

COMBATING MARITIME TERRORISM UNDER THE INTERNATIONAL LAW AND EUROPEAN LAW

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Abstract

Maritime terrorism is a form of contemporary terrorism and it presents enormous danger to a human life, to the safety of navigation and to the marine environment. This article considers briefly relevant international and European documents regulating this issue. Although they are all introduced more than a decade ago, they represent suitable legal basis to meet modern challenges to the security at sea. Authors point out their most important solutions but also the problem which rises from the fact that maritime terrorism doesn't have official definition. Authors indicate that maritime terrorism cannot be suppressed simply by adequate regulations. In order to achieve this goal all interested and threatened parties must collaborate and must strengthen efforts concerning the extradition and prosecution of terrorist as well as inhibit suspicious countries and organization to finance terrorist groups.

Key words: *maritime terrorism, SUA Convention, ISPS Code, Regulation 725/2004/EC*

1. Introduction

Terrorism is one of the greatest threats to the ideals of democracy and freedom and to the values of peace, which are the very essence of the modern society. It is a threat that does not recognize borders and may affect states and people irrespective of their geographical location. Maritime terrorism, as a form of contemporary terrorism, presents enormous danger to a human life, to the safety of navigation and to the marine environment. In the last 20 years maritime terrorism has expanded rapidly and has become a complex security issue.¹ According to their targets, terrorist attacks can be divided in 3 categories: attacks against vessels on the sea, attacks against vessels in ports and at anchor and attacks against port

¹ The rise of this form of terrorism was due to inadequate supervision of the coastal sea, wide selection of potentially valuable targets, the general trend of reducing the number of crew on board of merchant ships and low safety standards in maritime ports. See: **Igor Spicijarić**, *Maritime Terrorism – global problem and combat perspectives*, Hrvatski vojnik, br. 37, June 2011, www.hrvatski-vojniki.hr Also: **Peter Chalk**, *The Maritime Dimension of International Security-Terrorism, Piracy and Challenges for the United States*, RAND Corporation, 2008, p.22.

facilities and other coastal targets.² Terrorist prefer to attack vessels because they have numerous vulnerable points.³ Regardless of the object of carriage, potential damage, in the case of terrorist attack, would be immeasurable. Although, adequate legal regulations cannot solve this problem, they can contribute to its prevention and act repressively. Legal framework for maritime terrorism comprises a list of international and European rules. Most important among them are *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention)* and its *Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf*,⁴ the *International Ship and Port Facility Security Code (ISPS Code)* and *Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security*. Since the newest of these instruments was adopted more than a decade ago, the question is whether they present sufficient and appropriate legal basis to meet and regulate modern challenges to the security at sea.

2. The Concept of Terrorism

One of the biggest deficiencies of the legal combat against terrorism lies in the fact that official definition of terrorism does not exist. Today there're more than 150 different definitions of this concept.⁵ Although, key aspects of terrorism such as political and ideological motives, violence, intimidation as a purpose, change of behavior as a goal are not

² **Bojan Mednikarov – Kiril Kolev**, *Terrorism on the Sea, Piracy and Maritime Security*, Information and security, Vol.19, 2006, p.107

³ Cruise ships are lucrative terrorist target because on a relatively small area there is a large number of a person whose movement is difficult and limited in a case of a terrorist attack. On the other hand, a major attention was recently given to tankers and other vessels carrying dangerous materials. The sinking of or the damage to one of those ships would result with enormous environmental catastrophe. **Stjepan Bernardić**, *The threat from maritime terrorism*, Hrvatski vojnik, br. 15, January 2005, www.hrvatski-vojn timer.hr

⁴ The amendments to the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf reflect those in the 2005 Protocol to the SUA Convention. New article 2bis broadens the range of offences included in the Protocol. A person commits an offence if that person unlawfully and intentionally, when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act, uses against or on a fixed platform or discharges from a fixed platform any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage; or discharges from a fixed platform, oil, liquefied natural gas, or other hazardous or noxious substance, in such quantity or concentration, that it causes or is likely to cause death or serious injury or damage; or threatens, with or without a condition, as is provided for under national law, to commit an offence. New article 2ter includes the offences of unlawfully and intentionally injuring or killing any person in connection with the commission of any of the offences; attempting to commit an offence; participating as an accomplice; organizing or directing others to commit an offence. www.imo.org/en/About/Conventions/ListOfConventions/Pages/SUA-Treaties.aspx

⁵ See: **Božo Vukasović**, *Terrorism (part I)*, Hrvatski vojnik, br. 87., svibanj 2006, www.hrvatski-vojn timer.hr

disputable, all the attempts to shape them in precise and objective definition failed.⁶ Likewise, there's a lack of official definition of maritime terrorism.⁷

