

**A LAW TO INCORPORATE THE CONVENTION FOR THE
SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF
MARITIME NAVIGATION, 2005 (2005 SUA CONVENTION) AND THE
PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS
AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON
THE CONTINENTAL SHELF, 2005 (2005 SUA PROTOCOL) INTO
THE LAWS OF MEXICO.**

PART I: EXPLANATORY NOTES

I. INTRODUCTION

According to the International Maritime Organisation (IMO), over ninety percent of the world's trade is carried by sea.¹ Since ships are bigger they are capable to transport more goods by sea.² Not only the maritime industry was benefited by shipping, but also the criminals. A ship may be used as a weapon against port facilities or delivery vehicle for weapons.³ Since ships are capable of carrying large amounts of cargo, they serve for smuggling terrorist and weapons.⁴

There have been a few terrorist attacks against ocean-going merchant ships, and Islam extremists were alleged to be responsible for some of the most dramatic assaults at sea.⁵ In 1985, for example, Palestinian terrorists took control of the cruise ship *Achille Lauro*, murdering a passenger and forced the ship to secure the release of terrorists in Israeli prison.⁶

Despite the fact that there is no universally accepted definition of maritime security, States coincide it as a stable order of the oceans subject to the rule of law at sea.⁷ In this context, a distinction is drawn between maritime safety and maritime security. Maritime safety refers to preventing or minimizing the occurrence of accidents at sea that may be caused by substandard ships, unqualified crew or operator error, whereas maritime security is related to protection against unlawful and deliberate acts.⁸

Hawkes, cited by Mejía, defines maritime security as those measures employed by owners, operators and administrator of vessels, port facilities, offshore installations, and other maritime organisations or establishments to protect against seizure, sabotage, piracy, pilferage, annoyance, or surprise.⁹

¹ IMO, 'IMO's contribution to sustainable maritime development' (IMO official website, 29 April 2017) <<http://www.imo.org/en/OurWork/TechnicalCooperation/Documents/Brochure/English.pdf>> accessed 29 April 2017.

² Ibid.

³ Michael McNicholas, *Maritime Security an Introduction* (Butterworth-Heinemann, 2008) 162.

⁴ Ibid.

⁵ James Kraska and Raúl Pedrozo, *International Maritime Security Law* (Martinus Nijhoff Publishers, 2013) 358

⁶ Ibid.

⁷ Natalie Klein, *Maritime Security and the Law of the Sea* (Oxford, 2011) 8.

⁸ Ibid.

⁹ Maximo Q. Mejía Jr., *Maritime Gerrymandering: Dilemmas in defining Piracy, Terrorism and other Acts of Maritime Violence* (Journal of International Commercial Law, 2003) 2.

Maritime security threats as piracy, ship hijacking, use of the sea by terrorist, smugglers of illicit cargo including drugs and arms, human traffickers, international criminal and extremist organisations are predominantly nowadays jeopardize the safety of navigation, ships and passengers.¹⁰

In his 2008 Report on Oceans and the Law of the Sea, the United Nations Secretary–General identified seven specific threats to maritime security:

1. Piracy and armed robbery against ships
2. Terrorism
3. Illicit trafficking in arms and weapons of mass destruction (WMD's)
4. Illicit trafficking of narcotic drugs and psychotropic substances
5. Smuggling and trafficking of persons by sea
6. Illegal, unreported, and unregulated fishing (IUU Fishing)
7. Intentional and unlawful damage to the marine environment.¹¹

With more than 3 million square kilometres of Exclusive Economic Zone (EEZ), the United Mexican States (Mexico) is no exception to these threats. The flow of maritime traffic in Mexican marine areas, as well as its connection and proximity to American waters make it even more prone to terrorist attacks.

This project analyses the current legal and factual conditions under which, Mexico need to ratify the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005 (2005 SUA Convention)¹² and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 2005 (2005 SUA Protocol),¹³ as well as a proposed law that implements its provisions at the national level, defining the implementing authorities and empowering them to deal with unlawful acts against the safety of ships at sea and fixed platforms located in the Continental Shelf.

¹⁰ Klein, (n. 7) 9.

¹¹ United Nations General Assembly, Oceans and the Law of the Sea: Report of the Secretary-General (10 March 2008) UN Doc A/63/63, para 39.

¹² Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 2005 (London, 14 October 2005, entered into force 28 July 2010) LEG/CONF.15/21 (2005 SUA Convention).

¹³ Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 2005 (London 14 October 2005, entered into force 28 July 2010) LEG/CONF.15/21 (2005 SUA Protocol).

1. AN OVERVIEW OF SUA CONVENTIONS

1.1 SUA Convention and Protocol 1988

1.1.1 Background

In October 1985, four armed Palestinians belonging to the Palestinian Liberation Front,¹⁴ hijacked an Italian cruise liner, the *Achille Lauro*.¹⁵ The hijackers demanded that Israel free 50 Palestinian prisoners and among the 400 passengers, they chose a disabled American tourist to kill him to demonstrate their seriousness.¹⁶ Egypt, Italy and the United States of America (U.S.) surrender the hijackers as part of the negotiations in order to save the passengers.¹⁷

In November 1985, the problem was considered in International Maritime Organisation's 14th Assembly when a proposal by the U.S. that measures to develop the prevention measures of such unlawful acts was supported.¹⁸ As a result, the Assembly adopted resolution A.584(14) measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crew, then, in 1986 the Maritime Safety Committee (MSC) issued a Circular (MSC/Circ.443) on measures to prevent unlawful acts against passengers and crews on board ships.¹⁹

After one year, the Governments of Austria, Egypt and Italy proposed that IMO had to prepare a convention on the subject of unlawful acts against the safety of maritime navigation.²⁰ In March 1988, IMO held a conference in Rome, which adopted the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention 1988)²¹ and its Protocol for the Suppression of Unlawful Acts against the Safety of Fixed

¹⁴ A terrorist group headed by Abu al-Abbas as a tool of the Iraqi regime for carrying out terrorist attacks against Israel.

¹⁵ Maximo Q. Mejía Jr., *Contemporary Issues in Maritime Security* (World Maritime University Publications, 2005) 163.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ IMO, 'Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf' (*IMO official website*, 27 April 2017) <<http://www.imo.org/en/About/conventions/listofconventions/pages/sua-treaties.aspx>> accessed 27 April 2017.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 10 March 1988, entered into force 1 March 1992) 1678 U.N.T.S. 201 (SUA Convention 1988).

Platforms Located on the Continental Shelf (SUA Protocol 1988).²² Both instruments came into force on 1 March 1992 after ratification by 15 States.²³ As of April 2015, the Convention has 166 State parties, which includes 164 United Nations member States, plus the Cook Islands and Niue.²⁴

1.1.2 Main features

SUA Convention 1988 is a multilateral treaty based upon the 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation and the Convention for the Suppression of Unlawful Seizure of Aircraft and criminalises similar behaviour in the context of maritime navigation.²⁵

Regarding the scope of the Convention, it does not apply to warships, ships owned or operated by a State when being used as a naval auxiliary or for customs or police purposes and ships that have been withdrawn from navigation or laid up.²⁶

The SUA Convention 1988 criminalises the following conducts:

1. Seizing or control of a ship by force or threat of force;
2. Committing an act of violence against a person on ship if it is likely to endanger the safety of the ship;
3. Destroying or damaging a ship or its cargo in such a way that endangers the safe navigation of the ship;
4. Placing or causing to be placed on a ship a device or substance which is likely to destroy or cause damage to the ship or its cargo;
5. Destroying or damaging a ship's navigation facilities or interfering with their operation if it is likely to endanger the safety of the ship;

²² Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, 10 March 1988, entered into force 1 March 1992) 1678 U.N.T.S. 201 (SUA Protocol 1988).

²³ IMO, 'Status of multilateral Conventions and instruments in respect of which the International Maritime Organization or its Secretary-General performs depositary or other functions' (*IMO official website*, 21 April 2017) 421 <<http://www.imo.org/en/About/Conventions/StatusOfConventions/Documents/Status%20-%202017.pdf>> accessed 29 April 2017.

²⁴ *Ibid.*

²⁵ IMO, (n. 18).

²⁶ SUA Convention 1988, (n. 21) Article 2.

