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Global Conventions on Maritime Crimes Involving Piratical Acts

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Global Conventions on Maritime Crimes Involving Piratical Acts

Captain J. Ashley Roach

GLOBAL CONVENTIONS ON MARITIME CRIMES INVOLVING PIRATICAL ACTS

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This article examines how the 1979 International Convention Against the Taking of Hostages and the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) collectively fill many of the limitations in the provisions of the international treaties on piracy. Further, the 2005 SUA Protocol makes significant improvements to its predecessor. Used together, these instruments complement each other in the context of piracy and armed robbery at sea. However, implementation through domestic legislation is essential to enabling nations to suppress acts of piracy and armed robbery at sea.

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* The views expressed in this paper are those of the author alone and are not intended to reflect the positions of any department or agency of the U.S. Government. This paper is adapted and updated from J. Ashley Roach, *Global Conventions on Piracy, Ship Hijacking, Hostage Taking and Maritime Terrorism: Prospects for Cooperation*, *in* PIRACY AND INTERNATIONAL MARITIME CRIMES IN ASEAN 38 (Robert C. Beckman & J. Ashley Roach eds., 2012). Captain J. Ashley Roach, JAGC, U.S. Navy (retired) was attorney adviser in the Office of the Legal Adviser, U.S. Department of State, from 1988 until he retired at the end of January 2009, responsible for law of the sea matters. He has taught, advised and published extensively on national maritime claims and other law of the sea issues, including piracy and armed robbery at sea. He has negotiated, and participated in the negotiation of, numerous international agreements involving law of the sea issues. He received his LL.M. (highest honors in public international law and comparative law) from the George Washington University School of Law in 1971 and his J.D. from the University of Pennsylvania Law School in 1963.

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I. INTRODUCTION

This article analyzes three U.N. counter-terrorism conventions as potential tools to combat piracy and other serious international maritime crimes. Rather than create new legal instruments to address maritime piracy, these three conventions provide mechanisms to deal with ship-hijacking, the taking of crew members hostage for ransom, and unlawful acts against the safety of maritime navigation. Considered in the context of the twenty participants of the Djibouti Code of Conduct ("DCOC"),[1] the three treaties are the 1979 International Convention Against the Taking of Hostages ("Hostage-Taking Convention"),[2] the 1988 Convention for the Suppression of

1. Int'l Maritime Org. [IMO], *Adoption of the Code of Conduct Concerning the Repression of Piracy and Armed Robbery Against Ships in the Western Indian Ocean and the Gulf of Aden*, Djibouti Meeting Res. 1 (Jan. 29, 2009), *available at* http://www.imo.org/OurWork/Security/PIU/Documents/Djibouti Code of Conduct%20English.pdf; *Signatory States*, IMO, http://www.imo.org/OurWork/Security/PIU/Pages/Signatory-States.aspx (last visited Sept. 23, 2013); *infra* Table 1.

2. International Convention Against the Taking of Hostages, *opened for signature* Dec. 18, 1979, T.I.A.S. No. 11,081, 1316 U.N.T.S. 206 (entered

Unlawful Acts Against the Safety of Maritime Navigation ("1988 SUA Convention"),[3] and the Protocol of 2005 to the 1988 SUA Convention ("2005 SUA Protocol").[4] In addition to these three conventions, several other treaties may provide support in combating piracy and other serious international maritime crimes. These treaties are referenced throughout the article, and they are included in Table 2. The DCOC was formulated in response to the escalating incidents of piracy off the coast of Somalia. It calls for, *inter alia*, the promotion of greater regional cooperation among the participants as a means more effectively to prevent, prosecute, and punish those who commit piratical acts at sea.[5] Given the commitments enshrined in the DCOC, the Djibouti participants should recognize the utility of these three conventions in achieving the goals set out therein. Therefore, after detailing the relevant provisions of the three treaties, this article proposes that the DCOC members should ratify these conventions and pass domestic legislation incorporating the substance of the treaties.

A. Status of Conventions[6]

The Hostage-Taking Convention currently has 173 parties, including nearly all of the participants in the DCOC except Eritrea, the Maldives, and Somalia.[7] Of the participants in the DCOC,

into force June 3, 1983) [hereinafter Hostage-Taking Convention], *available at* http://treaties.un.org/doc/db/Terrorism/english-18-5.pdf.

3. Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, *opened for signature* Mar. 10, 1988, 1678 U.N.T.S. 221 (entered into force Mar. 1, 1992) [hereinafter 1988 SUA Convention].

4. Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, *opened for signature* Feb. 14, 2006, IMO Doc. LEG/CONF.15/21 (entered into force July 28, 2010) [hereinafter 2005 SUA Protocol]. The consolidated text of the 1988 SUA Convention as modified by the 2005 Protocol is available at https://www.unodc.org/tldb/en/2005_Cons_Version_Conv_and_Prot_Maritime_Navigation.html. This article does not address the 1988 and 2005 Protocols for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf or the 2003 Convention against Corruption.

5. Djibouti Code of Conduct, *supra* note 1, pmbl.

6. *Multilateral Treaties Deposited with the Secretary-General*, U.N. TREATY COLLECTION, http://treaties.un.org/pages/ParticipationStatus.aspx (last visited Mar. 14, 2014) (noting the location where the status of treaties registered with the U.N. may be viewed).

7. *International Convention Against the Taking of Hostages*, U.N. TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=XVIII-5&chapter=18&lang=en (last visited Mar. 14, 2014) (describing the status of the parties and signatories to the Hostage-Taking Convention).

Ethiopia, Jordan, Kenya, Maldives, Mauritius, Mozambique, Oman, South Africa, Sudan, UAE, and Tanzania have either existing domestic legislation dealing with the crime of hostage-taking, or they have enacted legislation implementing the Convention.[8]

Similar in size, the 1988 SUA Convention currently has 163 parties, including all of the participants in the DCOC except Eritrea and Somalia.[9] Of the participants in the Djibouti Code of Conduct, Ethiopia, Jordan, Kenya, Maldives, Oman, South Africa, Sudan, UAE, Tanzania, and Yemen have either existing domestic legislation addressing maritime security, or they enacted legislation implementing the Convention.[10]

The 2005 SUA Protocol is the smallest of the three conventions, with a current membership of 29 parties. None of the participants in the DCOC are party to the 2005 SUA Protocol except Saudi Arabia.[11]

As discussed in the following sections, these three conventions can adequately provide a framework for combating piracy, which is the central goal of the DCOC. This brief status report suggests that there are several holes in the legal framework to diffuse the piracy situation off the coast of Somalia. The remainder of this article propounds that until all DCOC participants ratify and implement these important conventions, the DCOC objectives—namely, providing lasting solutions to maritime piracy—cannot be obtained. By building a complete foundation for legal accountability of pirates through these treaties, the DCOC countries would serve both their individual and collective self-interests.

---

8. *See generally Browse Countries*, U.N. OFFICE ON DRUGS & CRIME, https://www.unodc.org/tldb/browse_countries.html (last visited Mar. 14, 2013) (listing U.N. member states and linking to each state's substantive criminal law implementing the Hostage-Taking Convention).

9. IMO, *Status of Multilateral Conventions and Instruments in Respect of Which the International Maritime Organization or Its Secretary-General Performs Depository or Other Functions* 418–19 (2014), http://www.imo.org/About/Conventions/StatusOfConventions/Documents/Status%20-%202014.pdf.

10. *See Browse Countries*, *supra* note 8 (providing a link to each state's substantive criminal law relating to maritime security); U.N. Secretary-General, Letter dated 23 March 2012 from the Secretary-General to the President of the Security Council, U.N. Doc. S/2012/177 (Mar. 23, 2012) (detailing the domestic enactment of anti-piracy criminal legislation and the prosecution efforts against pirates in forty-two U.N. member states); *see generally National Legislation on Piracy*, U.N. OCEANS AND LAW OF THE SEA, http://www.un.org/Depts/ los/piracy/piracy_national_legislation.htm (last updated Oct. 26, 2011) (listing those states with implementing legislation on piracy in compliance with G.A. Res. 64/71).

11. *See* IMO, *supra* note 9, at 430–31 (listing, *inter alia*, those states that are party to the 2005 SUA Protocol).

B. Criminal Jurisdiction at Sea Generally

The existence and scope of criminal jurisdiction at sea is governed by the U.N. Convention on the Law of the Sea (UNCLOS). In UNCLOS, who may exercise criminal jurisdiction at sea depends on the maritime location. Seaward of the territorial sea, the flag state has exclusive jurisdiction over vessels flying its flag.[12] Except in cases of piracy or suspected statelessness,[13] no foreign state may board another nation's vessels or arrest persons on board without the vessel's permission, granted ad hoc or in advance by international agreement. This rule was not changed by the 2005 SUA Protocol.