The Council for Security Cooperation in the Asia Pacific (CSCAP) Working Group has offered an extensive definition for maritime terrorism: "...the undertaking of terrorist acts and activities within the maritime environment, using or against vessels or fixed platforms at sea or in port, or against any one of the passengers or personnel, against coastal facilities or settlements, including tourist resorts, port areas and port towns or cities." Yet, this definition does not define what terrorism is and whether it would only include maritime attacks against merchant vessels or also attacks against military crafts.⁸

A great problem within the legal fight against maritime terrorism, nowadays, represents intertwinement of piracy⁹ and maritime terrorism. Piracy on the high seas is becoming a key tactic of terrorist groups. Unlike the pirates of old, whose sole objective was quick commercial gain, many of today's pirates are maritime terrorist with an ideological bent and political agenda.¹⁰ The distinction between piracy and maritime terrorism is blurred in at least three dimensions: ends, means and effects. In terms of ends, piracy is usually driven by financial gain, while terrorism is usually politically motivated. In terms of means, pirates are usually associated with basic tactics/capabilities while terrorists are associated with sophisticated tactics/capabilities. In terms of effects, piracy has traditionally been confined to the tactical level and terrorism usually aims at achieving a strategic effect. However, nowadays pirates use modern technology and apply sophisticated tactics, as well, so it is practically impossible to make a sharp distinction between piracy and maritime terrorism.

3. Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation

Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and its Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed

⁶ **Steven Best- Antony J. Nocella II**, *Defining Terrorism*, Terrorists or Freedom Fighters: Reflections on the Liberation of Animals, New York, 2004, p.361-377

⁷ Jane's Intelligence Report defines maritime terrorism as „the deliberate creation and exploitation of fear through violence or the threat of violence in the pursuit of political change, in the maritime domain“. **Frederick Chew**, *Piracy, maritime terrorism and regional interests*, Geddes Papers 2005, p. 74, www.defence.gov.au

⁸ www.maritimeterrorism.com

⁹ More about piracy: **Petra Amižić Jelovčić**, *Piracy suppression measures in the Gulf of Aden*, Proceedings "In memoriam prof. dr. sc. Vjekoslav Šmid", Rab, 2010-2012., p. 133.-169.

¹⁰ **Gal Luft-Anne Korin**, *Terrorism Goes to Sea*, Foreign Affairs, November/December 2004, www.iags.org

Platforms Located on the Continental Shelf were adopted in March 1988 at the conference in Rome.¹¹ The main purpose of the Convention is to ensure that appropriate action is taken against persons committing unlawful acts against ships.¹² Important amendments to the 1988 SUA Convention and its related Protocol were adopted by the Diplomatic Conference on the Revision of the SUA Treaties held from 10 to 14 October 2005. The amendments were adopted in the form of Protocols to the SUA treaties (the 2005 Protocols). This 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 (article 4).¹³

Among the unlawful acts covered by the SUA Convention in Article 3 are the seizure of ships¹⁴ by force; acts of violence against persons on board ships;¹⁵ and the placing of devices on board a ship which are likely to destroy or damage it.¹⁶ Furthermore, the concept of unlawful act encloses incidents when a person unlawfully and intentionally places or causes to be placed on a ship 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 destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe

¹¹ Concern about unlawful acts which threaten the safety of ships and the security of their passengers and crews grew during the 1980s, with reports of crews being kidnapped, ships being hi-jacked, deliberately run aground or blown up by explosives. Passengers were threatened and sometimes killed. In November 1986 the Governments of Austria, Egypt and Italy proposed that IMO prepare a convention on the subject of unlawful acts against the safety of maritime navigation to provide for a comprehensive suppression of unlawful acts committed against the safety of maritime navigation which endanger innocent human lives, jeopardize the safety of persons and property, seriously affect the operation of maritime services and thus are of grave concern to the international community as a whole. www.imo.org/en/About/Conventions/ListOfConventions/Pages/SUA-Treaties.aspx

¹² The Rome Convention was the result of a diplomatic initiative taken by the Governments of Austria, Egypt and Italy in response to Achille Lauro incident which had made it clear that the rules of international law existing then were not appropriate for dealing with maritime terrorism. See: **Rüdiger Wolfrum**, *Fighting terrorism at Sea: Options and Limitations under International Law*, p.6., www.itlos.org/fileadmin/itlos/documents/statements_of_president/wolfrum/doherty_lecture_130406_eng.pdf In 1985 Achille Lauro, Italian-flagged cruise ship was seized while travelling on the high seas from Alexandria to Port Said, allegedly by a Palestinian guerrilla group. They threatened to kill the British and American passengers unless Israel was to liberate 50 Palestinian prisoners. When their demands were not met they killed an American passenger. **H.E. Jose Luis Jesus**, *Protection of Foreign Ships against Piracy and Terrorism at Sea: Legal Aspects*, *The International Journal of Marine and Coastal Law*, Vol.18, No.3, 2003, p.388

¹³ In cases where the Convention does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State referred to in paragraph 1 (article 4, paragraph 2).

