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**A BILL FOR AN ACT TO DOMESTICATE THE
INTERNATIONAL MARITIME SEARCH AND
RESCUE CONVENTION (1979) AS AMENDED
INTO THE LAWS OF NIGERIA**

**A Legislation Drafting Project submitted in partial fulfillment of the
requirements for the award of the Degree of Master of Laws (LL.M.) at the
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DEDICATION

**To the King Eternal Immortal, Invincible the only true God and Father of our Lord
Jesus Christ.**

Everything I am, and ever will be I owe to You.

To You be all the Honour and Glory forever.

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**INTERNATIONAL CONVENTION ON MARITIME SEARCH AND RESCUE
(RATIFICATION AND ENFORCEMENT) BILL, 2009**

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LEGISLATIVE DRAFTING PROJECT

A Bill for an Act to domesticate the International Convention on Maritime Search and Rescue 1979, as amended

EXPLANATORY NOTE

INTRODUCTION

The obligation to render assistance to distressed persons at sea is a longstanding humanitarian maritime tradition recognized by international law. The International Convention for the Safety of Life at Sea (SOLAS) 1974, regulation V/33.1 provides that the “*master of a ship at sea which is in a position to be able to provide assistance, on receiving information from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance, if possible informing them or the search and rescue service that the ship is doing so.*” The SOLAS Convention also enshrines in chapter V, regulation 7, the responsibility of Governments “*to ensure that necessary arrangements are made for distress communication and coordination in their area of responsibility and for the rescue of persons in distress at sea around its coasts. These arrangements should include the establishment, operation and maintenance of such search and rescue facilities as are deemed practicable and necessary.....*”

Similarly, Article 98 of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) codifies this obligation to the extent that every “*State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew, or the passengers ... to render assistance to any person found at sea in danger of being lost ...*”¹ This is in addition to imposing an obligation on States to “*promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea ...*”²

II

¹ Clause 1(a) of Article 98 of UNCLOS

² Clause 2 of Article 98 of UNCLOS

Although the obligation of ships to render assistance to vessels in distress is deeply rooted in maritime tradition and in the above mentioned international treaties there was no international system governing maritime search and rescue operations until the adoption in 1979 of the International Convention on Maritime Search and Rescue (SAR). Prior to the SAR Convention, there were in a few countries well-established organizations able to provide assistance promptly and efficiently but in most others there was nothing at all. Co-ordination and control of maritime search and rescue operations tended to be organized by each individual country in accordance with its own requirements and as dictated by its own resources.

As a result, national organizational plans were developed along different lines. Search and rescue coordination centre existed in some countries, mainly as result of aviation requirements, but this was not universal.³

THE INTERNATIONAL CONVENTION ON MARITIME SEARCH AND RESCUE 1979 (AS AMENDED)⁴

The 1979 Maritime SAR Convention was adopted at a Conference of the International Maritime Organization (IMO) in Hamburg on 27 April 1979. The preamble of the SAR Convention reveals that the adoption of the Convention was informed by the great importance, attached in several conventions to the rendering of assistance to persons in distress at sea and to the establishment by every coastal State of adequate and effective arrangements for coast watching and for search and rescue services.

III

Having given due regard to Recommendation 40 adopted by the International Conference on Safety of Life at Sea, 1960, which recognized the desirability of coordinating activities regarding safety on and over the sea among a number of inter-governmental organizations, the IMO through the SAR Convention desired to develop and promote these activities by establishing an

³ Graham Mapplebeck, "Maritime Search and Rescue & Stowaways: the international legal framework" being a paper presented at various meetings but most recently at a UNHCR conference on Rescue at sea – Athens, January 2008. Sourced at http://www.imo.org/InfoResource/mainframe.asp?topic_id=406.

⁴ Source: www.imo.org. Also see Graham Mapplebeck, op.cit.

international maritime search and rescue plan responsible to the needs of maritime traffic for the rescue of persons in distress at sea. The organization through the SAR Convention also wished to promote co-operation among search and rescue organizations around the world and among those participating in search and rescue operations at sea.⁵

The broad objective of the SAR Convention is therefore, the development of an international SAR plan, so that, no matter where an accident occurs, the rescue of persons in distress at sea will be coordinated by a SAR organization and, when necessary, by co-operation between neighboring SAR organizations. The Convention entered into force on 22 June 1985.

The technical requirements of the SAR Convention are contained in an Annex, which was divided into five Chapters. Parties to the Convention are required to ensure that arrangements are made for the provision of adequate SAR services in their coastal waters. Indeed, under Paragraph 1 of the Convention, the Parties undertake to adopt all legislative or other appropriate measures necessary to give full effect to the Convention and its Annex.

Paragraph 2.1.1 of the Annex places an obligation on the Parties to the Convention to ensure that necessary arrangements are made for the provision of adequate search and rescue services for persons in distress at sea round their coasts.

IV

Parties are also required under Paragraph 2.1.2 to forward to the Secretary-General information on their search and rescue organization and later alterations of importance, including information on national maritime search and rescue services, location of established rescue co-ordination centres, their telephone and telex numbers and areas of responsibility; and principal available rescue units at their disposal.

Paragraph 2.1.8 places further obligations on Parties to arrange that their search and rescue services are able to give prompt response to distress calls. Thus, on receiving information that a

⁵ Source: www.imo.org.

person is in distress at sea in an area within which a Party provides for the overall co-ordination of search and rescue operations, the responsible authorities of that Party shall take urgent steps to provide the most appropriate assistance available.⁶ They shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found.⁷

Parties are encouraged to enter into SAR agreements with neighbouring States involving the establishment of SAR regions, the pooling of facilities, establishment of common procedures, training and liaison visits. Accordingly, Paragraph 2.1.4 provides that each search and rescue region shall be established by agreement among Parties concerned and the Secretary-General shall be notified of such agreement.

In case agreement on the exact dimensions of a search and rescue region is not reached by the Parties concerned, Paragraph 2.1.5 provides that those Parties shall use their best endeavours to reach agreement upon appropriate arrangements under which the equivalent overall co-ordination of search and rescue services is provided in the area. The Secretary-General shall be notified of such arrangements.

The Convention also requires the co-ordination of search and rescue facilities and efforts at the national level. To this end, Paragraph 2.2.2 provides that Parties shall establish national machinery for the overall co-ordination of search and rescue services.

V

Parties are also invited under Paragraph 2.3 to establish rescue co-ordination centres and rescue sub-centres in their countries. Each rescue co-ordination centre and rescue sub-centre so established shall have adequate means for the receipt of distress communications via a coast radio station or otherwise. Every such centre and sub-centre shall also have adequate means for communication with its rescue units and with rescue co-ordination centres or rescue sub-centres, as appropriate, in adjacent areas.⁸

⁶ See Paragraph 2.1.9

⁷ See Paragraph 2.1.10

⁸ See Paragraph 2.3.3.

The Convention states that Parties should take measures to expedite entry into its territorial waters of rescue units from other Parties. In this regard, Paragraph 3.1.2 provides that unless otherwise agreed between the States concerned, a Party should authorize, subject to applicable national laws, rules and regulations, immediate entry into or over its territorial sea or territory of rescue units of other Parties solely for the purpose of searching for the position of maritime casualties and rescuing the survivors of such casualties. In such cases, search and rescue operations shall, as far as practicable, be coordinated by the appropriate rescue co-ordination centre of the Party which has authorized entry, or such other authority as has been designated by that Party.

Furthermore, paragraph 3.1.3 provides that unless otherwise agreed between the States concerned, the authorities of a Party which wishes its rescue units to enter into or over the territorial sea or territory of another Party shall transmit a request, giving full details of the projected mission and the need for it, to the rescue co-ordination centre of that other Party. The competent authorities of the receiving Party shall in turn immediately acknowledge the receipt of such a request; and as soon as possible indicate the conditions, if any, under which the projected mission may be undertaken.⁹

The Convention outlines operating procedures to be followed in the event of emergencies or alerts and during SAR operations. This includes the designation of an on-scene commander and his duties.

