Roadmap

1. Fundamental Principles Governing Crimes at Sea
2. Measures before 2001 relating to Maritime Terrorism
5. US Proliferation Security Initiative (PSI)
6. 2005 SUA Protocol
7. UN Security Council & Proliferation of WMD by Sea
8. Conclusions
Part 1
Fundamental Principles of Jurisdiction Governing Crimes at Sea
Principles of Criminal Jurisdiction

- Different principles in zones under sovereignty of coastal States and outside the sovereignty of coastal States
- In zones under sovereignty, no foreign State may exercise arrest power without consent of coastal State
- Outside the territorial sea, ships suspected of terrorist acts cannot be boarded without the consent of flag State
- “Piracy” and “right of visit” are exception
- Further exceptions to the principle of exclusive jurisdiction of the flag State can be created in other Conventions
Part 2
Measures before 2001 relating to Maritime Terrorism
Three UN Counter-Terrorism conventions adopted prior to 2001 are applicable to some acts of maritime terrorism:

2. **1979 Convention Against the Taking of Hostages**
3. **1999 International Convention for the Suppression of the Financing of Terrorism**
Features of the 3 Conventions

1. “Universal Jurisdiction” among States Parties based on link to offence or presence of offender in territory

2. States parties must make offences defined in the Conventions a crime under their national laws punishable by severe penalties no matter where the act took place

3. States parties agree to cooperate with each other to ensure that persons who commit such crimes are arrested and prosecuted by:
   - (1) arresting offenders present in their territory;
   - (2) extraditing or prosecuting them
Features of the 3 Conventions

1. apply to acts within the territorial sea or even territory of another State
2. apply only if there is a “transnational element”
3. obligation on States to cooperate by arresting and prosecuting alleged offenders present in territory
4. can be very effective provided that all the States in a region ratify and implement them
5. provide a basis for arresting “accomplices” on land or in other States
6. subject to principles of criminal jurisdiction over crimes at sea– no increased powers to arrest sea
Part 3

New Threats in 2001
USS Cole, Aden, Yemen, 12 Oct 2000
Sep 11, 2001 attack on WTC, NY
Limburg, Gulf of Aden, 6 Oct 2002
Part 4
IMO Measures to Enhance Maritime Security after 2001
IMO Response to terrorist threat

1. IMO incorporated “maritime security” within “navigational safety” and it became its highest priority from 2002 to 2004

   - US proposed draft of new security measures to the IMO in late 2001 in the form of amendments to the 1974 IMO Convention on Safety of Life at Sea (SOLAS)
   - Adopted by the IMO in December 2002 with only minor amendments
   - 2002 measures included ISPS Code on port and ship security
2002 Amendments to Chp V of SOLAS

- **Automatic Information Systems** (AIS) - new timetable
- **Ships' Identification Numbers** - must be permanently marked in a visible place either on the ship's hull or superstructure
- **Continuous Synopsis Record** (CSR) - intended to provide an on-board record of the history of the ship registration of the ship
New Chapter XI-2 to SOLAS - Special measures to enhance maritime security

- Part A of ISPS Code is mandatory
- Part B contains guidance as to how best to comply with the mandatory requirements
- ISPS Code requires administrations to set security levels and ensure the provision of security level information to ships entitled to fly their flag
Part 5
US Proliferation Security Initiative (PSI)
Proliferation Security Initiative (PSI) was announced by President George Bush on May 31, 2003.

PSI aims to enhance and expand efforts to prevent the flow of WMD, their delivery systems, and related materials on the ground, in the air, and at sea, to and from states and non-state actors of proliferation concern.

The PSI Statement of Interdiction Principles was agreed by PSI participants on September 4, 2003.

As of 31 October 2010, 98 States are cooperating with the US in the PSI.
Proliferation Security Initiative - 2

- Under the Interdiction Principles, PSI participants are committed to establish a more coordinated and effective basis through which to impede and stop shipments of WMD, delivery systems, and related materials flowing to and from states and non-state actors of proliferation concern, consistent with national legal authorities and relevant international law and frameworks, including the UN Security Council.
PSI Interdiction Principles call for States to take appropriate actions to stop and/or search in their internal waters, territorial seas, or contiguous zones (when declared) vessels that are reasonably suspected of carrying such cargoes to or from states or non-state actors of proliferation concern and to seize such cargoes that are identified;

Some States have been reluctant to join the PSI because they believe that language in the Principles is too vague to ensure that interdictions will be consistent with UNCLOS.
Part 6
2005 SUA Protocol
2005 SUA Protocol - Background

- One of several measures by IMO after 9/11 to enhance maritime security
- IMO Assembly adopted resolution requesting revision of existing legal measures
- US made proposal and IMO Legal Committee took more than 3 years to agree on the text
- US draft was substantially amended
- The 2005 Protocol was adopted on 14 Oct 2005 at an International Diplomatic Conference in London organized by the IMO
Parties and Status of 2005 Protocol

- State must be party to 1988 SUA before it can become a party to the 2005 Protocol
- 2005 Protocol entered into force on 28 July 2010, which was 90 days after 12 states had ratified or acceded
- For parties to both instruments, the 1988 Convention & 2005 Protocol shall be read and interpreted together as one single instrument, and it shall be called the 2005 SUA Convention
- As of 31 Oct 2010, only 17 States are parties to the SUA Protocol
Scope of 2005 SUA Protocol

