



IMO
INTERNATIONAL MARITIME LAW INSTITUTE
Established under the auspices of the International Maritime Organization
A specialized agency of the United Nations



Subject:- Amendment to “The Suppression of Unlawful Acts Against the Safety of Maritime Navigation and Fixed Platforms Located on the Continental Shelf Act, 2002” of India.

Object:- For incorporation of 2005 Protocol to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 1988 into the Indian National Law, and

To incorporate “criminal jurisdiction” for prosecuting a foreign national committing criminal act against an Indian citizen outside Indian Territorial waters in a foreign flag ship.

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 IMO International Maritime Law Institute

Submitted By: *Ananda Chandra Ojha*
(India)

Supervisor: *Mr. Ruben Y. Maceda, Assistant Lecturer*

Academic Year 2007/2008

The author is like to express his gratitude appreciation for the Supervisor's commitment and valuable guidance throughout the completion of this work.

Ananda C. Ojha

TABLE OF CONTENTS

1.	Chapter I	Introduction	4
1.1		Origin	5
1.2		SUA Convention 1988	6
1.3		2005 SUA Protocol	7
2.	Chapter II	Indian scenario	10
2.1		SUA Convention, 1988 and Indian SUA Act, 2002	11
2.2		India's position on 2005 Protocol to SUA, 1988	12
2.3		Need for amendment	13
2.4		Indian Legislative procedure	15
3.	Chapter III	SUA Bill	17
3.1		Statement of Objects and Reasons	18
3.1		Draft SUA (Amendment) Bill 2008	21
3.2		SUA Act, 2002	31
3.3		SUA (Amended) Bill 2008 (Consolidated Text)	39

CHAPTER I

INTRODUCTION

ORIGIN

Maritime Safety has been on the International Maritime Organisation (IMO)'s agenda since the Organisation was established in 1948 as International Maritime Consultative Committee (IMCO). The issue has become more specific since the 1980s, and the unlawful acts which threaten the safety of ships and the security of their passengers and crews have started to gain more importance. The issue caught the attention of the international community in the aftermath of hijacking of the Italian cruise ship *Achille Lauro* in October 1983¹.

In October 1983 four heavily armed Palestinian terrorists hijacked the Italian cruise ship *Achille Lauro* which was carrying more than 400 passengers and crew. The hijackers demanded that Israel free 50 Palestinian prisoners. After two days of negotiations, the hijackers surrendered in exchange for a guarantee of safe passage out of Egypt. Originally planned by the Palestine Liberation Movement's Abu Abbas group as mission to smuggle arms and explosives into Israel via the sea, it turned out to be a hostage-taking incident when the *Achille Lauro's* crew inadvertently uncovered the Palestinian plot. The terrorists took control of the vessel and demanded, among other things, the release of their confederates held in Israeli jails and safe passage for themselves. In the course of the high drama, one of the terrorists killed an unarmed and disabled American tourist and thrown his body overboard with his wheelchair. When an Egyptian jet air tried to fly the hijackers

¹ Dr Oya Ozcayir 'Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention)' JIML, (2005) 11.

to freedom, US Navy fighters intercepted and forced it to land in Sicily, where the terrorists were taken into custody by the Italian authorities².

Following the *Achille Lauro* incident, the IMO adopted Assembly resolution A545(13) in 1985 on 'Measures to prevent acts of piracy and armed robbery against ships', in order to address specific problems relating to piracy and armed robbery. In December, 1985, the IMO was requested by the United Nations General assembly to carry out a study on the problem of terrorism aboard or against ships, in order to make recommendations on appropriate measures. In November 1986, the governments of Austria, Egypt and Italy proposed a convention on the subject of unlawful acts against the safety of maritime navigation to the IMO. They submitted a draft proposed convention, which would fill the gap in the present system on the suppression of such acts.

The SUA Convention 1988

In March 1988, a conference in Rome adopted the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) together with a Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf. These two instruments entered into force on 1 March, 1992. The aim of the Convention as evident from its preamble is stated as under:

“To provide for a comprehensive suppression of unlawful acts committed against the safety of maritime navigation which endanger innocent human lives, jeopardize the safety of persons and property, seriously affect the operation of maritime services and thus are of grave concern to international community as a whole.”³

The primary purpose of the SUA convention and its protocol is to make sure that people committing unlawful acts against ships and against fixed platforms located on the continental shelf) will not be given shelter in any country, but will either be prosecuted or

² Dr P K Mukherjee and Max Mejia Jr 'SUA Convention 2005: a critical evaluation of its effectiveness in suppressing marine criminal acts' JMIL, (2006) 12.

³ Preamble to Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988.

extradited to a country where they will stand trial. In other words, its purpose is to ensure that appropriate action is taken against persons committing unlawful acts against ships and fixed platforms in the continental shelf. 'Unlawful acts' include the seizure of ships by force; acts of violence against persons on board ships, and the placing of devices on board a ship which are likely to destroy or damage it.

2005 Protocol to the SUA Convention

Following the tragic events of 9/11, the shipping industry realized that a more stringent and comprehensive set of security measures was needed. In November 2001, the IMO Assembly adopted Resolution A.924 (22) the SUA treaty and its protocol are kept under periodic review by IMO's legal committee. The IMO legal committee's three years' work on amending the SUA Convention started in 2002. The aim is to strengthen the SUA treaties by substantial amendments, in order to provide an appropriate response to the increasing risk caused to maritime navigation by international terrorism.

In 2002, the 85th Session of the IMO legal Committee held a preliminary exchange of views on the text of draft proposed amendments to the 1988 SUA Convention and the SUA Convention remained a central issue on the agenda of the 89th session of the legal committee. The Diplomatic Conference on the Revision of the SUA Treaties met at the IMO from 10-14 October 2005 at London and adopted the amendments in the form of protocols to the SUA treaties (the 2005 Protocols).

The scope of offences included in the protocol has been extended with a new Article 2bis⁴. A person commits an offence if that person unlawfully, when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act, uses against or on a fixed platform or discharges from a fixed platform any explosive, radioactive material or biological, chemical and nuclear (BCN) material in a manner that cause or is likely to cause death or serious injury or damage; or discharges from a fixed platform, oil, liquefied

⁴ Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988.

natural gas, or other hazardous or noxious substance, in such quantity or concentration, that it causes or is likely to cause death or serious injury or damage; or threatens, with or without a condition, as is provided for under national law, to commit an offence.

New Article 2ter includes the offences of unlawfully and intentionally injuring or killing any person in connection with the commission of any of the offences; attempting to commit an offence; participating as accomplice; organizing or directing others to commit an offence.

Amendments extend the rights of maritime forces to pursue terrorists, pirates and maritime criminals into foreign territorial waters. Article 8bis adds provisions regarding transportation of explosives and radioactive materials, BCN weapons, their source materials, any equipments, material software or related technology as well as persons involving such terrorist and subversive activities as unlawful and an offence under the new protocol to Convention. The boarding provisions of the new Protocol establish a comprehensive set of procedures and protections to facilitate the boarding of a vessel suspected of being involved in a SUA offence, while ensuring that flag state jurisdiction is respected. The aim of the procedure is to eliminate the need to negotiate time-consuming boarding arrangements in the face of an ongoing criminal activity. A flag state may grant authorization to a requesting state to board and search a ship, including the persons and goods on board. A flag state may also authorise a boarding state to exercise powers, in relation to arrest, detention, forfeiture and prosecution, but these powers can only be granted to 'another state having jurisdiction under Article 6'. But Article 6 does not give power to exercise jurisdiction in respect of persons arrested on the high seas if there is no other ground of jurisdiction.