¹⁴ For the purposes of this Convention "ship" means a vessel of any type whatsoever not permanently attached to the seabed, including dynamically supported craft, submersibles, or any other floating craft (article 1 SUA Convention). This Convention does not apply to:

1. a warship; or
2. a ship owned or operated by a State when being used as a naval auxiliary or for customs or police purposes; or
3. a ship which has been withdrawn from navigation or laid up.

¹⁵ Art.3, par.1, subpar.b) of 1988 SUA Convention.

¹⁶ Art.3, par.1, subpar.c) of 1988 SUA Convention.

navigation of a ship;¹⁷ or communicates information which he knows to be false, thereby endangering the safe navigation of a ship (article 3, paragraph 1. of 1988 SUA Convention). Any person also commits an offence if that person threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b), (c) and (e), if that threat is likely to endanger the safe navigation of the ship in question (article 3, paragraph 2 of 1988 SUA Convention).

The 2005 Protocol to the SUA Convention broadens the range of offences within the meaning of the Convention by adding new article. Article 3bis states that a person commits an offence if that person unlawfully and intentionally:

- a) when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from any act:
 - i) uses against or on a ship or discharging from a ship any explosive, radioactive material¹⁸ or BCN¹⁹ weapon in a manner that causes or is likely to cause death or serious injury or damage;
 - ii) discharges from a ship oil, liquefied natural gas,²⁰ or other hazardous or noxious substance, in such quantity or concentration that causes or is likely to cause death or serious injury or damage;
 - iii) uses a ship in a manner that causes death or serious injury or damage;
 - iv) threatens, with or without a condition, as is provided for under national law, to commit an offence set forth in subparagraph (a)(i), (ii) or (iii); or
- b) transports on board a ship:
 - i) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, death or serious injury or damage for the purpose of intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act;
 - ii) any BCN weapon, knowing it to be a BCN weapon;
 - iii) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special

¹⁷ Art.3, par.1, subpar.e) of 1988 SUA Convention.

¹⁸ Further on radioactive material: **Petra Amižić Jelovčić**, *Maritime Carriage of Nuclear Material*, Split, 2010., p.53-58

¹⁹ BCN means biological, chemical, nuclear.

²⁰ More on LNG see: **Petra Amižić Jelovčić**, *Maritime Carriage of Liquefied Natural Gas*, Proceedings “*In memoriam prof. dr. sc. Vjekoslav Šmid*“, Rab, 2010-2012., p. 285. - 312

fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to an IAEA²¹ comprehensive safeguards agreement;²² and

- iv) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose.

Under the new instrument, a person commits an offence within the meaning of the Convention if that person unlawfully and intentionally transports another person on board a ship knowing that the person has committed an act that constitutes an offence under the SUA Convention or an offence set forth in any treaty listed in the Annex.²³ SUA Convention stipulates that a person also commits an offence if that person attempts to commit any of the offences; abets the commission of any of the offences; threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth by article 3 of this Convention. 2005 Protocol to the SUA Convention is more precise and defines it as an offence to unlawfully and intentionally injure or kill any person in connection with the commission of any of the offences in the Convention; to attempt to commit an offence; to participate as an accomplice; to organize or direct others to commit an offence; or to contribute to the commissioning of an offence (article 3v).

Convention obliges each State Party to make all these offences punishable by appropriate penalties which take into account the grave nature of the offences (article 5). Furthermore, each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for management or control of that legal entity has,

²¹ IAEA means International Atomic Energy Agency. It is widely known as the world's "Atoms for Peace" organization within the United Nations family. Set up in 1957 as the world's centre for cooperation in the nuclear field, the Agency works with its Member States and multiple partners worldwide to promote the safe, secure and peaceful use of nuclear technologies. www.iaea.org

²² The transportation of nuclear material is not considered an offence if such item or material is transported to or from the territory of, or is otherwise transported under the control of, a State Party to the Treaty on the Non Proliferation of Nuclear Weapons.