6. Communicating information which is known to be false, thereby endangering the safety of the navigation of a ship;
7. Injuring or killing anyone while committing the previous behaviours;
8. Attempting any of the previous behaviours;
9. Being an accomplice to any of the previous behaviours; and
10. Compelling another through threats to commit any of the previous behaviours.²⁷

The Convention limits its application 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, and it stipulates that it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than that single State.²⁸

Jurisdiction over the offences set forth in the Convention must be granted by State Parties when the offence is committed against or on board a ship flying the flag of the State at the time the offence is committed, in the territory of that State, including its territorial sea or by a national of that State.²⁹ The Convention also includes general provisions for extradition proceedings against people committing offenses stated therein.³⁰

Article 8 entitles shipmasters to render delivery of suspects to the authorities of any other State Party. It also considers that receiving State shall accept the delivery, except where it has grounds to consider that the Convention is not applicable to the acts giving rise to the delivery. Provisions for the acceptance or rejection of suspects by States Parties are also considered in this article.

Article 9 makes clear that the competence of a State that rightfully investigates and enforces its jurisdiction on board of a ship which does not fly its flag, is not affected by the 2005 SUA Convention.

Articles 10 and 11 contain the core competences of the Convention. They mark the basic principle of *aut dedere aut judicare* which requires States Parties to either extradite the offender for custody or submit the case for prosecution. States parties are also required to

²⁷ Ibid, Article 3.

²⁸ Ibid, Article 4.

²⁹ Ibid, Article 6.

³⁰ Ibid, Articles 7, 10 and 11.

assist each other in connection with criminal proceedings undertaken in the framework of the Convention. States Parties are to cooperate in the prevention of offences by taking all practicable measures to prevent preparations for the commission of these offences in their respective territories and outside their territories by exchanging information in accordance with their national laws.³¹

Article 12 covers mutual legal cooperation as far as possible. It needs to be based either on existing legal cooperation agreements or, in the absence of those agreements, based on national legislation. The following articles 13 and 14 set out non-mandatory regulations and deal with certain pre-emptive measures in order to prevent criminal actions pursuant the Convention. The Secretary-General of the International Maritime Organization (IMO) is designated as coordination facility for the purpose of exchange of information to minimize terrorist attacks.³²

SUA Convention 1988 contains a procedure for the settlement of disputes between State parties concerning the interpretation or application of the Convention. Article 16 provides that if the dispute cannot be settled by negotiation within a reasonable time, it shall at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organisation of the arbitration anyone of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

On the other hand, SUA Protocol 1988 stated the conducts considered as offenses against the safety of fixed platforms, including the following behaviour:

1. Seizing or control over a fixed platform by force or threat of force;
2. Performing an act of violence against a person on board a fixed platform if it is likely to endanger its safety;
3. Destroying or damaging a fixed platform in such a way that endangers its safety;
4. Placing or causing to be placed on a fixed platform, a device or substance which is likely to destroy or cause damage to the platform;
5. Injuring or killing anyone in connection with the commission or the attempted commission of any of the offences;

³¹ Reto A. Dürler, *Suppression of Unlawful Acts against Maritime Navigation Safety*, in David Joseph Attard (ed), *The IMLI Manual on International Maritime Law Volume III* (Oxford University Press, 2016) 431.

³² 2005 SUA Convention, (n. 12) Article 15.

6. Attempting any of the previous behaviours;
7. Being an accomplice to any of the previous behaviours; and
8. Compelling another through threats to commit any of the previous behaviours.³³

1.2 SUA Convention and Protocol 2005

1.2.1 Background

Despite of adoption of SUA Convention 1988, illicit activities at sea continued committing by sea around the world. In 2000, Al-Qaeda operatives attacked the USS Cole in Aden, Yemen.³⁴ The slow, low-tech suicide assault on the Cole killed 17 Navy sailors and early sank the ship.³⁵ The attack on the French oil tanker Limburg, also by members of Al-Qaeda. Occurred off the coast of Yemen in October 2002 and exposed the vulnerability of the sea line of communication between the Strait of Hormuz and consumer markets in Europe and Asia.³⁶ Two years later, the deadly bombing in the Philippines of Super Ferry 14 by the Abu Sayyaf Islamist organization killed 116 people.³⁷

With the events of 9/11 in the U.S., the issue of terrorism went back to the international attention.³⁸ It was evident the way that a conveyance can be used as a lethal weapon. Therefore international community return to the analysis of the meaning of terrorism and its scope on the sea. IMO held a diplomatic conference on maritime security from 2-13 December 2002 in London. The Legal Committee of the IMO has also been mandated to review the SUA Convention and Protocol 1988 to adapt them to the new challenges.³⁹

The inclusion of a procedure in the 2005 SUA Convention to allow States to board ships marked a shift from merely providing lawful bases to establish jurisdiction to creating the means to exercise jurisdiction.⁴⁰ During the course of negotiations, the Legal Committee of the IMO recognized that:

³³ SUA Protocol 1988, (n. 22) Article 2.

³⁴ Kraska, (n.5), 359.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Mejía, (n. 9), 164

³⁹ Ibid.

⁴⁰ Klein, (n. 7), 174.

The inclusion of a boarding procedure constituted a significant departure from the fundamental principle of freedom of navigation on the high seas and exclusive jurisdiction of the flag State over vessels. It was accepted that the principle of flag State jurisdiction must be respected to the utmost extent, recognized in that a boarding by another State on the high seas could only take place in exceptional circumstances. Any exception must be precise, unambiguous and internationally accepted.⁴¹

The inclusion of the ship boarding provision in the revised protocol emerged in August 2002 following discussion among a Correspondence Group established by the U.S., who proposed ship-boarding provisions based in similar provisions stated in other bilateral agreements relating to the cooperation in suppressing illicit maritime traffic of drugs.⁴²

The Legal Committee continued to work on a revised draft protocol prepared by the Correspondence Group over the next three years. After those years of study and deliberation by States and organisations, the Legal Committee completed its work at its 90th session in April 2005. An International Conference on the Revision of the SUA Treaties was held in October 2005 to adopt amendments to the SUA Convention 1988.⁴³ 2005 SUA Convention was adopted on 14 October 2005.⁴⁴

The Convention would enter into force 90 days after the date on which 12 States formally ratified or accepted it by giving official notice to the IMO Secretary-General of their consent to be bound by its provisions.⁴⁵ To become a party to the 2005 SUA Convention, a State must first become a party to SUA Convention 1988. As of March 31 2008, only two States have ratified 2005 SUA Convention.⁴⁶ The Convention came into force on 28 July 2010 and as of February 2016 has been ratified by 41 States.⁴⁷

The risk of terrorist attacks against offshore installations also took place to adopt the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.⁴⁸ In 2004, this risk was demonstrated with the attempting bombing of the *Khawr al Amaya* oil loading terminal in Iraq.⁴⁹ It also opened the possibility to adopt a new

⁴¹ IMO Legal Committee “Report of the Legal Committee on the Work of its Eighty-Ninth Session” (4 November 2004), para 66.

⁴² Klein, (n. 7), 174.

⁴³ Rupert Herbert-Burns, *Lloyd’s MIU Handbook of Maritime Security* (Taylor & Francis Group, 2009) 192.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ IMO, (n. 23) 432.

⁴⁸ Klein, (n. 7), 306.

⁴⁹ *Ibid.*

Protocol to update the SUA Protocol 1988, the new Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf was adopted on the same date than 2005 SUA Convention.⁵⁰

1.2.2 Main features

The main purpose of 2005 SUA Convention is to ensure that appropriate action is taken against persons committing unlawful acts against ships. These include the seizure of ships by force; acts of violence against persons on board ships; and the placing of devices on board a ship which are likely to destroy or damage it.⁵¹

Article 2 includes new definitions: prohibited weapons, persons, organization, Secretary-General, serious injury or damage.

The Convention adds provisions which criminalises the use of ships to transfer or discharge biological, chemical, or nuclear weapons. One exception was stated in the sense that transporting nuclear materials is not considered an offence if it is transported to or from the territory or under the control of a state party to the Treaty on the Non-Proliferation of Nuclear Weapons. It also prohibits ships from discharging oil, liquefied natural gas, radioactive materials, or other hazardous or noxious substances in quantities or concentrations that are likely to cause death or serious injury or damage. Finally, it prohibits the use of such weapons or substances against ships involved in maritime navigation.⁵²

The Convention also includes new boarding provisions. The 2005 SUA Convention sets out in Article 8*bis* procedures by which states parties may request that flag States of suspect vessels permit boarding outside the territorial sea of any State. Ship-boarding provisions were premised on the scenario of a State party wishing to board a vessel that either flies the flag or displays marks of registry of another State party. The Convention includes provisions regarding the requesting permission to board, express and tacit consent of flag State to board its vessels, time-limit to reply and implicit authorization and the option to States to give

⁵⁰ IMO, (n. 18).

