

# Questionnaire on Criminal Offenses Committed on Foreign Flagged Ships

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## Introduction

In document LEG 85/10, Japan referred to an incident involving the M/V Tajima, a Panamanian flagged ship with a mixed Japanese and Philippine crew. It was alleged that the Japanese second officer was killed by two Philippine seafarers while the vessel was on the high seas. The master placed the suspects in custody until the ship made a cargo call in Japan.

Questions have arisen as to the appropriate conduct of the coastal (or port) State where there are alleged criminal offences on foreign flagged ships and, in particular, whether there was an offence committed under article 3(1)(b) of SUA 1988.

The purpose of this questionnaire is to collate information about law and practice internationally, in order to see if it is necessary to enact international legislation or to produce guidelines as to the appropriate response of coastal (or port) States. For the international law background, reference may be made to document LEG 85/10 (attached). [*Attach document LEG 85/10 and/or text of articles 3(1)(b), 7 and 8 of SUA 1988?*]

Questions 1 to 4 concern the application of general criminal law. Questions 5 and 6 deal with the position under SUA.

## **General Criminal Jurisdiction (not under SUA)**

*Question 1:* Under your national criminal law, is there jurisdiction to try an alleged offender in your State in respect of general criminal offences committed on a foreign flagged ship:

- A. on the high seas?
- B. in territorial (or other) waters?

*Question 2:* In particular, under your national criminal law is there jurisdiction to try an alleged offender who is a foreign national, where the victim is a national of your State, in respect of general criminal offences committed on a foreign flagged ship:

- A. on the high seas?
- B. in territorial (or other) waters?

*Question 3:* Where there is an alleged criminal offence committed, on a foreign flagged ship, by a foreign national against one of your nationals, would your State, in practice,

- A. prosecute the alleged offender?
- B. receive or remove the alleged offender from the ship?
- C. detain the alleged offender?
- D. return the alleged offender to the flag State/State of the alleged offender's nationality /or other State?

*For Question 3, please indicate any conditions under which the above options A-D might be might exercised:*

Slovenian criminal law shall apply for all criminal acts which are committed on the territory of the Republic of Slovenia. Territory of the Republic of Slovenia includes also the Slovenian territorial waters and it is not important if the criminal act is committed on a foreign flagged ship.

Slovenian criminal law is also valid for foreign citizens, who commit criminal act against Slovenian citizens out of territory of Slovenia in the case they are caught on the territory of Slovenia or they are extradited in the Republic of Slovenia and it is not important if the criminal act is committed on a foreign flagged ship. The foreign citizens, who commit criminal act against Slovenian citizens out of territory of Slovenia can also be extradited in the foreign country, in the case the foreign country institutes criminal proceeding against them, and Slovenian Circuit court which is competent for the territory, where the foreign citizens are caught, decides to perform extradition in the foreign country. Slovenian Circuit court can also extradite the foreign citizens who commit the criminal act on the territory of Slovenia if they have the domicile in the foreign country and the foreign country performs the request for extradition.

*Question 4:* Where there is an alleged criminal offence committed, on a foreign flagged ship, by one of your nationals against a foreign national, would your State, in practice,

- A. prosecute the alleged offender?
- B. receive or remove the alleged offender from the ship?
- C. detain the alleged offender?
- D. return the alleged offender to the flag State/State of the alleged offender's nationality /or other State?

*For question 4, please indicate any conditions under which the above options A-D might be exercised.*

Slovenian criminal law shall apply for all criminal acts which are committed on the territory of the Republic of Slovenia. Territory of the Republic of Slovenian includes also the Slovenian territorial waters, and it is not important if the criminal act is committed on a foreign flagged ship. Slovenian criminal law is valid for Slovenian citizens, who commit criminal act against foreign citizens out of territory of Slovenia, in the case they are caught on the territory of Slovenia or they are extradited in the Republic of Slovenia, and it is not important if the criminal act is committed on a foreign flagged ship. Slovenian citizens can not be extradited in the foreign country.

Coastal (or Port) State Procedure under SUA

Article 3(1)(b) of SUA 1988 requires there to be an "act of violence" which "endangers the safety of the vessel".

*Question 5:* If your authorities received information from a master about an act of violence allegedly committed on a foreign flagged ship which might fall within article 3(1)(b) of SUA 1988, how would your State deal with a request from the master to accept delivery of the alleged offender under article 8? In particular,

- A. Which authority would assume responsibility (e.g. Police, Coastguard, Maritime or harbour authority)?
- B. How extensive an investigation would be made (e.g. would the authority make the decision to accept delivery under SUA after a full investigation, or rely on the initial assessment of the master that safety was endangered)?

*Question 6:* On the outline facts of the Tajima case, what action would your State have taken as a coastal (or port State)? In particular,

- A. Would you have accepted delivery of the alleged offender?

B. Did the facts bring the case within article 3(1)(b) of SUA?

*For Question 6, please indicate any factor which influenced the answers to A and B*

Slovenia is not the member of the SUA

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