The protocol in Article 8bis also provides for more meaningful State cooperation to prevent and suppress such unlawful acts covered in the Convention in confirmation with international law. The member States are now required to respond to the requests as expeditiously as possible. It also provides for the procedure thereof. It further provides safeguards against any wrongful or unreasonable action for detention of the ship/vessel in this respect. However, the State party (under Port State Control regime) has to make such

efforts reasonable, responsibly and diligently keeping a balance between the safety of navigation and unreasonable detention or delay of the vessel. Thus, more responsibility and burden has been placed on the State parties.

CHAPTER II

INDIAN SCENARIO

The SUA Convention 1988 and Indian SUA Act, 2002

India is committed to the international regime against the terrorist activities world wide and is a strong supporter of the SUA Convention from its beginning. The International Conference convened under the auspices of the International Maritime Organisation, London on 10th March, 1988 adopted the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation as well as the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf. While the Convention applies to unlawful acts in relation to ships of any type not permanently attached to seabed, the Protocol applies to Fixed Platforms. These were adopted in view of the world wide escalating acts of terrorism endangering the safety of life at sea and conforming to the purpose and principles of the UN Charter concerning the maintenance of international peace and security and promotion of friendly relations and cooperation amongst States. India has acceded to the Convention as well as the Protocol in 1999 and it came into force from 13th January, 2000 w.r.t. India.

To ensure effective and smooth implementation of the provisions of the Convention and the Protocol, a new and separate legislation has been considered necessary. Accordingly, the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 (69 of 2002) on the lines of the Suppression of Unlawful Acts Against the Safety of Civil Aviation Act, 1982 (66 of 1982) and the Anti Hijacking Act, 1982 (65 of 1982). The Act aims at having legislative provisions to effectively deal with unlawful acts which endanger safety of maritime navigation, safety of persons and of property. It provides for stringent punishments for various unlawful acts on the sea.

India's Position on 2005 Protocol to the SUA Convention, 1988

The 2005 amendment to the SUA Convention (2005 SUA Protocol) is yet another milestone in the field of treaty-making. The SUA Protocol aims at further unifying international law with the purpose of preventing the maritime infrastructure from becoming a victim and eventually defeating the scourge of terrorism worldwide. The Protocol restates the sensitivity of any state over sovereign issues and its right of non-interference in its internal affairs, adding that states have responsibilities towards their own people, the international community and their international engagements. The amendments to the SUA treaties in the Protocols include a substantial broadening of the range of offences included in Article 3 of the SUA Convention and the introduction of provisions in Article 8 to allow for the boarding of vessels suspected of being involved in terrorist activities.

India's main objection is to Para 1(b)(iii) of *Article 3 bis* of the Protocol which makes transport on board a ship any source material or special fissionable material or material with the intended use in a nuclear explosive activity or any other nuclear activity not under the safeguards pursuant to the Comprehensive Safeguard Agreement, an offence under Article 3. The IAEA Safeguards Agreement contains voluntary and comprehensive safeguard mechanisms. India has agreed to the "voluntary or facility wise" safeguards and not "comprehensive or full-scope safeguards". India has opened 6 reactors out of its 15 operating nuclear reactors under voluntary safeguards system. As of now India is not ready to concede to the comprehensive safeguards mechanism which nuclear weapon states insist on. Article 3 bis of the 2005 Protocol therefore prohibits the transport of nuclear or other dual use materials by declared nuclear weapon states like India and Pakistan. This clause in reality affects only India and Pakistan. The transportation of the BCN weapons and dual use materials by the nuclear weapon States is exempted under Article 3 bis (2) thereby making the nuclear weapons trade within them and between the nuclear weapon states and Non Proliferation Treaty (NPT) States legal.

From India's perspective the Protocol, through Article 3 bis (1) (b) (iii) and (2) definitely perpetuates a discriminatory regime in the line of NPT. The emphasis of the Protocol is rather on the prevention of horizontal proliferation of nuclear weapons than on vertical proliferation and disarmament⁵.

India has not signed and ratified the Protocol yet. However, taking into account India's future energy needs, it more aggressively seeks international cooperation of western developed countries. In the context of the Indo-US nuclear agreement 123 in 2006, it appears that India is moving more closely to IAEA Safeguards Agreement. On this background it is hoped that India may ratify the 2005 Protocol.

However, from the academic point of view with regard to this drafting project it is presumed that the Government of India has ratified the 2005 Protocol to SUA.

Need For Amendment

In the recent past there are some criminal offences resulting in casualty against Indian citizen on board foreign flag ships in international waters. Unfortunately, there is no proper investigation and subsequent prosecution of the offenders, very often, who are foreign nationals beyond the Indian criminal jurisdiction. In a sequel to rise in marine casualties, there is persistent pressure from public and some legislators to make provisions to prosecute such offenders under Indian jurisdiction. The matter is under consideration by the Ministry of Shipping Road Transport and Highways, Government of India and consultation was taken up with the Ministry of Law and Justice and Ministry of External Affairs.

The Ministry of Law and Justice and Ministry of External Affairs are of the view that Article 6.2.b of the SUA Convention, 1988 provides that a State may establish its jurisdiction over

⁵ Dr A Sudhakar Reddy, Legal Advisor (L& T), MEA, GoI, NMF, New Delhi Round Table Conference Speech on 2005 Amendment of the 1988 SUA Convention (05 May 2006)

any offence when a national of that State is seized, threatened, injured or killed. Thus under the Convention, a State Party whose national is a victim, may also establish its jurisdiction over the offence. India is party to the Convention and incorporated it to its domestic law by enactment of Suppression of Unlawful Acts Against the Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act 2002 which is in force since February, 2003. While the Convention confers right on a State party under Article 6.2.b to establish its jurisdiction over an offence committed against its national in international water, the Indian SUA Act of 2002 has excluded such jurisdiction to be exercised by Indian courts under Section 3.8 by not establishing jurisdiction on the basis of the nationality of victim under Article 6.2.b of the Convention. This provision (Section 3.8 of the Indian SUA Act, 2002) of the Act has the effect of restricting the jurisdiction of Indian courts to the Indian territorial jurisdiction only against the extra-territorial jurisdiction provided by the SUA Convention based on the nationality of the victim under Article 6.2.b. Hence, there is a need for amendment.

Following the tragic events of 9/11, the shipping industry realized that a more stringent and comprehensive set of security measures was needed. This resulted to Diplomatic Conference on the Revision of the SUA Treaties met at the IMO from 10-14 October 2005 at London and adopted the amendments in the form of protocols to the SUA treaties (the 2005 Protocols). The scope of offences included in the protocol has been extended with a new Article 2bis. New provisions have been provided against transportation of BCN and other explosive materials that may be used for terrorist and subversive activities, wide ranging powers enabling the boarding of the ships etc. India being a potential target from such terrorist activities as well as its commitments to international regime, it would be practical to ratify the 2005 SUA Protocol.

In view of the recent development of Indo-US Nuclear Agreement 123, there is more possibility of India signing and ratifying the 2005 SUA Protocol. To incorporate the provisions of the said protocol there is a need to amend the domestic law Suppression of

Unlawful Acts Against the Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act 2002.

Indian Legislative Procedure

The Constitution of India Part IV, 'Directive Principles of State Policy' provides for promotion of international peace and security under Article 51.⁶ It stipulates that the State shall endeavour to promote international peace and security, maintain just and honourable relations between nations, foster respect for international law and treaty obligations in the dealings of organised peoples with one another. International treaties/conventions do not automatically become part of the national law. They have to be incorporated into the legal system by appropriate law. As per Article 253 of the Constitution⁷, Parliament has the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. As per the Constitutional provisions in India the international treaties/conventions are to be ratified with the approval of the Parliament of India. Thereafter, the treaty/convention is incorporated by enactment of a new law in the subject matter or amending the existing law, if there is any pre-existing law in the matter.