⁵¹ 2005 SUA Convention, (n. 12) Articles 3*ter* and 3*quater*.

⁵² *Ibid*, Article 3*bis*.

general authorization to board its vessels in advance. Required safeguards in undertaking a ship-boarding are also laid down in the new Convention.

The new article 11*bis* states that, for the purpose of extradition none of the offences shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives. Article 11*ter* states that the obligation to extradite or afford mutual legal assistance need not apply if the requested State Party has substantial ground for believing that the request for extradition 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.

Regarding the amendments stated in 2005 SUA Protocol, a new article broadens the range of offences included in the Protocol, including offences against or on a fixed platform or discharges from a fixed platform any explosive, radioactive material or Biological, Chemical and Nuclear Weapons (BCN) in a manner that causes or is likely to cause death or serious injury or damage. 2005 SUA Protocol also considers the 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.⁵³

Finally, article 2*ter* included 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.

⁵³ 2005 SUA Protocol, (n. 13) Article 2*bis*.

2. THE NEED OF MEXICO TO RATIFY SUA CONVENTION AND PROTOCOL 2005

2.1 Lack of Domestic Legislation to Implement SUA Convention and Protocol 1988

Even though Mexico ratified SUA Convention and Protocol 1988, no law or regulation was issued to implement the State's obligations contained therein. There is no specific existing domestic legislation that regulates who is the responsible authority to detain people at sea committing unlawful acts. The penalties applicable to crimes committed in SUA Convention and Protocol 1988 are not regulated as well as the manner in which the Mexican State will investigate, detain and prosecute offenders for such crimes.

Within the current Mexican legal framework, the following laws regulate maritime security:

- a. **Federal Criminal Code.** It was issued in January 1931 and the latter reform was made in 18 July 2016.⁵⁴ It is the compilation of conducts considered as crimes at the federal level within the Mexican law.⁵⁵ With 429 articles, the Code regulate criminal responsibility, set out sanctions and lays down twenty-six categories of crimes, inter alia, offenses against the Security of the Nation (which includes terrorism),⁵⁶ against International Law, Humanity and Peace and Security of Persons.

The Code considers as executed in the territory of the Mexican Republic: a) Offenses committed by Mexicans or foreigners on the high seas, on board national ships, b) Those executed on board a national warship out of port or in territorial waters of another nation. c) Commits on board a foreign vessel that has been fired in a national port or in territorial waters of Republic, if public tranquillity is disturbed or if the offender or offended person is not of the crew. Otherwise, it will operate according to the right of reciprocity.⁵⁷

⁵⁴ Federal Criminal Code (Published in the Official Diary of the Federation 14 August 1931, last amendment published 7 April 2017).

⁵⁵ Ibid, Article 1.

⁵⁶ Ibid, Article 139.

⁵⁷ Ibid, Article 5.

Provision stated in Article 6 is important because stipulates the application of the Code to crimes stated in the binding international conventions adopted by Mexico, even though those crimes are not specifically stated in the Code. Hence, crimes established in SUA Convention and Protocol 1988 are part of the Mexican legal system. However, the Code does not contain sanctions for crimes stated in International Conventions. It is just prevented that the judge shall determine the penalties and measures of security that he deems fair and appropriate within the limits indicated for each crime, based on the gravity of the offense, the quality and specific condition of the victim or offended and the degree of guilt of the agent.⁵⁸

Accordingly, even though the crimes established in SUA are considered by the Criminal Code, the lack of penalties makes it necessary to adopt a new law that regulates the commission of crimes at sea separately. On the contrary, applying the normal criminal laws may be inadequate in punishing the offenders appropriately.

- b. Law of Maritime Trade and Navigation.** It regulates the general routes of communication by water, navigation and its protection, as well as the acts, facts and goods related to maritime commerce.⁵⁹ This law establishes the Mexican Navy as the National Maritime Authority and entitles it to act in the supervision of navigational safety, ship inspections and safety of life at sea.⁶⁰ However, the law does not contain any disposition about maritime crimes neither gives enforcement powers to the Navy to act against them.
- c. Port Law.** Its purpose is regulate terminals, marinas and port facilities, their construction, use, exploitation, operation, protection and administration, as well as provision of port services.⁶¹ This law contains regulations related with the implementation of security measures according with the International Convention for the Safety of Life at Sea (SOLAS)⁶² and International Ship and Port Facility Security Code (ISPS),⁶³ but none referring to crimes committed at sea.

⁵⁸ Ibid, Article 52.

⁵⁹ Law of Maritime Trade and Navigation (Published in the Official Diary of the Federation 1 June 2006, last amendment published 19 December 2016).

⁶⁰ Ibid, Article 7.

⁶¹ Port Law (Published in the Official Diary of the Federation 19 July 1993, last amendment published 19 December 2016).

⁶² International Convention for the Safety of Life at Sea, 1974, as amended (London. 1 November 1974, entered into force 1 May 1991) 1184 U.N.T.S. 3 (SOLAS).

⁶³ International Ship and Port Facility Security Code (Implemented by IMO on July 1st 2004) (ISPS).

2.2 Extension of SUA Convention and Protocol 1988 Provisions

With the development of SUA Convention and Protocol 2005, the provisions established in SUA Convention and Protocol 1988 were expanded:

- a. It increases the conducts considered as unlawful acts against the safety of maritime navigation:
 - i. Offences relating to the use of Biological Weapons.⁶⁴
 - ii. Offences relating to the transport of offenders on board ships.⁶⁵
 - iii. Offences relating to parties to offences.⁶⁶

- b. A new article requires Parties to take necessary measures to enable a legal entity to be made liable and to face sanctions when a person responsible for management of control of that legal entity has, that capacity, committed an offence under the Convention.⁶⁷

- c. It includes new provisions for co-operation 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.⁶⁸

These provisions are important to provide legal certainty to the Mexican Navy in the implementation of ship boarding provisions since today it acts without a clear and specific legal basis.

- d. In the field of extradition, a new provision states that none of the offences should be considered for the purposes of extradition as a political offence.⁶⁹ The Convention sets out that obligation to extradite or afford mutual legal assistance need not apply if the request for extradition is believed to have been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin,

⁶⁴ 2005 SUA Convention, (n. 12) Article *3bis* and 2005 SUA Protocol, (n. 13) Article *2bis*.

⁶⁵ 2005 SUA Convention, (n. 12) Article *3ter*.

⁶⁶ 2005 SUA Convention, (n. 12) Article *3quater* and 2005 SUA Protocol, (n. 13) Article *2ter*.

⁶⁷ 2005 SUA Convention, (n. 12) Article *5bis*.

⁶⁸ *Ibid*, Article *8bis*.

⁶⁹ *Ibid*, Article *11bis*.

political opinion or gender, or that compliance with the request would cause prejudice to that person's position for any of these reasons.⁷⁰

With the adoption and domestication of SUA Convention and Protocol 2005, the obligations and rights of which Mexico is already a Party to SUA Convention and Protocol 1988, would be also expanded and improved, because the new provisions are more detailed and have a greater scope.

2.3 Geostrategic Importance of Mexico for the Security of North America

Since 9/11, hundreds of Americans and people residing inside the U.S. have been charged with jihadist terrorism or related crimes, or have died before being charged but were widely reported to have engaged in jihadist criminal activity.⁷¹ In the past two years, the rise of ISIS has brought an unprecedented surge in terrorism cases though there have been cases every year since 9/11.⁷²

In the north, Mexico limits with the U.S. and in the south with Guatemala and Belize. Historically the southern border has been a bound space for transit of migrants from Central and South America and countries of the African Eurasian continent, who are looking to get to the U.S.⁷³ The motives of these people can range from looking for a better life, to illegally trafficking drugs and weapons. Hence, the passage from Mexican waters to the U.S. for terrorist purposes or trafficking of BCN should not be discarded.