In the territorial sea, generally speaking, no foreign vessel may be boarded without the coastal state's permission. This is not always the case, as some coastal states also require the flag state's permission to board.[14] UNCLOS seeks to restrain the exercise of criminal jurisdiction by the coastal state on board a foreign ship in the territorial sea. Article 27 of UNCLOS allows such jurisdiction in only a few enumerated circumstances:

> 1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the following cases:
>
> (a) if the consequences of the crime extend to the coastal State;
>
> (b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea;
>
> (c) if the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag State; or
>
> (d) if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances.

12. U.N. Convention on the Law of the Sea arts. 58(2), 92(1), *opened for signature* Dec. 10, 1982, 1833 U.N.T.S. 397 (entered into force Nov. 16, 1994) [hereinafter UNCLOS] (stating that flag states have exclusive jurisdiction over ships flying their flags in the high seas). All participants in the Djibouti Code of Conduct except Eritrea, Ethiopia and the UAE are party. *See infra* Table 1.

13. UNCLOS, *supra* note 12, arts. 105, 110, 1833 U.N.T.S. at 437, 438.

14. *Id.* art. 27, at 407.

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.

3. In the cases provided for in paragraphs 1 and 2, the coastal State shall, if the master so requests, notify a diplomatic agent or consular officer of the flag State before taking any steps, and shall facilitate contact between such agent or officer and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or in what manner an arrest should be made, the local authorities shall have due regard to the interests of navigation.

5. Except as provided in Part XII or with respect to violations of laws and regulations adopted in accordance with Part V, the coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.[15]

C. Obligations of State Parties

The Hostage-Taking Convention and the two SUA Conventions each obligate state parties to take a number of actions to carry out the international obligations the parties undertook by ratifying or acceding to those treaties.

First, state parties are required to make the offenses enumerated in the convention crimes under their national law punishable by "appropriate penalties which take into account the grave nature of those offenses."[16] These offenses are described in greater detail in the following section of this article. Next, state parties are required to

15. *Id.* Article 27 is adapted from Article 19 of the Convention on the Territorial Sea and the Contiguous Zone. *Compare id.* (stating UNCLOS' treatment of coastal state criminal jurisdiction over foreign ships), *with* Convention on the Territorial Sea and the Contiguous Zone art. 19, *opened for signature* Apr. 29, 1958, 15 U.S.T. 1606, 516 U.N.T.S. 205 (specifying the Convention on the Territorial Sea's treatment of coastal state criminal jurisdiction over foreign ships).

16. Hostage-Taking Convention, *supra* note 2, art. 2, 1316 U.N.T.S. at 207; 1988 SUA Convention, *supra* note 3, art. 5, 1678 U.N.T.S. at 226; 2005 SUA Protocol, *supra* note 4, art. 5.

establish jurisdiction over the offender: (a) if the offense occurred within its territory, including its territorial sea; (b) if it is the flag state; (c) if the offender is the state party's national; or (d) if the offender is present in the state party's territory.[17]

Additionally, state parties are required, if the alleged offender is present in the state party's territory, to take the individual into custody, and either seek to prosecute or extradite the individual.[18] Finally, state parties are required to provide the greatest measure of assistance in connection with the criminal proceedings. This may include supplying evidence in the case of the Hostage-Taking Convention or assistance in obtaining such evidence in the case of the SUA Convention, when the state parties have the information at their disposal.[19]

II. OFFENSES UNDER ALL THREE CONVENTIONS UNDER ANALYSIS

A. Offenses Under the Hostage-Taking Convention

Article 1 of the Hostage-Taking Convention defines the offense of hostage-taking as follows:

> 1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking hostages ("hostage-taking") with the meaning of this Convention.
>
> 2. Any person who:

17. *See* Hostage-Taking Convention, *supra* note 2, art. 5, 1316 U.N.T.S. at 207–08; 1988 SUA Convention, *supra* note 3, art. 6(1), 1678 U.N.T.S. at 226; 2005 SUA Protocol, *supra* note 4, art. 6(1). The SUA Conventions also permit a party to establish jurisdiction if a SUA offense (a) is committed by a stateless person habitually resident in that state, or (b) if one of its nationals is seized, threatened or killed, or (c) the offense is committed in an attempt to compel that state to do or abstain from doing any act. 1988 SUA Convention, *supra* note 3, art. 6(2), 1678 U.N.T.S. at 226; 2005 SUA Protocol, *supra* note 4, art. 6(2).

18. Hostage-Taking Convention, *supra* note 2, arts. 6(1), 8(1), 1316 U.N.T.S. at 208–09; 1988 SUA Convention, *supra* note 3, arts. 7(1), 10(1), 1678 U.N.T.S. at 227–29; 2005 SUA Protocol, *supra* note 4, arts. 7(1), 10(1).

19. Hostage-Taking Convention, *supra* note 2, art. 11(1), 1316 U.N.T.S. at 210; 1988 SUA Convention, *supra* note 3, art. 12(1), 1678 U.N.T.S. at 230; 2005 SUA Protocol, *supra* note 4, art. 12(1).

> (a) Attempts to commit an act of hostage-taking, or
>
> (b) Participates as an accomplice of anyone who commits or attempts to commit an act of hostage-taking likewise commits an offence for the purposes of this Convention.[20]

Accordingly, the offense of hostage-taking involves three elements as defined by this convention. The offense of hostage-taking requires (1) an individual to detain a person, (2) in order to compel another to act or not act, (3) as a condition for release of the hostage.

B. Offenses Under the 1988 SUA Convention

Article 3 of the 1988 SUA Convention defines the following offenses:

> 1. Any person commits an offence if that person unlawfully and intentionally:
>
> (a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
>
> (b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or
>
> (c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or
>
> (d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or
>
> (e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or
>
> (f) communicates information which he knows to be false, thereby endangering the safe navigation of a ship;[21] or

20. Hostage-Taking Convention, *supra* note 2, art. 1, 1316 U.N.T.S. at 207.

21. 1988 SUA Convention, *supra* note 3, art. 3(f), 1678 U.N.T.S. at 225; *see also* 2005 SUA Protocol, *supra* note 4, art. 4(2) (replacing subparagraph (f) with the following gender-neutral text: "communicates

(g) injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).[22]

2. Any person also commits an offence if that person:

(a) attempts to commit any of the offences set forth in paragraph 1; or

(b) abets the commission of any of the offences set forth in paragraph 1 perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or

(c) 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.[23]

Thus, the scope of maritime offenses under the 1988 SUA Convention is broad—it covers nearly all acts of violence committed against ships, and also punishes those who attempt, abet, or threaten such violent acts.

information which that person knows to be false, thereby endangering the safe navigation of a ship").

22. 1988 SUA Convention *supra* note 3, art. 3(g), 1678 U.N.T.S. at 225; *see also* 2005 SUA Protocol, *supra* note 4, art. 4(3) (deleting subparagraph (g) from the 1988 SUA Convention).

23. 1988 SUA Convention, *supra* note 3, art. 3, 1678 U.N.T.S. at 225; *see also* 2005 SUA Protocol, *supra* note 4, art. 4(4) (replacing paragraph 2 with the following text: "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 paragraphs 1 (b), (c), and (e), if that threat is likely to endanger the safe navigation of the ship in question."); *see also id.* art. 4(7) (moving provisions of subparagraphs (a) and (b) on accessory offenses to Article 3*quater*).

C. Offenses Under the 2005 SUA Protocol[24]

Paragraphs 5-7 of Article 4 of the 2005 SUA Protocol expand the reach created by the 1988 SUA Convention by adding four new categories of offenses under the Convention. These new categories include using a ship in a terrorist offense; transporting a WMD, delivery systems, and related items; transporting a terrorist fugitive; and accessory offenses.

1. Counterterrorism offenses

Article 4(5) of the 2005 SUA Protocol adds Article 3*bis*(1)(a) to the 1988 SUA Convention, making it an offense for a person to unlawfully and intentionally, with the purpose of intimidating a population, or compelling a government or an international organization to do or abstain from doing any of these acts:

> (i) use[] against or on a ship or discharge[] from a ship any explosive, radioactive material or BCN weapon[25] in a manner that causes or is likely to cause death or serious injury or damage;
>
> (ii) discharge[], from a ship, oil, liquefied natural gas, or other hazardous or noxious substance . . . in such a quantity or concentration that causes or is likely to cause death or serious injury or damage;
>
> (iii) use[] a ship in a manner that causes death or serious injury or damage; or (iv) threaten[] . . . to commit an offence set forth in subparagraph (a)(i), (ii), or (iii).[26]

2. Non-proliferation provisions

Article 4(5) of the 2005 SUA Protocol also adds 3*bis*(1)(b) to the 1988 SUA Convention and makes it an offense to transport 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

24. *See* S. TREATY DOC. NO. 110-8, at XI–XV (2007) [hereinafter SEN. T. DOC. 110-8], *available at* http://www.gpo.gov/fdsys/pkg/CDOC-110tdoc8/pdf/CDOC-110tdoc8.pdf (summarizing the new offenses created by the 2005 SUA Protocol concerning safety of maritime navigation and fixed platforms on the continental shelf).

