

**Countering offences committed at
sea through criminal justice
mechanisms:**

**Interplay between existing
international instruments**

9-10 June 2009,
Singapore

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- Can the existing international legal framework improve States' criminal justice response to certain serious offences committed at sea?
 - Case study



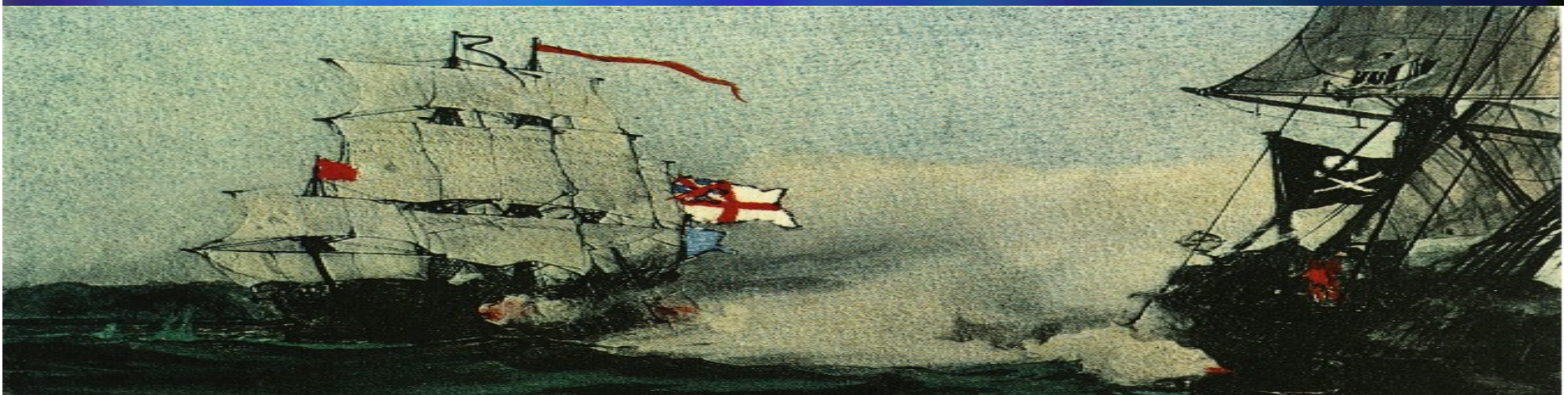
The Ponant case



- 4 April 2008
- French cruise ship *Ponant* sailing from Seychelles back to Mediterranean sea
- Boarded by “pirates” in the Gulf of Aden
- No passengers on board, 30 crew members of various nationalities
- Hostages eventually liberated and pirates under criminal proceedings

Was it piracy or else?

- Article 101 UN Convention on the Law of the Sea (UNCLOS)
- Article 3 Convention on Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention)



Article 101 UNCLOS

- Acts of violence, detention, depredation, etc.
- Private ends
- On the high sea
- "2 ship" requirement

Article 3 SUA Convention

- Seizing or exercising control over a ship
- By force, threat of force or other form of intimidation
- Intentionally or unlawfully