Even though in Mexico it is not common to face problems of international terrorism, its geographical location makes it unsafe and susceptible to criminals' activities. Because of its proximity to the U.S., Mexico is in a position of geostrategic importance.

Even if Mexico does not have problems of terrorism, the adoption and implementation of SUA Convention and Protocol 2005 in national legislation could help to prevent regional terrorist

⁷⁰ Ibid, Article 11*ter*.

⁷¹ According to New America Organisation, 366 persons were charged in the U.S., 6 more outside the U.S. and 30 deceased. For more information see, <<https://www.newamerica.org/in-depth/terrorism-in-america/part-i-overview-terrorism-cases-2001-today/>> accessed 28 April 2017.

⁷² Ibid.

⁷³ Pérez Maldonado, F. (2015). *LA ARMADA DE MÉXICO Y LA SEGURIDAD NACIONAL EN LA FRONTERA SUR*. Captain. Center for Naval Studies of the Mexican Navy, (*Unpublished*).

attacks. In that sense, it is better to be prepared for a probable attack than to react after an accomplished attack. The implementation of SUA Convention and Protocol 2005 would allow the Mexican State in advance, to know what authorities should act and how they should act in the suppression of unlawful acts against the safety of maritime navigation and implement the mechanisms of international cooperation available.

From December 2006 to December 2012, the Mexican Government seized 61,193 weapons of which 36,623 were short arms, and 24,570 were large arms and most of them came from the U.S., Spain and China.⁷⁴ Further, 5,090 grenades, 19 rocket launcher, 237 grenade launcher, two missile launcher and 5'429,763 munitions were seized in that period.⁷⁵ From 1 January 2013 to 31 July 2016, 43,347 weapons were confiscated (16,385 short weapons and 26,962 long weapons).⁷⁶ Since this is a volatile area Mexico needs legislative backing to help in fighting the activities of criminal groups that operate in the region.

2.4 Mexico's Operational Capacity to Face Maritime Crimes

In Mexico, the only authority that has the human, material and financial resources to suppress crimes at sea is the Navy. Warships are the main element of the Navy to accomplish the effort at sea to maintain the rule of law at the Mexican EEZ that is equivalent of 3 149 920 km².⁷⁷ Thus, the question is: Does the Navy have enough resources to face maritime crimes in the Mexican EEZ and beyond?

Nowadays, the Mexican Navy has almost 30 Oceanic Patrols, and approximately 20 Coastal Patrols and 67 Interceptors Patrols to maintain the control of all the EEZ. These different types of patrols have different characteristics in terms of range, velocity and the capacity to have a helicopter and a fast patrol on board. For example, the interceptor patrol, that represents the main quantity of the surface force, can reach 45 knots but it is limited to 7 hours of service.⁷⁸

⁷⁴ Norma Ponce, 'MILENIO' (*En el sexenio pasado se decomisaron 61 mil 193 armas: PGR*, 4 February 2013) <http://m.milenio.com/policia/sexenio-pasado-decomisaron-armas-PGR_0_141585918.html> accessed 27 April 2017.

⁷⁵ Ibid.

⁷⁶ Presidency of Mexico: This is a report compiled by the Presidency coverings the years 2013, 2014, 2015 and 2016. Presidency of Mexico, Mexico City. <<http://www.presidencia.gob.mx/informe/>> accessed 29 April 2017.

⁷⁷ INEGI, 'Mexican Territory' (*National Institute of Geography and Statistics (INEGI)*, 27 April 2017) <<http://cuentame.inegi.org.mx/territorio/extension/default.aspx?tema=T>> accessed 27 April 2017.

⁷⁸ Mexican Navy, 'El Comandante Supremo de las Fuerzas Armadas encabeza la Graduación y el Abanderamiento de Dos Patrullas de la Armada de México' (*Mexican Navy Official Website*, 23 July

Those units are distributed all around the country based at the different naval commands, depending on the local infrastructure and the physical characteristics of the ports. It is necessary to consider the times that these units are out of service because of mayor maintenance at shipyards or at port and consider the time that the crews are taking breaks and the times of training. After all considerations, it can be concluded that there are not enough units to have presence in the entire Mexican EEZ at all time. Therefore, international cooperation sets out in 2005 SUA Convention becomes necessary.

Having the cooperation of vessels belonging to other States is an excellent opportunity to maintain presence in the common waters of North and Central America. The coordinated implementation of ship-boarding provisions laid down in 2005 SUA Convention with other States Parties can be the big difference in those cases in which, for operational, geographical or climatological reasons, Mexican Navy's warships are not in a position to board ships with Mexican flag.

Working together with the North and Central American countries and supported by the resources of the U.S. as the world's leading maritime power, Mexico could increase its operational capacity and improve not only regional but also national maritime security.

2.5 Legal Need to Entitle the Mexican Navy to Implement Ship-Boarding Provisions

2005 SUA Convention establishes that each State Party shall take appropriate measures to ensure that its law enforcement or other authorized officials are empowered to act pursuant to ship-boarding provisions.⁷⁹ No law empowers the Mexican Navy to implement the right to visit vessels that are not Mexican flag. When the Navy implements ship-boarding provisions, it does it based on international Treaties authorizing States to do so. The Navy has been designated by the Mexican State for the implementation of these provisions before the United Nations, but no domestic law contains the circumstances in which it must do so.

2015) <<https://www.gob.mx/semar/prensa/el-comandante-supremo-de-las-fuerzas-armadas-encabeza-la-graduacion-y-el-abanderamiento-de-dos-patrullas-de-la-armada-de-mexico?idiom=es>> accessed 27 April 2017.

⁷⁹ 2005 SUA Convention, (n. 12) Article 8*bis* (14).

Since December 2016, the Mexican Navy is entitled as National Maritime Authority.⁸⁰ The Navy has two legal personalities with two different missions.⁸¹ First, as a military institution with military functions, in this regards, the Navy is responsible for the military defence of the Mexican territory and seas in case of war.⁸² In that sense, the Navy acts as part of the Mexican Armed Forces defending the sovereignty of the State in general, and on the territorial sea, seabed, subsoil and air space in particular. These military functions are primarily established on the Federal Constitution⁸³ and its Organic Law.⁸⁴

Second, the Navy, as part of the executive branch of the State with no military functions. As a Federal Secretariat, the Navy is entitled to exercise functions of “maritime police” to maintain the rule of law within the Mexican maritime zones.⁸⁵ Despite this, there are no current legal dispositions to specify marine police functions. The current Mexican law is silent about the meaning of “maritime police”, its functions are not established in any law and their scope is unknown. No national law entitles the Mexican Navy with law enforcement powers to implement ship-boarding provisions. The adoption of 2005 SUA Convention could cover part of this legal gap that has existed for more than forty years.⁸⁶

2.6 The Boarding Provisions Established in 2005 SUA Convention are More Complete than those Established in other Treaties

In practice, the success of the detention of vessels committing crimes at sea depends on factors as time, place and the way that law enforcement authorities implement boarding measures. Hence, the scope of legal provisions are very important because the success of the detentions may depend on the functions that agencies are entitled to render.

⁸⁰ Law of Maritime Trade and Navigation (n. 59) Article 7.

⁸¹ Organic Law of the Mexican Navy sets out the functions of the Navy as a military Institution, while the Organic Law of Federal Public Administration stipulates functions of the Navy as a civil Secretariat of the Federal Executive branch of the Government.

⁸² Organic Law of the Mexican Navy, (Published in the Official Diary of the Federation 30 December 2002, last amendment published 31 December 2012) Article 1.

⁸³ Political Constitution of the Mexican United States, (Published in the Official Diary of the Federation 5 February 1917, last amendment published 24 February 2017) Article 89.

⁸⁴ Organic Law of the Mexican Navy, (n. 82) Articles 1 and 2.

⁸⁵ Organic Law of Federal Public Administration, (Published in the Official Diary of the Federation 29 December 1976, last amendment published 19 December 2016) Article 30 (VII).

⁸⁶ Since its creation in 1976, the Organic Law of the Federal Public Administration has considered maritime police functions for the Mexican Navy without any legal provision defining them.

Of all Treaties where Mexico is a party to, the scope of boarding provisions is not as comprehensive as that in 2005 SUA Convention.

