



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



SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION AND FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF ACT, 2011

**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: Kenroy K. Simmons (Antigua and Barbuda)

Supervisor: Mr. Riyaz Hamza

Academic Year 2010/2011

Table of Contents

Explanatory Note	1
Introduction.....	1
The Achille Lauro and the international response to Terrorism at Sea	1
1988 SUA Convention and Protocol.....	3
9/11 and an Expanded SUA	3
The need for new legislation in Antigua and Barbuda	5
Transforming International Treaties into Domestic law	6
Giving Effect to SUA Convention and Protocol on Fixed Platforms.....	8
Explanation of Draft legislation.....	8
Draft Text of SUA Bill	10

Explanatory Note

Introduction

Piracy is universally regarded as the oldest threat to the safety of maritime navigation, and is a threat which has seen a tremendous resurgence over the past few decades. Under Customary International Law and through the 1958 Geneva Convention on the High Seas and the 1982 United Nations Convention on the Law of the Sea, States have sought to combat the threat that piracy poses to international commerce through shipping.

One important fact to note with regard to the definition of piracy is that it is limited to acts occurring on the High Seas, and directed at another vessel¹. Whilst the threat of piracy is longstanding, the measures to combat it do not address all unlawful acts of violence which may be committed by or using a ship at sea (or in port) and indeed does not adequately reflect the challenges of the more modern phenomenon of terrorism at sea. The approach of the international community to address this threat has been the adoption of the Convention for Suppression of Unlawful Acts Against the Safety of Maritime Navigation.

The Achille Lauro and the international response to Terrorism at Sea

Notwithstanding the growing concern throughout the 1980s of unlawful acts threatening the safety and security of ships, passengers and crews (including hijackings, ships being deliberately run aground, blown up by explosives and the killing of passengers)², and in contrast to the approach taken with regards to other targets of terrorism³ it was the *Achille Lauro* incident in 1985 which brought the problem of terrorism at sea to the forefront of the agenda of the international maritime community.

¹ Article 15(1) of the Geneva Convention on the High Seas and Article 101 of the United Nations Convention on the Law of the Sea.

² Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, <<http://www.imo.org/About/Conventions/ListOfConventions/Pages/SUA-Treaties.aspx>>, accessed 5 January 2011.

³ See for example Hague Convention on Suppression of Unlawful Seizure of Aircraft (1970), Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (1971), Convention Against the Taking of Hostages (1979) and Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents (1973).

The *Achille Lauro* was an Italian flagged cruise vessel sailing from Alexandria to Port Said⁴. On October 7, 1985, the vessel was hijacked by four members of the Palestine Liberation Front (PLF) who had boarded in Genoa posing as tourists and managed to smuggle automatic weapons, grenades and other explosives on board⁵. The hijackers held the passengers and crew hostage and threatened to kill them unless 50 Palestinian prisoners were released by Israel. The hijackers subsequently shot and killed an American passenger and threw him overboard after their demands were not met.

In response to this incident, the Assembly of the International Maritime Organization (IMO) adopted Resolution A. 584 (14) *Measures to prevent unlawful acts which threaten the safety of ships and the security of their Passengers and Crews* which not only called upon governments and other interested stakeholders to strengthen port and on board security measures⁶ but directed the Maritime Safety Committee⁷ to develop technical measures to ensure the security of passengers and crew aboard vessels.

This approach was supported by the United Nations and in two resolutions, one of the General Assembly⁸ and one of the Security Council⁹, both condemning the hijacking of the *Achille Lauro* and urging the development of appropriate measures to address such acts of maritime terrorism. The Maritime Safety Committee (MSC) then issued MSC/Circ. 443 on *Measures to prevent unlawful acts against passengers and crews on board ships* in 1986 to address these matters.

⁴ Halberstam, Malvina, Terrorism on the High Seas: The Achille Lauro, Piracy and the IMO Convention on Maritime Safety, American Journal of International Law, Vol. 82, (1988), p. 269.

