

An Act to give effect to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005 (2005 SUA Convention) and to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 2005 (2005 SUA Fixed Platforms Protocol).

Malta plays an important role in the international shipping community, especially due to its geographical location and its historic maritime connections. Apart from its seminal role in international shipping fora and its contribution to the development of law of the sea, on the domestic plane Malta over the years sought and is still seeking to develop into an International Maritime Centre. It is a well known fact that the economic stability, a modern comprehensive maritime legislative framework, and competent professionals in the field are amongst the ingredients to the recipe of success. Undoubtedly, the Maltese Shipping Register and the ever-prominent Freeport are but two examples of successful achievements in their own right, especially when put against the highly-competitive background in which they operate.

Recent international developments have mounted considerable pressure on Malta, both as a flag-state and as an international transshipment hub. Reference is hereby being made to the escalation and threatening problem of international terrorism. Both ships and port interfaces are, at present, under the scrutiny of those responsible for maritime security due to the serious threats posed by international terrorism. Terrorism in all its forms must not be allowed to interfere, in any way whatsoever, with the cycle of maritime transport which, in statistical terms, accounts for the transportation of around 85% of world trade. Ships can be the means to achieve ignoble ends either as a dangerous ship itself or as a means to transport dangerous goods or persons intended or intending to cause harm.

The recent amendments to the SOLAS Convention and the adoption of the SUA Protocol 2005 can be considered as the response of the international maritime community to the security threats posed by international terrorism. On the one hand the ISPS Code addresses the problem by providing for a comprehensive set of preventive technical measures to reduce as much as possible the security risk. The SUA Convention and its 2005 Protocol, on the other, require state parties to have in force a legal regime to enable the state party involved, first, to assume jurisdiction over the offence committed and secondly, either to prosecute itself or to extradite the alleged offender to another State which is both willing and able* to prosecute the offender for the alleged offence committed. As a result, the SUA Convention aims at establishing, between the State parties, a universal-jurisdictional-web, based on the text of the Convention itself, in order not to allow the perpetrator/s to abscond by moving from one jurisdiction to another. Though, it is correct to say, that an important feature of the SUA Convention is its preventive[†] rather than just reactive[‡] nature. In fact State parties are obliged to establish cooperation networks and to exchange information to detect potential harmful acts.

* i.e. it has jurisdiction over the offence and the offender

† as regards those articles requiring cooperation and exchange of intelligence such as Article 12 as amended

‡ as regards those articles which require states either to prosecute or extradite alleged offenders; Article 10.

The SUA Convention and its 2005 Protocol, which is the Convention with which is the Convention being analyzed for the purposes of the drafting project, is relevant to Malta as a maritime island-state in two respects.

(1) **Malta, as a flag State of the 5th largest fleet in the world.**

The rights and obligations of Malta as a flag-state are considerably affected by the 2005 amendments to the Convention. The authorization of the flag-state, upon a request from the requesting State, to board ships flying the flag of the authorizing State is a fundamental pillar of the newly agreed amendments. The flag State has complete discretion whether to authorize or otherwise the boarding of a ship flying its flag and the requesting part cannot board the ship or take any measures without the express authorization of the flag State.[§] This is in line with the cardinal rule that the vessel, while on the high seas, is subject to the exclusive jurisdiction of the flag State save in exceptional circumstances provided for in the 1982 Law of the Sea Convention.^{**} The corollary principle to the aforementioned general principle is that when the ship is passing through the coastal waters of another state it is possible to have concurrent jurisdictions over that ship.

Amongst the rights granted to the flag State by virtue of the new amendments there are the following rights;

1. The right to exercise jurisdiction over a detained ship, cargo or other items and persons on board, including seizure, forfeiture, arrest and prosecution.
2. The right to request additional information from the requesting party and the right to impose conditions when granting authorization to another state to board a ship flying its flag.

[§] Article 8*bis*

^{**} The 1982 United Nations Convention on the Law of the Sea.

From the text of the Convention it is clearly evident that the interests of the flag State are given paramount importance and therefore it is equally important for Malta as a flag State to discharge to the best of its endeavours its obligations under the Convention and International law.

2. **Malta, as an international transshipment hub.**

The Convention is relevant to Malta in this respect when an alleged offence is intended or aimed at inflicting harm on local shores or when dangerous and illegal cargo is transhipped in Malta while awaiting carriage to a third State. The situation may arise where a carrier knowingly transports an alleged offender knowing that such person has committed an offence^{††} and intended to assist that person to evade criminal prosecution. In such a situation Malta has to exercise jurisdiction, take the offender in custody and decide whether to prosecute or extradite. Every State party is obliged to take such measures as may be necessary to establish jurisdiction over the offences set forth in the Convention.^{‡‡}

Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. 10/03/1988 and its 2005 Amending Protocol.

Piracy is regarded as *hostis humani generis*, an enemy of the human race, punishable wherever encountered. The term “piracy” usually refers to a broad range of violent acts at sea. The LOS Convention defines it as follows:

^{††} Being an offence which falls within the purview of the SUA Convention.