25. 2005 SUA Protocol, *supra* note 4, art. 2(1)(d) (defining "BCN" as biological, chemical and nuclear).

26. *Id.* art. 4(5).

an international organization to do or to abstain from doing any act; or

(ii) any BCN weapon, knowing it to be a BCN weapon as defined in article 1; or

(iii) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special 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 IAEA comprehensive safeguards agreement; or

(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.[27]

These nonproliferation offenses make significant advances to counterterrorism efforts by filling a gap in the existing international treaty framework. The 2005 SUA Protocol requires criminalization of certain transports of nuclear-related items associated with nuclear weapons or nuclear explosive devices, and thus it provides a complementary law enforcement element to the nuclear nonproliferation regime. The revised Article 3*bis*(1)(b)(iv) of the 1988 SUA Convention pursuant to the 2005 SUA Protocol goes beyond the Treaty on the Non-Proliferation of Nuclear Weapons[28] (NPT), as it requires the criminalization of the transport of equipment, materials, or software or related technology that significantly contributes to the design or manufacture of delivery systems for nuclear weapons (other than those of NPT nuclear-weapon state parties). The nonproliferation offenses further the objectives of, and are complementary with, the nonproliferation obligations set forth in U.N. Security Council Resolutions 1540 and 1673, adopted in 2004 and 2006 respectively.[29]

27. *Id.*

28. Treaty on the Non-Proliferation of Nuclear Weapons, *opened for signature* July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161 (entered into force Mar. 5, 1970) (in which states undertake not to transfer nuclear weapons, but such conduct is not criminalized). All participants in the Djibouti Code of Conduct have either acceded or ratified this treaty. *See Status of the Treaty - Treaty on the Non-Proliferation of Nuclear Weapons*, UNODA, http://disarmament.un.org/treaties/t/npt (last visited Mar. 14, 2014).

29. S.C. Res. 1540, para. 1, U.N. Doc. S/RES/1540 (Apr. 28, 2004); S.C. Res. 1673, para. 1, U.N. Doc. S/RES/1673 (Apr. 27, 2006).

Under the 2005 SUA Protocol, Article 3*bis*(2) of the 1988 SUA Convention constitutes a nonproliferation "savings clause" by specifying that nuclear transport activities remain permissible under the 1988 SUA Convention in certain circumstances, notwithstanding the wording of the offenses in article 3*bis*(1)(b).[30] Article 3*bis*(2) states that transporting an item or material covered by Article 3*bis*(1)(b)(iii) or, insofar as it relates to a nuclear weapon or other nuclear explosive device, Article 3*bis*(1)(b)(iv), will not be an offense within the meaning of the 1988 SUA Convention if the item or material in question is transported to or from the territory of, or is otherwise transported under the control of a state party to the NPT. This is true where:

> (a) the resulting transfer or receipt, including internal to a State, of the item or material is not contrary to such State Party's obligations under the [NPT] and,
>
> (b) if the item or material is intended for the delivery system of a nuclear weapon or other nuclear explosive device of a State Party to the [NPT], the holding of such weapon or device is not contrary to that State Party's obligations under that Treaty.[31]

This nonproliferation savings clause in the revised Article 3*bis*(2) of the 1988 SUA Convention, coupled with the general provision in Article 2*bis*(3) declaring that the 1988 SUA Convention shall not affect the rights and obligations of state parties under the NPT, ensures that the 1988 SUA Convention is consistent with the rights and obligations of the state parties to the NPT (except to the extent that the 1988 SUA Convention goes beyond the NPT with respect to nuclear weapon delivery systems). As provided in Article 3*bis*(2) of the 1988 SUA Convention, the treaty would not require criminalization of the transport to or from the territory of, or under the control of, an NPT state party of source or special fissionable material. The same is true of equipment or material specifically designed or prepared for the processing, use, or production of special fissionable material, as long as the resulting transfer or receipt of such items or materials is not contrary to the NPT obligations of the NPT state party. This is the case even when a non-NPT party is on the "other end" of the transport to or from (or under the control of) the NPT state party.[32]

30. 2005 SUA Protocol, *supra* note 4, art. 4(5).

31. *Id.*

32. *Id.*

3. Transport of terrorist fugitives

Article 4(6) of the 2005 SUA Protocol adds Article 3*ter* to the 1988 SUA Convention. Article 3*ter* makes it an offense for a person to unlawfully and intentionally transport another person on board a ship with knowledge that the person has committed an act that constitutes an offense under Article 3, 3*bis* or 3*quater*, or an offense set forth in one of the treaties listed in the Annex to the 1988 SUA Convention. Furthermore, it is an offense to assist that person in evading criminal prosecution.[33] The Annex is added to the 1988 SUA Convention by Article 7 of the 2005 SUA Protocol.[34] The inclusion of such an Annex mirrors the approach to the Terrorist Financing Convention.[35] Although accessory provisions in the existing counterterrorism conventions and protocols may criminalize aiding and abetting a fugitive to flee during the course of a crime, this provision would criminalize assisting a fugitive to avoid apprehension after the crime has been completed.

4. Accessory offenses

Article 3*quater* provides a comprehensive framework creating criminal liability for accessory offenses. This was added to the 1988 SUA Convention by Article 4(7) of the 2005 SUA Protocol.[36] Subparagraph (a) of Article 3*quater* makes it an offense to kill or injure any person in connection with any offense under Articles 3(1), 3*bis*, or 3*ter* of the Convention. Subparagraph (b) of Article 3*quater* makes it an offense to attempt to commit an offense under Articles 3(1), 3*bis*(1)(a)(i)–(iii), or 3*quater*(a) of the 1988 SUA Convention. Subparagraphs (c) and (d) of Article 3*quater* make it an offense to participate as an accomplice or to organize or direct others in connection with any offense under Articles 3, 3*bis*, 3*ter*, or 3*quater*(a) or (b). Finally, subparagraph (e) of Article 3*quater* makes it an offense to contribute to the commission of one or more offenses under Articles 3, 3*bis*, 3*ter*, or 3*quater*(a) or (b) by a group of persons acting with a common purpose.[37] These accessory offenses are substantially the same as those provided for by the Terrorist

33. *Id.* art. 4(6).

34. *Id.* art. 4(7).

35. International Convention for the Suppression of the Financing of Terrorism, *opened for signature* Jan. 10, 2000, 2178 U.N.T.S. 229 (entered into force Apr. 10, 2002) [hereinafter Terrorism Financing Convention]. This treaty includes all participants in the Djibouti Code of Conduct except Eritrea and Somalia (although Somalia has signed it). *See infra* Table 2.

36. 2005 SUA Protocol, *supra* note 4, art. 4(7).

37. *Id.*

Bombings Convention[38] and the Terrorism Financing Convention.[39] They strengthen the ability of the international community to investigate, prosecute, and extradite those who conspire or otherwise contribute to the commission of offenses under the 1988 SUA Convention.

Thus, the SUA Conventions and the related treaties on nonproliferation and terrorism work in concert to provide an extensive legal regime where all manner of violent acts that could occur through maritime piracy are addressed.

III. REQUIREMENT FOR TRANSNATIONAL ELEMENT

For the Hostage-Taking Convention to apply, the offense must have some transnational character. In particular, the Hostage-Taking Convention provides that it does not apply if the offense is committed within a single state, or if the hostage and alleged offender are nationals of that state and the alleged offender is found in the territory of that state.[40]

For the SUA Conventions to apply to a particular situation, the offense must have a different transnational character. Offenses under the 1988 SUA Convention and the 2005 SUA Protocol apply "if the ship is navigating of 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."[41] Nevertheless, if the 1988 SUA Convention does not apply pursuant to Article 4(1), it applies "when the offender . . . is found in the territory of a State Party other than the State referred to in" Article 4(1).[42] Thus, the 1988 SUA Convention applies where a covered offense occurs in the territorial sea of a state or if the offender is found in the territory of another state party.

Accordingly, offenses under these conventions are not limited to the high seas and exclusive economic zone as in the case of piracy.

38. International Convention for the Suppression of Terrorist Bombings, *opened for signature* Jan. 12, 1998, 2149 U.N.T.S. 284 (entered into force May 23, 2001) [hereinafter Terrorist Bombing Convention]. All participants in the Djibouti Code of Conduct except Eritrea, Jordan, Oman, and Somalia are parties. *See infra* Table 2.