On the basis of the Convention, a draft Bill is prepared in the concerned administrative Ministry by a committee of legal and subject specialists in consultation with the Ministry of Law and Justice and other concerned Ministries and Departments. Thereafter with the approval of the Cabinet, the Bill is introduced along with "Statement of Objects and Reasons" in either House of the Parliament by the Minister concerned. If the Bill has some financial implication before the introduction consent of the President is obtained and the Bill is introduced in the Lower House i.e., the Lok Sabha of the Parliament.

⁶ Article 51, Part IV, Constitution of India.

⁷ Article 253, Part XI, Chapter I, Constitution of India.

After introduction, it may be discussed in that House, and passed or rejected after due deliberation in the said House. It may also be referred to a Parliamentary Standing Committee for detailed examination and its recommendation if the House so desired.

Once the House refers the draft Bill to a Parliamentary Standing Committee for examination of the same and this will take considerable time. The Committee shall examine the Bill, gets the public opinion, may hold meetings with the stake-holders and submit its report to the Parliament with recommendations and suggestions. If the draft Bill needs certain changes and modification, then it is returned to the administrative Ministry for such modification and improvements.

The suggestions and recommendations of the Committee are examined in consultation with the experts and specialists. Again with the approval of the Cabinet the Bill is sent to the said House of the Parliament and the same process is repeated for passing of the Bill.

If passed, it is sent to the other House (Rajya Sabha) of the Parliament and considered in that House as well. After passing in the said House it is sent to the assent of the President for his signature. Once the President signs the Bill it gets the force of law. Thereafter, the Act is notified in the Government gazette for publication.

CHAPTER III

STATEMENT OF OBJECTS AND REASONS

The International Conference convened under the auspices of the International Maritime Organisation, London on 10th March, 1988 adopted the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation as well as the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf. The Convention and Protocol have been ratified by India in 1999 and the Convention has come into force in respect of India in 2000. To ensure effective and smooth implementation of the provisions of the Convention and the Protocol, a new and separate legislation the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 (69 of 2002) has been promulgated, on the lines of the Suppression of Unlawful Acts Against the Safety of Civil Aviation Act, 1982 (66 of 1982) and the Anti Hijacking Act, 1982 (65 of 1982) . The Act aims at having legislative provisions to effectively deal with unlawful acts which endanger safety of maritime navigation, safety of persons and of property. It provides for stringent punishments for various unlawful acts on the sea.

The Convention and the Protocol were adopted in the backdrop of deep concern of the international community after the world wide escalation of acts of terrorism in all its forms, which endanger or take a heavy toll of human lives. It was also considered that the unlawful acts jeopardize the safety of life and property at sea, affect the maritime services, and undermine the confidence of the people of the world in the safety of maritime navigation. This together with the purpose and principles of the UN charter concerning the maintenance of international peace and security and promotion of friendly relations and cooperation amongst States was instrumental in adoption of the Convention and the Protocol as mentioned above.

Following the tragic events of 9/11, the shipping industry realized that a more stringent and comprehensive set of security measures was needed. The Diplomatic Conference on the Revision of the SUA Treaties met at the IMO from 10-14 October 2005 at London and adopted the amendments in the form of protocols to the SUA treaties (the 2005 Protocols). The scope of offences included in the protocols has been extended with a new Article 2bis. New provisions have been provided for

transportation of BCN weapons and other explosive materials that may be used for terrorists and subversive activities, wide ranging powers enabling the boarding of the ships etc. India being committed to international regime have ratified the 2005 SUA Protocol.

India being a potential target of such terrorist activities and being deeply committed to fight against terrorism in all its forms and concerned with acts of terrorism taking place around its waters and deeply conscious of the need to improve the security environment in the maritime context as well as its commitment to international peace and security acceded to the Convention as well as the Protocol on, by deposition of the instrument of accession with the Secretary General of the IMO⁸. The Convention and the Protocol came into effect in respect of India w. e. f.

To provide teeth to the provisions of the SUA Convention and Protocol 2005 and in view of the requirements of international law concerning extradition etc. an amendment to the existing domestic law, the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 (69 of 2002) has been considered necessary to incorporate the changes made therein. To ensure effective and smooth implementation of the provision of the Convention & Protocol a draft amended bill containing the necessary amendments has been prepared. The major amendments are in the following sections:

- Section 1 contains short title, extent and application.
- Section 2 spells out definitions of additional terms used in the legislation.
- Section 3 lists the additional offences against ships, fixed platforms, cargo of a ship and navigational facilities etc. to which the legislation shall apply and indicates the sanctions thereto.
- Section 3(8) provisions for extra-territorial jurisdiction have been provided to Indian courts for the prosecution of non-citizens committing such offence against Indian nationals beyond Indian territorial waters.

⁸ NB: For the purpose of this legislative project, it is presumed that the protocol has been ratified by India.

- Section 4 provides additional provisions for the Central Government to confer powers to board, arrest, seize and investigate by an authorised officer/ a police officer under the Code of Criminal Procedure, 1973 on any gazetted officer of the Coast Guard or any other gazetted officer of the Central Government.
- Section 9 provides some additional provisions for extradition of such offenders under the Convention from and to the Member States.

* * * * *

AMENDMENT BILL

THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY OF MARITIME NAVIGATION AND FIXED PLATFORMS ON CONTINENTAL SHELF (AMENDMENT) ACT, 2008

ACT NO. OF 2008

[6th March, 2008.]

An Act to amend the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act 2002 to give effect to the International Maritime Organisation Protocol of 2005 to the Convention for Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 and Protocol to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 1988 and for matters connected therewith.

WHEREAS a Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf were signed at Rome on the 10th day of March, 1988;

AND WHEREAS the said Convention and Protocol were amended by the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 and Protocol to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 1988 were signed at London on the 14th day of October, 2005;

AND WHEREAS India, having acceded to the said Protocol of 2005, should make provisions for giving effect thereto and for matters connected therewith;

BE it enacted by the Parliament in the Fifty-ninth Year of the Republic of India as follows:-

1. This Act may be called the Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf (Amendment) Act, 2008 Short title

Amendment to
the Preamble

2. In the Preamble to the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act 2002 (hereinafter referred as the principal Act), after the second paragraph, the following paragraph shall be inserted, namely:--

69 of 2002

“AND WHEREAS the said Convention and Protocol were amended by the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf were signed at London on the 14th day of October, 2005;”;

Amendment of
section 2

3. In section 2 of the principal Act,---

(i) before clause (a), the following shall be inserted, namely:-

(a1) *“BCN weapon” means:*

(i) *“biological weapons”, which are:*

(1) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or

(2) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

(ii) *“chemical weapons”, which are, together or separately:*

(1) toxic chemicals and their precursors, except where intended for:

(A) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; or

(B) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or

(C) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or

(D) law enforcement including domestic riot control purposes, as long as the types and quantities are consistent with such purposes;

(2) munitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (ii)(1), which would be released as a result of the employment of such munitions and devices;

(3) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (ii)(2).

(iii) nuclear weapons and other nuclear explosive devices.

(ii) after clause (e), the following shall be inserted, namely:-

(e1) "Organization" means the International Maritime Organization (IMO).

(e2) "precursor" means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system.