⁵ See Kieserman, Brad J. "Preventing and Defeating Terrorism at Sea: Practical Considerations for Implementation of the Draft Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA)." Recent Developments in the Law of the Sea and China. Eds. Myron H. Nordquist, John Norton Moore and Kuen-chen Fu. Martinus Nijhoff Publishers, 2006, quoted in Tuerk, Helmut. "Combating Terrorism at Sea: the Suppression of Unlawful Acts against the Safety of Maritime Navigation." Legal Challenges in Maritime Security. Eds. Myron H. Nordquist, Rüdiger Wolfrum, John Norton Moore and Ronán Long. Martinus Nijhoff Publishers, 2008 at p. 338.

⁶ IMO Assembly Resolution A. 584 (14) Measures to prevent unlawful acts which threaten the safety of ships and the security of their Passengers and Crews, paragraph 1.

⁷ *Ibid.* at paragraph 2.

⁸ UN General Assembly Resolution 40/61, Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes, A/RES/38/130.

⁹ UN Security Council Resolution 579.

1988 SUA Convention and Protocol

The Governments of Austria, Egypt and Italy in November 1986 proposed that the IMO prepare a convention ‘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 [and] seriously affect the operation of maritime services¹⁰’. It was against this backdrop that a Conference was convened in Rome, and on 10 March 1988. The Conference adopted the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) and a Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.

The Convention is intended to operate for ships (excluding warships and government owned or operated ships used for non-commercial purposes) and where the offence takes place beyond the outer limit of the territorial sea of one or more States. It requires member States to create a set of new offences related to the commission of unlawful acts such as seizure of the vessel through the use or threat of force against the ship itself¹¹, destruction of the ship or cargo¹² and other maritime navigational facilities¹³ as well as the use of violence against persons on board the vessel¹⁴, likely to endanger the safe navigation of the ship. The Convention, rather than establishing precautionary rules to prevent the commission of unlawful acts sets out provisions concerning the punishment of such acts once committed. One crucial element of the Convention is the requirement¹⁵ that States submit the case against an individual for prosecution to its competent judicial authority if it does not extradite him, in other words, the ‘extradite or prosecute’ principle. The Protocol was adopted at the same time and addresses some of the concerns of the SUA as they relate to Fixed Platforms.

9/11 and an Expanded SUA

The SUA Convention entered into force on 1 March 1992. Since then, the threats to the safety of maritime navigation from acts of terrorism (and indeed piracy) have grown. The

¹⁰ See *supra* Note 2.

¹¹ SUA (1988) Article 3(1).

¹² SUA (1988) Article 3(2).

¹³ SUA (1988) Article 3(5).

¹⁴ SUA (1988) Article 3(2).

¹⁵ SUA (1988) Article 10.

United Nations continually urged States to ratify and implement the Convention¹⁶ towards the elimination of international terrorism.

However, in light of the 11 September 2001 terrorist attack in the United States, the IMO Assembly, mindful of existing UN General Assembly resolutions regarding terrorism, adopted Assembly Resolution A.924 (22) on *Review of Measures and Procedures to Prevent Acts of Terrorism Which Threaten the Security of Passengers and Crews and the Safety of Ships* in November 2001. This Resolution requested the MSC, the Legal Committee and the Facilitation Committee review the 1988 SUA Convention (and other relevant instruments) with a view to determining whether and to what extent they required updating and to determine whether there was a need for the adoption of any other maritime security measures.

Following the work of the IMO Legal Committee on the revision of the treaties, the International Conference on the Revision of the SUA Treaties convened in 2005 and adopted Protocols amending both the 1988 SUA Convention and the Protocol on Fixed Platforms. The Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (the 2005 SUA Convention) and the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (2005 SUA Fixed Platforms Protocol) entered into force on July 28, 2010.

The 2005 Protocol provides for a broad expansion of the scope of the 1988 SUA Convention. Firstly, the scope of the Convention is expanded to cover the transportation and the use or discharge of certain types of materials, including explosive materials, biological, chemical and nuclear weapons and other such hazardous materials with the intention of intimidating a population, Government or international organization¹⁷. The Protocol goes further and prohibits the unlawful and intentional transportation of a person on board a ship knowing that person has committed an offence under the Convention or a list of other conventions annexed to the Protocol, and intending to assist that person to evade prosecution¹⁸. Attempting, participating, organizing and directing the commission of the offences involved is also to be

¹⁶ Such as UN General Assembly Resolution 49/60

¹⁷ See Article 3*bis* of SUA 2005 Protocol

¹⁸ See Article 3*ter* of SUA 2005 Protocol.

made a criminal offence¹⁹ as well as the establishment of liability for legal entities within the territory of the State or established under its laws²⁰.

