMU Journal of Maritime Affairs* 3, no. 17 (2004), pp. 26–27.
 4. UN Security Council, Resolution [hereafter UNSCR] 1373, 28 September 2001, para. 2(b).
 5. International Maritime Organization [hereafter IMO], Review of Measures and Procedures to Prevent Acts of Terrorism Which Threaten the Security of Passengers and Crews and the Safety of Ships, 22 January 2002, IMO Doc. A.924(22).
 6. IMO, Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Rome, 10 March 1988, 1 March 1992, IMO Doc. MSC/Circ. 754, 27 I.L.M. 672 (1988), UN Law of the Sea Bull. no. 11, July 1988, at 14, 1678 U.N.T.S. 221; IMO, Convention for the Suppression of Unlawful Acts against the Safety of Maritime

- Navigation, London, 14 October 2005, 28 July 2010, IMO Doc. SUA.3/Circ.11, 4 May 2010 [hereafter SUA 2005]
7. UNSCR 1540, 28 April 2004.
 8. Mark R. Patterson and Susan J. Patterson, “Unmanned Systems: An Emerging Threat to Waterside Security” (paper presented at the International WaterSide Security Conference, Institute of Electrical and Electronics Engineers [IEEE], 3–5 November 2010), available at www.vims.edu/.
 9. *Ibid.*
 10. Definition of a “vessel” as including all means of water transportation, 1 U.S.C. § 3 (1947), ch. 388, 61 Stat. 633.
 11. *Charles Barnes Co. v. One Dredge Boat*, 169 F. 895, 896 (E.D. Ky. 1909).
 12. SUA 2005, art. 1(c).
 13. *Ibid.*, art. 3*bis*(1)(b)(i).
 14. *Ibid.*, art. 3*bis*(1)(b)(iv).
 15. *Ibid.*, art. 1(d).
 16. Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (Biological Weapons Convention), done at Washington, London, and Moscow on 10 April 1972; Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Chemical Weapons Convention), done at Paris on 13 January 1993.
 17. 1997 International Convention for the Suppression of Terrorist Bombing, 2149 U.N.T.S. 256 (2002).
 18. For the unanimous adoption of the statute, see Off. Rec. of the 1956 Conference on the Statute of the International Atomic Energy Agency, IAEA/CS/OR.39; for the text of the statute, see IAEA/CS/OR.40, T.I.A.S. 3873, pp. 11–15.
 19. SUA 2005, art. 3*ter*. The treaties are appended as annexes.
 20. *Ibid.*, art. 3.
 21. Under *ibid.*, art. 3*bis*, a person commits an offense if he or she “unlawfully and intentionally” commits an act the purpose of which, “by its nature or context, is to intimidate a population, or to compel a government.”
 22. *Ibid.*, art. 3*bis*(1)(b)(i)–(iv).
 23. *Ibid.*, art. 3*quater*.
 24. *Ibid.*, art. 3(1)(b).
 25. *Black’s Law Dictionary*, 6th ed. (1990), p. 1570.
 26. Israeli Penal Act of 1977, reproduced in *Laws of the State of Israel*, special vol., *Penal Law*, 5737-1977.
 27. This new article was created by article 8(2) of the 2005 SUA Protocol.
 28. SUA 2005, art. 8*bis*. This general obligation is reflected in and derived from article 17(1) of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1582 U.N.T.S. 165 (no. 27627), 28 I.L.M. 493 (1989) [hereafter 1988 Vienna Narcotic Drug Convention] and article 7 of the Protocol against Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organized Crime [hereafter Migrant Smuggling Protocol].
 29. SUA 2005, art. 8*bis*(2).
 30. This provision is derived from article 17(2) of the 1988 Vienna Narcotic Drug Convention and article 8(1) of the Migrant Smuggling Protocol. The prerogative of the flag state is reaffirmed in article 8*bis*(8), in accordance with articles 91 and 92 of UNCLOS and articles 5 and 6 of the 1958 Convention on the High Seas.
 31. SUA 2005, art. 8*bis*(5).
 32. *Ibid.*, art. 8*bis*(6).
 33. *Ibid.*, art. 8*bis*(15).
 34. The provision is similar to article 17(7) of the 1988 Vienna Narcotic Drug Convention and article 8(6) of the Migrant Smuggling Protocol.
 35. IMO, “Status of Multilateral Conventions and Instruments in Respect of Which the International Maritime Organization or Its Secretary-General Performs Depositary or Other Functions,” 19 April 2016, pp. 430–31.
 36. 1988 Vienna Narcotic Drug Convention, art. 17(7)–(8).
 37. Directory of Competent National Authorities, UN Office of Drugs and Crime (UNODC) Doc. ST/NAR.5/2014/2 (E/NA) (2014).
 38. *Ibid.*, p. ix.

39. *United States v. Shi*, 396 F. Supp. 2d 1132 (D. Haw. 2003).
40. *United States v. Shi*, 525 F.3d 709 (9th Cir. 2008).
41. 27 I.L.M. 672 (1988).
42. *United States v. Shi*, 396 F. Supp. 2d 1132 (D. Haw. 2003). The case is consistent with U.S. criminal procedure, which permits courts to assert jurisdiction over defendants even when brought within the jurisdictional territory of the court against their will. See *Frisbie v. Collins*, 342 U.S. 519, 522, 72 S.Ct. 509, 96 L.Ed. 541 (1952); *Ker v. Illinois*, 119 U.S. 436, 7 S.Ct. 225, 30 L.Ed. 421 (1886).
43. U.S. Constitution, art. I, sec. 8, cl. 10.
44. See Roscoe Pound, "Law in Books and Law in Action," *American Law Review* 44, no. 12 (1910), pp. 12–36. See also Karl Llewellyn, "A Realistic Jurisprudence—the Next Step," *Columbia Law Review* 30, no. 431 (1930), pp. 444–57.



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