39. *See* Terrorist Bombing Convention, *supra* note 38, art. 2, 2149 U.N.T.S. at 285–86; Terrorism Financing Convention, *supra* note 35, art. 2, 2178 U.N.T.S. at 230–31.

40. Hostage-Taking Convention, *supra* note 2, art. 13, 1316 U.N.T.S. at 210.

41. 1988 SUA Convention, *supra* note 3, art. 4(1), 1678 U.N.T.S. at 225.

42. 1988 SUA Convention, *supra* note 3, art. 4(2), 1678 U.N.T.S. at 226; 2005 SUA Protocol, *supra* note 4, art. 4(2).

Rather, in defined circumstances, they may also occur in the territorial sea.

IV. PERSONS WHO CAN COMMIT HOSTAGE-TAKING OR SUA OFFENSES

There are three categories of persons who can commit the offense of hostage-taking. The first category is comprised of those that actually commit an act of hostage-taking. The second includes those that attempt to commit an act of hostage-taking. Finally, the third category comprises those that participate as an accomplice of anyone who commits or attempts to commit an act of hostage-taking.[43]

As opposed to the Hostage-Taking Convention, there are six categories of persons who can commit a SUA offense under the 2005 SUA Protocol. The six categories include those that actually commit a SUA offense; those that attempt to commit a SUA offense; those that participate as an accomplice of anyone who commits a SUA offense; those who organize or direct others to commit a SUA offense; those who unlawfully and intentionally injure or kill a person in connection with the commission of a SUA offense; and those who contribute to the commission of one or more SUA offenses by a group of persons' actions with a common purpose. For this final category, the action must be intentional, and it must occur either with the aim of furthering the criminal activity or criminal purpose of the group, where the activity or purpose involves the commission of a SUA offense, or the knowledge of the group's intention to commit a SUA offense.[44]

Under all three major treaties, the scope of the offenses can include piratical acts committed at sea.

V. INNOCENT PERSONS[45]

The 2005 SUA Protocol was drafted to prevent innocent seafarers from subjection to criminal prosecution under the 1988 SUA Convention simply for being on board a vessel that was engaged in illegal actions. This is the case even where the seafarer had mere knowledge of the criminal activity.

The offenses enumerated in Article 3*bis*(1)(b)[46] apply by virtue of the definition of "transport" in Article 2 of the 2005 SUA Protocol to

43. Hostage-Taking Convention, *supra* note 2, art. 1(2), 1316 U.N.T.S. at 207.

44. 2005 SUA Protocol, *supra* note 4, art. 4 (amending or creating Articles 3, 3*bis*, 3*ter*, 3*quater*).

45. SEN. T. DOC. 110-8, *supra* note 24, at XVI–XVII (describing how the 2005 SUA Protocol protects innocent seafarers from criminal prosecution).

those persons who initiate, arrange, or exercise effective control, including decision-making authority, over the movement of a person or item.[47] This definition would exclude from criminal liability seafarers and employees on shore, except in those rare cases where they are actively engaged in the criminal activity.

The individual offenses added by the 2005 SUA Protocol contain subjective elements that would exclude innocent carriers and seafarers from their reach. For example, under the provision that covers certain dual use items (Article 3*bis*(1)(b)(iv)), the transporter must have the intention that the dual use item will be used in the design, manufacture, or delivery of a BCN weapon.[48] In most situations, a seafarer, for example, would not have the requisite general knowledge and intent, let alone the additional specific intent required under this provision. When containers are ordinarily sealed and loaded at port, a seafarer likely would not know what is in the containers. In order for a seafarer to be held criminally liable, a prosecuting state must prove three elements. First, the state must prove that the seafarer knew what the item was. Second the state must prove that the seafarer intentionally initiated, arranged, or exercised effective control, including decision-making authority, over the movement of the item by, for example, smuggling the item on board or placing the item in a container to be loaded on the ship. Finally, the prosecuting state must prove that the seafarer intended for the item to be used in the design, manufacture, or delivery of a BCN weapon.[49]

VI. SHIP BOARDING UNDER THE 2005 SUA PROTOCOL

The 2005 SUA Protocol contains a comprehensive provision on the procedures for obtaining flag state consent to board ships seaward of the territorial sea suspected of committing offenses. The 2005 SUA Protocol also includes a provision outlining the conduct of such boardings.[50]

Article 8(2) of the 2005 SUA Protocol adds Article 8*bis* to the 1988 SUA Convention.[51] Article 8*bis* creates a ship boarding regime by establishing a comprehensive set of procedures and protections designed to facilitate the boarding of a vessel suspected of being

46. *See supra* Section II.C.2.

47. 2005 SUA Protocol, *supra* note 4, art. 2.

48. *Id.* art. 4(5).

49. *See id.* arts. 2, 4(5).

50. *See* SEN. T. DOC. 110-8, *supra* note 24, at XVII–XXIV (summarizing Article 8*bis* of the 2005 SUA Protocol).

51. 2005 SUA Protocol, *supra* note 4, art. 8(2).

involved in an offense under the 1988 SUA Convention.[52] The boarding procedures do not change existing international maritime law, nor do they infringe upon the traditional principle of freedom of navigation. Instead, the procedures eliminate the need to negotiate time-consuming ad hoc boarding arrangements when facing the immediacy of ongoing criminal activity.

The first three paragraphs of Article 8*bis* set forth general parameters for the ship boarding regime. State parties must cooperate to the fullest extent possible to prevent and suppress offenses under the 1988 SUA Convention, in conformity with international law, and to respond to requests under the boarding regime as expeditiously as possible.[53] This provision is derived from Article 17(1) of the 1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances ("1988 Vienna Narcotic Drug Convention"),[54] in addition to Article 7 of the Protocol Against the Smuggling of Migrants by Land, Sea and Air ("Migrant Smuggling Protocol"), supplementing the U.N. Convention Against Transnational Organized Crime.[55]

Each request should, if possible, contain the name of the suspected ship, the ship's International Maritime Organization (IMO) identification number, the port of registry, the ports of origin and destination, and any other relevant information.[56] In addition, each state party must take into account the dangers and difficulties involved in boarding a ship at sea and searching its cargo. Each state party must consider whether other appropriate measures agreed between the states concerned could be more safely taken in the next port of call or elsewhere.[57]

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52. *Id.*

53. *Id.*

54. U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, *opened for signature* Dec. 20, 1988, 1582 U.N.T.S. 165 (entered into force Nov. 11, 1990) [hereinafter 1988 Vienna Narcotic Drug Convention]. All participants in the Djibouti Code of Conduct except Somalia are party to this Convention. *See infra* Table 2.

55. Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime, *opened for signature* Dec. 12, 2000, 2241 U.N.T.S. 507 (entered into force Jan. 28, 2004) [hereinafter Migrant Smuggling Protocol]. All participants in the Djibouti Code of Conduct except Comoros, Eritrea, Jordan, Maldives, Somalia, Sudan, UAE, and Yemen are party to this Protocol. *See infra* Table 2.

56. 2005 SUA Protocol, *supra* note 4, art. 8 (adding these requirements in Article 8*bis*(2)).

57. *Id.* art. 8 (including these factors in Article 8*bis*(3)).

Pursuant to paragraph 4 of article 8*bis*, if a state party has reasonable grounds to suspect that an offense under Articles 3, 3*bis*, 3*ter*, or 3*quater* of the 1988 SUA Convention has been, is being, or is about to be committed involving a ship flying its flag, the state party may request the assistance of other state parties in preventing or suppressing that offense. The requested state parties shall use their best endeavors to render such assistance within the means available to them.[58] This provision is derived from Article 17(2) of the 1988 Vienna Narcotic Drug Convention and Article 8(1) of the Migrant Smuggling Protocol. This provision does not obligate a party to board or take law enforcement actions on foreign-flagged ships, except to the extent it is required to use best endeavors to render assistance within the means available to it upon request of a flag state to assist in prevention or suppression of an offense specified under the 1988 SUA Convention.[59] The absence of a reference in paragraph 4 to "marks of registry" (both "flying its flag" and "displaying marks of registry" are used in paragraph 5) is of no consequence because each refers to indicia of the nationality of the vessel permissible. This is reflected in Articles 5 and 6 of the 1958 Convention on the High Seas,[60] and Articles 91 and 92 of the UNCLOS.[61]

Paragraph 5 of Article 8*bis* sets forth the procedures for ship boarding. Whenever law enforcement or other authorized officials of a state party ("the Requesting Party") encounter a ship flying the flag or displaying the marks of registry of another state party ("the First Party") located seaward of any state's territorial sea, and the requesting party has reasonable grounds to suspect that the ship or a person on board the ship has been, is, or is about to be involved in the commission of an offense under Articles 3, 3*bis*, 3*ter*, or 3*quater* of the 1988 SUA Convention, and the requesting party desires to board, it shall take the following steps. In this situation, law enforcement must request, in accordance with paragraphs 1 and 2, that the First Party confirm the claim of nationality. If nationality is confirmed, the Requesting Party shall ask the First Party (also called "the flag state") for authorization to take appropriate measures. This may

58. *Id.* art. 8 (adding this provision in Article 8*bis*(4)).