The Protocol also provides for boarding of vessels suspected of being engaged in offences provided for under the Convention²¹, subject to certain safeguards built into the Protocol²². The extradition provisions are also updated to provide that the offences covered are not to be considered as political offences, offences connected with political offences or offences inspired by political offences²³.

The need for new legislation in Antigua and Barbuda

Antigua and Barbuda is a member of both the United Nations and the IMO. Antigua and Barbuda therefore has a fundamental obligation as a Member of these Organizations to work with these International Organizations in the accomplishment of their aims and objectives. Antigua and Barbuda is a party to the 1988 SUA Convention, thereby acknowledging the need for international cooperation in the suppression of acts of terrorism in general and acts of maritime terrorism in particular.

Given the recognition by the global maritime community of the inadequacy of the provisions of the SUA 1988, in the wake of the September 11, 2001 terrorist attack in the US and the illustrated vulnerabilities in the suppression of acts maritime terrorism, it is therefore imperative that the country moves to strengthen its maritime anti-terrorism rules (through the adoption and creation of appropriate domestic provisions) to further the global objective of the eradication of acts of maritime terrorism.

From a more practical perspective, Antigua and Barbuda operates an open registry, and currently has in excess of 1200 (merchant) vessels in its registered fleet. The country already had over 10,000,000 DWT registered, with vessels operating in all parts of the world, including areas such as the Gulf of Aden which are susceptible to both piracy and acts of maritime terrorism. It is therefore the duty of the country as a responsible flag state to

¹⁹ See Article 3^{quarter} of SUA 2005 Protocol.

²⁰ See Article 5^{bis} of SUA 2005 Protocol.

²¹ See Article 8^{bis} of SUA 2005 Protocol.

²² See Article 8^{bis} of SUA 2005 Protocol, these safeguards include not endangering life at sea for example.

²³ See Article 11^{bis} of SUA 2005 Protocol.

incorporate the latest maritime anti-terrorism rules to ensure adequate and effective protection of its flagged vessels.

Antigua and Barbuda currently has several laws in place which relate to terrorism. The Prevention of Terrorism Act (2005) lists the SUA 1988 as a counter-terrorism Convention under the provisions of that Act. However, the provisions relating to counter-terrorism convention merely provide that they may be used as the basis of mutual legal assistance. The Prevention of Terrorism Act seeks to address the financing, membership and conduct of terrorist activities from a fairly broad perspective.

The provisions of SUA, seek to create a set of offences, with sufficiently severe punishment where the State may exercise jurisdiction in the prosecution where applicable. The existing legal framework within Antigua and Barbuda does not address this and therefore there is a patent need for the development of new legislation to cover the offences articulated in the Convention in a logical manner.

Given the global importance of shipping in international trade, and bearing in mind the need for uniformity and simplicity, the creation of a separate Act, to incorporate the provisions of the SUA Convention as amended by the 2005 Protocol seems most appropriate rather than amending various pieces of legislation. It would provide a more coherent and efficient method of facilitating the prosecution of the offences established (without prejudice to any other applicable laws).

For the reasons illustrated above, it is important for the country to adhere to the 2005 Protocol of the SUA Convention and the 2005 Fixed Platforms Protocol and establish of the necessary legislative procedures to ensure the effective prosecution of the offences for which the convention calls, which is the purpose of this legislation.

Transforming International Treaties into Domestic law

Executive power is exercised by the Cabinet of Antigua and Barbuda, including the responsibility for determining whether or not the country wishes to adhere to a particular treaty and thereafter issue the necessary instructions to the Ministry of Foreign Affairs for

their action. The adoption of the Convention on an international stage, and the expression of the intent of the country to be bound would therefore be completed through that process.

From a domestic perspective, given that Antigua and Barbuda is a dualist State, the domestic legal effect (without prejudice to the international legal obligation of the State) is governed by Section 3 of the Ratification of Treaties Act (CAP 364) which provides that:

Where a treaty to which Antigua and Barbuda becomes party [...] is one which affects or concerns:

(a) the status of Antigua and Barbuda under international law or the maintenance or support of such status, or

(b) the security of Antigua and Barbuda, its sovereignty, independence, unity or territorial integrity, or

(c) the relationship of Antigua and Barbuda with any international organisation, agency, association or similar body,

such treaty shall not enter into force with respect to Antigua and Barbuda unless it has been ratified or its ratification has been authorised or approved in accordance with the provisions of this Act.