1. Updates maritime offences in light of increased threat of maritime terrorism
2. New boarding provisions provide procedures for boarding & search of suspect vessels outside territorial sea of any State with consent of flag state
3. Intended to be consistent with existing conventions and CIL, including international law on the human rights of accused persons
4. New provisions recognize need to protect carriers and seafarers as well as the marine environment
New Boarding Provisions

- Detailed procedures to facilitate boarding of a vessel suspected of being involved in a SUA offence
- Boarding can only take place:
  - beyond the outer limits of the territorial sea (high seas or EEZ) and
  - with the express consent of the flag state
- If flag state does authorize boarding, it may impose conditions
- If boarding and search are authorized, the flag state has the right to retain jurisdiction over the detained ship and cargo and the persons on board
Boarding Provisions – 4 hour rule

- US draft provision provided that a suspect ship could be boarded and searched if the flag did not respond within 4 hours to a request to board.
- Objections to the draft provision were raised because some felt it was inconsistent with UNCLOS and could be subject to abuse.
- Final provision provides that 4-hour rule applies only to States Parties that make a Declaration to the IMO Secretary-General accepting the rule.
- State can also submit a Declaration to IMO authorizing boarding and search of ships flying its flag.
2005 Protocol & the PSI

- 2005 Protocol and PSI complement one another in the sense that both are aimed to counter the proliferation of WMD by sea.
- Boarding provisions in SUA Protocol expressly state that there can be no boarding of foreign ships except outside limits of territorial sea and with the express consent of the flag State.
- 2005 SUA Protocol contains many safeguards to prevent abuse by boarding States and protect the interests of flag State, crew members, ship-owner, cargo-owner and any persons who are arrested.
1. States Parties to SUA Protocol are encouraged to develop standard operating procedures (SOP) for joint operations and to consult with other states with a view to harmonizing SOP.

2. 2005 SUA provides that States Parties may conclude agreements or arrangements between them to facilitate law enforcement operations carried out under the boarding provisions (e.g., PSI).

3. 2005 SUA Boarding provisions and safeguards could be used as SOPs for boarding under PSI, even for States not parties to PSI.
Part 7

UN Security Council and Proliferation of WMD by Sea
UN Security Council Res 1540

- Adopted unanimously on 28 April 2004
- Binding on all members because adopted under Chapter VII of UN Charter
- Aimed at preventing proliferation of weapons of mass destruction
- Affirmed that the proliferation of WMD constitutes a “threat to international peace and security"
UN Security Council Res 1540

- calls upon all States, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in WMD
- acknowledged that cooperative arrangements are both useful and necessary to prevent illicit trafficking in WMD
- no reference to interdiction of ships to enforce the resolution
- Nevertheless, it provides some authority for cooperative arrangements such as PSI
In order to ensure compliance with the requirements of this paragraph, and thereby preventing illicit trafficking in nuclear, chemical or biological weapons, their means of delivery and related materials, all Member States are called upon to take, in accordance with their national authorities and legislation, and consistent with international law, cooperative action including through inspection of cargo to and from the DPRK, as necessary;
11. Calls upon all States to inspect, in accordance with their national authorities and legislation, and consistent with international law, all cargo to and from the DPRK, in their territory, including seaports and airports, if the State concerned has information that provides reasonable grounds to believe the cargo contains items the supply, sale, transfer, or export of which is prohibited by paragraph 8 (a), 8 (b), or 8 (c) of resolution 1718 or by paragraph 9 or 10 of this resolution, for the purpose of ensuring strict implementation of those provisions;
12. Calls upon all Member States to inspect vessels, with the consent of the flag State, on the high seas, if they have information that provides reasonable grounds to believe that the cargo of such vessels contains items the supply, sale, transfer, or export of which is prohibited by paragraph 8 (a), 8 (b), or 8 (c) of resolution 1718 (2006) or by paragraph 9 or 10 of this resolution, for the purpose of ensuring strict implementation of those provisions.
13. *Calls upon* all States to cooperate with inspections pursuant to paragraphs 11 and 12, and, if the flag State *does not consent to inspection on the high seas*, *decides* that the flag State shall direct the vessel to proceed to an appropriate and convenient port for the required inspection by the local authorities pursuant to paragraph 11.
Part 8
Conclusions
General Conclusions

1. New challenges for the international community and the law of the sea after 2001
2. IMO reacted quickly to enhance maritime security and update the 1988 SUA Protocol
3. 2005 SUA Protocol contains new Boarding provisions which are consistent with UNCLOS
4. PSI Principles on Interdiction are vague but can be interpreted in a manner consistent with UNCLOS
5. Security Council has encouraged States to take cooperative action such as PSI
6. Security Council has created limited exceptions in particular cases without attempting to undermine or alter the fundamental principles

7. The fundamental principles have withstood the challenges and are perhaps even more firmly entrenched than before 2001

8. Enhanced cooperation to combat threats of maritime terrorism, including proliferation of WMD, is more likely if cooperative arrangements do not infringe or threaten the fundamental principles
Thanks for Your Attention

Prof Robert Beckman
Director, Centre for International Law (CIL)
National University of Singapore
Email: CILDIR@NUS.EDU.SG
Website: WWW.CIL.NUS.EDU.SG