²³ The Annex lists nine such treaties: Convention for the Suppression of Unlawful Seizure of Aircraft, 1970.; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971.; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973.; International Convention against the Taking of Hostages, adopted by the General 1979.; Convention on the Physical Protection of Nuclear Material, 1979.; Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1988.; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988.; International Convention for the Suppression of Terrorist Bombings, 1997.; International Convention for the Suppression of the Financing of Terrorism, 1999.

in that capacity, commits an offence set forth in this Convention. Such liability may be criminal, civil or administrative.²⁴ It is commendable for SUA Convention that it obliges Contracting Governments either to extradite or prosecute alleged offenders. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth by this Convention when the offence is committed against or on board a ship flying the flag of the State at the time the offence is committed; or in the territory of that State, including its territorial sea; or by a national of that State (article 6).²⁵ The State Party in the territory of which the offender or the alleged offender is found shall, in cases to which article 6 applies, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.²⁶

Article 8 of the SUA Convention covers the responsibilities and roles of the master of the ship, flag State and receiving State in delivering to the authorities of any State Party any person believed to have committed an offence under the Convention, including the furnishing of evidence pertaining to the alleged offence. The master of a ship of a State Party (the “flag State”) may deliver to the authorities of any other State Party (the “receiving State”) any person who the master has reasonable grounds to believe has committed an offence set forth by this Convention. States Parties shall cooperate to the fullest extent possible to prevent and

²⁴ It should be emphasized that liability of legal entity is incurred without prejudice to the criminal liability of individuals having committed the offences.

²⁵ This Convention does not exclude any criminal jurisdiction exercised in accordance with national law (article 6, paragraph 5). Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present shall, in accordance with its law, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted (article 7, paragraph 1). Any person regarding whom the measures referred to in paragraph 1 are being taken shall be entitled to: 1. communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence; 2. be visited by a representative of that State (article 7, paragraph 3). Furthermore about extradition procedure: article 11 of SUA Convention.

²⁶ Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State. Any person who is taken into custody, or regarding whom any other measures are taken or proceedings are being carried out pursuant to this Convention, shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law (article 10). Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth by this Convention or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person’s race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with the request would cause prejudice to that person’s position for any of these reasons.

suppress unlawful acts covered by this Convention, in conformity with international law, and shall respond to requests pursuant to this article as expeditiously as possible. A State Party that has reasonable grounds to suspect that an offence set forth by this Convention has been, is being or is about to be committed involving a ship flying its flag, may request the assistance of other States Parties in preventing or suppressing that offence. The States Parties so requested shall use their best endeavors to render such assistance within the means available to them.²⁷ When carrying out the authorized actions under this Convention, the use of force shall be avoided except when necessary to ensure the safety of its officials and persons on board, or where the officials are obstructed in the execution of the authorized actions. Any use of force shall not exceed the minimum degree of force which is necessary and reasonable in the circumstances.

Convention prescribes in detail obligation of assistance for all States Parties. According to the article 12 of SUA Convention, States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth by Convention, including assistance in obtaining evidence at their disposal necessary for the proceedings. In addition, Convention also regulates States Parties obligation to cooperate in the prevention of the offences set forth in this Convention. They shall take all practicable measures to prevent preparation in their respective territories for the commission of those offences within or outside their territories and shall exchange information in accordance with their national law, and coordinating administrative and other measures taken as appropriate to prevent the commission of offences.²⁸ Moreover, any State Party having reason to believe that an offence set forth in this Convention will be committed shall, in accordance with its national law, furnish as promptly as possible any relevant

²⁷An article 8bis in the 2005 Protocol covers cooperation and procedures to be followed if a State Party desires to board a ship flying the flag of a 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 offence under the Convention For all boarding pursuant to this article, the flag State has the right to exercise jurisdiction over a detained ship, cargo or other items and persons on board, including seizure, forfeiture, arrest and prosecution However, the flag State may, subject to its constitution and laws, consent to the exercise of jurisdiction by another State having jurisdiction under article 6. Nothing in this Convention shall affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag. Article 8bis includes important safeguards when a State Party takes measures against a ship, including boarding. The safeguards cover: not endangering the safety of life at sea; ensuring that all persons on board are treated in a manner which preserves human dignity and in keeping with human rights law; taking due account of safety and security of the ship and its cargo; ensuring that measures taken are environmentally sound; and taking reasonable efforts to avoid a ship being unduly detained or delayed.