It provides further in Section 3(2) that:

A treaty to which subsection (1) applies shall be ratified or shall have its ratification authorised or approved as follows-

(a) where such treaty concerns a matter referred to in paragraph (a) or (b) of subsection (1) or contains any provisions which is to become, or to be enforceable as part of the law of Antigua and Barbuda, by Act of Parliament;

(b) where such treaty concerns a matter referred in paragraph (c), by Resolution of the House of Representatives;

Section 3(3) thereafter reaffirms that:

No provision of a treaty shall become, or be enforceable as, part of the law of Antigua and Barbuda except by or under an Act of Parliament.

As SUA is a Convention concerned with the suppression of terrorist acts, it clearly falls within the scope of this law, and in particular, within the meaning of Section 3(1)(b) as a treaty concerning the security of Antigua and Barbuda. Its provisions therefore, to be given domestic effect must be achieved through an Act of Parliament under the requirements of Section 3(2)(a).

Giving Effect to SUA Convention and Protocol on Fixed Platforms

In order to give effect to the provisions of the SUA Convention and Protocol on Fixed Platforms, (as explained in the next part), the relevant provisions of the Convention and Protocol have been extracted and incorporated in primary legislation. This is primarily important due to the application of the Ratification of Treaties Act, and in order to give force to the provisions of the Convention that leave to the State the obligation to determine appropriate penalties.

Explanation of Draft legislation

The Draft legislation is divided into four parts: Definitions, Offences, Trial of Offences and Miscellaneous provisions.

Under Part I, the terms used in the Act are defined in Section 2, the definitions being taken directly from the provisions of the SUA Convention as amended to ensure that the maximum effect is given to the text of the Convention. Additionally, as the Act makes provision for the Minister to exercise certain functions, a definition is provided which identifies which Minister shall exercise such function. The definition of law enforcement officer is broad to allow for the performance of such functions by the appropriate officers as necessary and to provide for example where officers from the Regional Security Services, established by a regional agreement may be empowered to exercise such functions. Section 3 is incorporated to ensure that the necessary formalities relating to the domestic ratification of the treaty are observed under the provisions of the Ratification of Treaties Act. This therefore presupposes that Antigua and Barbuda has already become a party to the Convention (in other words, the country is already bound by the provisions of the treaty on an international level).

Part II of the Act, covering Sections 4 to 8, establishes the offences as provided for under the provision of the SUA Convention, as amended by the Protocol of 2005 and the Fixed Platform Protocol of 2005. It includes provisions for the punishment of the offences as provided, and includes a new provision to establish the liability of a legal entity where a person who has control or management of the entity commits an offence under the Act. It establishes a monetary fine and allows for the Minister to provide Regulations to establish additional civil and administrative sanctions as may be required.

Part III (Section 9) provides for the jurisdiction of the High Court in deciding cases under this Act, and establishes the circumstance where the court may exercise jurisdiction where the offence may have been committed outside of Antigua and Barbuda.

Part IV covers various miscellaneous provisions to allow for the effective implementation of the law. The police or other appropriate law enforcement officials are given powers of arrest without warrant regarding offences committed under this Act, and it provides for the masters of vessels flagged with Antigua and Barbuda to turn over persons and evidence to the authorities of a foreign state who they reasonably suspect of having committed an offence under this Act.

Sections 12 to 15 allow for the Convention to be used as a basis for extradition, mutual legal assistance and boarding in the absence of such agreement with a state requesting such matters.

There is a protection built into the Act which prohibits the extradition or provision of mutual legal assistance where it would effectively amount to a violation of human rights (freedom from discrimination) of the person accused.

The final provision provides the general powers of the Minister of National Security to make Regulations and outlines the procedure for Parliamentary oversight of those Regulations as well as to provide for a circumstance where Parliament rejects the Regulations adopted by the Minister under this Act.