^{‡‡} Article 6 as amended.

Piracy consists of any of the following acts: (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed to: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

However, the above definition has its limitations. First, it defines “piracy” as only for “private ends” and terrorist acts at sea for political ends are generally excluded. In response to the *Achille Lauro* hijacking, the Governments of Austria, Egypt, and Italy made a proposal in November 1986 that the IMO prepare a convention on the unlawful acts against the safety of maritime navigation. Second, according to the above definition, piracy *juris gentium* presupposes that a criminal act is one exercised by the passengers or the crew of a ship against another ship or persons or property on its board. The two-vessel requirement is an ingredient of the crime of piracy, unless a criminal act occurs in *terra nullius*. Thus “internal seizure” within the ship is hardly regarded as an “act of piracy” under the definition of the 1982 Law of the Sea Convention.

Finally, piracy must occur on the high seas and piratical acts within territorial waters are not subject to the above definition. To remedy these limitations, the IMO has attempted to divide acts of piracy into two categories by geographical and legal division of maritime zones: piracy on the high seas is regarded as “piracy” as defined by the LOS Convention, while acts of piracy in ports or national waters (internal waters and territorial sea) are defined as “armed robbery against ships”.

The SUA Convention applies to all maritime terrorist acts, whether private or political. It is significant that even if terrorist acts cannot be punished and suppressed under the LOS Convention, they may still be punished under the Rome Convention. This means that any maritime terrorist and piratical act cannot escape justice. The other twin instrument is the

1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (“SUA Protocol”), which was adopted at the same time

as the Rome Convention and contains similar provisions. It is relevant in the context of seas that are rich in oil and gas and their coastal States have already launched exploitation projects either by themselves or jointly with foreign oil companies. It has been suggested that offshore oil and gas installations are potential targets of piracy.

Provisions

The Convention defines ‘ship’ as any type of vessel whatsoever that is not permanently attached to the sea-bed, including dynamically supported craft, submersible, or any other floating craft. Warships, ships owned or operated by a State when being used as a naval auxiliary or for customs or police purposes, or ships that have been withdrawn from navigation or laid up are not included under the auspices of the Convention.

Scope of Operation

The Rome Convention applies if the ship is navigation or is scheduled to navigate into, through, or from waters beyond the other limit of the territorial sea of a single state, or the lateral limits of its territorial sea with adjacent States. In all other cases, the Convention also applies when the offender or alleged offender is found in the territory of a State Party other than the State in whose waters the offence occurred. No changes have been effected to Article 4 by the 2005 amendments. State parties are required to make the offences punishable by appropriate penalties that take into account the grave nature of those offences.

Jurisdiction

States are required to establish jurisdiction over the offences listed in the Convention, when such offences are committed against or on board a ship flying the flag of a State at the time the offence is committed. Similarly when the offence is committed in the

territory of that State, including its territorial sea or is otherwise committed by a national of that State or by a stateless person whose habitual residence is in that State. Once jurisdiction has been established, States shall take the offender into custody and immediately make a preliminary inquiry into the facts. State parties are required to either extradite the offender in custody or submit the case for prosecution. State parties are also required to assist each other in connection with criminal proceedings brought under the Convention. State parties are also to cooperate in the prevention of offences by taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories and by exchanging information in accordance with their national laws.

Offences under the Convention

According to the 1988 Convention any person commits an offence if that person unlawfully and intentionally commits, attempts to commit, threatens to commit, or abets the seizure or exercise of control over a ship by force or threat of force or any form of intimidation; or commits any of the following acts if it endangers or is likely to endanger the safe navigation of that ship; an act of violence against a person on board; destroying a ship or damaging a ship or its cargo; placing or causing to be placed on a ship a device or substance likely to destroy the ship or cause damage to the ship or its cargo; destroying or seriously damaging maritime navigational facilities or seriously interfering with their operations; or communicating information he knows to be false. It is also an offence to injure or kill any person in connection with the commission or attempted commission of any of the aforementioned offences.

Following the recent amendments brought about by the 2005 Protocol, Article *3bis*, Article *3ter* and Article *3quater* have been added to the Convention. These articles bring further offences within the purview of the Convention. For the first time, if a person knowingly and unlawfully discharges any substance, in such quantity or concentration that causes or is likely to cause death or serious injury or damage, is made a punishable offence which attracts the operation of the Convention. Intentional hazardous navigation of a ship that causes death or serious injury or damage is likewise made a punishable offence.

To combat the proliferation of nuclear materials, it is now a criminal offence to knowingly and unlawfully transport on board any explosive or radioactive material for the purpose of intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act. It is also prohibited to transport another person on board a ship knowing that the person has committed an act that constitutes an offence under the Convention and intending to assist that person to evade criminal prosecution. Any willful homicide committed in connection with any of the offences set forth in article 3, paragraph 1, article *3bis*, or article *3ter* is also an offence within the meaning of the Convention. The Convention likewise criminalizes any participation, organization, or directions and contributions knowingly made with the intent to facilitate or to further the commission of any offence mentioned in Articles 3, Article *3bis* or article *3ter*.