²⁸ When, due to the commission of an offence the passage of a ship has been delayed or interrupted, any State Party in whose territory the ship or passengers or crew are present shall be bound to exercise all possible efforts to avoid a ship, its passengers, crew or cargo being unduly detained or delayed (article 13).

information in its possession to those States which it believes would be the States having established jurisdiction in accordance with article 6.²⁹

It is to be concluded that SUA Convention, as well as its 2005 Protocol, which was developed in direct response to the events of 11th September 2001, prohibits a broad range of acts of violence directed against ships or shipping but does not prescribe the rules concerning suppression of maritime terrorism. On the contrary, SUA Convention is concentrated on the prosecution of offenders. The only exception is article 8 of 2005 Protocol which covers the responsibilities and roles of the master of the ship. Accordingly, SUA Convention can be used neither to take effective response actions against ships under the control of terrorists nor to take preventive action.³⁰

4. Code on International Ship and Port Security (ISPS Code)

After the terrorist attack on 11th September 2001 in the New York City serious concern was raised in the shipping community in respect of the prospect of terrorist attacks against ships or against targets such as port facilities by using ships as terrorist weapons, in the same way the planes were used as weapons against the Twin Towers. Since then a lot of legal initiatives were taken and one of the most important was a Conference on Maritime Security held in December 2002 in London. The major result of that Conference was the amendment of Chapter XI of the Safety of Life at Sea Convention - SOLAS Convention,³¹ creating a new chapter XI-2 dedicated to maritime security and adoption of the Code on International Ship and Port Security- ISPS Code.³² The measures agreed upon under the Code were brought into force on 1st July 2004.

One of the objectives of this Code is to establish an international framework involving cooperation between Contracting Governments, Government agencies, local administrations and the shipping and port industries to detect security threats and take preventive measures

²⁹ Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration (article 16).

³⁰ Wolfrum, R., *o.c.*, p.10

³¹ The SOLAS Convention in its successive forms is generally regarded as the most important of all international treaties concerning the safety of merchant ships. The first version was adopted in 1914, in response to the Titanic disaster, the second in 1929, the third in 1948, and the fourth in 1960. The 1974 version includes the tacit acceptance procedure. As a result the 1974 Convention has been updated and amended on numerous occasions. The Convention in force today is sometimes referred to as SOLAS, 1974, as amended. It entered into force on May 25th 1980. www.imo.org

³² Jesus, H.E.J.L., *o.c.*, p.390

against security incidents affecting ships or port facilities used in international trade. In order to achieve its objectives, this Code embodies a number of functional requirements such as: gathering and assessing information with respect to security threats and exchanging such information with appropriate Contracting Governments; requiring the maintenance of communication protocols for ships and port facilities; preventing unauthorized access to ships, port facilities and their restricted areas; preventing the introduction of unauthorized weapons, incendiary devices or explosives to ships or port facilities; requiring ship and port facility security plans based upon security assessments; and requiring training, drills and exercises to ensure familiarity with security plans and procedures (article 1.3. of ISPS Code).

The ISPS Code consists of two major components. Part A provides the minimum mandatory requirements that ships and ports³³ must follow, while Part B provides more detailed, but not compulsory, guidelines and recommendations in the implementation of security assessments and plans. In theory, compliance with the ISPS Code should reduce the vulnerability of port facilities and ships to maritime attacks by terrorists and pirates.³⁴ However, a major problem is that International Maritime Organization - IMO³⁵ is powerless in enforcing the instrument, while it can only monitor compliance. Another problem represents the fact that meeting the ISPS Code requirement places substantial additional costs on ship owners.³⁶

In compliance with The Code, all ships over 500 gross tonnage and critical facilities within the port's domain are obliged to conduct vulnerability assessments and develop security plans to deter potential terrorist attacks.³⁷ The Company shall ensure that the ship security plan contains a clear statement emphasizing the master is authority. The Company

³³ Ships are represented by their respective firms and ports are represented by the contracting government.

³⁴ A number of problems have started to come to light, which points to serious deficiencies in the Code itself and in its implementation, especially to ports. Despite the general consensus that port's security is essential in safeguarding maritime and supply chain securities, unlike ships, the responsibilities of port security lie within the hands of the public sector, as reflected by IMO's emphasis on the roles of the contracting governments who would have the final authority in virtually all decisions. **Nong Hong- Adolf K.Y.Ng**, *The International Legal Instruments in addressing Piracy and Maritime Terrorism: A Critical Review*, p.15

³⁵ As a specialized agency of the United Nations, IMO is the global standard-setting authority for the safety, security and environmental performance of international shipping. Its main role is to create a regulatory framework for the shipping industry that is fair and effective, universally adopted and universally implemented. www.imo.org

³⁶ First, ship owners have in some cases had to increase their crew size. Secondly, costs incurred by ports that have also had to introduce law security measures under the Code are being passed onto the ship owners in the form of extra charges for using the particular port. Third, there is a lack of coordination between governments, local administrations, shipping, and port industries in a bid to enhance maritime security. *Ibidem*, p.16