VI

Parties to the Convention are required to establish ship reporting systems, under which ships report their position to a coast radio station. This enables the interval between the loss of contact with a vessel and the initiation of search operations to be reduced. It also helps to permit the rapid determination of vessels which may be called upon to provide assistance including medical help when required.

Revision of SAR Convention

⁹ See paragraph 3.1.4 of Chapter II.

The 1979 SAR Convention imposed considerable obligations on Parties - such as setting up the required shore installations. This resulted in the Convention not being ratified by many countries. Equally important, many of the world's coastal States had not accepted the Convention and the obligations it imposed.

It was generally agreed that one reason for the small number of acceptances and the slow pace of implementation was due to problems with the SAR Convention itself and that these could best be overcome by amending the Convention. At a meeting in October 1995 in Hamburg, Germany, it was agreed that there were a number of substantial concerns that needed to be taken into account, including:

- (a) lessons learned from SAR operations;
- (b) experiences of States which had implemented the Convention;
- (c) questions and concerns posed especially by developing States which were not yet Party to the Convention;
- (d) need to further harmonize the IMO and International Civil Aviation Organization (ICAO) SAR provisions; and
- (e) inconsistent use of Convention terminology and phraseology.

VII

The IMO's Sub-Committee on Radio-Communications and Search and Rescue (COMSAR) was requested to revise the technical Annex of the Convention. A draft text was prepared and was approved by the 68th session of the MSC in May 1997, and was then adopted by the 69th MSC session held on the 18th of May 1998. The 1998 SAR amendments came into force on the 1st of January 2000.

The revised technical Annex of the SAR Convention clarifies the responsibilities of governments and puts greater emphasis on the regional approach and co-ordination between maritime and aeronautical SAR operations.

The entire text of the Annex to the SAR Convention was revised under the 1998 SAR Amendments except paragraphs 2.1.4, 2.1.5, 2.1.7, 2.1.10 of Chapter II (covering organization) and paragraphs 3.1.2 and 3.1.3 of Chapter III (covering cooperation between States). The revised Annex includes five Chapters:

Chapter 1 – Terms and Definitions

This Chapter updates the original Chapter 1 under the SAR 1979. Paragraph 1.3 of the Revised Annex now defines the expressions “search”, “rescue” and “search and rescue services” which were not defined under SAR 1979.

Accordingly, the Revised Annex has defined "Search" to mean “an operation, normally coordinated by a rescue coordination centre or rescue sub-centre, using available personnel and facilities to locate persons in distress.”

"Rescue" on the other hand has been defined as “an operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety.”

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"Search and Rescue Service" is defined as “the performance of distress monitoring, communication, coordination and search and rescue functions, including provision of medical advice, initial medical assistance, or medical evacuation, through the use of public and private resources including cooperating aircraft, vessels and other craft and installations.”

Other expressions defined in the Revised Annex which were not defined in SAR 1979 includes "search and rescue facility", which is defined as “any mobile resource, including designated search and rescue units, used to conduct search and rescue operations”; "alerting post", defined as “any facility intended to serve as an intermediary between a person reporting an emergency and a rescue coordination centre or rescue sub-centre”; "on-scene coordinator", defined as “a person designated to coordinate search and rescue operations within a specified area”.

Chapter 2 – Organization and Co-ordination

Under the 1979 Convention maritime search and rescue was organized on a regional basis. Clause 2.1.4 of Chapter 2 of the Annex to the 1979 Convention provided that each search and rescue region shall be established by agreement among Parties concerned and the Secretary-General shall be notified of such agreement.

Clause 2.1.5 provided further that in case agreement on the exact dimensions of a search and rescue region is not reached by the Parties concerned, those Parties shall use their best endeavours to reach agreement upon appropriate arrangements under which the equivalent overall co-ordination of search and rescue services is provided in the area.

Furthermore, Clauses 2.1.9 and 2.1.10 provided that the Parties shall be responsible for providing the most appropriate assistance available to a person in distress at sea in an area within their region regardless of the nationality or status of such a person or the circumstances in which that person is found.

IX

The revised Annex replaces the provisions of the 1979 Chapter 2 on Organization. The Chapter has been re-drafted to make the responsibilities of governments clearer. It requires Parties, either individually or in co-operation with other States, to establish basic elements of a search and rescue service, to include:

- (a) legal framework;
- (b) assignment of a responsible authority;
- (c) organization of available resources;
- (d) communication facilities;
- (e) co-ordination and operational functions; and

- (f) processes to improve the service including planning, domestic and international co-operative relationships and training.

Parties should establish search and rescue regions within each sea area - with the agreement of the Parties concerned. Such regions should be contiguous and, as far as practicable, not overlap. Parties are further invited to seek to promote consistency, where applicable, between their maritime and aeronautical search and rescue services while considering the establishment of maritime search and rescue regions. Parties having accepted responsibility for providing search and rescue services for a specified area shall use search and rescue units and other available facilities for providing assistance to a person who is, or appears to be, in distress at sea.

The Chapter also describes how SAR services should be arranged and national capabilities be developed. Parties are required to establish rescue co-ordination centres and rescue sub centres and to operate them on a 24-hour basis with trained staff having a working knowledge of English.

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Furthermore, each rescue coordination centre and rescue sub-centre so established shall arrange for the receipt of distress alerts originating from within its search and rescue region. Every such centre shall also arrange for communications with persons in distress, with search and rescue facilities, and with other rescue coordination centres or rescue sub-centres.

Parties are also required to "ensure the closest practicable co-ordination between maritime and aeronautical services". Whenever practicable, each Party should establish joint rescue coordination centres and rescue sub-centres to serve both maritime and aeronautical purposes.

For purpose of organization and coordination, the draft SAR Bill establishes a Search and Rescue Coordinating Committee (SARC Committee) which will provide a standing forum for coordination of administrative and operational search and rescue matters within Nigeria, approve national Search and Rescue plans, policies and procedures and coordinate the activities of the Search and Rescue Sub – Centres to ensure conformity with the provisions of the SAR Convention and the SAR Act.

Chapter 3 - Co-operation between States

Clause 3.1.1 of Chapter 3 of the Annex to the 1979 Convention provides that Parties shall co-ordinate their search and rescue organizations and should, whenever necessary, coordinate search and rescue operations with those of neighbouring States.

Clause 3.1.2 provides that unless otherwise agreed between the States concerned, a Party should authorize, subject to applicable national laws, rules and regulations, immediate entry into or over its territorial sea or territory of rescue units of other Parties solely for the purpose of searching for the position of maritime casualties and rescuing the survivors of such casualties.

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Chapter 3 went on to set out certain formalities to be fulfilled by the request of the State requesting entry during SAR operation can be granted.

The revised Annex replaces the original Chapter 3 save for paragraphs 3.1.2 and 3.1.3 on Co-operation and requires Parties to co-ordinate search and rescue organizations, and, where necessary, search and rescue operations with those of neighbouring States. The revised paragraph 3.1.4 is similar to that of the original paragraph 3.1.4 except that the expression “competent authorities of Parties” has been replaced with “responsible authorities of parties”.

Thus where a request is received by a State for authorization to enable another Party gain immediate entry into or over its territorial sea or territory for rescue units of other Parties solely for the purpose of search and rescue, the responsible authorities of the State shall immediately acknowledge the receipt of such a request; and as soon as possible indicate the conditions, if any, under which the projected mission may be undertaken.

Under the revised paragraph 3.1.5 Parties are required to enter into agreements with neighbouring States setting forth the conditions for entry of each other's search and rescue units

into or over their respective territorial sea or territory. These agreements should also provide for expediting entry of such units with the least possible formalities.