Ship-boarding provisions covered by the Treaties are the followings:

- a.** Right of visit under Article 110 the 1982 United Nations Convention on the Law of the Sea,⁸⁷ that authorizes a warship that encounters a foreign ship on the high seas is, to board it if there is reasonable ground for suspecting that the ship is engaged in: a) piracy, b) slave trade, c) unauthorized broadcasting, d) if it is a ship without nationality or though flying a foreign flag or refusing to show its flag and e) the ship is in reality of the same nationality as the warship.
- b.** Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988,⁸⁸ that allows the interception of a ship suspected of illicit trafficking by a State other than the flag State.
- c.** Article 8 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime,⁸⁹ that considers that a State may request assistance of other States in suppressing the use of vessels for the purposes of migrant smuggling.

All the ship-boarding provisions above, are stipulated in general terms and do not contain enough detailed provisions to stop crimes at sea more comprehensively.

2005 SUA Convention goes beyond and covers other aspects, such as delay in time by the flag State to reply to boarding requests and the establishment of 4 hours as a time-limit to consider the flag State's silence as an affirmative fiction. Timely authorization is essential because it permits the law enforcement agencies to control the situation before the traffickers

⁸⁷ United Nations Convention on the Law of the Sea (Montego Bay, opened for signature 10 Dec. 1982, entered into force 10 Nov. 10 1994) 1833 U.N.T.S. 3 (UNCLOS).

⁸⁸ United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, opened for signature Dec. 20 1988, entered into force Nov. 11 1990) 1582 U.N.T.S. 164 (1988 Drugs Convention).

⁸⁹ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (Palermo, 15 November 2000, entered into force 28 January 2004) 40 ILM 384 (Smuggling Protocol).

have time to destroy the evidence or evade apprehension.⁹⁰ The establishment of safeguard measures are also important to proceed against suspect vessels without committing abuse.

With the new ship-boarding provisions, 2005 SUA Convention reinforce the capacity of maritime authorities to prevent and prosecute offenses committed at sea.

⁹⁰ Patricia Mallia, *Migrant Smuggling by Sea: Combating a current threat to Maritime Security through the Creation of a Cooperative Framework* (Martinus Nijhoff Publishers, 2010) 145.

3. THE LEGISLATIVE SYSTEM IN MEXICO

Mexico is a representative, democratic and federal Republic composed by States which are free and sovereign in order to organize their internal regimes, but which are also united as a Federation established under Constitutional principles.

The legislative Power rest in the Congress, which is composed, by a Chamber of Deputies and a Chamber of Senators. The Senate has exclusive faculties among others are to analyse the annual inform of exterior politics developed by the executive branch of the federal government and has the power to ratify all international treaties and diplomatic conventions signed by the Union's Executive power.

3.1 Incorporation of SUA Convention and Protocol 2005 into Mexican Law

As a monist country, Mexico considers Treaties as part of its national law and according to the Federal Constitution.⁹¹ According to the constitutional supremacy principle, a ratified international instrument is subordinate to the provisions of the Federal Constitution and superior in hierarchy from Federal Codes and Norms.⁹²

In theory, when a Treaty is ratified by the Mexican Senate, it becomes automatically part of the Mexican legal system. However, the mere act of ratification may not suffice by itself, to produce the desire effect regarding a general rule of international law. It is indispensable to see how the language of those general rules is to find its way into the more concrete and specific question, subsequent to the requisite ratification process.

Because of this, the adoption of a specific law for the proper implementation of the SUA Convention and Protocol 2005 is necessary for the Mexican State to have legal certainty *vis-à-vis* the international community and to ensure that its judicial processes do not present deficiencies regarding lack of legal basis.

For this drafting legislation project, it is necessary to implement the accession process according to the Mexican Constitution. When the accession is made, Mexico will be subject to the SUA Convention and Protocol 2005.

⁹¹ Political Constitution of the Mexican United States, (n. 83) Article 133.

⁹² National Supreme Court of Mexico, Thesis LXXVII/99, VIII/2007, LXXV/2012 and Jurisprudence J. 20/2014, <<https://sjf.scjn.gob.mx/SJFSist/paginas/tesis.aspx>> accessed 29 April 2017.

3.2 Accession Document According to the Mexican Constitution

After the Mexican Senate has voted for the accession of the International treaty, the proper notification to the President of the Republic shall be issued as follows:

MEXICAN STATE:

----- of ---- 2017.

Directorate of the Legal Advisor Affairs of the Presidency of Mexico.

During the present legislature, this sovereign power represented by all the parliamentary groups have voted and reached to the decision that Mexico has to accede to the SUA Convention and Protocol 2005.

According to Article 76(1) of the Mexican Constitution, Article 237 of the internal rules of the Senate and on behalf of the Government, we ask to continue the legislative process for the publication of this instrument.

As it is mentioned on the ordinary session:

THE MEXICAN SENATE ACCORDING TO ARTICLE 76 SECTION 1 OF THE MEXICAN CONSTITUTION DECREED:

ARTICLE ONE.- RATIFICATION OF THE 2005 CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION AND 2005 PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF.

Signatures

President of the Board Directive
of the Chamber of Senators.

President of the Republic.

3.3 Legislation Process in Mexico

The right to initiate laws and decrees according to article 71 of the Mexican Constitution is vested on the president of the Mexican Republic, the Deputies, the Senators, the Union Congress; and the States Legislatures.

The initiatives done by the President, the States Legislatures or the Deputies of the States, will pass through the commission. The ones presented by the Senators and Deputies, will be subject to the law of the Congress and its respective norms.

According to article 72 of the Mexican Constitution, all bills of law or decree (which resolution is not exclusively of one of the Chambers) will be discussed successively in both, observing the rules of the Congress and its respective norms about the form, intervals and the mode of proceeding in discussions and voting:

- a.** After a bill is approved in the Chamber of its origin, it will pass for further discussion to the Chamber. If it's approved, it will be sent to the Executive, who, if does not have any observations to make, will publish it immediately.
- b.** All bills will be considered approved by the Executive if no observations about them have been made and if they have not been returned to the Chamber of their origin within the next following thirty days of its reception; due this time the Executive will dispose of ten natural days to promulgate and publish the law or decree. When the second stage is concluded the law or decree will be considered as promulgated and the President of the Chamber of its origin will order within the next ten days the publication of it on the Official Diary of the Federation without the need of referendum. (Publication document is stated in page 27). The stages that are mentioned above will not be interrupted if the Congress is out of session, the Permanent Commission will take care of the process.
- c.** The bill of law or decree rejected in full or by part by the Executive, will be returned to the Chamber of its origin with its observations. It will have to be discussed again, and if it is confirmed by two thirds of the total majority number, it will pass again through the revision Chamber. If it is approved there by the same majority number,

the bill will become law or decree, and it will return to the Executive for its promulgation.

- d.** If a bill of law or decree is rejected totally by the reviewing Chamber, it will be returned to the chamber of its origin, with the observations made by the reviewing chamber, and if it was approved by the majority, it will be sent to the Executive, but if it is not approved, it may not be presented again in the same period of sessions.
- e.** If a bill of law or decree was disapproved in part, or modified, or added by the review Chamber the new discussion of the Chamber of its origin will deal only with what was rejected, or about the changes or additions, without altering the approved articles in any manner. If the additions or changes made by the Chamber or review were disapproved by majority of votes in the chamber of its origin, they will be returned there with the reasons for their rejection; and if by the majority of present votes, the Chamber of origin rejects these additions or changes, the parts of the bill that have been approved by both Chambers, it will pass to the Executive as mentioned in paragraph a). If the Chamber of review insists, by the majority of the votes presented, on those additions or changes, the whole bill will not return to be presented until the following periods of sessions, unless both Chambers agree, by the majority of its members, to dispatch the law or decree only with the Articles approved, and to reserve additions and changes for examinations and voting in the following sessions.
- f.** In the interpretation, change, or repeal of the laws or decrees, the same procedures establishes for their formation will be observed.
- g.** All bills of law or decree that were rejected in the Chamber of its origin, may not be presented again in the same year's session.
- h.** The formation of laws or decrees may begin indifferently in either of the two Chambers, with the exception of the bills that pertain loans or taxes, or of the recruitment of troops, all of which be discussed first in the Chamber of Deputies.
- i.** The initiatives of a bill of law or decree shall be discussed preferentially in the Chamber in which they are presented, at least within one month from when they are

passed to the appropriate committee for its option. If the Chamber has not given an opinion in the law or decree. It may be presented and discussed in the other Chamber.