³⁷ For example passenger, vehicle and baggage screening procedures, security patrol, the establishment of restricted areas and its execution, procedures for personnel identification, access control, installation of surveillance equipment, etc.

shall establish in the ship security plan that the master has the overriding authority and responsibility to make decisions with respect to the safety and security of the ship and to request the assistance of the Company or of any Contracting Government as may be necessary. The Company shall also ensure that the company security officer,³⁸ the master and the ship security officer³⁹ are given the necessary support to fulfill their duties and responsibilities (article 6 of ISPS Code). Article 7 prescribes 3 security levels upon which a ship is required to act.⁴⁰

Each ship shall carry on board a ship security plan approved by the Administration.⁴¹ The plan shall address, at least, the following: measures designed to prevent weapons dangerous substances and devices intended for use against persons, ships or ports and the carriage of which is not authorized from being taken on board the ship; identification of the restricted areas and measures for the prevention of unauthorized access to them; measures for the prevention of unauthorized access to the ship; procedures for responding to security threats or breaches of security, including provisions for maintaining critical operations of the ship or ship/port interface; procedures for responding to any security instructions Contracting Governments may give at security level 3; procedures for evacuation in case of security threats or breaches of security *etc.* (article 9 of ISPS Code).

A port facility is required to act upon the security levels set by the Contracting Government within whose territory it is located. Security measures and procedures shall be applied at the port facility in such a manner as to cause a minimum of interference with, or delay to, passengers, ship, ship's personnel and visitors, goods and services (article 14). A port facility security plan shall be developed and maintained, on the basis of a port facility

³⁸ The Company shall designate a company security officer. A person designated as the company security officer may act as the company security officer for one or more ships, depending on the number or types of ships the Company operates provided it is clearly identified for which ships this person is responsible. A Company may, depending on the number or types of ships they operate designate several persons as company security officers provided it is clearly identified for which ships each person is responsible.

³⁹ A ship security officer shall be designated on each ship. The duties and responsibilities of the ship security officer shall include, but are not limited to: undertaking regular security inspections of the ship to ensure that appropriate security measures are maintained; maintaining and supervising the implementation of the ship security plan, including any amendments to the plan; co-ordinating the security aspects of the handling of cargo and ship's stores with other shipboard personnel and with the relevant port facility security officers; proposing modifications to the ship security plan *etc.* (article 12.1.).

⁴⁰ Level 3 is the highest security level.

⁴¹ An essential and integral part of the process of developing and updating the ship security plan is the ship security assessment. The ship security assessment shall include an on-scene security survey and, at least, the following elements: 1 identification of existing security measures, procedures and operations; identification and evaluation of key ship board operations that it is important to protect; identification of possible threats to the key ship board operations and the likelihood of their occurrence, in order to establish and prioritize security measures; and identification of weaknesses, including human factors in the infrastructure, policies and procedures (article 8 of ISPS Code).

security assessment, for each port facility, adequate for the ship/port interface.⁴² The plan shall make provisions for the three security levels, as defined by this Code and shall address, at least, the following: measures designed to prevent weapons or any other dangerous substances and devices intended for use against persons, ships or ports and the carriage of which is not authorized, from being introduced into the port facility or on board a ship; measures designed to prevent unauthorized access to the port facility, to ships moored at the facility, and to restricted areas of the facility; procedures for responding to security threats or breaches of security; procedures for responding to any security instructions the Contracting Government, in whose territory the port facility is located, may give at security level 3; procedures for evacuation in case of security threats or breaches of security etc. (article 16.3. of ISPS Code). Each ship to which this Part of the Code applies shall be subject to the verifications. The verifications of ships shall be carried out by officers of the Administration. An International Ship Security Certificate shall be issued after the initial or renewal verification in accordance with the provisions of this Code.⁴³

Contrary to SUA Convention, ISPS Code was created with the intent to prevent and suppress terrorist attacks. It abounds with preventive provisions and comprises numerous applicable solutions in cases where ship or port security is at risk.

5. Regulation (EC) No 725/2004 of the European Parliament and of the Council

The main objective of this regulation⁴⁴ is to implement European Union (EU) measures aimed at enhancing the security of ships and port facilities in the face of threats of intentional unlawful acts. This regulation contains preventive measures and transposes the part of the SOLAS Convention on special measures to enhance maritime security and, at the

⁴² The port facility security assessment is an essential and integral part of the process of developing and updating the port facility security plan. The port facility security assessments shall periodically be reviewed and updated, taking account of changing threats and/or minor changes in the port facility and shall always be reviewed and updated when major changes to the port facility take place (article 15). The port facility security assessment shall include, at least, the following elements: identification and evaluation of important assets and infrastructure it is important to protect; identification of possible threats to the assets and infrastructure and the likelihood of their occurrence, in order to establish and prioritize security measures; identification, selection and prioritization of counter measures and procedural changes and their level of effectiveness in reducing vulnerability; and identification of weaknesses, including human factors in the infrastructure, policies and procedures (article 15.5. of ISPS Code).