The revised paragraph 3.1.6 requires each Party to authorize its rescue coordination centres:

- a) to request from other rescue coordination centres such assistance, including vessels, aircraft, personnel or equipment, as may be needed;
- b) to grant any necessary permission for the entry of such vessels, aircraft, personnel or equipment into or over its territorial sea or territory; and
- c) to make the necessary arrangements with the appropriate customs, immigration, health or other authorities with a view to expediting such entry.

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Each Party is further required under paragraph 3.1.7 to ensure that its rescue coordination centres provide, when requested, assistance to other rescue coordination centres, including assistance in the form of vessels, aircraft, personnel or equipment.

Chapter 4 - Operating Procedures

Incorporates the previous Chapters 4 (Preparatory Measures) and 5 (Operating Procedures).

The Chapter prescribes certain preparatory measures. To this end, each Rescue Co-ordination Centre (RCC) and Rescue Sub-Centre (RSC) is required to have up-to-date information on search and rescue facilities and communications in the area as well as detailed plans for conduct of search and rescue operations.

In addition, each rescue coordination centre and rescue sub-centre should have ready access to information regarding the position, course and speed of vessels within its area which may be able to provide assistance to persons, vessels or other craft in distress at sea, and regarding how to contact them. This information should either be kept in the rescue coordination centre, or be readily obtainable when necessary.

Parties - individually or in co-operation with others should have appropriate equipment capable of receiving distress alerts on a 24-hour basis. Any alerting post receiving a distress alert shall

immediately relay the alert to the appropriate rescue coordination centre or sub-centre, and then assist with search and rescue communications as appropriate; and if practicable acknowledge the alert.

The Chapter include procedures to be followed during an emergency and state that any authority or element of the search and rescue service having reason to believe that a person, a vessel or other craft is in a state of emergency shall forward as soon as possible all available information to the rescue coordination centre or rescue sub-centre concerned.

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Rescue coordination centres and rescue sub-centres on their part shall, immediately upon receipt of information concerning a person, a vessel, or other craft in a state of emergency, evaluate such information and determine the phase of emergency in accordance with paragraph 4.4 and the extent of operations required.

The Chapter says that search and rescue activities should be coordinated on - scene for the most effective results. Furthermore, "search and rescue operations shall continue, when practicable, until all reasonable hope of rescuing survivors has passed".

Chapter 5 - Ship reporting systems

This Chapter includes recommendations on establishing ship reporting systems for search and rescue purposes, noting that existing ship reporting systems could provide adequate information for search and rescue purposes in a given area.

2004 Revision of SAR Convention as Amended

By Resolution MSC.158(78) adopted on 20th May 2004, the IMO effected a further amendment to the SAR Convention of 1979 as amended in 1998. The preamble to the Convention acknowledges that the further amendment was necessary because of the realization of the need for clarification of existing procedures to guarantee that persons rescued at sea will be provided a

place of safety, regardless of their nationality, status or the circumstances in which they were found.

Under the latest amendment, a new sub - paragraph 4 has been added to paragraph 3.1.6 of Chapter 3 in the following terms:

“4 to make the necessary arrangements in co-operation with other RCC’s to identify the most appropriate place(s) for disembarking persons found in distress at sea.”

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Also a new paragraph 3.1.9 is added to Chapter 3 after the existing paragraph 3.1.8 and the new paragraphs provides as follows:

“3.1.9 Parties shall co-ordinate and co-operate to ensure that masters of ships providing assistance by embarking persons in distress at sea are released from their obligations with minimum further deviation from the ships’ intended voyage, provided that releasing the master of the ship from these obligations does not further endanger the safety of life at sea. The Party responsible for the search and rescue region in which such assistance is rendered shall exercise primary responsibility for ensuring such co-ordination and co-operation occurs, so that survivors assisted are disembarked from the assisting ship and delivered to a place of safety, taking into account the particular circumstances of the case and guidelines developed by the Organization. In these cases, the relevant Parties shall arrange for such disembarkation to be effected as soon as reasonably practicable.”

Furthermore, a new paragraph 4.8.5 is added to Chapter 4 after the existing paragraph 4.8.4 and the new paragraphs provides as follows:

“4.8.5 The rescue co-ordination centre or rescue sub-centre concerned shall initiate the process of identifying the most appropriate place(s) for disembarking persons found in distress at sea. It shall inform the ship or ships and other relevant parties concerned thereof.”

In accordance with Article III(2)(h) of the Convention, the amendments shall enter into force on 1 July 2006 and shall be deemed accepted on that date unless, prior to that date, more than one third of the Parties, have notified their objection to the amendments. No such objection had been notified by that date.

XV

SEARCH AND RESCUE REGIME IN NIGERIA

Nigeria is a signatory to the 1974 SOLAS Convention, the 1982 UNCLOS as well as the 1979 SAR Convention. Thus, Nigeria is obliged to provide search and rescue services for people that are in distress along its coast. In addition to the ratification of these Conventions, Nigeria proceeded to incorporate the SOLAS Convention under Sections 131 to 250 of her Merchant Shipping Act 1962 (MSA 1962).¹⁰ Specific provisions were also made in Chapter 9, Sections 45 to 51 of the MSA 1962 for the rendering of assistance to distressed individuals. The MSA 1962 has been repealed and replaced by the Merchant Shipping Act 2007 (MSA) and the new Act in Part IX, Sections 117 to 123 has also made provisions for the assistance of distressed individuals.

However, in all of these, there was no search and rescue centre in the country to coordinate search and rescue efforts. Nigeria in 1998 formally agreed to undertake responsibility for the coordination and control of SAR operations across a substantial sea area exceeding her obligation under the SOLAS Convention to do so in areas around her coast.¹¹

During the October 2000 International Maritime Organization (IMO) Conference on Search and Rescue and the Global Maritime Distress and Safety System, held in Florence, Italy, governments agreed that a regional approach to the provision of SAR services in western, southern and eastern parts of Africa should be pursued.

¹⁰ Cap. 224 Laws of the Federation of Nigeria, 1990.

¹¹ The undertaking was made in 1998 at an IMO Conference in Fremantle, Australia during which the IMO formally recognised that the establishment of appropriate SAR facilities off the coast of Africa was a key component in the implementation of the Global SAR Plan.

They adopted a resolution inviting the African countries bordering the Atlantic and Indian Ocean, anti-clockwise from Morocco to Somalia, as well as the nearby Atlantic and Indian Ocean Island States, to establish five regional centres and 26 sub-centres to cover their entire coastline areas for SAR coordination purposes.¹²

The outcome of the Conference was the designation of Nigeria as one of the Regional Maritime Rescue Coordination Centre (RMRCC) in Africa.¹³ Realizing the sensitivity of these obligations, the then National Maritime Authority (NMA), the predecessor to the present Nigeria Maritime Administration and Safety Agency (NIMASA) in 2002 set the necessary machinery in motion to establish a Regional Maritime Rescue Coordination Centre (RMRCC) and Maritime Rescue Sub-centres (MRSC) in accordance with IMO COMSAR/Circular 18.¹⁴

On the 27th of May 2008, a fully-equipped RMRCC built in Lagos, Nigeria was commissioned by the IMO Secretary-General Efthimios E. Mitropoulos.¹⁵ On the same day, Nigeria and eight other countries, to wit, the Republic of Benin, Cameroon, Republic of Congo, Democratic Republic of Congo, Sao Tome and Principe, Equatorial Guinea and Gabon, signed a multi-lateral agreement in Lagos on the provision of Maritime Search and Rescue Services under the auspices of the RMRCC.¹⁶

¹² The Conference envisaged that all the proposed centres could work co-operatively to provide SAR coverage in what had been identified as one of the areas of the world suffering most from a lack of adequate SAR and communications infrastructure. Source: **IMO Secretary-General commissions Nigerian Maritime Rescue Co-ordination Centre, IMO Briefing 21, 29 May 2008** sourced at http://www.imo.org/Safety/mainframe.asp?topic_id=1709&doc_id=9207

¹³ The other countries being South Africa, Kenya, Morocco and Liberia.

