



# IDSS COMMENTARIES (75/2005)

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## **Governments Meet to Strengthen Maritime Security Legal Measures**

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### **The Perfect Cover**

The maritime domain, the vast majority of which is international waters, has traditionally been one characterized by a lack of control bordering on the anarchic. It has therefore proved to be an ideal environment for those engaged in transnational crime and terrorism. In Southeast Asia in particular, the maritime domain is readily exploited by a number of different criminal elements. Piracy continues to take place on a daily basis and is showing no sign of abating. The Jemaah Islamiah terrorist group is suspected of utilizing the maritime domain for the transfer of its personnel from Malaysia to training camps in the Philippines and the Abu Sayyaf Group continues to conduct terrorist attacks on Philippine ferries and other maritime targets.

While deterrent measures and intelligence gathering are vital for preventing pirate or terrorist attacks, the appropriate legal measures must also be put in place in order to ensure that once an attack has occurred the offenders can be prosecuted. However, the issue of sovereignty, whether that be sovereignty over territorial waters or aboard a vessel at sea, has proved to be a stumbling block to the development of a comprehensive legal maritime regime. Differing legal traditions amongst the world's states has also led to the failure of many such initiatives.

### **Legal Measures to be Strengthened**

In what represents a significant step for international maritime law, substantial amendments to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) have been adopted by the Diplomatic Conference on the Revision of the SUA Treaties, which took place from 10 to 14 October.

The Convention itself was adopted in 1988 shortly after the hijacking of the cruise liner *Achille Lauro* by Palestinian terrorists. During this high-profile maritime terrorist attack the crew and passengers were held hostage and were threatened with death should a group of Palestinian prisoners detained in Israel not be freed. In the course of the incident a disabled American citizen was murdered and his body and wheelchair were thrown into the sea in full view of the international press. This attack triggered an international response and the result was the adoption of the SUA Convention, the main purpose of which is to ensure that appropriate action is taken against persons committing unlawful acts against sea-going vessels. These include:

- The seizure of ships by force;

- Acts of violence against persons on board ships;
- The placing of devices on board a ship which are likely to destroy or damage it.

The convention obliges contracting governments either to extradite or prosecute alleged offenders, therefore ensuring that anyone committing such unlawful acts will not be able to seek shelter in a foreign country and avoid trial for their criminal acts.

The adopted amendments to the SUA Convention, also known as the Protocol of 2005, are aimed at strengthening the Convention in order to provide an appropriate response to the increasing risks posed to maritime navigation by international terrorism. Speaking at the opening of the Diplomatic Conference, International Maritime Organization (IMO) Secretary-General Mr. Efthimios E. Mitropoulos said that the adoption of the amendments to the SUA Convention was ‘yet another milestone in the field of treaty-making, this time aimed at further unifying international law with the purpose of preventing the maritime infrastructure from becoming a victim and eventually [will become] the scourge of terrorism worldwide.’

### **The 2005 Protocol**

The amendments adopted at the conference include the addition of a new offence, which is concerned with activities on board or directed against a ship that involve a terrorist purpose. The activities proscribed by the Protocol are:

- The use of chemical, biological or nuclear weapons against or on a ship.
- The discharge of hazardous or noxious substances from a ship.
- The use of a ship in a manner that causes death, serious injury or damage.
- The transport on board a ship of any biological, chemical or nuclear weapon (WMD), or their related material.

There is also a provision for the boarding of vessels on the high-seas suspected of being involved in terrorist activities, or transporting WMD or their related material, with the aim of neutralizing their potentially damaging consequences. The Protocol states that the authorization and cooperation of the flag state is required before such a boarding can take place.

### **The Need for Legal Measures**

Following 9/11, governments around the world hurried to address the vulnerabilities in the aviation sector that had allowed Al Qaeda terrorists to successfully carry out a devastating attack on the US. Not long after, the maritime sector was subject to the same scrutiny. Despite ongoing efforts to enhance global maritime security, the maritime transportation system represents a vulnerable and highly valuable target for terrorists. The uninterrupted flow of international seaborne trade is vital to the stability of the world’s economy. If this international supply chain was broken by terrorist attacks against commercial shipping or ports economic chaos would ensue. Thus there is a great need for strong, comprehensive maritime legal measures.

Although the SUA Convention has been signed by 126 out of 166 IMO Member states, which is a high number of contracting states in comparison to many other maritime conventions, a number of countries are conspicuously missing from the list, given their important position as guardians of strategically important waterways. In Southeast Asia only Singapore, Vietnam, Philippines, Myanmar and Brunei are signatories to the SUA Convention. Speaking at the

close of the Diplomatic Conference, Efthimios E. Mitropoulos stated that, “The usual request for States to become Parties to any new IMO treaty is, in the case of the two Protocols adopted today, an urgent plea....We are running a race against time in our efforts to prevent and suppress unlawful acts against the safety of maritime navigation and to bring to justice the perpetrators of the unlawful acts covered by the 2005 SUA Protocols.”

However, the new amendments have caused some concern and have been the subject of much debate. Disagreement over the definition of what constitutes an act of terrorism being one of the most difficult obstacles to overcome. There is a worry that the proposed measures could be abused, particularly in the case of the boarding of ships suspected of being involved in terrorist activity. The addition of the transportation of biological, chemical and nuclear weapons to the list of activities which constitute an offense has also been a subject of contention.

Before the amended SUA Convention can enter into force it must be signed or ratified by twelve states. While it is widely agreed that there is a need for a strong legal regime at sea, many states may be hesitant to sign up to this newly strengthened convention. Until they do so, terrorists and other transnational criminal elements will continue to operate unchallenged in the maritime domain.

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