⁴³ An International Ship Security Certificate shall be issued for a period specified by the Administration which shall not exceed five years (article 19.3. of ISPS Code).

⁴⁴ Official Journal L 129 , 29/04/2004

same time, the ISPS Code, two of the cornerstones of maritime security at world level. The amendments to the SOLAS Convention and Part A of the ISPS Code are mandatory, but subject to interpretation. On the other hand, Part B of the Code consists of recommendations which the EU countries are called on to implement. EU countries are required to communicate to the IMO, the Commission and the other EU countries the information requested and the special measures adopted to enhance maritime security under the SOLAS Convention (article 4).⁴⁵

In respect of international shipping, Member States shall apply in full, by 1 July 2004, the special measures to enhance maritime security of the SOLAS Convention and Part A of the ISPS Code, in accordance with the conditions and with respect to the ships, companies and port facilities referred to therein.⁴⁶

Security checks in the port may be carried out by the competent maritime security authorities⁴⁷ of the EU countries, but also, as regards the international ship security certificate, by inspectors acting in the framework of port State control, as provided for in Directive 95/21/EC.⁴⁸ When a ship announces its intention to enter a port in an EU country, the competent maritime security authority of that country should demand that the information be provided at least 24 hours in advance or, if the voyage time is less than 24 hours, at the latest at the time the ship leaves the previous port or, if the port of call is not known, as soon as the port of call becomes known (article 6).

⁴⁵ Each EU country must draw up the list of port facilities concerned on the basis of the port facility security assessments carried out and establish the scope of the measures taken to enhance maritime security. This list must be communicated to the other EU countries and to the Commission by 1 July 2004 at the latest. EU countries must vigorously monitor compliance with the security rules by ships intending to enter an EU port, whatever their origin.

⁴⁶With regard to domestic shipping, Member States shall apply, by 1 July 2005, the special measures to enhance maritime security of the SOLAS Convention and Part A of the ISPS Code to Class A passenger ships operating domestic services and to their companies, as defined in regulation IX-1 of the SOLAS Convention, and to the port facilities serving them. Passenger ships are divided into the following classes according to the sea area in which they operate. Article 4 of Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships Class A means a passenger ship engaged on domestic voyages other than voyages covered by Classes B, C and D.

⁴⁷ Competent authority for maritime security' means an authority designated by a Member State to coordinate, implement and monitor the application of the security measures laid down in this Regulation in respect of ships and/or one or more port facilities (article 2, paragraph 7 of the Regulation 725/2004).

⁴⁸ See: Official Journal L 157, 07/07/1995. The purpose of this Directive is to help drastically to reduce substandard shipping in the waters under the jurisdiction of Member States by increasing compliance with international and relevant Community legislation on maritime safety, protection of the marine environment and living and working conditions on board ships of all flags and establishing common criteria for control of ships by the port State and harmonizing procedures on inspection and detention, taking proper account of the commitments made by the maritime authorities of the Member States under the Paris Memorandum of Understanding on Port State Control –MOU (article 1). According to the Directive 95/21/EC, each Member State is obliged to inspect at least 25 % of the ships flying other countries' flags which enter its ports. Vessels which have already been inspected within the previous six months are exempt (article 5).

Regulation obliges Member States to ensure that effective, proportionate and dissuasive sanctions for breaching its provisions are introduced (article 14).

6. Conclusion

Today we are all witnesses of omnipresence of terrorism and maritime terrorism is no exception. Although there're several relevant legal documents which adequately regulate this contemporary international issue, unfortunately they cannot resolve it. Resolution of this problem rests on coordination and cooperation between all interested parties. They should all exchange information in accordance with their national law, analyze and assess them with the special reference to information about terrorist groups and their planned actions. In addition to it, they should map and update their potential aims, find their vulnerable points, intensify surveillance of merchant ships, recruit armed escort *etc.* Furthermore, it is necessary to improve the training of maritime specialists in countering these criminal actions. No one expects the crews of merchant ships to solve all problems related to neutralization of terrorists. The goal is to provide training for necessary skills and adequate reaction.⁴⁹