¹⁴ Sourced at: <http://nimasa.gov.ng/MRCC-functions.htm>

¹⁵ IMO Briefing 21, 29 May 2008, *op.cit.*

¹⁶ See Thisday Newspaper of 28th May 2008 sourced at <http://www.thisdayonline.com/nview.php?id=112650>

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The Functions of the RMRCC will include:

- (a) providing harbour for the Joint Rescue Coordination SAR boats and helicopter, to give quick response time to the SAR teams;
- (b) strategic location of the MRCC and the accessibility by road, sea/waterways and air which will greatly create good access to medical attention;
- (c) state-of-the-art emergency facilities, Helicopter, SAR Boats, Ambulances to address and provide immediate response to emergency rescue cases;
- (d) serving as a centre to organise SAR training to seafarer on SAR operations;
- (e) operate as the Regional Centre for Distress Alert within the West and Central African region through the GDMSS.¹⁷

Despite the laudable efforts at enhancing search and rescue in Nigeria's coastlines, what was lacking for the nation was the fact that it had ratified but had failed to domesticate the International Convention on Maritime SAR 1979 and its amendments.

It is instructive to note in this regard that the MSA 2007 which came into force on the 28th of May 2007 only went as far as providing as follows:

“As from the commencement of this Act, the following Conventions, Protocols and their amendments relating to maritime safety shall apply; that is –

- (a) [not relevant];
- (b) [not relevant];
- (c) [not relevant];

¹⁷ Sourced at: <http://nimasa.gov.ng/MRCC-functions.htm>

(d) International Convention on Maritime Search and Rescue, 1979 (SAR).¹⁸

XVIII

Although the above provisions tend to suggest that the provisions of the International Convention on Maritime Search and Rescue 1979 together with its amendments have been domesticated, it is the writer's view that such an important Convention deserves to be domesticated in more specific terms rather than the generic approach to domestication adopted under the Merchant Shipping Act 2007.

This view finds support in the following statement made by one of Nigeria's leading maritime authorities:

*"... a convention only applies to Nigeria when it has been specifically incorporated into Nigerian legislation. This incorporation is effected in one of two ways. It may be interwoven together with provisions from other conventions to form one particular piece of legislation; or it may be introduced as a separate piece of legislation by featuring as the schedule to a brief enabling act..."*¹⁹

AIM

The aim of this project is to:

- (1) propose to the Government of Nigeria to domesticate in more specific terms the International Convention on Maritime SAR, 1979 as amended; and
- (2) propose a draft Bill for the domestication of the provisions of the International Convention on Maritime Search and Rescue, 1979, as amended.

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¹⁸ Section 215(d) Merchant Shipping Act 2007.

¹⁹ Louis N. Mbanefo, SAN, *Essays on Nigerian Shipping Laws*, Vol. 2, 1992 – 1997 at page 244.

IMPORTANCE OF DOMESTICATION OF THE SAR CONVENTION TO NIGERIA

Nigeria is presently on the IMO Council having successfully been elected at the last Council meeting in November 2007. The incorporation of the SAR Convention into Nigeria's domestic legislation will not only promote the unification and standardization of international law in the area of Maritime SAR, it will also ensure that Nigeria has the necessary legal framework for an efficient and effective SAR operations. This will in turn bolster Nigeria's influence among the world maritime community.

Domestication of the SAR Convention, as amended will also provide the proper legal framework for the efficient and successful operation of the newly commissioned Regional Maritime Rescue Coordination Centre (RMRCC) in Lagos, Nigeria and other MRCC's that would be established in the country in future. To borrow the words the Secretary General of the IMO, Mr. Mitropoulos, the domestication of the SAR Convention together with the establishment of the MRCC, "*will play a considerable part in achieving the overall objective of safeguarding life at sea and increasing the chances that those who find themselves in distress will be able to reach shore safely, while, at the same time, strengthening the region's response to enhanced maritime security and any threat posed by pirates and armed robbers*".²⁰

In addition to the other advantages earlier mentioned, the domestication of the SAR Convention with its amendments will ensure the closest practicable co-ordination between maritime and aeronautical services.

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It should be noted in this connection that Nigeria participated in the Conference on Search and Rescue hosted by the International Civil Aviation Organization (ICAO) and the African Civil

²⁰ The statement was part of the speech of the Secretary General at the commissioning of the Lagos MRCC. See IMO *Briefing 21, 29 May 2008, op.cit.*

Aviation Commission (AFCAC) on the 3rd – 7th of September 2007 in France. The conference in recognition of the need for harmonized SAR regulations, adopted a model Draft Search and Rescue Bill with a view to establish a cooperative [state] aeronautical and maritime Search and Rescue service organization in accordance with the provisions of the SAR Convention 1979), the Convention on International Civil Aviation (Chicago, 7 December 1944), and the SOLAS Convention 1974 as amended.²¹

As stated earlier an important Convention like the SAR 1979 together with its amendments deserves to be domesticated in more specific terms rather than the generic approach to domestication adopted under the Merchant Shipping Act 2007.

Contrary to the approach adopted by the MSA 2007 the SAR Convention should be incorporated into the laws of Nigeria in one of two ways. It may be interwoven together with provisions from other conventions to form one particular piece of legislation; or it may be introduced as a separate piece of legislation by featuring it as a schedule to a brief enabling act. The objective of this project is to adopt the latter approach by introducing an enabling Act with the Convention featuring as the schedule.

THE LEGISLATION DRAFTING PROCESS IN NIGERIA

The first stage in the legislative process is the introduction of a Bill. A Bill proposes either a change in the existing law or makes new legislative proposals and it is an initial draft of what may eventually become a statute.²² A Bill, in Nigeria may be initiated by the legislature, the executive arm or by private individuals.

XXI

A Bill for the domestication of an international convention would usually be initiated by the executive arm through any of its ministries or departments or directly from the Presidency.

Prior to its presentation as a Bill, the international convention would have gone through the process of signing, accession or ratification. The duty to conclude and ratify an international

²¹ The Draft SAR Bill can be found at <http://www.icao.int/SARafrica/Conf/Documentation.htm>.

²² Akintola A. Jimoh, *Law Practice & Procedure of Legislature*, 1999 at page 79.

convention is principally that of the Minister of Foreign Affairs, although certain other Ministers may do so upon due authorization.

On conclusion of ratification of the convention, the Ministry of Foreign Affairs would host an Inter-Ministerial Meeting and the relevant government organs responsible for implementing the convention would be identified. It is not uncommon for the government ministry responsible for implementing the international convention to initiate / sponsor the Bill for the domestication of the convention either alone or in conjunction with the Federal Ministry of Justice.

The government department vested with the ultimate control of shipping in all its ramifications is the Federal Ministry of Transport.²³

Although the Minister of Transport is the government official vested with the administration and general superintendence of the matters to which the Merchant Shipping Act 2007 relates²⁴, the Act empowers the Minister “to delegate any of the powers of a routine nature conferred on him” by the Act.²⁵ Furthermore, the Minister may from time to time give to the Agency of Government established and responsible for Maritime Safety Administration and Security [i.e. NIMASA] such general directions, not inconsistent with the Act or its Regulations as he may consider necessary.²⁶

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By these provisions, the Federal Ministry of Transport or NIMASA shall be responsible for introducing to the National Assembly, the proposed SAR Act.

All legislative proposal and Bills presented to the National Assembly are usually submitted to the office of the Legislative Counsel where draftsmen prepare the Bills in the legal form using the language and technicalities of law. At this stage, a number of amendments may be made to the draft Bill before a final draft of the Bill is presented to the House. Even after presentation of the Bill on the floor of the House a number of amendments may still be made by the House. Nigeria

²³ See Louis N. Mbanefo, SAN in a paper titled, “The Merchant Shipping Act 2007” presented at the 10th Maritime Seminar Law for Judges held on the 24th – 26th of June 2008.