This Act is closely modelled on the existing Prevention of Terrorism Act, in particular where the establishment of penalties are concerned. This is to ensure that the Act is consistent with the existing legal anti-terrorism framework in Antigua and Barbuda.



ANTIGUA AND BARBUDA

No. of 2011

AN ACT to make provision for the implementation of 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 as amended by the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.

ENACTED by the Parliament of Antigua and Barbuda as follows –

PART 1

Short title **1.** This Act may be cited as the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and Fixed Platforms Located on the Continental Shelf Act 2011

Interpretation **2.** In this Act, unless the context otherwise requires –

"BCN weapon" means –

(i) "biological weapons", which are –

a. 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

- b. 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 –
 - a. toxic chemicals and their precursors, except where intended for –
 - i. industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; or
 - ii. protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or
 - iii. 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
 - iv. law enforcement including domestic riot control purposes,
 - as long as the types and quantities are consistent with such purposes;
 - b. munitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (ii)(a), which would be released as a result of the employment of such munitions and devices;
 - c. any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (ii)(b);
- (iii) nuclear weapons and other nuclear explosive devices;

“Fixed Platform” means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes;

“law enforcement officer” means any person duly authorized by a national law of Antigua and Barbuda and shall include Officers of the ONDCP, The Antigua and Barbuda Defence Force (including the Antigua and Barbuda Defence Force Coast) and any other category of persons as may be prescribed by Regulations made by the Minister;

“Minister” means the Minister with responsibility for National Security;

“Officer of the ONDCP” has the same meaning as is assigned to it in section 2 of the Office of National Drug and Money Laundering Control Policy Act 2003, No. 11 of 2003;

"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;

"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.

"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;

"ship" means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft, excluding –

- (i) a warship; or
- (ii) a ship owned or operated by a State when being used as a naval auxiliary or for customs or police purposes; or
- (iii) a ship which has been withdrawn from navigation or laid up;

"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;

"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;

"transport" means to initiate, arrange or exercise effective control, including decision-making authority, over the movement of a person or item.

Ratification of
Protocols under
Ratification of
Treaties Act
Cap 364.

3. For the purpose of the Ratification of Treaties Act Cap 364, The Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, which was done at London on 14 October 2005, and The Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, which was done at London on 14 October 2005 and attached herewith as Schedules I and II are hereby Ratified as treaties in accordance with the provisions of that Act.

PART II

OFFENCES

Prohibition of
terrorist acts.

4. (1) Every person who unlawfully and intentionally –
- a. seizes or exercises control over a ship or fixed platform by force or threat thereof or any other form of intimidation; or
 - b. performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or
 - c. performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety; or
 - d. destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or
 - e. destroys a fixed platform or causes damage to it which is likely to endanger its safety; or
 - f. places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or
 - g. places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or is likely to endanger its safety; or
 - h. destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or
 - i. communicates information which that person knows to be false, thereby endangering the safe navigation of a ship;

commits an offence and is liable on indictment to imprisonment for a term not exceeding twenty-five years.

(2) Every person who unlawfully and intentionally, threatens, with or without condition, to commit any of the offences set forth in paragraphs (b), (d), and (h) of Section 4(1), with the aim of compelling a physical or juridical person to do or refrain from doing any act, provided such threat is likely to endanger the safe navigation of the ship in question commits an offence and is liable upon indictment to imprisonment for a term not exceeding twenty-five years.

(3) Every person who unlawfully and intentionally, threatens, with or without condition, to commit any of the offences set forth in paragraphs (c) and (e) of Section 4(1), with the aim of compelling a physical or juridical person to do or refrain from doing any act, provided such threat is likely to endanger the safety of the fixed platform commits an offence and is liable upon indictment to imprisonment for a term not exceeding twenty-five years.

Prohibition of
use of ship and
transport of
certain
materials and
use of and
discharge of
BCN weapons
from Fixed
Platform

5. (1) Every person who unlawfully and intentionally –
- a. when the purpose of the act, by its nature or context, is to 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. uses against or on a fixed platform or discharges from a fixed platform any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage; or
 - iii. discharges, from a ship any 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

- iv. discharges, from a fixed platform any oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by subparagraph (a)(ii), in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or
- v. uses a ship in a manner that causes death or serious injury or damage; or
- vi. threatens, with or without a condition, to commit an offence set forth in subparagraph (a)(i), (ii), (iii), (iv) or (v); or

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, with or without a condition, 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 1; 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;

commits an offence and is liable on indictment to imprisonment for a term not exceeding twenty-five years.