- j.** The Executive of the Union is not allowed to make observations about the resolutions of the Congress or one of its Chambers when they are exercising functions as an electoral body or jury, or when the Chamber of Deputies declares that it should accuse one of the high officials of the Federations of official crimes. However, it may present decrees at extraordinary sessions that the Permanent Commission calls.

3.4 Publication of the Presidential Decree in the Official Diary

When the President of the Republic has received the proper notification from the Senate according to Article 76 (1) the Mexican Constitution, it will accept the treaty and its publication will give effectiveness to the international instrument as a supreme law of the State. The publication process will be as the following:

SECRETARY OF FOREIGN AFFAIRS

PRESIDENTIAL DECREE WHEREBY IT IS RAFTIFIED THE SUA CONVENTION AND PROTOCOL 2005.

IN THE LEFT UPPER CORNER THE NATIONAL SEAL THAT SAYS: MEXICAN UNITED STATES.- THE PRESIDENT OF MEXICO TO THE MEXICAN POPULATION LET THEM KNOW:

THE SENATE HOUSE OF THE MEXICAN CONGRESS HAS THE COURTESY TO ADDRESS:

THE MEXICAN SENATE ACCORDING TO ARTICLE 76 SECTION I OF THE MEXICAN CONSTITUTION DECREEED:

ARTICLE ONE RATIFICATION OF THE 2005 CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION AND 2005 PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF.

SIGNATURES

President of the Republic.

Secretary of Foreign Affairs.

PART 2: IMPLEMENTING LAW

1. EXPLANATORY DRAFT

This draft is integrated by nine chapters and eleven sections, with 51 articles.

Chapter 1 contains general provisions relating to the definitions of terms used in the law.

Chapter 2 provides for the purpose and scope of the draft law.

Chapter 3 is divided into five sections which set out the offences for which a person can be held liable in the act in accordance with articles 3, *3bis*, *3ter* and *3quater* of the 2005 SUA Convention and prescribes penalties for them. Section one lays out offences against the safety of ships, section two covers offences relating to the use of BCN weapons, section three the transport of offenders on board ships, section 4 offences against the safety of fixed platforms according to 2005 SUA Protocol, and section five for offences relating to persons who participate or are accomplice to any of the acts mentioned in the previous sections in this Chapter.

The cases in which the Federal Criminal Courts of the Mexican United States shall have jurisdiction over the offences set in Chapter 3 is laid down by Chapter 4.

Chapter 5 deals with the delivery by ship Masters of persons suspected to have committed any of the offences previously mentioned.

The ship-boarding provisions stipulated in article *8bis* of the 2005 SUA Convention were adapted in Chapter 6 that sets out the Mexican Navy as the national authority to receive and respond to requests for assistance, for confirmation of nationality, and for authorization to take appropriate measures in ship-boarding circumstances. Section one vests general provisions of ship-boarding, section two regulated the proceeding and section three contains safeguards to ensure there is no abuse in his power to board ships.

Taking into consideration that 2005 SUA Convention contains the principle of *aut dedere aut judicare*, which sets out that a State party must either: a) Prosecute a person who commits one of the offences or b) Send the individual to another state that requests his or her extradition for prosecution of the same crime, Chapter 7 deals with extradition.

Mutual assistance between Mexico and other States is covered under Chapter 8 and Chapter 9 deals with the final provision of the law covering the entry into force of the law after its publication in the Official Diary of the Federation.

2. LAW

A LAW TO INCORPORATE THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION, 2005 (2005 SUA CONVENTION) AND THE PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF, 2005 (2005 SUA PROTOCOL) INTO THE LAWS OF MEXICO.

Arrangement of Sections

CHAPTER 1: GENERAL PROVISIONS

SECTION 1: Definitions

(Article 1)

CHAPTER TWO: PURPOSE AND SCOPE

SECTION 1: Purpose

SECTION 2: Scope

(Articles 2 to 7)

CHAPTER 3: OFFENCES AND PENALTIES

SECTION 1: Offences against the Safety of Ships

SECTION 2: Offences relating to the Use of BCN Weapons

SECTION 3: Offences relating to the Transport of Offenders on Board
Ships

SECTION 4: Offences against the Safety of Fixed Platforms

SECTION 5: Offences relating to Parties to Offences

(Articles 8 to 20)

CHAPTER 4: JURISDICTION

(Articles 21 to 23)

CHAPTER 5: DELIVERY OF SUSPECTS

(Articles 24 to 26)

CHAPTER 6: SHIP-BOARDING

SECTION 1: General Provisions

SECTION 2: Proceedings

SECTION 3: Safeguards

(Articles 27 to 37)

CHAPTER 7: EXTRADITION

(Articles 38 to 44)

CHAPTER 8: MUTUAL ASSISTANCE

(Articles 45 to 50)

CHAPTER 9: FINAL PROVISION

(Article 51)

ANNEX

A LAW TO INCORPORATE THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION, 2005 (2005 SUA CONVENTION) AND THE PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF, 2005 (2005 SUA PROTOCOL) INTO THE LAWS OF MEXICO.

CHAPTER 1: GENERAL PROVISIONS

SECTION 1: DEFINITIONS

ARTICLE 1.

For the purposes of this Law:

- I.** “Ship” means a vessel of any type whatsoever not permanently attached to the seabed, including dynamically supported craft, submersibles, or any other floating craft.
- II.** “Transport” means to initiate, arrange or exercise effective control, including decision-making authority, over the movement of a person or item.
- III.** “Serious injury or damage” means:
 - (i) Serious bodily injury; or
 - (ii) Extensive destruction of a place of public use, State or government facility, infrastructure facility, or public transportation system, resulting in major economic loss; or
 - (iii) Substantial damage to the environment, including air, soil, water, fauna, or flora.
- IV.** “BCN weapon” means:
 - (i) “Biological weapons”, which are:
 - (1) Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or
 - (2) Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.
 - (ii) “Chemical weapons”, which are, together or separately:
 - (1) Toxic chemicals and their precursors, except where intended for:
 - (A) Industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; or

- (B) Protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or
 - (C) Military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or
 - (D) Law enforcement including domestic riot control purposes, as long as the types and quantities are consistent with such purposes;
- (2) Munitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (ii)(1), which would be released as a result of the employment of such munitions and devices;
 - (3) Any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (ii)(2).
- (iii) Nuclear weapons and other nuclear explosive devices.
- V.** “Fixed platform” means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes.
 - VI.** “Precursor” means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system.
 - VII.** “Government” means the Federal Government of the Mexican United States.
 - VIII.** “Organization” means the International Maritime Organization (IMO).
 - IX.** “Secretary-General” means the Secretary-General of the Organization.
 - X.** “Toxic chemical” means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.
 - XI.** The terms “place of public use”, “State or government facility”, “infrastructure facility”, and “public transportation system” have the same meaning as given to those terms in the International Convention for the Suppression of Terrorist Bombings, done at New York on 15 December 1997; and
 - XII.** The terms “source material” and “special fissionable material” have the same meaning as given to those terms in the Statute of the International Atomic Energy Agency (IAEA), done at New York on 26 October 1956.

CHAPTER 2: PURPOSE AND SCOPE

SECTION 1: PURPOSE

ARTICLE 2.

This is a federal law and relates to the suppression of unlawful acts against the safety of maritime navigation.

SECTION 2: SCOPE

ARTICLE 3.

This Law applies to:

- I.** All ships flying the flag of the Mexican United States.
- II.** To all ships navigating or scheduled to navigate into, through, or from waters beyond the outer limits of the territorial sea of the Mexican United States or the lateral limits of its territorial sea with adjacent States; or
- III.** To all fixed platforms located on the Continental Shelf of the Mexican United States.

ARTICLE 4.

This law does not apply to:

- I.** Warships
- II.** A ship owned or operated by a State when being used as a naval auxiliary of for customs or police purposes; or
- III.** A ship which has been withdrawn from navigation or laid up.

ARTICLE 5.

Nothing in this law affects the immunities of warships and other government ships operated for non-commercial purposes.

ARTICLE 6.

Nothing in this Law affects the rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international human rights, refugee and humanitarian law.

ARTICLE 7.