²⁴ Section 1(1) of Merchant Shipping Act 2007.

²⁵ Section 1(2) of Merchant Shipping Act 2007.

²⁶ Section 2(1) of Merchant Shipping Act 2007.

operates a bicameral legislature with the implication that amendments are made to the Bill as it passes through the lower and upper chambers of the National Assembly. During this process, contentious clauses are deleted and useful clauses which were omitted are inserted.²⁷

It is after these rigorous processes that the Bill is finally passed into law by both the House of Representatives and the Senate.

INCORPORATION OF THE SEARCH AND RESCUE CONVENTION INTO NIGERIAN LAW

Nigeria follows the principle of dualism which is well entrenched in the English Legal System with regard to incorporation and application of international conventions into Nigerian law. The principle of dualism was restated as follows by Lord Oliver of Aylmerton in *Maclaine Watson & Co Ltd v Department of Trade and Industry, Maclaine Watson Co Ltd v International Tin Council*²⁸:

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“... As a matter of the constitutional law of the United Kingdom, the royal prerogative, whilst it embraces the making of treaties, does not extend to altering the law or conferring rights on individuals or depriving individuals of rights which they enjoy in domestic law without the intervention of Parliament. Treaties, as it is sometimes expressed, are not self-executing. Quite simply, a treaty is not part of English law unless and until it has been incorporated into the law by legislation. So far as individuals are concerned, it is res inter alios acta from which they cannot derive rights and by which they cannot be deprived of rights or subjected to obligations; and it is outside the purview of the court not only because it is made in the conduct of foreign relations, which

²⁷ Akintola Jimoh, op. cit., at page 84.

²⁸ (1990) 2 A.C. 418, 500, HL

are a prerogative of the Crown, but also because, as a source of rights and obligations, it is relevant."

The above position of the law was adopted with approval by Nigeria's Supreme Court in ***Abacha v. Fawehinmi***²⁹ where it was held that a treaty does not have the force of law in Nigeria until it has been passed into law by the National Assembly. The following statement of Ejiwunmi, JSC, is instructive:

*"It is therefore manifest that no matter how beneficial to the country or the Citizenry an international treaty to which Nigeria has become a signatory may be, it remains unenforceable, if it is not enacted into the law of the country by the National Assembly; This position is generally in accord with the practice in other countries. In the recent case of **Higgs & Anor. v. Minister of National Security & Ors.** The Times of December, 23, 1999 the Privy Council held that: - "In the law of England and the Bahamas, the right to enter into treaties was one of the surviving prerogative powers of the Crown. **Treaties formed no part of domestic law unless enacted by the legislature.** Domestic Courts had no jurisdiction to construe or apply Treaty, nor could unincorporated treaties change the law of the*

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*land. They had no effect upon citizens' rights and duties in common or statute law. They might have an indirect effect upon the construction of Statutes or might give rise to a legitimate expectation by citizens that the Government, it is act affecting them would observe the terms of the treaty."*³⁰ (Emphasis added)

The Supreme Court in ***Abacha v. Fawehinmi*** (supra) had construed the provisions of Section 12(1) of the Constitution of the Federal Republic of Nigeria 1979 which is in pari materia with Section 12(1) of the Constitution of the Federal Republic of Nigeria 1999, which provides as follows:

²⁹ (2000) 2 S.C. (Pt. II) 1 at page 75.

³⁰ ***Abacha v. Fawehinmi*** (supra) at page 75.

"No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly."

All treaties to be negotiated and entered into for and on behalf of the Federation of Nigeria by any Ministry, government agency, body or persons shall be made in accordance with the procedure specified in the Treaties (Making Procedure, etc.) Act of 1993.³¹

The Treaties (Making Procedure, etc.) Act stipulates that all treaties to be made between the Government of the Federation and any other country shall be classified into the following categories:

(a) law – making treaties, being agreements constituting rules which govern international relationship and co-operation in any area of endeavour and which have the effect of altering or modifying existing legislation or which affects the legislative powers of the National Assembly;

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(b) agreements which impose financial, political and social obligations on Nigeria or which are of scientific or technological import;

(c) agreements which deal with mutual exchange or cultural and educational facilities.³²

The Treaties (Making Procedure, etc.) Act provides further that the agreements specified in paragraph (a) above need to be enacted into law and the agreements specified in paragraph (b) above need to be ratified while those in paragraph (c) above may not need to be ratified.³³

In view of the fact that the SAR Convention 1979, as amended is a law – making treaty, it would require to be enacted into law by the National Assembly. Upon its enactment/passage into law,

³¹ See Section 1(2) of the Treaties (Making Procedure, etc.) Act , 1993, Cap. T20, Laws of the Federation of Nigeria 2004.

³² Treaties (Making Procedure, etc.) Act , 1993., Sections 2 and 3(1).

³³ Ibid., Section 3(2).

the Act domesticating the treaty shall be assented to by the President of Nigeria³⁴ and published in a Gazette. Thereafter it automatically becomes applicable as part of the Domestic Laws of Nigeria.

The SAR Convention 1979 as amended which is intended to be domesticated as part of Nigerian law is attached to the Bill as Schedule 1.

ENFORCEMENT AND IMPLEMENTATION OF THE CONVENTION

The Nigerian Maritime Administration and Safety Agency (NIMASA) is Nigeria's apex regulatory and promotional maritime agency. NIMASA emerged on 1st August 2006 from the merger of the erstwhile National Maritime Authority (NMA) and the Joint Maritime Labour Industrial Council (JOMALIC which was responsible for the regulation and administration of maritime labour in Nigeria).

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By virtue of this merger, NIMASA is now responsible for maritime administration and safety as well as the regulation and administration of maritime labour in Nigeria.

The powers and functions of the Agency are derived from the following statutes:

- (i) Nigerian Maritime Administration and Safety Agency Act 2007;
- (ii) Merchant Shipping Act 2007; and
- (iii) Coastal and Inland Shipping (Cabotage) Act 2003.

These Acts confer the following functions on the Agency, among others:

- a) Pursue the development of shipping and regulate matters relating to merchant shipping and seafarers;
- b) Administering the registration and licensing of ships;

³⁴ Section 58(1) of the 1999 Constitution of Nigeria provides that "the power of the National Assembly to make laws shall be exercised by bills passed by the both the Senate and the House of Representatives and, except as otherwise provided by subsection (5) of this section, assented to by the President.

- c) Regulate and administer the certification of seafarers;
- d) Establish maritime training and safety standards;
- e) Regulate the safety of shipping as regards the construction of ships and navigation;
- f) Provide directions and ensure compliance with vessel security measures;
- g) Carry out air and coastal surveillances;
- h) Control and prevent maritime pollution;
- i) Provide direction on qualification, certification, employment and welfare of maritime labour;
- j) Develop and implement policies and programmes which will facilitate the growth of local capacity in ownership, manning and construction of ships and other maritime infrastructure;
- k) Perform port and flag state duties;
- l) Receive and remove wrecks;
- m) Provide National Maritime Search and Rescue Services;
- n) Provide Maritime Security; and

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- o) Establish the procedure for the implementation of conventions of the International Maritime Organisation and the International Maritime Labour Organisation and other international conventions to which the Federal Republic of Nigeria is a party on Maritime Safety and Security, Maritime Labour, Commercial Shipping and for the implementation codes, resolutions and circulars arising there from.

Nigeria joined the IMO on 15 March 1962 and as a member State, she is bound by Article 2.6 of the Vienna Conventions on Law of Treaties 1969 and 1986, which provides that “every treaty in force is binding upon the parties to it and must be performed by them in good faith”.

However, as at 2001, Nigeria had only formally accepted 13 out of the 43 IMO International Conventions which were then in force. Out of the 13 Conventions only 3 had been domesticated while the remaining 10 Conventions were merely ratified or acceded to.³⁵

With the introduction of the new MSA 2007, a lot of changes have occurred in the maritime safety administration. A quantum leap was made by Section 215 of the new Act. In one fell swoop, it incorporated into the Act twelve important International Conventions relating to maritime safety among which was the SAR Convention, 1979.