(ii) after clause (e), the following shall be inserted, namely:-

(g1) "Secretary-General" means the Secretary-General of the Organization.

(g2) "serious injury or damage" means:

(i) serious bodily injury; or

(ii) extensive destruction of a place of public use, State or government facility, infrastructure facility, or public transportation system, resulting in major economic loss; or

(iii) substantial damage to the environment, including air, soil, water, fauna, or flora.

(g3) “State Party” means state that ratified/acceded to the Convention

(iii) after clause (h), the following shall be inserted, namely:-

(h1) “toxic chemical” means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.

(h2) “transport” means to initiate, arrange or exercise effective control, including decision-making authority, over the movement of a person or item.

(iv) after sub-section 2(1) the following shall be inserted, namely:-

(2) For the purposes of this Act:

(a) the terms “place of public use”, “State or government facility”, “infrastructure facility”, and “public transportation system” have the same meaning as given to those terms in the International Convention for the Suppression of Terrorist Bombings, done at New York on 15 December 1997; and

(b) the terms “source material” and “special fissionable material” have the same meaning as given to those terms in the Statute of the International Atomic Energy Agency (IAEA), done at New York on 26 October 1956.

Amendment of
section 3

4. In section 3 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:-

(1A) Whoever unlawfully and intentionally:

(a) intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act:

(i) uses against or on a ship or discharges from a ship any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage; or

(ii) discharges, from a ship, oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by subparagraph (a)(i), in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or

(iii) uses a ship in a manner that causes death or serious injury or damage; or

(iv) threatens, with or without a condition, as is provided for under national law, to commit an offence set forth in subparagraph (a)(i), (ii) or (iii) shall be punished with imprisonment for life;

(b) transports on board a ship:

(i) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act; or

(ii) any BCN weapon, knowing it to be a BCN weapon as defined in section 2; or

(iii) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to an IAEA comprehensive safeguards agreement; or

(iv) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose shall be punished with imprisonment for life.

(1B) It shall not be an offence within the meaning of this Act to transport an item or material covered by paragraph 1(b)(iii) or, insofar as it relates to a nuclear weapon or other nuclear explosive device, paragraph 1(b)(iv), if such item or material is transported to or from the territory of, or is otherwise transported under the control of, a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons where:

(a) the resulting transfer or receipt, including internal to a State, of the item or material is not contrary to such State Party's obligations under the Treaty on the Non-Proliferation of Nuclear Weapons and,

(b) if the item or material is intended for the delivery system of a nuclear weapon or other nuclear explosive device of a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons, the holding of such weapon or device is not contrary to that State Party's obligations under that Treaty.

3. In section 3 of the principal Act, for sub-section (8), the following sub-section shall be substituted, namely:-

(8) No court shall take cognizance of an offence punishable under this section which is committed outside India unless-

(a) such offence is committed on board or against a ship flying the Indian flag at the time the offence is committed; on a fixed platform or

(b) such offence is committed on board or against a ship which is for the time being chartered without crew to a lessee who has his principal place of business, or where he has no such place of business, his permanent residence, is in India; or

(c) such offence is committed on or against a fixed platform in the Continental Shelf of India at the time the offence is committed; or

(d) such offence is committed by or against an Indian citizen.

Provided that, the Court shall have jurisdiction to take cognizance of an offence committed outside India in circumstances other than those mentioned in sub-section 2(a), and (b, if the

Ministry of Home Affairs is satisfied—

34 of 1962

(a) in case a request for the person surrender for the purpose of trying him or her for such an offence has been made by a Convention State under the Extradition Act, 1962 or otherwise, and that request has been given a final refusal, or

(b) in any other case that because of a special circumstance, including but not limited to, the fact that the suspect is a stateless person, it is expedient that proceedings be taken against the person for such an offence.

(a) such offence is committed on board or against a ship flying the Indian flag at the time the offence is committed; on a fixed platform or

(b) such offence is committed on board or against a ship which is for the time being chartered without crew to a lessee who has his principal place of business, or where he has no such place of business, his permanent residence, is in India; or

(c) such offence is committed on or against a fixed platform in the Continental Shelf of India at the time the offence is committed; or

(d) such offence is committed by or against an Indian citizen.

Provided that, the Court shall have jurisdiction to take cognizance of an offence committed outside India in circumstances other than those mentioned in sub-section 2(a), and (b), if the Ministry of Home Affairs is satisfied—

(a) in case a request for the person surrender for the purpose of trying him or her for such an offence has been made by a Convention State under the Extradition Act, 1962 or otherwise, and that request has been given a final refusal, or

(b) in any other case that because of a special circumstance, including but not limited to, the fact that the suspect is a stateless person, it is expedient that proceedings be taken against the person for such an offence.

Amendment of
section 4

5. In section 4 of the principal Act, after sub-section (2), the following sub-sections shall be inserted, namely:-

(2A) Any authorised person may on grounds of urgency and without warrant, proceed with the arrest of such person, where there is a reasonable cause to suspect that such person committed or is about to commit, any of the offences referred to under this Act.

(2B) Where an authorised person suspects, with reasonable cause that a person who is about to board, or is on board, a ship or fixed platform intends to commit any of the offences under this act and or in relation to a ship or fixed platform, such authorised person may—

- (a) prevent the person from boarding the ship or fixed platform or from traveling on board the ship,*
- (b) without warrant board the ship or fixed platform and remove the person from it, or*
- (c) without warrant arrest the person.*

(2C.1) The master of the ship or person for the time being in charge of a fixed platform may arrest and detain such person, where there is a reasonable cause to suspect that such person committed or is about to commit, any of the offences referred to under this Act.

(2C.2) Such a person may be so detained only until he or she can be delivered to--

- (a) an authorised person, or*
- (b) the appropriate authorities of a Convention state*

Provided that a person so delivered to a member of the Coast Guard or Navy shall be delivered to as soon as possible, to the police authorities and shall there upon be treated as a person arrested without warrant by the police authorities, unless the person is brought as soon as practicable, but in all cases not later than 48 hours after being so delivered to the police authorities, before the court of Magistrate.

Provided further, that the Magistrate before whom such a person is brought shall, in considering any application for bail, take into account the need of the presence of such person in India for such time as is necessary to enable any proceedings against the person to be instituted, including any extradition proceedings under the Extradition Act.

(2D) A master of a ship or person for the time being in charge of a fixed platform is not liable to--

- (a) conviction in any criminal prosecution, or*
- (b) damages in civil proceedings*

brought in respect of any action reasonably taken by either of them under this Act against any other person.

6. After section 4 of the principal Act the following new sections shall be inserted, namely:-

4A.(1) A master of a ship may deliver to the appropriate authorities of a Convention State any person detained under section 4 of this Act.

Amendment of section 4

(2) A master of a ship who intends to do so deliver such a person shall notify the authorities concerned of the intention to do so and the reasons there for such delivery.

(3) the notification must be given whenever practicable and, if possible, before the ship enters the territorial sea of the Convention State.

(4) On delivery of a person under sub-section (1) the master shall--

- (a) make to the appropriate authorities of the Convention State such oral or written statements relating to the alleged offence as they may be reasonably require, and*
- (b) provide them any other evidence in his or her possession relating to that offence.*

(5) A master who without, reasonable cause, does not comply with sub-section (3) or (4) of this section shall on conviction be guilty of an offence and shall be punished with imprisonment for a term which may extendable to five years or a fine of Rs.10,000/- or both.