59. 1988 Vienna Narcotic Drug Convention, *supra* note 54, art. 17, 1582 U.N.T.S. at 197; Migrant Smuggling Protocol, *supra* note 55, art. 8(1), 2241 U.N.T.S. at 510.

60. Convention on the High Seas, *opened for signature* Apr. 29, 1958, 13 U.S.T 2312, 450 U.N.T.S. 82 (entered into force Sept. 30, 1962), [hereinafter High Seas Convention]. Parties to this treaty include only Kenya, Madagascar, Mauritius and South Africa from the Djibouti Code of Conduct.

61. UNCLOS, *supra* note 12, arts. 91, 92, 1833 U.N.T.S. at 433; *see also* 2005 SUA Protocol, *supra* note 4, art. 8 (adding similar provisions in Article 8*bis*(5)(a),(b), and (d)).

include stopping, boarding, and searching the ship, its cargo and persons on board, as well as questioning the persons on board.[62]

The flag state may, pursuant to Article 8*bis*(5)(c), authorize the Requesting Party to board and take appropriate measures described in subparagraph (b), conduct the boarding and search with its own law enforcement or other officials, conduct the boarding and search together with the requesting party, or decline to authorize a boarding and search.[63] Article 8*bis*(5)(c) expands on the provisions of Article 17(4) of the 1988 Vienna Narcotic Drug Convention and Article 8(2) of the Migrant Smuggling Protocol. Nothing in Article 8*bis*(5) requires the flag state to provide any such authorization. Moreover, Article 8*bis*(5)(c) makes clear that the Requesting Party may not take any measures set forth above without the express authorization of the flag state. A flag state may also impose certain restrictions on the Requesting Party's board and search measures, in accordance with Article 8*bis*(7), discussed in greater detail below.

A state party may provide advance consent to board ships flying its flag or displaying its mark of registry pursuant to subparagraphs (d) or (e) of Article 8*bis*(5) by notification to the IMO Secretary-General.[64] A notification pursuant to Article 8*bis*(5)(d) would grant the Requesting Party authorization to board and search a ship, its cargo and persons on board, and to question the persons on board in order to locate and examine documentation of its nationality and determine if an offense under Articles 3, 3*bis*, 3*ter*, or 3*quater* of the 1988 SUA Convention has been, is being, or is about to be committed, if there is no response from that state party, within four hours of acknowledgement of its receipt of a request to confirm nationality.[65] Notification pursuant to Article 8*bis*(5)(e) would provide general advance consent for other state parties to board and search such ships, their cargo, and persons on board, and to question the persons on board in order to determine if an offense under Articles 3, 3*bis*, 3*ter*, or 3*quater* of the 1988 SUA Convention has been, is being, or is about to be committed. These optional notifications may be withdrawn at any time.[66] Advance consent pursuant to either subparagraph (d) or (e) is not authorization for detention of the vessel, cargo, or persons on board or any other enforcement action.[67]

62. 2005 SUA Protocol, *supra* note 4, art. 8 (adding these provisions to Article 8*bis*(5)(a) and (b)).

63. *Id.* (adding the authorization to Article 8*bis*(5)(c)).

64. 2005 SUA Protocol, *supra* note 4, art. 8(2) (adding these provisions to Article 8*bis*(5)(d) and (e)).

65. *Id.*

66. *Id.*

67. *Id.*

Under paragraph 6 of Article 8*bis*, when the requesting Party boards and finds evidence of the conduct described in Articles 3, 3*bis*, 3*ter* or 3*quater*, the flag state may authorize the Requesting Party to detain the ship, cargo, and persons on board, pending receipt of disposition instructions from the flag state. The Requesting Party must in all cases promptly inform the flag state of the results of a boarding, search, and detention conducted pursuant to Article 8*bis*, including discovery of evidence of illegal conduct that is not subject to the 1988 SUA Convention.[68]

Paragraph 7 of Article 8*bis* permits a flag state to subject its authorization under paragraphs 5 or 6 to conditions, including obtaining additional information from the Requesting Party and relating to responsibility for and the extent of measures to be taken. This provision builds on the text of Article 17(6) of the 1988 Vienna Narcotic Drug Convention and Article 8(5) of the Migrant Smuggling Protocol. Paragraph 7 also prohibits the Requesting State from taking any measures without the express authorization of the flag state, except when necessary to relieve imminent danger to the lives of persons or when otherwise derived from bilateral or multilateral agreements.[69]

Paragraph 8 of Article 8*bis* reaffirms explicitly that, for all boardings under Article 8*bis*, the flag state retains 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 party that has jurisdiction under Article 6 of the 1988 SUA Convention.[70]

Paragraph 9 of Article 8*bis* sets forth overarching principles for the use of force by officials acting under the ship boarding regime. It directs state parties to avoid the use of force "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."[71] Paragraph 9 also specifies that any such use of force "shall not exceed the minimum degree of force which is necessary and reasonable in the circumstances."[72] The language of Article 8*bis*(9) is drawn from Article 22(1)(f) of the Agreement for the Implementation of the Provisions of the U.N. Convention on the Law of the Sea of 10 December 1982, Relating to the Conservation and Management of

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

Straddling Fish Stocks and Highly Migratory Fish Stocks.[73] As such, this use of force provision is consistent with current practice on the use of force in international law.

Paragraph 10 of Article 8*bis* establishes a number of safeguard provisions to protect seafarers and carriers during the conduct of ship boardings. First, subparagraph (a) sets forth a series of safeguards that a state party taking measures against a ship must respect. These measures include taking due account of the need not to endanger the safety of life at sea; treating all persons in a manner that preserves their human dignity and complies with applicable provisions of international law; ensuring that a boarding and search is conducted in accordance with applicable international law; taking due account of the safety and security of the ship and cargo; taking due account of the need not to prejudice the commercial or legal interests of the flag state; ensuring, within available means, that any measure taken with regard to the ship or its cargo is environmentally sound; ensuring that any person on board against whom proceedings may be commenced in connection with offenses under the 1988 SUA Convention is guaranteed fair treatment, regardless of location; ensuring that the master of a ship is advised of its intention to board, and is, or has been, afforded the opportunity to contact the ship's owner and the flag state at the earliest opportunity; and taking reasonable efforts to avoid undue detention or delay of the ship.[74] These safeguards build on those contained in Article 17(5) of the 1988 Vienna Narcotic Drug Convention and Article 9 of the Migrant Smuggling Protocol.[75]

Article 8*bis*(10)(b) establishes a framework for liability and recourse arising from any damage, harm, or loss attributable to state

73. Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, *opened for signature* Dec. 4, 1995, 2167 U.N.T.S. 3 (entered into force Dec. 11, 2001). Of the participants in the Djibouti Code of Conduct, France, Kenya, Maldives, Mauritius, Mozambique, Oman, Seychelles and South Africa are party. *Compare Djibouti Code of Conduct*, OCEANS BEYOND PIRACY, http://oceansbeyondpiracy.org/matrix/activity/djibouti-code-conduct (last visited Mar. 14, 2014), *with Status of Treaties*, U.N. TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-7&chapter=21&lang=en.

74. 2005 SUA Protocol, *supra* note 4, art. 8(2).

75. 1988 Vienna Narcotic Drug Convention, *supra* note 54, art. 17(5), 1582 U.N.T.S. at 197 ("Parties concerned shall take due account of the need not to endanger the safety of life at sea, the security of the vessel and the cargo or to prejudice the commercial and legal interests of the flag State or any other interested state"); Migrant Smuggling Protocol, *supra* note 55, art. 9, 2241 U.N.T.S. at 511 (containing a number of safeguard clauses, including those related to the safety of the vessel and persons on board).

parties taking measures under Article 8*bis*. It clarifies that authorization to board by a flag state shall not per se give rise to its liability. Liability for damage, harm, or loss as a result of ship boarding activities arises under two circumstances. The first circumstance occurs when the grounds for ship boarding measures prove to be unfounded, provided that the ship has not committed any act justifying the measures taken. The second circumstance takes place when such measures are unlawful or unreasonable in light of the available information to implement the provisions of Article 8*bis*.[76] State parties are obligated to "provide effective recourse in respect of such damage, harm or loss."[77] This provision does not require a state party to provide a specific remedy, forum, or venue, and it does not require any form of binding dispute resolution. Accordingly, the manner of "effective recourse" remains at the discretion of each state party. Article 8*bis*(10)(b) of the 1988 SUA Convention is consistent with the claims provisions of existing relevant international treaties, including Article 22(3) of the High Seas Convention and Article 9(2) of the Migrant Smuggling Protocol.[78]

Article 8*bis*(10)(c) requires any state party that takes measures against a ship in accordance with the 1988 SUA Convention to take due account of the need not to interfere with the rights and obligations and exercise of jurisdiction of coastal states in accordance with the international law of the sea and the authority of flag states to exercise jurisdiction and control in administrative, technical, and social matters involving the ship.[79] This provision builds upon Article 17(11) of the 1988 Vienna Drug Convention, Article 94(1) of UNCLOS, and Article 9(3) of the Migrant Smuggling Protocol.[80]

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76. 2005 SUA Protocol, *supra* note 4, art. 8(2).