Although the Minister of Transport is the government official vested with the administration of the MSA 2007, the new Act [Section 1(2)] empowers the Minister “to delegate any of the powers of a routine nature conferred on him” by the Act. Furthermore, Section 2(1) of the Act provides that the Minister may from time to time give to the Agency of Government established and responsible for Maritime Safety Administration and Security [i.e. NIMASA] such general directions, not inconsistent with the Act or its Regulations as he may consider necessary.

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By this provision and the provisions of the NIMASA Act, NIMASA shall be the implementing agency for the Act³⁶ and would be responsible for the implementation of conventions such as the SAR Convention and other international conventions to which the Federal Republic of Nigeria is a party on Maritime Safety and Security, Maritime Labour, Commercial Shipping, etc.

³⁵ See Dr. Bola Fajemirokun’s paper titled, “New Maritime Regulatory Statutes” published in the book 9th Maritime Seminar for Judges at pages 217 - 218.

³⁶ See Louis N. Mbanefo, SAN in a paper titled, “The Merchant Shipping Act 2007” presented at the 10th Maritime Seminar Law for Judges held on the 24th – 26th of June 2008.

XXIX

**INTERNATIONAL CONVENTION ON MARITIME SEARCH AND RESCUE
(RATIFICATION AND ENFORCEMENT) BILL, 2009**

A BILL

FOR

**AN ACT TO ENABLE EFFECT TO BE GIVEN IN THE FEDERAL REPUBLIC OF
NIGERIA TO THE INTERNATIONAL CONVENTION ON MARITIME SEARCH AND
RESCUE AND MATTERS CONNECTED THEREWITH**

[6th April, 2009] Commencement

WHEREAS a Convention entitled the “International Convention on
Maritime Search and Rescue”, has been duly adopted by diverse States

at *Hamburg, on 27 April 1979* (in this Act referred to as “the SAR Convention”) and amendments have been made to the Convention in *London, on 18 May 1998 and 20 May 2004*;

AND WHEREAS the Federal Republic of Nigeria, being desirous of adhering to the SAR Convention has ratified the Convention as amended;

AND WHEREAS it is necessary and expedient that the SAR Convention as amended and as set out with modifications in the First Schedule to this Act should, subject to the provisions of this Act, be given the force of law in the Federal Republic of Nigeria;

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NOW THEREFORE BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows: -

- 1(a) As from the commencement of this Act, the provisions of the Application SAR Convention which are set out in the First Schedule to this of the SAR Act shall, subject as hereunder provided, have force of Law and Convention shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive and judicial powers in the Federal Republic of Nigeria

- 2 (a) There is hereby established the Regional Maritime Rescue Establishment Coordination Centre (“RMRCC”) for provision of maritime search and rescue services for seafarers and other persons that are in distress along the coastal waters of Nigeria, the Republic of Benin, Cameroon, Republic of Congo, Democratic Republic of Congo, Sao Tome and Principe, Equatorial Guinea and Gabon and such other countries that Nigeria may enter into agreement with for the provision of Maritime Search and Rescue services.

- (b) The Minister responsible for maritime transportation may establish or approve the establishment of such other Maritime Rescue Sub – Centres (“Sub – Centres”) as he may deem necessary for the provision of search and rescue services for seafarers and other persons that are in distress along the coast or within the territorial waters or inland waters of Nigeria.

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- 3.(a) The Regional Centre shall be administered and operated by Administration the Nigerian Maritime Administration and Safety Agency in accordance with the Nigerian Maritime Administration and Safety Agency Act 2007 and the provisions of this Act.
- (b) A Sub – Centre, if established by the Minister responsible for maritime transportation shall be administered by the Nigerian Maritime Administration and Safety Agency in accordance with its enabling Act and the provisions of this Act or by any other government agency designated by the Minister .
- 4.(1) The functions and duties of the Regional Centre and the Sub – Functions & Centres shall where applicable include: Duties
- (a) on receiving information that any person is, or appears to be, in distress at sea or within the inland waters of Nigeria, to take urgent steps to ensure that the necessary assistance is promptly provided to that person regardless of the nationality or status of such a person or the circumstances in which that person is found;

- (b) to provide adequate shore-based communication infrastructure, efficient distress alert routing, and proper operational coordination to effectively support search and rescue services;
- (c) to establish close cooperation between services and organizations which may contribute to improve search and rescue services in areas such as operations, planning, training, exercises and research and development;

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- (d) to ensure the closest practicable coordination between maritime and aeronautical services so as to provide for the most effective and efficient search and rescue services in and over the territory of Nigeria;
- (e) to cooperate with other Regional Maritime Rescue Coordination Centres outside Nigeria for the development, coordination, and improvement of search and rescue services in accordance with the provisions of the SAR Convention;
- (f) to implement, enforce and administer the provisions of the SAR Convention set out in the Schedule to this Act;
- (g) to perform such other obligations to be performed by Nigeria under the SAR Convention set out in the Schedule to this Act and any reference to “Party”, “Parties”, “State” or “States” in the Convention shall be deemed in so far as it is applicable to be reference to the Regional Centre, the Sub – Centres, the Nigerian Maritime Administration and Safety Agency or the Minister responsible for maritime transportation as the case may be.

- (2) The Regional Centre and each Sub – Centre, established in accordance with this Act shall arrange for the receipt of distress alerts originating from within its search and rescue area and shall also arrange for communications with persons in distress, with search and rescue facilities, and with other rescue coordination centres or rescue sub-centres.

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- (3) The Regional Centre and each Sub - Centre shall be operational on a 24-hour basis and be constantly staffed by trained personnel having a working knowledge of the English language.
- (4) Containers and packages containing survival equipment for dropping to survivors should have the general nature of their contents indicated by markings in accordance with standards adopted by the International Maritime Organization.

5(1) A Search and Rescue Coordinating Committee (SARC Committee) shall be established for the purpose of: The SARC Committee

- (a) providing a standing forum for coordination of administrative and operational Search and Rescue matters within the territory of the Federal Republic of Nigeria;
- (b) approving national Search and Rescue plans, policies and procedures;
- (c) coordinating the activities of the Sub – Centres to ensure conformity with the provisions of the SAR Convention and this Act.

- (2) The SARC Committee shall be chaired on a rotational basis every two years by the Minister responsible for aviation and maritime transport.

- (3) The composition of the SARC Committee shall include representatives of Ministries and government agencies responsible for defence, interior, national disaster management, civil aviation, health, works and maritime transport.

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- (4) The Chairperson may if the need arises, invite representatives of other ministries, private, governmental and volunteer organizations to be members of the SARC Committee on *ad hoc* basis.

6. Nothing in this Act shall affect the operation of sections 117, Savings
117, 119, 120, 121, 122, 123 and 215(d) of the Merchant Shipping Act
2007 and sections 22(1)(o), (5) and (6) of the Nigerian Maritime
Administration and Safety Agency Act 2007 as amended by any
subsequent enactment.

7. In this Act, unless the context otherwise requires - Interpretation

- (a) Words and expressions used in this Act shall have the same meaning assigned to them in the First Schedule to the Act and the Merchant Shipping Act 2007;
- (b) The Annex to the SAR Convention is an integral part of the Convention and a reference in this Act to the Convention constitutes at the same time a reference to its Annex as set out in the First Schedule to the Act.

8. This Act may be cited as the International Convention on Short title
Maritime Search and Rescue (Ratification and Enforcement)
Act, 2009.