4B.(1) An authorised person may search without warrant a ship or fixed platform, if there is reasonable cause to suspect that;

- (a) any offence under this Act has been committed on board the ship or fixed platform, or*

(b) a person who has committed such an offence is on the ship or fixed platform;

Provided that such authorised person may, seize any object believed to be related to or connected with the commission of an offence. Such authorised person may further remove or take copies of any record or extracts from records which may be so related.

(2) Any person who obstructs or attempts to obstruct, an authorised person while searching a ship or fixed platform shall on conviction shall be punished with imprisonment for a term which may extendable to five years or a fine of Rs.10,000/- or both.

(3) The authorised person may arrest without warrant any person who is committing an offence under sub-section (2) of this section.

Amendment of section 9

7. In section 9 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:-

“(2) For the purposes of the application of the Extradition Act, 1962 to offences under this Act, any ship registered in a Convention State or Protocol State shall, at any time while that ship is plying, be deemed to be within the jurisdiction of that Convention State or Protocol State, whether or not it is for the time being also within the jurisdiction of any other country.

34 of 1962

For the purpose of the Extradition act, extradition shall not be refused solely on the ground, that any of the offences set forth in the Act, concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Provided that nothing in this Act shall be interpreted as an obligation to extradite if there are substantial grounds for believing that the request for extradition for any of the offences set forth in this Act has been made for the purpose of prosecuting or punishing a person on account of that person’s race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with the request would cause prejudice to that person’s position for any of these reasons mentioned in this proviso.”

XXXXXXXXXXXXXXXX

Secretary to the Government of India

**THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY OF MARITIME
NAVIGATION AND FIXED PLATFORMS ON CONTINENTAL SHELF ACT, 2002**

ACT NO. 69 OF 2002

[20th December, 2002.]

An Act to give effect to the International Maritime Organisation Convention for Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf and for matters connected therewith.

WHEREAS a Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf were signed at Rome on the 10th day of March, 1988;

AND WHEREAS India, having acceded to the said Convention and the Protocol, should make provisions for giving effect thereto and for matters connected therewith;

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

Short title, extent, application and commencement.-

1. (1) This Act may be called the Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002.

(2) It extends to the whole of India including the limit of the territorial waters, the continental shelf, the exclusive economic zone or any other maritime zone of India within the meaning of section 2 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976).

(3) Save as otherwise provided, it shall apply-

(a) to any offence under section 3 committed outside India by any person;

(b) to a ship, if that ship is navigating or scheduled to navigate into, through or from waters beyond the outer limits of the territorial waters of India, or the lateral limits of its territorial waters with adjacent States;

(c) when the offence is committed on board a ship in the territorial waters of India or against a fixed platform located on the Continental Shelf of India.

(4) Notwithstanding anything contained in sub-section (3), this Act shall apply only to offences committed by an offender or alleged offender,-

(a) when such an offender is found in the territory of a Convention State;

(b) when such an offender is found in the territory of a Protocol State in whose internal water or territorial waters or continental shelf the fixed platform is located; or

(c) when such an offender is found in the territory of a State other than the State referred to in clause (a) or clause (b).

(5) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,-

(a) "Code" means the Code of Criminal Procedure, 1973 (2 of 1974);

(b) "Continental Shelf of India" shall have the meaning assigned to it in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976);

(c) "Convention" means the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, signed at Rome on the 10th day of March, 1988 as amended from time to time;

(d) "Convention State" means a State Party to the Convention;

(e) "fixed platform" means an artificial island, installation or structure permanently attached to the seabed for the purpose of exploration for, or exploitation of resources or for other economic purposes;

(f) "Protocol" means the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf adopted at Rome on the 10th day of March, 1988 as amended from time to time;

(g) "Protocol State" means a State Party to the Protocol;

(h) "ship" means a vessel of any type whatsoever not permanently attached to the seabed and includes dynamically supported craft, submersibles, or any other floating craft.

CHAPTER II OFFENCES

Offences against ship, fixed platform, cargo of a ship, maritime navigational facilities, etc..

3. 1) whoever unlawfully and intentionally-

(a) commits an act of violence against a person on board a fixed platform or a ship which is likely to endanger the safety of the fixed platform or, as the case may be, safe navigation of the ship shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine;

(b) destroys a fixed platform or a ship or causes damage to a fixed platform or a ship or cargo of the ship in such manner which is likely to endanger the safety of such platform or safe navigation of such ship shall be punished with imprisonment for life ;

(c) seizes or exercises control over a fixed platform or a ship by force or threatens or in any other form intimidates shall be punished with imprisonment for life;

(d) places or causes to be placed on a fixed platform or a ship, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or that ship or cause damage to that fixed platform or that ship or its cargo which endangers or is likely to endanger that fixed platform or the safe navigation of that ship shall be punished with imprisonment for a term which may extend to fourteen years;

(e) destroys or damages maritime navigational facilities or interferes with their operation if such act is likely to endanger the safe navigation of a ship shall be punished with imprisonment for a term which may extend to fourteen years;

(f) communicates information which he knows to be false thereby endangering the safe navigation of a ship shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine;

(g) in the course of commission of or in attempt to commit, any of the offences specified in clauses (a) to (d) in connection with a fixed platform or clauses (a) to (f) in connection with a ship-

(i) causes death to any person shall be punished with death;

(ii) causes grievous hurt to any person shall be punished with imprisonment for a term which may extend to fourteen years;

(iii) causes injury to any person shall be punished with imprisonment for a term which may extend to ten years;

(iv) seizes or threatens a person shall be punished with imprisonment for a term which may extend to ten years; and

(v) threatens to endanger a ship or a fixed platform shall be punished with imprisonment for a term which may extend to two years.

(2) Whoever attempts to commit, or abets the commission of, an offence punishable under sub-section (1) shall be deemed to have committed such offence and shall be punished with the punishment provided for such offence.

(3) Whoever unlawfully or intentionally threatens a person to compel that person to do or refrain from doing any act or to commit any offence specified in clause (a), clause (b) or clause (c) of sub-section (1), if such threat is likely to endanger the safe navigation of a ship or safety of a fixed platform shall be punished with the punishment provided for such offence.

(4) Where any act referred to in sub-section (1) is committed,-

(a) against or on board-

(i) an Indian ship at the time of commission of the offence; or

(ii) any ship in the territory of India including its territorial waters;

(b) by a stateless person,

such act shall be deemed to be an offence committed by such person for the purposes of this Act.

Explanation.- In this sub-section, the expression "stateless person" means a person whose habitual residence is in India but he does not have nationality of any country.

(5) Where an offence under sub-section (1) is committed and the person accused of or suspected of the commission of such offence is present in the territory of India and is not extradited to any Convention State or Protocol State, as the case may be, such person shall be dealt with in India in accordance with the provisions of this Act.

(6) On being satisfied that the circumstances so warrant, the Central Government or any other authority designated by it shall take the person referred to in sub-section (5) and present in the territory of India into custody or take measures, in accordance with the law for the time being in force, to ensure his presence in India for such time as is necessary to enable any criminal or extradition proceeding to be instituted:

Provided that when a person is taken into custody under this sub-section, it shall be necessary for the Central Government or any other authority designated by it to notify the Government of any jurisdiction over the offence committed or suspected to have been committed by the person in custody. Convention State or Protocol State which have also established

(7) Subject to the provisions of sub-section (8), where an offence under sub-section (1) is committed outside India, the person committing such offence may be dealt with in respect thereof as if such offence had been committed at any place within India at which he may be found.