77. *Id.*

78. High Seas Convention, *supra* note 60, art. 22(3), 450 U.N.T.S. at 94 ("If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained."); Migrant Smuggling Protocol, *supra* note 55, art. 9(2), 2241 U.N.T.S. at 511 ("Where the grounds for measures taken pursuant to article 8 of this Protocol prove to be unfounded, the vessel shall be compensated for any loss or damage that may have been sustained, provided that the vessel has not committed any act justifying the measures taken.").

79. 2005 SUA Protocol, *supra* note 4, art. 8(2).

80. 1988 Vienna Narcotic Drug Convention, *supra* note 54, art. 17(11), 1582 U.N.T.S. at 198 (stating that measures should not affect the rights and obligations and the exercise of jurisdiction of coastal states); UNCLOS, *supra* note 12, art. 94(1), 1833 U.N.T.S. at 434 ("Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag."); Migrant Smuggling Protocol, *supra* note 55, art. 9(3), 2241 U.N.T.S. at 511

Subparagraphs (d) and (e) of Article 8*bis*(10) designate who may conduct ship boardings consistent with the 1988 SUA Convention. Article 8*bis*(10)(d) requires that any ship boarding measure must be carried out by law enforcement or other authorized officials from warships or military aircraft, or from other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect. Additionally, notwithstanding Articles 2 and 2*bis* of the 1988 SUA Convention, the provisions of Article 8*bis* will apply.[81] This provision reflects the accepted international law rule as set out in Article 17(10) of the 1988 Vienna Narcotic Drug Convention, Article 9(4) of the Migrant Smuggling Protocol, Articles 21 and 23(4) of the High Seas Convention, and Articles 107 and 111(5) of UNCLOS.[82] Article 8*bis*(10)(e) defines "law enforcement or other authorized officials" as "uniformed or otherwise clearly identifiable members of law enforcement or other government authorities duly authorized by their government."[83] For the purposes of ship boarding under the 1988 SUA Convention, these officials must provide appropriate government-issued identification documents for examination by the master of the ship upon boarding.

The ship boarding provisions under the 1988 SUA Convention do not apply to or limit boarding of ships conducted by any state party in accordance with international law, seaward of any state's territorial sea. Paragraph 11 of Article 8*bis* confirms this understanding of the 1988 SUA Convention's applicability.[84] Other lawful ship boarding measures include, but are not limited to, the right of approach and visit; belligerent rights under the law of war; self-defense; the enforcement of U.N. Security Council Resolutions; actions taken pursuant to specific bilateral or multilateral instruments such as counter-narcotics agreements; the rendering of assistance to persons, ships, and property in peril; authorization from the flag state to take action; or the historic role of the armed forces in law enforcement activities on the high seas.[85] Article 8*bis* would not affect these rights.

(indicating that measures cannot interfere with the exercise of jurisdiction of the coastal or flag state).

81. 2005 SUA Protocol, *supra* note 4, art. 8(2).

82. 1988 Vienna Narcotic Drug Convention, *supra* note 54, art. 17(10), 1582 U.N.T.S. at 198 (stating that action must be carried out by warships, military aircraft, or other vessels marked as being in government service); Migrant Smuggling Protocol, *supra* note 55, art. 9(4), 2241 U.N.T.S. at 511 (same); High Seas Convention, *supra* note 60, arts. 21, 23(4), 450 U.N.T.S. at 92, 94 (same); UNCLOS, *supra* note 12, arts. 107, 111(5), 1833 U.N.T.S. at 437, 439 (same).

83. 2005 SUA Protocol, *supra* note 4, art. 8(2).

84. *Id.*

85. J. Ashley Roach, *Global Conventions on Piracy, Ship Hijacking, Hostage Taking and Maritime Terrorism: Prospects for Cooperation*, *in* PIRACY

Paragraph 12 of Article 8*bis* encourages states parties to develop standard operating procedures for joint operations, and recommends consultation, as appropriate, with other state parties with a view to harmonizing such standard operating procedures. Paragraph 13 allows state parties to conclude agreements or arrangements between themselves to facilitate law enforcement operations carried out pursuant to Article 8*bis*. This provision is adapted from Article 17(9) of the 1988 Vienna Narcotic Drug Convention and Article 17 of the Migrant Smuggling Protocol.[86] Paragraph 14 requires each state party to take appropriate measures to ensure that law enforcement or other authorized officials acting on its behalf are empowered to conduct ship boarding activities and take other appropriate measures pursuant to Article 8*bis*.[87]

Finally, paragraph 15 of Article 8*bis* directs each state party to designate the appropriate authority or authorities to receive and respond to requests for assistance, confirmation of nationality, and authorization to take appropriate measures. This designation, including contact information of the authority or authorities, must be notified to the IMO Secretary-General within one month of becoming a party. The IMO Secretary-General will inform all other state parties within one month of such designation. Under paragraph 15 of Article *8bis,* each state party is responsible for providing prompt notice through the IMO Secretary-General of any changes in the designation or contact information.[88] This provision is adapted from Article 17(7) of the 1988 Vienna Narcotic Drug Convention and Article 8(6) of the Migrant Smuggling Protocol.[89]

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86. 1998 Vienna Narcotic Drug Convention, *supra* note 54, art. 17(9), 1582 U.N.T.S. at 198.

87. Migrant Smuggling Protocol, *supra* note 55, art. 17, 2241 U.N.T.S. at 515.

88. 2005 SUA Protocol, *supra* note 4, art. 8(2). Only Latvia is reported by the IMO to have made the notification required by Article 8*bis*. IMO, *supra* note 9, at 431.

89. 1988 Vienna Narcotic Drug Convention, *supra* note 54, art. 17(7), 1582 U.N.T.S. at 198 (stating "at the time of becoming a Party to this Convention, each Party shall designate an authority or, when necessary, authorities to receive and respond to such requests. Such designation shall be notified through the Secretary-General to all other Parties within one month of the designation."); Migrant Smuggling Protocol, *supra* note 55, art. 8(6), 2241 U.N.T.S. at 511 (stating "[e]ach State Party shall designate an authority or, where necessary, authorities to receive and respond to requests for assistance, for confirmation of registry or of the right of a vessel to fly its flag and for authorization to take appropriate measures. Such designation shall be notified through

Article 9 of the 2005 SUA Protocol amends Article 10(2) of the 1988 SUA Convention by adding specific reference to international law including international human rights law. This amendment is intended to further enhance the safeguards for seafarers. As revised, Article 10(2) of the Convention provides that any person who is taken into custody or otherwise subject to proceedings under the 1988 SUA Convention shall be guaranteed fair treatment, including all rights and guarantees under the law of the state in which that person is present, as well as "applicable provisions of international law, including international human rights law."[90] This additional text already appears in Article 17 of the Terrorism Financing Convention and in Article 14 of the Terrorist Bombings Convention.[91]

VII. Arrest and Prosecution

There is no authority under the 1988 SUA or Hostage-Taking Conventions to board ships on high seas and seize offenders without flag state consent.[92] These conventions also apply when the alleged offenders are present in the territory or territorial sea of a state party.[93] Once alleged offenders are present in the territory of a state party, the state party is under an obligation to take the offenders into custody, and to prosecute them or extradite them to their home country.[94]

Under the 1988 SUA Convention, the master of a ship may deliver to any other state party "any person who he has reasonable grounds to believe has committed [a SUA offense]."[95] For example,

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the Secretary-General to all other States Parties within one month of the designation.").

90. 2005 SUA Protocol, *supra* note 4, art. 9.

91. Terrorism Financing Convention, *supra* note 35, art. 17, 2178 U.N.T.S. 197 at 237 (stating that any person taken into custody under the convention shall be treated fairly in accordance with international law and international human rights law); Terrorist Bombings Convention, *supra* note 38, art. 14, 2149 U.N.T.S. at 290 (same).

92. 1988 SUA Convention, *supra* note 3, art. 3(1)(a), 1678 U.N.T.S. at 224; *see* Hostage-Taking Convention, *supra* note 2, art. 14, 1316 U.N.T.S. at 210 ("Nothing in this Convention shall be construed as justifying the violation of the territorial integrity or political independence of a State in contravention of the Charter of the United Nations.").