FIRST SCHEDULE

**INTERNATIONAL CONVENTION ON
MARITIME SEARCH AND RESCUE, 1979 as Amended**

THE PARTIES TO THE CONVENTION,

NOTING the great importance attached in several conventions to the rendering of assistance to persons in distress at sea and to the establishment by every coastal State of adequate and effective arrangements for coast watching and for search and rescue services,

HAVING CONSIDERED Recommendation 40 adopted by the International Conference on Safety of Life at Sea, 1960, which recognizes the desirability of coordinating activities regarding safety on and over the sea among a number of inter-governmental organizations,

DESIRING to develop and promote these activities by establishing an international maritime search and rescue plan responsible to the needs of maritime traffic for the rescue of persons in distress at sea,

WISHING to promote co-operation among search and rescue organizations around the world and among those participating in search and rescue operations at sea.

HAVE AGREED as follows:

Article I

N/A

Article II

Other treaties and interpretation

1. Nothing in the Convention shall prejudice the codification and development of the law of the sea by the United Nations Conference on the Law of the Sea convened pursuant to resolution 2750(XXV) of the General Assembly of the United Nations nor the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction.
2. No provision of the Convention shall be construed as prejudicing obligations or rights of vessels provided for in other international instruments.

ANNEX

"CHAPTER 1

TERMS AND DEFINITIONS

- 1.1 "Shall" is used in the Annex to indicate a provision, the uniform application of which by all Parties is required in the interest of safety of life at sea.
- 1.2 "Should" is used in the Annex to indicate a provision, the uniform application of which by all Parties is recommended in the interest of safety of life at sea.
- 1.3 The terms listed below are used in the Annex with the following meanings:
 - .1 "Search". An operation, normally coordinated by a rescue coordination centre or rescue sub-centre, using available personnel and facilities to locate persons in distress;

- .2 "Rescue". An operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety;
- .3 "Search and rescue service". The performance of distress monitoring, communication, coordination and search and rescue functions, including provision of medical advice, initial medical assistance, or medical evacuation, through the use of public and private resources including cooperating aircraft, vessels and other craft and installations;
- .4 "Search and rescue region". An area of defined dimensions associated with a rescue coordination centre within which search and rescue services are provided;
- .5 "Rescue coordination centre". A unit responsible for promoting efficient organization of search and rescue services and for coordinating the conduct of search and rescue operations within a search and rescue region;
- .6 "Rescue sub-centre". A unit subordinate to a rescue coordination centre established to complement the latter according to particular provisions of the responsible authorities;
- .7 "Search and rescue facility". Any mobile resource, including designated search and rescue units, used to conduct search and rescue operations;
- .8 "Search and rescue unit". A unit composed of trained personnel and provided with equipment suitable for the expeditious conduct of search and rescue operations;
- .9 "Alerting post". Any facility intended to serve as an intermediary between a person reporting an emergency and a rescue coordination centre or rescue sub-centre;

- .10 "Emergency phase". A generic term meaning, as the case may be, uncertainty phase, alert phase or distress phase;

- .11 "Uncertainty phase". A situation wherein uncertainty exists as to the safety of a person, a vessel or other craft;
- .12 "Alert phase". A situation wherein apprehension exists as to the safety of a person, a vessel or other craft;
- .13 "Distress phase". A situation wherein there is a reasonable certainty that a person, a vessel or other craft is threatened by grave and imminent danger and requires immediate assistance;
- .14 "On-scene coordinator". A person designated to coordinate search and rescue operations within a specified area;
- .15 "Secretary-General". The Secretary-General of the International Maritime Organization.

CHAPTER 2

N/A

CHAPTER 3

COOPERATION BETWEEN STATES

3.1 Cooperation between States:

3.1.1 Parties shall coordinate their search and rescue organizations and should, whenever necessary, coordinate search and rescue operations with those of neighbouring States.

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3.1.2 Unless otherwise agreed between the States concerned, a Party should authorize, subject to applicable national laws, rules and regulations, immediate entry into or over its territorial sea or territory of rescue units of other Parties solely for the purpose of searching for the position of maritime casualties and rescuing the survivors of such casualties. In such cases, search and rescue operations shall, as far as practicable, be

coordinated by the appropriate rescue co-ordination centre of the Party which has authorized entry, or such other authority as has been designated by that Party.

3.1.3 Unless otherwise agreed between the States concerned, the authorities of a Party which wishes its rescue units to enter into or over the territorial sea or territory of another Party solely for the purpose of searching for the position of maritime casualties and rescuing the survivors of such casualties, shall transmit a request, giving full details of the projected mission and the need for it, to the rescue co-ordination centre of that other Party, or to such other authority as has been designated by that Party.

3.1.4 The responsible authorities of Parties shall:

- .1 immediately acknowledge the receipt of such a request; and
- .2 as soon as possible indicate the conditions, if any, under which the projected mission may be undertaken.

3.1.5 Parties should enter into agreements with neighbouring States setting forth the conditions for entry of each other's search and rescue units into or over their respective territorial sea or territory. These agreements should also provide for expediting entry of such units with the least possible formalities.

3.1.6 Each Party should authorize its rescue coordination centres:

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- .1 to request from other rescue coordination centres such assistance, including vessels, aircraft, personnel or equipment, as may be needed;
- .2 to grant any necessary permission for the entry of such vessels, aircraft, personnel or equipment into or over its territorial sea or territory;
- .3 to make the necessary arrangements with the appropriate customs, immigration, health or other authorities with a view to expediting such entry; and

- .4 to make the necessary arrangements in co-operation with other RCC's to identify the most appropriate place(s) for disembarking persons found in distress at sea.”
- 3.1.7 Each Party shall ensure that its rescue coordination centres provide, when requested, assistance to other rescue coordination centres, including assistance in the form of vessels, aircraft, personnel or equipment.
- 3.1.8 Parties should enter into agreements with other States, where appropriate, to strengthen search and rescue cooperation and coordination. Parties shall authorize their responsible authority to make operational plans and arrangements for search and rescue cooperation and coordination with responsible authorities of other States.
- 3.1.9 Parties shall co-ordinate and co-operate to ensure that masters of ships providing assistance by embarking persons in distress at sea are released from their obligations with minimum further deviation from the ships' intended voyage, provided that releasing the master of the ship from these obligations does not further endanger the safety of life at sea. The Party responsible for the search and rescue region in which such assistance is rendered shall exercise primary responsibility for ensuring such co-ordination and co-operation occurs, so that survivors assisted are disembarked from the assisting ship and delivered to a place of safety, taking into account the particular circumstances of the case and guidelines developed by the Organization. In these cases, the relevant Parties shall arrange for such disembarkation to be effected as soon as reasonably practicable.

CHAPTER 4

OPERATING PROCEDURES

4.1 Preparatory measures

- 4.1.1 Each rescue coordination centre and rescue sub-centre shall have available up-to-date information especially concerning search and rescue facilities and available communications relevant to search and rescue operations in its area.

4.1.2 Each rescue coordination centre and rescue sub-centre should have ready access to information regarding the position, course and speed of vessels within its area which may be able to provide assistance to persons, vessels or other craft in distress at sea, and regarding how to contact them. This information should either be kept in the rescue coordination centre, or be readily obtainable when necessary.

4.1.3 Each rescue coordination centre and rescue sub-centre shall have detailed plans of operation for the conduct of search and rescue operations. Where appropriate, these plans shall be developed jointly with the representatives of those who may assist in providing, or who may benefit from, the search and rescue services.

4.1.4 Rescue coordination centres or sub-centres shall be kept informed of the state of preparedness of search and rescue units.

4.2 Information concerning emergencies

4.2.1 Parties, either individually or in cooperation with other States shall ensure that they are capable on a 24-hour basis of promptly and reliably receiving distress alerts from equipment used for this purpose within their search and rescue regions. Any alerting post receiving a distress alert shall:

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.1 immediately relay the alert to the appropriate rescue coordination centre or sub-centre, and then assist with search and rescue communications as appropriate; and

.2 if practicable acknowledge the alert.