(8) No court shall take cognizance of an offence punishable under this section which is committed outside India unless-

(a) such offence is committed on a fixed platform or on board a ship flying the Indian flag at the time the offence is committed;

(b) such offence is committed on board a ship which is for the time being chartered without crew to a lessee who has his principal place of business, or where he has no such place of business, his permanent residence, is in India; or

(c) the alleged offender is a citizen of India or is on a fixed platform or on board a ship in relation to which such offence is committed when it enters the territorial waters of India or is found in India.

Conferment of powers of investigation.

4.(1) Notwithstanding anything contained in the Code, for the purpose of this Act, the Central Government may, by notification in the Official Gazette, confer on any gazetted officer of the Coast Guard or any other gazetted officer of the Central Government powers of arrest, investigation and prosecution exercisable by a police officer under the Code.

(2) All officers of police and all officers of Government are hereby required and empowered to assist the officer of the Central Government referred to in sub-section (1), in the execution of provisions of this Act.

Explanation.-For the purpose of this section, "officer of the Coast Guard" means an officer as defined in clause (q) of section 2 of the Coast Guard Act, 1978 (30 of 1978).

Designated Courts.

5. (1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, areas

as may be specified in the notification. Specify a Court of Session to be a Designated Court for such area or

(2) Notwithstanding anything contained in the Code, a Designated Court shall, as far as practicable, hold the trial on a day-to-day basis.

Offence triable by Designated Court.

6. (1) Notwithstanding anything contained in the Code,-

(a) all offences under this Act shall be triable only by the Designated Court specified under sub-section (1) of section 5;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that where such Magistrate considers,-

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorised by him,

that the detention of such person is unnecessary, he shall order such person to be forwarded to the Designated Court having the jurisdiction;

(c) the Designated Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code, in relation to an accused person in such case who has been forwarded to him under that section;

(d) a Designated Court may, upon a perusal of a complaint made by an officer of the Central Government or the State Government, as the case may be, authorised in this behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Designated Court may also try an offence other than an offence under this Act, with which the accused may, under the Code, be charged at the same trial.

Application of Code to proceedings before a Designated Court.

7. Save as otherwise provided in this Act, the provisions of the Code shall apply to the proceedings before a Designated Court and the person conducting a prosecution before a Designated Court shall be deemed to be a Public Prosecutor.

Provision as to bail.

8. (1) Notwithstanding anything in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond unless-

(a) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in sub-section (1) are in addition to the limitations under the Code or any other law for the time being in force on granting of bail.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code.

CHAPTER III

MISCELLANEOUS

Provisions as to extradition

9. (1) The offences under section 3 shall be deemed to have been included as extraditable offences and provided for in all the extradition treaties made by India with Convention States or Protocol States and which extend to and are binding on, India on the date of commencement of this Act.

(2) For the purposes of the application of the Extradition Act, 1962 (34 of 1962) to offences under this Act, any ship registered in a Convention State or Protocol State shall, at any time while that ship is plying, be deemed to be within the jurisdiction of that Convention State or Protocol State, whether or not it is for the time being also within the jurisdiction of any other country.

Contracting parties to Convention or Protocol.

10. The Central Government may, by notification in the Official Gazette, certify as to which are the Convention States or Protocol States and to what extent such States have availed themselves of the provisions of the Convention or Protocol, as the case may be, and any such notification shall be conclusive evidence of the matters certified therein.

Power to treat certain ships to be registered in Convention States.

11. If the Central Government is satisfied that the requirements of the Convention have been satisfied in relation to any ship, it may, by notification in the Official Gazette, direct that such ship shall, for the purposes of this Act, be deemed to be registered in such Convention State as may be specified in the notification.

Previous sanction necessary for prosecution.

12. No prosecution for an offence under this Act shall be instituted except with the previous sanction of the Central Government.

Presumptions as to offences under section 3.

13. In a prosecution for an offence under sub-section (1) of section 3, if it is proved-

(a) that the arms, ammunition or explosives were recovered from the possession of the accused and there is reason to believe that such arms, ammunition or explosives of similar nature were used in the commission of such offence;

(b) that there is evidence of use of force, threat of force or any other form of intimidation caused to the crew or passengers in connection with the commission of such offence; or

(c) that there is evidence of an intended threat of using bomb, fire, arms, ammunition, or explosives or committing any form of violence against the crew, passengers or cargo of a ship or fixed platform located on the Continental Shelf of India,

the Designated Court shall presume, unless the contrary is proved, that the accused had committed such offence.

Protection of action taken in good faith.

14. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.

(2) No suit or other legal proceeding shall lie against the Central Government for any damage caused or likely to be caused for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.

SUBHASH C. JAIN,
Secretary to the Government of India.

**THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY OF
MARITIME NAVIGATION AND FIXED PLATFORMS ON
CONTINENTAL SHELF ACT, 2008**

ACT NO. 69 OF 2002

[As amended by Amendment Act, 2008 (- of 2008 w.e.f. 1st January, 2008.)]

An Act to give effect to the International Maritime Organisation Convention for Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf and for matters connected therewith.

WHEREAS a Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf were signed at Rome on the 10th day of March, 1988;

AND WHEREAS the said Convention and Protocol were amended by the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 and Protocol to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 1988 were signed at London on the 14th day of October, 2005;

AND WHEREAS India, having acceded to the said Convention and the Protocol, should make provisions for giving effect thereto and for matters connected therewith;

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002.

Short title,
extent,
application
and
commencement

(2) It extends to the whole of India including the limit of the territorial waters, the continental shelf, the exclusive economic zone or any other maritime zone of India within the meaning of section 2 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976.

(3) Save as otherwise provided, it shall apply-

(a) to any offence under section 3 committed outside India by any person;

(b) to a ship, if that ship is navigating or scheduled to navigate into, through or from waters beyond the outer limits of the territorial waters of India, or the lateral limits of its territorial waters with adjacent States;

(c) when the offence is committed on board a ship in the territorial waters of India or against a fixed platform located on the Continental Shelf of India.

(4) Notwithstanding anything contained in sub-section (3), this Act shall apply only to offences committed by an offender or alleged offender,-

(a) when such an offender is found in the territory of a Convention State;

(b) when such an offender is found in the territory of a Protocol State in whose internal water or territorial waters or continental shelf the fixed platform is located; or

(c) when such an offender is found in the territory of a State other than the State referred to in clause (a) or clause (b).

(5) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions

2. (1) In this Act, unless the context otherwise requires,-

(a1) “BCN weapon” means:

(i) “biological weapons”, which are:

(1) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or

(2) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

(ii) "chemical weapons", which are, together or separately:

(1) toxic chemicals and their precursors, except where intended for:

(A) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; or

(B) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or

(C) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or

(D) law enforcement including domestic riot control purposes, as long as the types and quantities are consistent with such purposes;

(2) munitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (ii)(1), which would be released as a result of the employment of such munitions and devices;

(3) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (ii)(2).

(iii) nuclear weapons and other nuclear explosive devices.

2 of 1974

(a) "Code" means the Code of Criminal Procedure, 1973;

80 of 1976

(b) "Continental Shelf of India" shall have the meaning assigned to it in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 ;

(c) "Convention" means the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, signed at Rome on the 10th day of March, 1988 as amended from time to time;

(d) "Convention State" means a State Party to the Convention;

(e) "fixed platform" means an artificial island, installation or structure permanently attached to the seabed for the purpose of exploration for, or exploitation of resources or for other economic purposes;

(e1) *"Organization" means the International Maritime Organization (IMO).*

(e2) *"precursor" means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system.*

(f) "Protocol" means the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf adopted at Rome on the 10th day of March, 1988 as amended from time to time;

(g) "Protocol State" means a State Party to the Protocol;

(g1) *"Secretary-General" means the Secretary-General of the Organization.*

(g2) *"serious injury or damage" means:*

(i) *serious bodily injury; or*

(ii) *extensive destruction of a place of public use, State or government facility, infrastructure facility, or public transportation system, resulting in major economic loss; or*

(iii) *substantial damage to the environment, including air, soil, water, fauna, or flora.*

(g3) *"State Party" means state that ratified/acceded to the Convention*

(h) "ship" means a vessel of any type whatsoever not permanently attached to the seabed and includes dynamically supported craft, submersibles, or any other floating craft.