This Law does not apply to the activities of Mexican armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, and the activities undertaken by Mexican military forces in the exercise of their official duties, inasmuch as they are governed by other rules of international law.

CHAPTER 3: OFFENCES AND PENALTIES

SECTION 1: OFFENCES AGAINST THE SAFETY OF SHIPS

ARTICLE 8.

Any person commits an offence within the meaning of this Law if that person unlawfully and intentionally:

- I.** Seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
- II.** 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
- III.** 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
- IV.** 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
- V.** 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
- VI.** Communicates information which that person knows to be false, thereby endangering the safe navigation of a ship.

ARTICLE 9.

Any person also commits an offence if that person threatens, with or without a condition, as is provided for under national law of Mexican United States, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set in article 8 paragraphs (II), (III), and (V), if that threat is likely to endanger the safe navigation of the ship in question.

ARTICLE 10.

The penalty for any person found guilty of committing an act under this Section will be a term of imprisonment of not less than 30 years.

SECTION 2: OFFENCES RELATING TO THE USE OF BCN WEAPONS

ARTICLE 11.

Any person commits an offence within the meaning of this Law if that person unlawfully and intentionally:

- I.** 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:
 - (i) Uses against or on a ship or discharges from a ship any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage; or
 - (ii) Discharges, from a ship, oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by subparagraph (I) (i), in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or
 - (iii) Uses a ship in a manner that causes death or serious injury or damage; or
 - (iv) Threatens, with or without a condition, as is provided for under national law, to commit an offence set forth in subparagraph (I) (i), (ii) or (iii); or
- II.** 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, with or without a condition, as is provided for under national law, 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; 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.

ARTICLE 12.

The penalty for any person found guilty of committing an act under this Section will be a term of imprisonment of not less than 30 years.

ARTICLE 13.

It shall not be an offence within the meaning of this Law to transport an item or material covered in article 11 (II) (iii) or, insofar as it relates to a nuclear weapon or other nuclear explosive device, article 11 (II) (iv), if such item or material is transported to or from the territory of, or is otherwise transported under the control of, the Mexican United States or a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons where:

- I.** The resulting transfer or receipt, including internal to the Mexican United States, of the item or material is not contrary to its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons and,
- II.** If the item or material is intended for the delivery system of a nuclear weapon or other nuclear explosive device of the Mexican United States or another State Party to the Treaty on the Non-Proliferation of Nuclear Weapons, the holding of such weapon or device is not contrary to the Mexican United States or those State Party's obligations under that Treaty.

SECTION 3: OFFENCES RELATING TO THE TRANSPORT OF OFFENDERS ON BOARD SHIPS

ARTICLE 14.

Any person commits an offence within the meaning of this Law 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 set forth in articles 8 and 11 or an offence set forth in any treaty listed in the Annex of this Law, and intending to assist that person to evade criminal prosecution.

ARTICLE 15.

The penalty for any person found guilty of committing an act under this Section will be a term of imprisonment of not less than 20 years.

SECTION 4: OFFENCES AGAINST THE SAFETY OF FIXED PLATFORMS

ARTICLE 16.

Any person commits an offence if that person unlawfully and intentionally:

- I.** Seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation; or
- II.** Performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety; or
- III.** Destroys a fixed platform or causes damage to it which is likely to endanger its safety; or
- IV.** Places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety.

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 in this article paragraphs (II) and (III), if that threat is likely to endanger the safety of the fixed platform.

ARTICLE 17.

Any person commits an offence within the meaning of this Law 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:

- I.** 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
- II.** Discharges, from a fixed platform, oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by subparagraph (I), in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or
- III.** Threatens, with or without a condition, as is provided for under national law, to commit an offence set forth in subparagraph (I) or (II).

ARTICLE 18.

The penalty for any person found guilty of committing an act under this Section will be a term of imprisonment of not less than 30 years.

SECTION 5: OFFENCES RELATING TO PARTIES TO OFFENCES

ARTICLE 19.

Any person also commits an offence within the meaning of this Law if that person:

- I.** Unlawfully and intentionally injures or kills any person in connection with the commission of any of the offences set forth in articles 8, 11, 14, 16 and 17; or
- II.** Attempts to commit an offence set forth in articles 8, 11, (I) (i), (ii) or (iii), or subparagraph (I) of this article; or
- III.** Participates as an accomplice in an offence set forth in articles 8, 11, 14, 16, 17, or subparagraph (I) or (II) of this article; or
- IV.** Organizes or directs others to commit an offence set forth in articles 8, 11, 14, 16, 17, or subparagraph (I) or (II) of this article; or
- V.** Contributes to the commission of one or more offences set forth in articles 8, 11, 14, 16, 17, or subparagraph (I) or (II) of this article, by a group of persons acting with a common purpose, intentionally and either:

- (i) With the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence set forth in articles 8, 11, 14, 16, 17; or
- (ii) In the knowledge of the intention of the group to commit an offence set forth in article articles 8, 11, 14, 16, 17.

ARTICLE 20.

The penalty for any person found guilty of committing an act under this Section will be a term of imprisonment of not less than 30 years.

CHAPTER 4: JURISDICTION

ARTICLE 21.

The Federal Criminal Courts of the Mexican United States shall have jurisdiction over the offences set in Chapter 3 when the offences are committed:

- I.** Against or on board a ship flying the flag of the Mexican United States at the time the offence is committed,
- II.** Against or on board a fixed platform located on the Continental Shelf of the Mexican United States,
- III.** In the territory of the Mexican United States, including its territorial sea; or
- IV.** By a national of the Mexican United States.

The Courts shall notify the Secretary-General when establish jurisdiction applying this article. In the case of subsequent rescission of that jurisdiction, it also shall notify the Secretary-General.

ARTICLE 22.

The Federal Criminal Courts of the Mexican United States shall also have jurisdiction over the offences set in Chapter 3 when:

- I.** It is committed by a stateless person whose habitual residence is in the Mexican United States;
- II.** During its commission a national of the Mexican United States is seized, threatened, injured or killed; or

III. It is committed in an attempt to compel the Mexican United States to do or abstain from doing any act.

ARTICLE 23.

The Federal Criminal Courts of the Mexican United States shall also have jurisdiction over the offences set in Chapter 3 when the alleged offender is present in the national territory and it does not extradite the alleged offender to another State that have established its jurisdiction in accordance with articles 22 and 23.

CHAPTER 5: DELIVERY OF SUSPECTS.

ARTICLE 24.

The **master of a ship** flying the flag of the Mexican United States 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 in Chapter 3.

ARTICLE 25.

The Government shall ensure that the master of its ship is obliged, whenever practicable, and if possible before entering the territorial sea the receiving State carrying on board any person whom the master intends to deliver in accordance with article 24, to give notification to the authorities of the receiving State of his intention to deliver such person and the reasons therefor.

ARTICLE 26.

The Government shall accept the delivery, except where it has grounds to consider that this Law is not applicable to the acts giving rise to the delivery, and shall proceed in accordance with the provision stated in article 25. Any refusal to accept a delivery shall be accompanied by a statement of the reasons for refusal.

CHAPTER 6: SHIP-BOARDING

SECTION 1: GENERAL PROVISIONS

ARTICLE 27.

The Mexican United States shall co-operate with other States to the fullest extent possible to prevent and suppress unlawful acts covered by this Law, in conformity with international law, and shall respond to requests pursuant to this Chapter as expeditiously as possible.

ARTICLE 28.

The Mexican Navy as the national maritime authority is responsible to receive and respond to requests for assistance, for confirmation of nationality, and for authorization to take appropriate measures related with the ship-boarding provisions set out in this Law.

ARTICLE 29.

Each request pursuant to this Chapter should, if possible, contain the name of the suspect ship, the IMO ship identification number, the port of registry, the ports of origin and destination, and any other relevant information. If a request is conveyed orally, the Mexican Navy shall confirm the request in writing as soon as possible. The Mexican Navy will receive acknowledgment of receipt of any oral or written request immediately.

ARTICLE 30.

The Mexican Navy shall take into account the dangers and difficulties involved in boarding a ship at sea and searching its cargo, and give consideration to whether other appropriate measures agreed between the Mexican United States and other States concerned could be more safely taken in the next port of call or elsewhere.

ARTICLE 31.