4.2.2 Parties shall, where appropriate, ensure that effective arrangements are in place for the registration of communication equipment and for responding to emergencies, to enable any rescue coordination centre or sub-centre to access pertinent registration information quickly.

4.2.3 Any authority or element of the search and rescue service having reason to believe that a person, a vessel or other craft is in a state of emergency shall forward as soon as possible all available information to the rescue coordination centre or rescue sub-centre concerned.

4.2.4 Rescue coordination centres and rescue sub-centres shall, immediately upon receipt of information concerning a person, a vessel, or other craft in a state of emergency, evaluate such information and determine the phase of emergency in accordance with paragraph 4.4, and the extent of operations required.

4.3 Initial action

Any search and rescue unit receiving information of a distress incident shall initially take immediate action if in the position to assist and shall, in any case without delay, notify the rescue coordination centre or rescue sub-centre in whose area the incident has occurred.

4.4 Emergency phases

To assist in determining the appropriate operating procedures, the following emergency phases shall be distinguished by the rescue coordination centre or sub-centre concerned:

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.1 Uncertainty phase:

.1.1 when a person has been reported as missing, or a vessel or other craft is overdue; or

.1.2 when a person, a vessel or other craft has failed to make an expected position or safety report.

.2 Alert phase:

- .2.1 when, following the uncertainty phase, attempts to establish contact with a person, a vessel or other craft have failed and inquiries addressed to other appropriate sources have been unsuccessful; or
- .2.2 when information has been received indicating that the operating efficiency of a vessel or other craft is impaired, but not to the extent that a distress situation is likely.
- .3 Distress phase:
 - .3.1 when positive information is received that a person, a vessel or other craft is in danger and in need of immediate assistance; or
 - .3.2 when, following the alert phase, further unsuccessful attempts to establish contact with a person, a vessel or other craft and more widespread unsuccessful inquiries point to the probability that a distress situation exists; or
 - .3.3 when information is received which indicates that the operating efficiency of a vessel or other craft has been impaired to the extent that a distress situation is likely.
- 4.5 Procedures to be followed by rescue coordination centres and rescue sub-centres during emergency phases.

- 4.5.1 Upon the declaration of the uncertainty phase, the rescue coordination centre or rescue sub-centre, as appropriate, shall initiate inquiries to determine the safety of a person, a vessel or other craft, or shall declare the alert phase.
- 4.5.2 Upon the declaration of the alert phase, the rescue coordination centre or rescue sub-centre, as appropriate, shall extend inquiries for the missing person, vessel or other craft, alert appropriate search and rescue services and initiate such action, as is necessary in the light of the circumstances of the particular case.

4.5.3 Upon the declaration of the distress phase, the rescue coordination centre or rescue sub-centre, as appropriate, shall proceed as prescribed in its plans of operation, as required by paragraph 4.1.

4.5.4 Initiation of search and rescue operations when the position of the search object is unknown.

In the event of an emergency phase being declared for a search object whose position is unknown, the following shall apply:

- .1 when an emergency phase exists, a rescue coordination centre or rescue sub-centre shall, unless it is aware that other centres are taking action, assume responsibility for initiating suitable action and confer with other centres with the objective of designating one centre to assume responsibility;
- .2 unless otherwise decided by agreement between the centres concerned, the centre to be designated shall be the centre responsible for the area in which the search object was according to its last reported position; and
- .3 after the declaration of the distress phase, the centre coordinating the search and rescue operations shall, as appropriate, inform other centres of all the circumstances of the emergency and of all subsequent developments.

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4.5.5 Passing information to persons, vessels, or other craft for which an emergency phase has been declared.

Whenever possible, the rescue coordination centre or rescue sub-centre responsible for search and rescue operations shall forward to the person, a vessel or other craft for which an emergency phase has been declared, information on the search and rescue operations it has initiated.

4.6 Coordination when two or more Parties are involved

For search and rescue operations involving more than one Party, each Party shall take appropriate action in accordance with the plans of operation referred to in paragraph 4.1 when so requested by the rescue coordination centre of the region.

4.7 On-scene coordination of search and rescue activities

4.7.1 The activities of search and rescue units and other facilities engaged in search and rescue operations shall be coordinated on-scene to ensure the most effective results.

4.7.2 When multiple facilities are about to engage in search and rescue operations, and the rescue coordination centre or rescue sub-centre considers it necessary, the most capable person should be designated as on-scene coordinator as early as practicable and preferably before the facilities arrive within the specified area of operation. Specific responsibilities shall be assigned to the on-scene coordinator taking into account the apparent capabilities of the on-scene coordinator and operational requirements.

4.7.3 If there is no responsible rescue coordination centre or, by any reason, the responsible rescue coordination centre is unable to coordinate the search and rescue mission, the facilities involved should designate an on-scene coordinator by mutual agreement.

4.8 Termination and suspension of search and rescue operations

4.8.1 Search and rescue operations shall continue, when practicable, until all reasonable hope of rescuing survivors has passed.

4.8.2 The responsible rescue coordination centre or rescue sub-centre concerned shall normally decide when to discontinue search and rescue operations. If no such centre is involved in coordinating the operations, the on-scene coordinator may take this decision.

4.8.3 When a rescue coordination centre or rescue sub-centre considers, on the basis of reliable information that a search and rescue operation has been successful, or that the emergency

no longer exists, it shall terminate the search and rescue operation and promptly so inform any authority, facility or service which has been activated or notified.

4.8.4 If a search and rescue operation on-scene becomes impracticable and the rescue coordination centre or rescue sub-centre concludes that survivors might still be alive, the centre may temporarily suspend the on-scene activities pending further developments, and shall promptly so inform any authority, facility or service which has been activated or notified. Information subsequently received shall be evaluated and search and rescue operations resumed when justified on the basis of such information.

4.8.5 The rescue co-ordination centre or rescue sub-centre concerned shall initiate the process of identifying the most appropriate place(s) for disembarking persons found in distress at sea. It shall inform the ship or ships and other relevant parties concerned thereof.

CHAPTER 5

SHIP REPORTING SYSTEMS

5.1 General

5.1.1 Ship reporting systems may be established either individually by Parties or in cooperation with other States, where this is considered necessary, to facilitate search and rescue operations.

5.1.2 Parties contemplating the institution of a ship reporting system should take account of the relevant recommendations of the Organization. Parties should also consider whether existing reporting systems or other sources of ship position data can provide adequate information for the region, and seek to minimize unnecessary additional reports by ships,

or the need for rescue coordination centres to check with multiple reporting systems to determine availability of ships to assist with search and rescue operations.

5.1.3 The ship reporting system should provide up-to-date information on the movements of vessels in order, in the event of a distress incident, to:

- .1 reduce the interval between the loss of contact with a vessel and the initiation of search and rescue operations in cases where no distress signal has been received;
- .2 permit rapid identification of vessels which may be called upon to provide assistance;
- .3 permit delineation of a search area of limited size in case the position of a person, a vessel or other craft in distress is unknown or uncertain; and
- .4 facilitate the provision of urgent medical assistance or advice.

5.2 Operational requirements.

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5.2.1 Ship reporting systems should satisfy the following requirements:

- .1 provision of information, including sailing plans and position reports, which would make it possible to determine the current and future positions of participating vessels;
- .2 maintenance of a shipping plot;
- .3 receipt of reports at appropriate intervals from participating vessels;
- .4 simplicity in system design and operation; and
- .5 use of internationally agreed standard ship reporting format and procedures.

5.3 Types of reports

5.3.1 A ship reporting system should incorporate the following types of ship reports in accordance with the recommendations of the Organization:

.1 Sailing plan;

.2 Position report; and

.3 Final report.

5.4 Use of systems

5.4.1 Parties should encourage all vessels to report their position when traveling in areas where arrangements have been made to collect information on positions for search and rescue purposes.

5.4.2 Parties recording information on the position of vessels should disseminate, so far as practicable, such information to other States when so requested for search and rescue purposes."