(h1) *"toxic chemical" means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.*

(h2) “transport” means to initiate, arrange or exercise effective control, including decision-making authority, over the movement of a person or item.

(2) *For the purposes of this Convention:*

(a) the terms “place of public use”, “State or government facility”, “infrastructure facility”, and “public transportation system” have the same meaning as given to those terms in the International Convention for the Suppression of Terrorist Bombings, done at New York on 15 December 1997; and

(b) the terms “source material” and “special fissionable material” have the same meaning as given to those terms in the Statute of the International Atomic Energy Agency (IAEA), done at New York on 26 October 1956.

CHAPTER II

OFFENCES

3. (1) whoever unlawfully and intentionally-

(a) commits act of violence against a person on board a fixed platform or a ship which is likely to endanger the safety of the fixed platform or, as the case may be, safe navigation of the ship shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine;

(b) destroys a fixed platform or a ship or causes damage to a fixed platform or a ship or cargo of the ship in such manner which is likely to endanger the safety of such platform or safe navigation of such ship shall be punished with imprisonment for life;

(c) seizes or exercises control over a fixed platform or a ship by force or threatens or in any other form intimidates shall be punished with imprisonment for life;

(d) places or causes to be placed on a fixed platform or a ship, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or that ship or cause damage to that fixed platform or that ship or its cargo which endangers or is likely to endanger that fixed platform or the safe navigation of that ship shall be punished with imprisonment for a term which may extend to fourteen years;

(e) destroys or damages maritime navigational facilities or interferes with their operation if such act is likely to endanger the safe navigation of a

Offences
against ship,
fixed platform,
cargo of a
ship, maritime
navigational
facilities, etc.

ship shall be punished with imprisonment for a term which may extend to fourteen years;

(f) communicates information which he knows to be false thereby endangering the safe navigation of a ship shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine;

(g) in the course of commission of or in attempt to commit, any of the offences specified in clauses (a) to (d) in connection with a fixed platform or clauses (a) to (f) in connection with a ship-

(i) causes death to any person shall be punished with death;

(ii) causes grievous hurt to any person shall be punished with imprisonment for a term which may extend to fourteen years;

(iii) causes injury to any person shall be punished with imprisonment for a term which may extend to ten years;

(iv) seizes or threatens a person shall be punished with imprisonment for a term which may extend to ten years; and

(v) threatens to endanger a ship or a fixed platform shall be punished with imprisonment for a term which may extend to two years.

(1A) Whoever unlawfully and intentionally:

(a) intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act:

(i) uses against or on a ship or discharges from a ship any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage; or

(ii) discharges, from a ship, oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by subparagraph (a)(i), in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or

(iii) uses a ship in a manner that causes death or serious injury or damage; or

(iv) threatens, with or without a condition, as is provided for under national law, to commit an offence set forth in subparagraph (a)(i), (ii) or (iii) shall be punished with imprisonment for life;

(b) transports on board a ship:

(i) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act; or

(ii) any BCN weapon, knowing it to be a BCN weapon as defined in section 2; or

(iii) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to an IAEA comprehensive safeguards agreement; or

(iv) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose shall be punished with imprisonment for life.

(1B) It shall not be an offence within the meaning of this Act to transport an item or material covered by paragraph 1(b)(iii) or, insofar as it relates to a nuclear weapon or other nuclear explosive device, paragraph 1(b)(iv), if such item or material is transported to or from the territory of, or is otherwise transported under the control of, a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons where:

(a) the resulting transfer or receipt, including internal to a State, of the item or material is not contrary to such State Party's obligations under the Treaty on the Non-Proliferation of Nuclear Weapons and,

(b) if the item or material is intended for the delivery system of a nuclear weapon or other nuclear explosive device of a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons, the holding of such weapon or device is not contrary to that State Party's obligations under that Treaty.

(2) Whoever attempts to commit, or abets the commission of, an offence punishable under sub-section (1), (1A) shall be deemed to have committed such offence and shall be punished with the punishment provided for such

offence.

(3) Whoever unlawfully or intentionally threatens a person to compel that person to do or refrain from doing any act or to commit any offence specified in clause (a), clause (b) or clause (c) of sub-section (1), (1A) if such threat is likely to endanger the safe navigation of a ship or safety of a fixed platform shall be punished with the punishment provided for such offence.

(4) Where any act referred to in sub-section (1) is committed,-

(a) against or on board-

(i) an Indian ship at the time of commission of the offence; or

(ii) any ship in the territory of India including its territorial waters;

(b) by a stateless person,

such act shall be deemed to be an offence committed by such person for the purposes of this Act.

Explanation.- In this sub-section, the expression "stateless person" means a person whose habitual residence is in India but he does not have nationality of any country.

(5) Where an offence under sub-section (1) is committed and the person accused of or suspected of the commission of such offence is present in the territory of India and is not extradited to any Convention State or Protocol State, as the case may be, such person shall be dealt with in India in accordance with the provisions of this Act.

(6) On being satisfied that the circumstances so warrant, the Central Government or any other authority designated by it shall take the person referred to in sub-section (5) and present in the territory of India into custody or take measures, in accordance with the law for the time being in force, to ensure his presence in India for such time as is necessary to enable any criminal or extradition proceeding to be instituted:

Provided that when a person is taken into custody under this sub-section, it shall be necessary for the Central Government or any other authority designated by it to notify the Government of any jurisdiction over the offence committed or suspected to have been committed by the person in custody. Convention State or Protocol State which have also established

(7) Subject to the provisions of sub-section (8), where an offence under sub-section (1) is committed outside India, the person committing such offence may be dealt with in respect thereof as if such offence had been committed at any place within India at which he may be found.

(8) *No court shall take cognizance of an offence punishable under this section which is committed outside India unless-*

Extra-territorial jurisdiction

(a) *such offence is committed on board or against a ship flying the Indian flag at the time the offence is committed; on a fixed platform or*

(b) *such offence is committed on board or against a ship which is for the time being chartered without crew to a lessee who has his principal place of business, or where he has no such place of business, his permanent residence, is in India; or*

(c) *such offence is committed on or against a fixed platform in the Continental Shelf of India at the time the offence is committed; or*

(d) *such offence is committed by or against an Indian citizen.*

Provided that, the Court shall have jurisdiction to take cognizance of an offence committed outside India in circumstances other than those mentioned in sub-section 2(a), and (b), if the Ministry of Home Affairs is satisfied—

(a) *incase a request for the person surrender for the purpose of trying him or her for such an offence has been made by a Convention country under the Extradition Act, 1962 or other wise, and that request has been given a final refusal, or*

34 of 1962

(b) *in any other case that because of a special circumstance, including but not limited to, the fact that the suspect is a stateless person, it is expedient that proceedings be taken against the person for such an offence.*

4.(1) Notwithstanding anything contained in the Code, for the purpose of this Act, the Central Government may, by notification in the Official Gazette, confer on any gazetted officer of the Coast Guard or any other gazetted officer of the Central Government powers of arrest, investigation and prosecution exercisable by a police officer under the Code.