If the Mexican United States has reasonable grounds to suspect that an offence set forth in Chapter 3, has been, is being or is about to be committed involving a ship flying its flag, may request the assistance of other States in preventing or suppressing that offence

SECTION 2: PROCEEDINGS

ARTICLE 32.

Whenever the Mexican Navy encounters a ship flying the flag or displaying marks of registry of another State party located seaward of any States' territorial sea, and the Mexican Navy 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 offence set in Chapter 3 and the Mexican Navy desires to board it shall do the following:

- I. Request confirm the claim of nationality.
- II. If nationality is confirmed, the Mexican Navy shall ask flag State for authorization to board and to take appropriate measures with regard to that ship, which may include stopping, boarding and searching the ship, its cargo and persons on board, and questioning the persons on board in order to determine if an offence set in Chapter 3 has been, is being or is about to be committed.
- III. The Mexican Navy shall act according to the reply of the flag State which may either:
 - (i) Authorize the Mexican Navy to board and to take appropriate measures set out in subparagraph (II); or
 - (ii) Conduct the boarding and search with its own law enforcement or other officials; or
 - (iii) Conduct the boarding and search together with the Mexican Navy; or
 - (iv) Decline to authorize a boarding and search.
- IV. The Mexican Navy will not board the ship or take measures set out in subparagraph (II) without the express authorization of the flag State, unless the flag State had granted previously authorization to board and search all its vessels, 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 offence set in Chapter 3. In this case, if there is no response from the flag State within four hours of acknowledgement of receipt of a request to confirm nationality, the Mexican Navy can board the ship.
- V. When evidence of conduct described in Chapter 3 is found as the result of any boarding conducted pursuant to this article, the flag State may authorize the Mexican Navy to detain the ship, cargo and persons on board pending receipt of disposition instructions from the flag State. The Mexican Navy shall promptly inform the flag State of the results of a boarding, search, and detention conducted pursuant to this article. The Mexican Navy shall also promptly inform the flag State of the discovery of evidence of illegal conduct that is not subject to this Law and International Law.

- VI.** No additional measures may be taken without the express authorization of the flag State, except when necessary to relieve imminent danger to the lives of persons or where those measures derive from relevant bilateral or multilateral agreements.
- VII.** For all boardings 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 the Mexican United States under Chapter 4.
- VIII.** When carrying out the authorized actions under this article, the Mexican Navy shall 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. Any use of force pursuant to this article shall not exceed the minimum degree of force which is necessary and reasonable in the circumstances, according to the Manual of the Use of the Force, of Common Application to the Mexican Armed Forces, published in the Official Diary on 30th May 2014.

SECTION 3: SAFEGUARDS

ARTICLE 33.

When the Mexican Navy takes measures against a ship in accordance with this article, it shall:

- I.** Take due account of the need not to endanger the safety of life at sea;
- II.** Ensure that all persons on board are treated in a manner which preserves their basic human dignity, and in compliance with the applicable provisions of international law, including international human rights law;
- III.** Ensure that a boarding and search pursuant to this article shall be conducted in accordance with applicable international law;
- IV.** Take due account of the safety and security of the ship and its cargo;
- V.** Take due account of the need not to prejudice the commercial or legal interests of the flag State;
- VI.** Ensure, within available means, that any measure taken with regard to the ship or its cargo is environmentally sound under the circumstances;
- VII.** Ensure that persons on board against whom proceedings may be commenced in connection with any of the offences set in Chapter 3 are afforded the protections of article 36, regardless of location;

- VIII.** Ensure 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
- IX.** Take reasonable efforts to avoid a ship being unduly detained or delayed.

ARTICLE 34.

Provided that authorization to board by a flag State shall not per se give rise to its liability, the Mexican United States will be liable for any damage, harm or loss attributable to them arising from measures taken pursuant to this article when:

- I.** The grounds for such measures prove to be unfounded, provided that the ship has not committed any act justifying the measures taken; or
- II.** Such measures are unlawful or exceed those reasonably required in light of available information to implement the provisions of this article. The Mexican United States will provide effective recourse in respect of such damage, harm or loss.

ARTICLE 35.

If the Mexican United States takes measures against a ship in accordance with this Law, it shall take due account of the need not to interfere with or to affect:

- I.** The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or
- II.** The authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the ship.

ARTICLE 36.

Any person who is taken into custody, or regarding whom any other measures are taken or proceedings are being carried out pursuant to this Law, shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the domestic law of the Mexican United States and applicable provisions of international law, including international human rights law.

ARTICLE 37.

This Chapter does not apply to or limit boarding of ships conducted by the Mexican Navy in accordance with international law, seaward of any State's territorial sea, including boardings based upon the right of visit, the rendering of assistance to persons, ships and property in distress or peril, or an authorization to take law enforcement or other action.

CHAPTER 7: EXTRADITION

ARTICLE 38.

The offences set forth in Chapter 3 shall be deemed to be included as extraditable offences in any extradition treaty existing between the United Mexican States and any of the States Parties. The Government shall undertake to include such offences as extraditable offences in every extradition treaty to be concluded between State parties.

ARTICLE 39.

If the Government receives a request for extradition from another State Party with which it has no extradition treaty, the Government may, at its option, consider this Law as a legal basis for extradition in respect of the offences set forth in Chapter 3. Extradition shall be subject to the other conditions provided by the law of the Mexican United States.

ARTICLE 40.

If necessary, the offences set forth in Chapter 3 shall be treated, for the purposes of extradition between the Mexican United States and States Parties, as if they had been committed not only in the place in which they occurred but also in a place within the jurisdiction of the Mexican United States.

ARTICLE 41.

If the Government receives more than one request for extradition from States which have established jurisdiction in accordance with Chapter 4 and which decides not to prosecute shall, in selecting the State to which the offender or alleged offender is to be extradited, pay due regard to the interests and responsibilities of the State Party whose flag the ship was flying at the time of the commission of the offence.

ARTICLE 42.

In considering a request for the extradition of an alleged offender pursuant to this Law, the Government shall pay due regard to whether his rights, can be effected in the requesting State.

ARTICLE 43.

None of the offences set forth in Chapter 3 shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives.

ARTICLE 44.

Nothing in this Law shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the Government has substantial grounds for believing that the request for extradition for offences set in Chapter 3 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.

CHAPTER 8: MUTUAL ASSISTANCE

ARTICLE 45.

The Government shall afford the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in Chapter 3, including assistance in obtaining evidence at their disposal necessary for the proceedings.

ARTICLE 46.

The Government having reason to believe that an offence set forth in Chapter 3 will be committed shall, in accordance the national law of the Mexican United States, furnish as promptly as possible any relevant information in its possession to those States which it believes would be the States having established jurisdiction in accordance with Chapter 4.

ARTICLE 47.

The Government shall co-operate with other States parties in the prevention of the offences set forth in Chapter 3, particularly by:

- I. Taking all practicable measures to prevent preparation in the territory of the Mexican United States for the commission of those offences within or outside its territory;
- II. Exchanging information in accordance with their national law, and co-ordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in Chapter 3.

When, due to the commission of an offence set forth in Chapter 3, the passage of a ship has been delayed or interrupted, and ship or passengers or crew are present in the territory of the

Mexican United States, the Government shall exercise all possible efforts to avoid a ship, its passengers, crew or cargo being unduly detained or delayed.

ARTICLE 48.

A person who is being detained or is serving a sentence in the Mexican United States whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in Chapter 3 may be transferred if the following conditions are met:

- I. The person freely gives informed consent; and
- II. The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

ARTICLE 49.

For the purposes of the previous article:

- I. The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the Mexican United States;
- II. The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the Mexican United States as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;
- III. The State to which the person is transferred shall not require the Mexican United States to initiate extradition proceedings for the return of the person;
- IV. The person transferred shall 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 Mexican United States.

ARTICLE 50.

Unless the Mexican United States agrees, that person, whatever that person's nationality, shall not be prosecuted or detained or subjected to any other restriction of personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions

anterior to that person's departure from the territory of the State from which such person was transferred.

CHAPTER 9: FINAL PROVISION

ARTICLE 51.

This law shall enter into force one labour day after its publication in the Official Diary of the Federation.

ANNEX

1. Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.
2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.
3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.
4. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
5. Convention on the Physical Protection of Nuclear Material, done at Vienna on 26 October 1979.
6. 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, done at Montreal on 24 February 1988.
7. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.
8. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.
9. International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.