(2) Notwithstanding the provisions of Section 5(1), 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.

Prohibition of
transport of
person known
to commit
terrorist acts

6. (1) Every person who unlawfully and intentionally transports another person on board a ship knowing that the person has committed an act that constitutes an offence set forth in Sections 4 and 5 of this Act, or an offence set forth in any treaty listed in Schedule III to this Act, and intending to assist that person to evade criminal prosecution, commits an offence and is liable on indictment to imprisonment for a term not exceeding twenty-five years.

(2) The Minister may, by Regulation issued in accordance with the provisions of this Act amend the list of treaties to which this section applies as necessary.

Prohibition of participating in, contributing to, organizing or attempting to commit terrorist act

7. Every person who –

- a. unlawfully and intentionally injures or kills any person in connection with the commission of any of the offences set forth in Section 4(1), 5, or 6; or
- b. attempts to commit an offence set forth in Section 4(1), 5(1)(a)(i), (ii), (iii), (iv) or (v), or subparagraph (a) of this Section; or
- c. participates as an accomplice in an offence set forth in Sections 4, 5, or 6, or subparagraph (a) or (b) of this Section; or
- d. organizes or directs others to commit an offence set forth in Sections 4, 5, or 6, or subparagraph (a) or (b) of this Section; or
- e. contributes to the commission of one or more offences set forth in Sections 4, 5, or 6 or subparagraph (a) or (b) of this Section, by a group of persons acting with a common purpose, intentionally and either:
 - i. with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence set forth in Sections 4, 5, or 6; or
 - ii. in the knowledge of the intention of the group to commit an offence set forth in article Sections 4, 5, or 6.

commits an offence and is liable on indictment to imprisonment for a term not exceeding twenty-five years.

Liability of legal entity.

- 8. (1)** Subject to the provisions of this Act, a legal entity which is located within the territory of Antigua and Barbuda or is established or organized under the provisions of any relevant law in Antigua and Barbuda, shall be liable where a person responsible for its management and control, in that capacity, commits an offence under the provisions of this Act and shall be liable to a fine not exceeding 1 million East Caribbean Dollars.

(2) Such liability shall be without prejudice to the criminal liability of the individual having committed the offence.

(3) Subject to the Provisions of this Act, the Minister may make Regulations providing for additional civil and administrative sanctions which may be imposed upon the legal entity referred to in subsection (1) of this Section.

PART III

TRIAL OF OFFENCES

Jurisdiction to
try offences
under this Act

9. (1) The High Court shall have jurisdiction to try offences under this Act.

(2) The High Court shall have jurisdiction to try an offence under this Act if the act or omission constituting the offence is committed in Antigua and Barbuda, including the territorial waters thereof;

(3) For the purposes of subsection (2), an act or omission committed outside Antigua and Barbuda and which would if committed in Antigua and Barbuda constitute an offence under this Act shall be deemed to have been committed in Antigua and Barbuda if –

- a. the person committing the act or omission is –
 - i. a citizen of Antigua and Barbuda; or
 - ii. not a citizen of any country but is ordinarily resident in Antigua and Barbuda.
- b. the act or omission is committed on board or against a ship flying the flag of Antigua and Barbuda at the time it is committed;
- c. the act or omission is committed to compel the Government of Antigua and Barbuda to do or refrain from doing any act;

d. the act or omission is committed against a citizen of Antigua and Barbuda who is seized, threatened, injured or killed during the commission of the offence;

e. the person who commits the act or omission is after its commission, present in Antigua and Barbuda.

PART IV

MISCELLANEOUS

Power of
arrest.

10. Any police officer or other law enforcement officer may arrest without warrant any person who has committed or is committing or whom he has reasonable grounds for suspecting to have committed or to be committing an offence under this Act.

Provision to
allow master to
deliver persons
and evidence to
foreign state.