(2) All officers of police and all officers of Government are hereby required and empowered to assist the officer of the Central Government referred to in sub-section (1), in the execution of provisions of this Act.

Conferral of powers of investigation

(2A) Any authorised person may on grounds urgency and without warrant, proceeds with the arrest of any person, where there is a reasonable cause to suspect that, any of the offences referred to under this act has been or is about to be committed.

(2B) Where an authorised person suspects, with reasonable cause that a person who is about to board, or is on board, a ship or fixed platform intends to commit any of the offences under this act and or in relation to a ship or fixed platform, such authorised person ma—

- (d) prevent the person from boarding the ship or fixed platform or from traveling on board the ship,*
- (e) without warrant board the ship or fixed platform and remove the person from it, or*
- (f) without warrant arrest the person.*

(2C) The master of the ship or person for the time being in charge of a fixed platform may arrest and detain any person where there is a reasonable cause to suspect that such person is guilty of an offence under this Act.

(2D) Such a person may be so detained only until he or she can be delivered to--

- (c) an authorised person, or*
- (d) the appropriate authorities of a Convention State*

Provided that a person so delivered to a member of the Coast Guard or Navy shall be delivered to as soon as possible, to the police authorities and shall there upon be treated as a person arrested without warrant by the police authorities, unless the person is brought as soon as practicable, but in all cases not later than 48 hours after being so delivered to the police authorities, before the court of magistrate.

Provided further, that the magistrate before whom such a person is brought shall, in considering any application for bail, take into account the need of the presence of such person in India for such time as is necessary to enable any proceedings against the person to be instituted, including any extradition proceedings under the Extradition act.

(2E) A master of a ship or person for the time being in charge of a fixed platform is not liable to--

- (c) conviction in any criminal prosecution, or*
- (d) damages in civil proceedings*

brought in respect of any action reasonably taken by either of them under this Act against any other person.

Explanation.-For the purpose of this section, "officer of the Coast Guard" means an officer as defined in clause (q) of section 2 of the Coast Guard Act, 1978.

30 of 1978

4A.(1) A master of a ship may deliver to the appropriate authorities of a Convention State any person detained under section 4 of this Act.

*Delivery of
detained
person to
authorities in
Convention
State*

(2) A master of a ship who intends to do so deliver such a person shall notify the authorities concerned of the intention to do so and the reasons therefor such delivery.

(3) the notification must be given whenever practicable and, if possible, before the ship enters the territorial sea of the Convention State.

(4) On delivery of a person under sub-section (1) the master shall--

(a) make to the appropriate authorities of the Convention State such oral or written statements relating to the alleged offence as they may be reasonably require, and

(b) provide them any other evidence in his or her possession relating to that offence.

(5) A master who without, reasonable cause, does not comply with sub-section (3) or (4) of this section shall on conviction be guilty of an offence and shall be punished with imprisonment for a term which may extendable to five years or a fine of Rs.10,000/- or both.

4B.(1) An authorised person may search without warrant a ship or fixed platform, if there is reasonable cause to suspect that;

*Power to
search and
seizure*

(c) any offence under this Act has been committed on board the ship or fixed platform, or

(d) a person who has committed such an offence is on the ship or fixed platform;

Provided that such authorised person may, seize any object believed to be related to or connected with the commission of an offence. Such authorised person may further remove or take copies of any record or extracts from records which may be so related.

(2) Any person who obstructs or attempts to obstruct, an authorised person while searching a ship or fixed platform shall on conviction shall be punished with imprisonment for a term which may extendable to five years or a fine of Rs.10,000/- or both.

(3) The authorised person may arrest without warrant any person who is committing an offence under sub-section (2) of this section.

Designated
Courts

5. (1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, areas as may be specified in the notification. Specify a Court of Session to be a Designated Court for such area or

(2) Notwithstanding anything contained in the Code, a Designated Court shall, as far as practicable, hold the trial on a day-to-day basis.

6. (1) Notwithstanding anything contained in the Code,-

(a) all offences under this Act shall be triable only by the Designated Court specified under sub-section (1) of section 5;

Offence triable
by Designated
Court

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that where such Magistrate considers,-

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorised by him,

that the detention of such person is unnecessary, he shall order such person to be forwarded to the Designated Court having the jurisdiction;

(c) the Designated Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code, in relation to an accused person in such case who has been forwarded to him under that section;

(d) a Designated Court may, upon a perusal of a complaint made by an officer of the Central Government or the State Government, as the case may be, authorised in this behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Designated Court may also try an offence other than an offence under this Act, with which the accused may, under the Code, be charged at the same trial.

7. Save as otherwise provided in this Act, the provisions of the Code shall apply to the proceedings before a Designated Court and the person conducting a prosecution before a Designated Court shall be deemed to be a Public Prosecutor.

Application of Code to proceedings before a Designated Court

8. (1) Notwithstanding anything in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond unless-

Provision as to bail

(a) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in sub-section (1) are in addition to the limitations under the Code or any other law for the time being in force on granting of bail.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code.

CHAPTER III

MISCELLANEOUS

9. (1) The offences under section 3 shall be deemed to have been included as extraditable offences and provided for in all the extradition treaties made by India with Convention States or Protocol States and which extend to and are binding on, India on the date of commencement of this Act.

Provisions as to extradition

34 of 1962

(2) *For the purposes of the application of the Extradition Act, 1962 to offences under this Act, any ship registered in a Convention State or Protocol State shall, at any time while that ship is plying, be deemed to be within the jurisdiction of that Convention State or Protocol State, whether or not it is for the time being also within the jurisdiction of any other country.*

For the purpose of the Extradition act, extradition shall not be refused solely on the ground, that any of the offences set forth in the Act, concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Provided that nothing in this Act shall be interpreted as an obligation to extradite if there are substantial grounds for believing that the request for extradition for any of the offences set forth in this Act has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with the request would cause prejudice to that person's position for any of these reasons mentioned in this proviso.

Contracting parties to Convention or Protocol.

10. The Central Government may, by notification in the Official Gazette, certify as to which are the Convention States or Protocol States and to what extent such States have availed themselves of the provisions of the Convention or Protocol, as the case may be, and any such notification shall be conclusive evidence of the matters certified therein.

Power to treat certain ships to be registered in Convention States.

11. If the Central Government is satisfied that the requirements of the Convention have been satisfied in relation to any ship, it may, by notification in the Official Gazette, direct that such ship shall, for the purposes of this Act, be deemed to be registered in such Convention State as may be specified in the notification.

Previous sanction necessary for prosecution.

12. No prosecution for an offence under this Act shall be instituted except with the previous sanction of the Central Government.

Presumptions as to offences under section 3.

13. In a prosecution for an offence under sub-section (1) of section 3, if it is proved-

(a) that the arms, ammunition or explosives were recovered from the possession of the accused and there is reason to believe that such arms, ammunition or explosives of similar nature were used in the commission of such offence;

(b) that there is evidence of use of force, threat of force or any other form of intimidation caused to the crew or passengers in connection with the commission of such offence; or

(c) that there is evidence of an intended threat of using bomb, fire, arms, ammunition, or explosives or committing any form of violence against the crew, passengers or cargo of a ship or fixed platform located on the Continental Shelf of India,

the Designated Court shall presume, unless the contrary is proved, that the accused had committed such offence.

14. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.

Protection of
action taken
in good faith

(2) No suit or other legal proceeding shall lie against the Central Government for any damage caused or likely to be caused for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.

XXXXXXXXXXXXXXXXX
Secretary to the Government of India.