93. 1988 SUA Convention, *supra* note 3, art. 4(1), 1678 U.N.T.S. at 225; *see* Hostage-Taking Convention, *supra* note 2, art. 5(1)(a), 1316 U.N.T.S. at 207.

94. 1988 SUA Convention, *supra* note 3, art. 10(1), 1678 U.N.T.S. at 229; *see* Hostage-Taking Convention, *supra* note 2, art. 6(1), 1316 U.N.T.S. at 208.

95. 1988 SUA Convention, *supra* note 3, art. 8(1), 1678 U.N.T.S. at 228.

since Kenya is a party to the 1988 SUA Convention and the Hostage-Taking Convention, warships that seize pirates in the territorial sea or exclusive economic zone (EEZ) of Somalia can deliver them to Kenya for prosecution and trial. The Hostage-Taking Convention and the 1988 SUA Convention also have provisions which make it possible to arrest and prosecute accomplices and leaders on land. The conventions provide that a person commits an offense if they abet the commission of any offense or if they are an accomplice of a person who commits an offense. Relevant accomplice provisions were discussed earlier in this article.

VIII. EXTRADITION[96]

The Hostage-Taking Convention and the 1988 SUA Convention both contain similar provisions on extradition. While the 2005 SUA Protocol brings the extradition provisions of the 1988 SUA Convention in line with the modern terrorism conventions, the extradition provisions of the Hostage-Taking Convention have not yet been updated.

Article (10)(2) of the 2005 SUA Protocol adds a new provision to the 1988 SUA Convention, Article 11*bis*, which states that none of the offenses under the 1988 SUA Convention shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offense.[97] Thus, a state may not refuse a request for extradition or mutual legal assistance solely by claiming a political offense. Similarly, a state cannot base its refusal on the grounds that the offense was connected with a political offense, or the offense was inspired by political motives. Article 11*bis* thus usefully restricts a state's ability to utilize the political offense exception in response to extradition requests pursuant to the 1988 SUA Convention. Like similar provisions in Article 14 of the Terrorism Financing Convention and Article 11 of the Terrorist Bombings Convention, Article 11*bis* builds on this trend by making the restriction on the invocation of the political offense exception for requests based on offenses under Articles 3, 3*bis*, 3*ter*, and 3*quater* a matter of general application. This now occurs in place of a dependence on the terms of individual bilateral law enforcement treaties between the states parties.[98]

Article 10(3) of the 2005 SUA Protocol adds Article 11*ter* to the 1988 SUA Convention, which provides that the 1988 SUA Convention

96. The summary of these provisions on extradition is taken from Senate Treaty Document 110-8. SEN. T. DOC. 110-8 *supra* note 24, at XXIV–XXV.

97. *Id.* at XXIV.

98. *Id.*

does not impose an obligation to extradite or afford mutual legal assistance if the requested state party has substantial grounds for believing that such a request for extradition or mutual legal assistance has been made for a group of potential purposes. These purposes include prosecuting and punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion, or gender. Further, the 1988 SUA Convention does not improve on obligations to extradite or afford mutual legal assistance if compliance with the request would cause prejudice to that person's position for any of the same reasons outlined above.[99] This Article is similar to provisions already included in a number of existing U.N. counterterrorism treaties, including Article 12 of the Terrorist Bombings Convention and Article 15 of the Terrorism Financing Convention.[100]

IX. MUTUAL LEGAL ASSISTANCE[101]

The Hostage-Taking Convention and the 1988 SUA Convention both contain similar provisions on mutual legal assistance. While the 2005 SUA Protocol brings the mutual legal assistance provisions of the 1988 SUA Convention in line with the modern terrorism conventions, the mutual legal assistance provisions of the Hostage-Taking Convention have not yet been updated.

Article 11(1) of the 2005 SUA Protocol makes conforming changes to Article 12(1) of the 1988 SUA Convention, which maintains state parties' obligations to afford one another assistance in connection with criminal proceedings brought for offenses under the 1988 SUA Convention. The amended provision updates the terms of assistance to encompass the new categories of offenses under the 1988 SUA Convention, as amended by the 2005 SUA Protocol, but it does not change the substantive language describing the degree of assistance required.[102]

Article 11(2) of the 2005 SUA Protocol does, however, establish a system to enhance the assistance that state parties may provide to each other in connection with offenses under the 1988 SUA Convention. It provides for a new article, Article 12*bis*, to govern the transfer of individuals in the custody of one state party to provide

99. *Id.* at XXIV–XXV.

100. *Id.* at XXV.

101. The summary of these provisions on mutual legal assistance is taken from Senate Treaty Document 110-8. SEN. T. DOC. 110-8 *supra* note 24, at XXV–XXVI.

102. *Id.* at XXV.

assistance to another state party in connection with an investigation or prosecution for offenses under the 1988 SUA Convention.[103]

Paragraph 1 of Article 12*bis* provides that a person who is being detained or is serving a sentence in the territory of one state party whose presence in another state party is requested for identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offenses set forth in Articles 3, 3*bis*, 3*ter*, and 3*quater* may be transferred, if two conditions are met. First, the person in custody must freely give informed consent to be transferred. Second, the competent authorities of both states must agree upon the transfer, subject to such conditions as those states may deem appropriate.[104] Similar provisions for the temporary transfer of persons in custody of one state party to another state party are included in Article 16 of the Terrorism Financing Convention, Article 13 of the Terrorist Bombings Convention, and numerous bilateral mutual legal assistance treaties.[105]

Paragraph 2 of Article 12*bis* details certain rights and obligations of a state to which a person is transferred pursuant to Article 12*bis*. Under subparagraph (a), the state to which the person is transferred maintains the authority and obligation to keep the transferred person in custody, unless otherwise requested or authorized by the state from which the person was transferred. Next, subparagraph (b) requires the state to which the person is transferred to implement without delay its obligation to return the person to the custody of the state from which the person was transferred as agreed in advance, or as otherwise agreed, by the competent authorities of both states. Additionally, subparagraph (c) states that return of a person transferred under Article 12*bis* shall not require initiation of extradition proceedings. Finally, subparagraph (d) requires that the person transferred receive credit for service of the sentence being served in the state from which the person was transferred for time spent in the custody of the state to which the person was transferred.[106]

Paragraph 3 of Article 12*bis* establishes a default rule that a person transferred pursuant to Article 12*bis*, whatever that person's nationality, shall not be prosecuted, detained, or subjected to any other restriction of personal liberty in the territory of the state to which that person is transferred for acts or convictions prior to that person's departure from the territory of the transferring state. However, the state party from which the person was transferred

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.* at XXV–XXVI.

pursuant to Article 12*bis* may agree otherwise, in which case this default rule will not impair the agreement between the state from which the person is transferred and the state to which the person is transferred.[107]

Article 12 of the 2005 SUA Protocol makes conforming changes to Article 13 of the 1988 SUA Convention to incorporate references to the new offenses. As amended, Article 13 provides that state parties shall cooperate in the prevention of offenses set forth in Articles 3, 3*bis*, 3*ter*, and 3*quater* by taking all practicable measures to prevent preparation in their respective territories for the commission of such offenses and by exchanging information and coordinating measures to prevent the commission of such offenses. Article 13 also provides that any state party shall be bound to exercise all possible efforts to avoid undue delay or detention of a ship, its passengers, crew, or cargo when the passage of that ship has been delayed or interrupted due to the commission of an offense under Articles 3, 3*bis*, 3*ter* or 3*quater*.[108]

Articles 13 and 14 of the 2005 SUA Protocol make conforming amendments to Article 14 and Article 15, paragraph 3, of the 1988 SUA Convention to make those provisions consistent with the new articles and terminology added to the 1988 SUA Convention by the 2005 SUA Protocol. These provisions govern information sharing under the 1988 SUA Convention with respect to any offense or suspected offenses under the 1988 SUA Convention.[109]

X. HOW THESE CONVENTIONS DEAL WITH PIRACY

Hijackings off Somalia are offenses under the Hostage-Taking Convention because the pirates intend to hold the crew hostage until ransom is paid. The pirates clearly commit the offense of hostage-taking when they board (or attempt to board) the ship, detain the crew, and finally release the crew after ransom is demanded and paid. Again, in the context of Somali piracy, offenders of hostage-taking include the pirates who board and detain a ship, and also those pirates who attempt to stop a ship but fail (perhaps due to the successful employment of Best Management Practices).[110] In addition, those who assist the pirates, including the "mother ship" operators and providers of logistics support ashore, also commit the offense of hostage-taking as aiders and abettors.

107. *Id.* at XXVI.