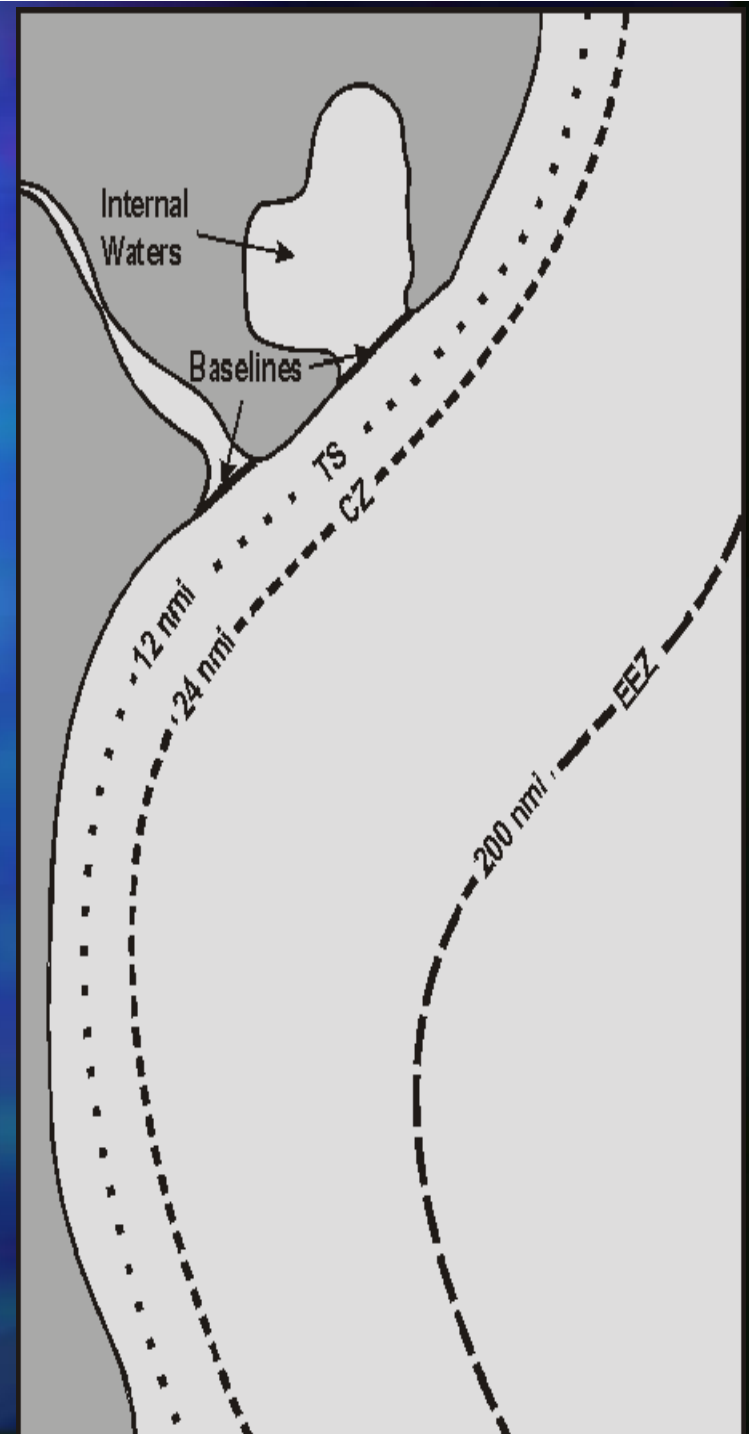
The Ponant case and the scope of application of the SUA Convention

- The legal status of the *Ponant*



Where has the act been committed?

- SUA Conv.: what matters is that the ship is coming from, or is directed to, a point outside the territorial sea of a single State
- “Cabotage” not included



The tricky side: Boarding



- Under UNCLOS, possibility for ANY State to board foreign vessel on the high sea, seize the ship and prosecute its crew
- New “boarding” provisions in the 2005 Amendments to SUA Conv.: are the two legal regimes getting closer?
- Proposals for change after the *Ponant* incident: right of “hot pursuit” into territorial waters?

The States directly "affected" and their situation under the SUA Convention

France

Somalia

Ponant incident

Ukraine

Philippines

Cameroon

The remaining 145 States Parties to the SUA Convention: any role to play?

- French authorities got hold of a few alleged offenders only
- State Parties where remaining offenders will be found under *aut dedere aut judicare* obligation!
- Providing legal assistance, extraditing suspects

Beyond the SUA Convention...

- Hostage Convention?
- Transnational Organised Crime Convention?
- Intl cooperation against maritime offences may be addressed through means that are not specifically conceived to deal with crimes at sea!

Types of maritime offences and possible applicable legal frameworks

- Against ships, their passengers and crew
 - ✓ UNCLOS
 - ✓ SUA Convention
 - ✓ 2005 Amendments to SUA Convention
 - ✓ Hostage Convention
 - ✓ Diplomatic Agents Convention
 - ✓ Terrorist Bombings Convention (ships as “public transportation systems”)
 - ✓ Nuclear Terrorism Convention (note expanded definition of “nuclear reactor”)

Types of maritime offences and possible applicable legal frameworks

■ From ships

- ✓ 2005 Amendments to SUA Convention (“discharging substances”)
- ✓ Physical Protection of Nuclear Material Convention (dispersal of nuclear material)

Types of maritime offences and possible applicable legal frameworks

■ Through/ by means of ships

- ✓ 2005 Amendments to SUA Convention (transport of WMD/ transport of fugitives)
- ✓ Physical Protection of nuclear material Convention (transfer of nuclear material)

Types of maritime offences and possible applicable legal frameworks

■ Onboard ships

- ✓ Terrorist Financing Convention
- ✓ Physical Protection of nuclear material Convention (theft or robbery, threats to use)

Dewi Madrim case

- 26 March 2003
- Chemical tanker “Dewi Madrim” attacked in Malacca Strait
- According to crew, attackers’ goal was learning to drive ship and training to take hostages
- Is it terrorism, piracy, or else?

- Qualifying offences at sea as “piracy” may still give advantage in relation to “boarding”
- Multiple international legal frameworks are potentially relevant for international cooperation
- Ask what is applicable in each concrete case
- Goal is bringing serious offenders to justice, however you want to call them, through flexible use of available legal mechanisms



THANK YOU !