11. (1) Subject to the provisions of subsection (2), the master of a vessel, which flies the flag of Antigua and Barbuda may deliver to the authorities of a State, party to the Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, as amended by the Protocol of 2005, any person who he has reasonable grounds to believe has committed any of the offences provided for in this Act;

(2) Where under the provisions of subsection (1) of this Section, the master of a vessel which flies the flag of Antigua and Barbuda, carries on board a person, and intends to deliver such person to the authorities of a foreign State, he shall, whenever practicable and as soon as possible before entering the territorial sea of that State, give notification to the authorities of that State of his intention to deliver such person and the reasons therefor;

(3) Subject to the provisions of this section, the master of such a vessel shall furnish any evidence in his possession which pertains to the alleged offences to the authorities of that foreign state.

SUA to be used
as basis for
extradition

12. (1) Where there is in force, an extradition arrangement between the Government of Antigua and Barbuda and another State party to the Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, as amended by the Protocol of 2005, the extradition arrangement shall be deemed, for the purposes of the Extradition Act, to include provision for extradition in respect of offences falling within the scope of that Convention;

(2) Where there is no extradition arrangement between the Government of Antigua and Barbuda and another State party to the Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, as amended by the Protocol of 2005, the Minister may, by Order published in the Gazette, treat that convention, for the purposes of the Extradition Act as an extradition arrangement between the Government of Antigua and Barbuda and that State, providing for extradition in respect of offences falling within the scope of that Convention.

SUA to be used
as basis for
mutual legal
assistance

13. (1) Where there is in force, an arrangement between the Government of Antigua and Barbuda and another State party to the Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, as amended by the Protocol of 2005, for mutual assistance in criminal matters, the arrangement shall be deemed, for the purposes of the Mutual Assistance in Criminal Matters Act, to include provision for mutual assistance in criminal matters in respect of offences falling within the scope of that convention;

(2) Where there is no arrangement between the Government of Antigua and Barbuda and another State party to the Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, as amended by the Protocol of 2005, for mutual assistance in criminal matters, the Minister may, by Order published in the Gazette, treat that Convention as an arrangement between the Government of Antigua and Barbuda and that State providing for mutual assistance in criminal matters in respect of offences falling within the scope of that Convention.

14. Notwithstanding anything in the Extradition Act or Mutual Legal Assistance in Criminal Matters Act an offence under this Act, shall, for the purposes of extradition or mutual assistance, be deemed not to be an offence of a political nature.

SUA to be used
as basis for
boarding
arrangement

15. Where there is no arrangement between the Government of Antigua and Barbuda and another State party to the Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, as amended by the Protocol of 2005, regarding the boarding of ships flying the flag of Antigua and Barbuda seaward of the territorial sea of any state, the Minister may, by Order published in the Gazette, treat that Convention as an arrangement between the Government of Antigua and Barbuda and that state providing for the boarding and searching of such ships, cargo and passengers under the provisions of that Convention.

Protection of
person accused
where
extradition
would subject
them to
discrimination

16. (1) Notwithstanding the provisions of this Act, and in particular the provisions of Sections 11, 12 and 13, the competent official concerned with the requests for extradition or mutual legal assistance shall not be obliged to extradite or provide mutual legal assistance with respect to the offences provided for under this Act concerning any person accused of such offences when he has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing the person on account of that person's race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with such request would cause prejudice to that person's position for any of those reasons

Power to make
Regulations

17. (1) The Minister may make Regulations in respect of all matters in respect of which regulations are required or authorized to be made by this Act;

(2) Every Regulation made under subsection (1), shall, as soon as convenient after its publication in the Gazette, be brought before Parliament for approval by affirmative resolution;

(3) Any Regulation which is not so approved by Parliament shall be deemed to be rescinded as from the date of disapproval, but without prejudice to anything previously done thereunder;

(4) Where an Order is deemed to be rescinded by reason of the operation of subsection the Minister shall cause notice of such rescission to be published in the Gazette.

Schedule I

*Text of the 2005 Protocol to the Convention for the Suppression of Unlawful Acts
against the Safety of Maritime Navigation*

Schedule II

*Text of the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts
against the Safety of Fixed Platforms Located on the Continental Shelf*

Schedule III

List of Treaties to which the provisions of Section 6 apply

1. Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970
2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971
3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973
4. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979
5. Convention on the Physical Protection of Nuclear Material, done at Vienna on 26 October 1979
6. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988
7. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988
8. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997
9. International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999