108. *Id.*

109. *Id.*

110. BMP 4: BEST MANAGEMENT PRACTICES FOR PROTECTION AGAINST SOMALI BASED PIRACY 1 (2011), *available at* http://www.mschoa.org/docs/public-documents/bmp4_low_res_sep_5_2011.pdf (stating the definition of piracy for the purposes of the Best Management Practices).

Hijackings of vessels off Somalia are also offenses under the 1988 SUA Convention because the seizure of a ship by force is a SUA offense. Somali pirates boarding a ship commit the offense described in Article 3(1)(a) with this violent and intentional action.[111] As with hostage-taking, pirates commit a SUA offense even if they fail to exercise control over a ship, and those who abet the offense or are accomplices also commit a SUA offense.

These acts can be offenses under the Hostage Taking and 1988 SUA Convention even if they took place in the territorial sea of another state.[112] This is in contrast to the territorial limitations of the crime of piracy, which can only occur on the high seas, EEZ, or outside the jurisdiction of any state.[113] Moreover, the three conventions not only encompass a broad scope of offenses that can include piracy, but they also contain provisions that have particular relevance to the crime of piracy. Indeed, the U.N. Security Council reiterated this point in Resolutions 1846 and 2020. It recognized that many countries afflicted with piracy do not have adequate domestic legislation that deals specifically with piracy, and they have even less guidance on how to treat and prosecute pirates once they are captured. In light of this absence, the Security Council reiterates first that the 1988 SUA Convention can help fill this void by, *inter alia*, creating offenses and establishing jurisdiction.[114] Resolution 2020 also incorporates the Hostage-Taking Convention by condemning the offenses included therein. Thus, the international community strongly endorses ratification of these treaties, or domestic legislation containing similar language, in order to effectively combat maritime piracy.[115]

XI. CONCLUSION

The Hostage-Taking Convention and the 1988 SUA Convention collectively fill many of the limitations in the UNCLOS articles on piracy. Further, the 2005 SUA Protocol makes significant improvements to its predecessor. Used together, these instruments complement each other in the context of piracy and armed robbery at sea. As seafarers from all countries, and the ships of all countries, are

111. 1988 SUA Convention, *supra* note 3, art. 3(1)(a), 1678 U.N.T.S. at 224.

112. *Id.* art. 4(1); *see* Hostage-Taking Convention, *supra* note 2, art. 3(1), 1316 U.N.T.S. at 207 (providing that a state "in the territory of which the hostage is held by the offender shall take all measures it considers appropriate to ease the situation of the hostage").

113. UNCLOS, *supra* note 12, arts. 58(2), 101, 1833 U.N.T.S. at 419, 436.

114. *See* S.C. Res. 1846, para. 15, U.N. Doc. S/RES/1846 (Dec. 2, 2008); S.C. Res. 2020, pmbl., U.N. Doc. S/RES/2020 (Nov. 22, 2011).

115. *See* S.C. Res. 2020, *supra* note 114, pmbl.

vulnerable to piracy and armed robbery at sea, to the extent that they have not yet done so, all countries should promptly ratify and implement each of the three primary treaties.

If all the states in this and other regions ratified and effectively implemented the Hostage-Taking Convention, the 1988 SUA Convention, and the 2005 SUA Protocol, they would give the international community another set of useful tools to combat piracy and armed robbery at sea.[116]

Table 1

Participants in Djibouti Code of Conduct	Signed Djibouti Code of Conduct	Party to High Seas Conv.[117]	Party to UNCLOS[118]	Party to 1988 SUA Conv.[119]	Party to 2005 SUA Protocol[120]	Party to Hostage Taking Conv.[121]
Comoros	23/11/09		yes	yes		yes
Djibouti	29/09/09		yes	yes		yes
Egypt	01/10/09		yes	yes		yes
Eritrea	26/10/10					

116. The U.N. General Assembly, in its omnibus resolution on Oceans and the Law of the Sea adopted on December 11, 2012, called upon states that have not yet done so to become parties to the 1988 and 2005 SUA Conventions and urged "States parties to take appropriate measures to ensure the effective implementation of those instruments through the adoption of legislation, where appropriate" and to the Migrant Smuggling Protocol and "to take appropriate measures to ensure their effective implementation." G.A. Res. 67/78, ¶¶ 107, 114, U.N. Doc. A/RES/67/78 (Dec. 11, 2012).

117. Status of High Seas Convention, U.N. TREATY COLLECTION, http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-2&chapter=21&lang=en (last visited Mar. 14, 2014).

118. Status of UNCLOS, U.N. TREATY COLLECTION, http://treaties.un.org/pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg_no=XXI~6&chapter=21&Temp=mtdsg3&lang=en (last visited Mar. 14, 2014).

119. IMO, *supra* note 9, at 430. With the exception of Saudi Arabia, none of these states are party to the 2005 SUA Protocol.

120. *Id.*

121. Status of Hostage-Taking Convention, U.N. TREATY COLLECTION, http://treaties.un.org/UNTC/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-5&chapter=18&lang=en (last visited Mar. 14, 2014).

Participants in Djibouti Code of Conduct	Signed Djibouti Code of Conduct	Party to High Seas Conv.	Party to UNCLOS	Party to 1988 SUA Conv.	Party to 2005 SUA Protocol	Party to Hostage Taking Conv.
Ethiopia	29/09/09		/s/[122]	yes		yes
France			yes	yes		yes
Jordan	20/05/10		yes	yes		yes
Kenya	29/09/09	yes	yes	yes		yes
Madagascar	29/09/09	yes	yes	yes		yes
Maldives	29/09/09		yes			
Mauritius	23/03/10	yes	yes	yes		yes
Mozambique	06/07/12		yes	yes		yes
Oman	29/07/10		yes	yes		yes
Saudi Arabia	10/03/10		yes	yes	yes	yes
Seychelles	29/09/09		yes	yes		yes
Somalia	29/09/09		yes			
South Africa	15/05/12	yes	yes	yes		yes
Sudan	01/12/09		yes	yes		yes
UAE	18/04/11		/s/	yes		yes
Tanzania	29/09/09		yes	yes		yes
Yemen	29/09/09		yes	yes		yes
Totals (21)	**20**	**4**	**18**	**18**	**1**	**18**

122. The "/s/" indicates the party has only signed the treaty, but has not ratified or acceded to it.

Table 2

Participants in Djibouti Code of Conduct	Party to 1988 Vienna Drug Convention [123]	Party to 2000 Migrant Smuggling Protocol[124]	Party to 1997 Terrorist Bombing Convention [125]	Party to Terrorism Financing Conv.[126]	Party to TOC[127]	Party to CAC[128]
Comoros	yes		yes	yes	yes	yes
Djibouti	yes	yes	yes	yes	yes	yes
Egypt	yes	yes	yes	yes	yes	yes
Eritrea	yes					
Ethiopia	yes	yes	yes	yes	yes	yes
France	yes	yes	yes	yes	yes	yes
Jordan	yes			yes	yes	yes
Kenya	yes	yes	yes	yes	yes	yes
Madagascar	yes	yes	yes	yes	yes	yes

123. Status of 1988 Vienna Narcotic Drug Convention, U.N. TREATY COLLECTION, http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-19&chapter=6&lang=en (last visited Mar. 14, 2014).

124. Status of Migrant Smuggling Protocol, U.N. TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=XVIII-12-b&chapter=18&lang=en (last visited Mar. 14, 2014).

125. Status of Terrorist Bombing Convention, U.N. TREATY COLLECTION, http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-9&chapter=18&lang=en (last visited Mar. 14, 2014).

126. Status of Terrorism Financing Convention, U.N. TREATY COLLECTION, http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-11&chapter=18&lang=en (last visited Mar. 14, 2014).

127. Status of 2000 U.N. Convention Against Transnational Organized Crime, U.N. TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en (last visited Mar. 14, 2014).

128. Status of 2003 U.N. Convention against Corruption, U.N. TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=XVIII-14&chapter=18&lang=en (last visited Mar. 14, 2014).

Participants in Djibouti Code of Conduct	Party to 1988 Vienna Drug Convention	Party to 2000 Migrant Smuggling Protocol	Party to 1997 Terrorist Bombing Convention	Party to Terrorism Financing Conv.	Party to TOC	Party to CAC
Maldives	yes		yes	yes	yes	yes
Mauritius	yes	yes	yes	yes	yes	yes
Mozambique	yes	yes	yes	yes	yes	yes
Oman	yes	yes		yes	yes	yes
Saudi Arabia	yes	yes	yes	yes	yes	yes
Seychelles	yes	yes	yes	yes	yes	yes
Somalia				/s/		
South Africa	yes	yes	yes	yes	yes	yes
Sudan	yes		yes	yes	yes	/s/
UAE	yes		yes	yes	yes	yes
Tanzania	yes	yes	yes	yes	yes	yes
Yemen	yes		yes	yes	yes	yes
Totals (21)	**20**	**13**	**17**	**19**	**19**	**18**


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