It is crucial to have constant initiative and to make impossible for terrorist to regroup or to plan new attacks. This is why exchange of information is of key importance, as well as active measures undertaken by naval forces of maritime states. So, it is to be concluded that there's nothing much more we can legally do to prevent and suppress maritime terrorism. Practice and practical combat against maritime terrorism is a whole new aspect and represents constant challenge for all of us and this is where we should all try to gain an advantage over terrorists. Such an example is Operation Active Endeavour. Under this Operation, NATO ships are patrolling the Mediterranean and monitoring shipping to help deter, defend, disrupt and protect against terrorist activity. The operation evolved out of NATO's immediate response to the terrorist attacks against the United States of 11 September 2001 and, in view of its success, is being continued.⁵⁰ International law gives a right to self-defense to the States targeted by terrorists from the sea⁵¹ but it is not clear whether such actions should only be

⁴⁹ This reaction should create capabilities to resolve the following complex problems: To prevent a terrorist act; To protect life and health of crewmembers and passengers, as well as their release (if necessary); To support special force units neutralizing terrorists; To protect the ship and its cargo. Mednikarov, B.-Kolev, K., *o.c.*, p.112

⁵⁰ Keeping the Mediterranean's busy trade routes open and safe is critical to NATO's security. In terms of energy alone, some 65 per cent of the oil and natural gas consumed in Western Europe pass through the Mediterranean each year, with major pipelines connecting Libya to Italy and Morocco to Spain. For this reason, NATO ships are systematically carrying out preparatory route surveys in "choke" points as well as in important passages and harbours throughout the Mediterranean. <http://www.nato.int>

⁵¹ The UN Charter rule, however, severely restricted the circumstances under which use of force may be considered legal. Article 2(4) now place a general prohibition on use of force and extends this prohibition

directed against the terrorists or may they also be directed against the state harboring and protecting them.⁵² It should be emphasized that the UN Charter welcomes the Security Council's decision to authorize force in order to maintain or restore international peace and security but is rather restrictive with respect to the use of force by states unilaterally. Either way, all actions taken must comply with proportionality principle.⁵³

Anyhow, international community should persist with its politics of not yielding to terrorists independently of casualties. Moreover, it must strengthen efforts concerning the extradition and prosecution of terrorist and inhibit suspicious countries and organization to finance terrorist groups. We cannot permit that terrorist intimidate us to such a degree that we stop living our lives the way we are used to because that way they would win.

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beyond war to include all types of unilateral use or threat of force. The Charter allows for two exceptions to the general prohibition on use of force: (i) individual and collective self-defence under Article 51 and (ii) enforcement measures authorized by the Security Council in response to ‘any threat to the peace, breach of the peace or act of aggression’ under chapter VII. The charter is fairly open-ended regarding the Security Council’s power to authorize force ‘to maintain or restore international peace and security’. In contrast, the UN Charter is rather restrictive with respect to the use of force by states. It is here that the dispute arises regarding validity of use of force by individual states to suppress international terrorism, whereby such action leads victim State to the territory of another State. **Prashanti Upadhyaya**, *The Use of Force against Terrorism: Does International Law fall Victim*, <http://www.legalindia.com>

⁵² In 2006, the General Assembly adopted the United Nations Global Counter-Terrorism Strategy (Resolution 60/288) by consensus and has since reviewed it every two years. The General Assembly has made clear that the primary responsibility for the implementation of the Strategy rests with Member States. Since its adoption in 2006, the United Nations Global Counter-Terrorism Strategy has seen important progress in its implementation, but has also encountered unforeseen challenges, especially with the rise of new types of terrorism-related threats to international peace and security. The most significant challenge is the spread of violent extremist ideologies and the emergence of terrorist groups fuelled by them. These groups transcend national boundaries, underscoring the need for increased international cooperation to prevent, counter and combat them. Member States will also need to take the lead in developing and implementing their national and regional plans of action to prevent violent extremism. The United Nations system can assist them. Activities of the United Nations system in implementing the United Nations Global Counter-Terrorism Strategy, **A/70/826**, www.un.org

⁵³ If a ship has been brought under the control of terrorists with the aim of using it as a weapon, the flag state is under an international obligation to intervene, given the worldwide and unconditional condemnation of terrorism by the Security Council acting under Chapter VII of the UN Charter. The question is, though, whether the state in question will be in a position to do so or to do so before the threat posed by such a ship materializes. If this is impossible, the flag state concerned not only has the option but in fact is under an obligation to request assistance from other states. In cases where military intervention against a ship under a foreign flag is the only means of protection against terrorists, the flag state is obliged to give its consent to such intervention. See: **Rüdiger Wolfrum**, *Fighting Terrorism at Sea: Options and Limitations under International Law*, p.24., <http://www.virginia.edu>

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