Corporate Liability

Article *5bis* is one of the innovations brought about by the 2005 Protocol. Each State party has to take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for management or control of that legal entity has, in that capacity, committed an offence set forth in the Convention. Such liability may be criminal, civil or administrative and is incurred without prejudice to the criminal liability of individuals who perpetrated the offences.

Effective, proportionate and dissuasive sanctions shall be enforced against such legal entity and such sanctions may include monetary sanctions.

Rights and obligations of the flag State

Article 8*bis* is a new article set forth by the 2005 Protocol. Under this Article States are obliged to cooperate to the fullest extent possible to prevent and suppress unlawful acts covered by the Convention. Such obligations must be discharged in accordance with International law. The article also regulates ‘requests’, for the prevention or suppression of an offence, made by a State party to another state party pursuant to this Article. Whenever a requesting state has reasonable grounds to suspect that the ship or a person on board the ship has been, is or is about to be involved in the commission of an offence and such requesting state desires to board, it shall first, request the flag State to confirm the claim of nationality and if nationality is confirmed^{§§} the requesting party can make a further request for authorization to board and to take appropriate measures with regard to that ship. Such measures may include stopping, boarding, and searching the ship, its cargo and persons on board and questioning the person on board in order to determine if any offence set forth in the Convention has been, is being or is about to be committed.

The flag State has four options when such a request is made. First, it can authorize, conditionally or otherwise, the requesting party to take appropriate measures; secondly, it can conduct the boarding and search with its own law enforcement or other officials; thirdly, it can conduct the boarding and search together with the requesting party; fourthly, it can decline to authorize a boarding and search. The requesting party cannot board the ship or take any measures^{***} without the express authorization of the flag State.

^{§§} This Convention confirms that it is the flag-state and none other than the flag-state that has the exclusive right to confirm or deny the nationality which a vessel claims to possess.

^{***} Listed in Article 5(b)

Article 5(d) of the Convention as amended provides for a tacit authorization procedure. Upon ratifying the Convention, a state party may notify the Secretary-General that the requesting party is granted authorization to board and search the vessel if there is no response from the requested party within four hours of acknowledgement of receipt of a request to confirm nationality. Some are of the opinion that open registers shall must not abide or give its prior consent to this ‘tacit authorization procedure’.

Once authorization is granted, the flag State has the right to exercise jurisdiction over a detained ship, cargo or other items and persons on board, including seizure, forfeiture, arrest and prosecution. However, the flag State may consent to the exercise of jurisdiction by another State having jurisdiction article 6 of the Convention. Any boarding undertaken pursuant to this Convention shall take due account of, amongst a myriad of other considerations, the need not to prejudice the commercial or legal interests of the flag State. It must also be ensured that prior to any boarding the master of the ship is advised of such intention to board, and is or has been afforded the opportunity to contact the ship’s owner and the flag-state at the earliest opportunity.

The grant of authorization by the flag State *per se* does not attach any liability to the flag State however, State parties are liable and shall provide effective recourse for any damage, harm or loss attributable to them arising from measures taken pursuant to Article 8 *bis* when either the ground for such measures prove to be unfounded or such measures are unlawful or exceed that reasonably required in light of available information to implement the provisions of Article 8 *bis*.

Any measure taken under this article must not interfere with or affect the rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea or the authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the ship. Furthermore, any measures taken under this article must be carried out by law enforcement or other recognized officials from warships or military aircraft and authorized to that effect.

As highlighted above, the underlying principle of this Convention is *aut dedere aut judicare*. The Protocol of 2005 introduced an important provision, which was a serious deficiency in the original convention. Article 11bis provides that none of the offences set forth in the Convention shall be regarded for the purpose of extradition or mutual legal assistance as a political offence or an offence connected with a political offence or an offence inspired by political motives. This is a major step towards the consolidation of the aforementioned principle in the workings of the Convention.

Otherwise, it would have been possible for a State party having the custody of an alleged offender to deny an extradition request solely on the basis that the offence in question is a political offence or an offence inspired by political motives. The Convention nonetheless provides a balance and does not oblige a state to extradite an alleged offender if an extradition request is 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.

The SUA Convention entered into force on 1st March 1992 and has 87 State parties. Malta has ratified the Convention and is now in the process of incorporating the Convention into domestic law. Given the global escalation of international terrorism, it is high-time for Malta to have a Maritime Security regime in place, covering both Maltese ships wherever they may be and its territorial waters. The trans-shipment of cargo plays a major role in our maritime commerce and it is a well-known fact that containerized cargo can pose a security risk to such maritime commerce. The SUA Convention provides for the necessary legal framework to prevent and suppress illegal acts against the safety of maritime navigation. The Convention operates proactively and criminalizes any attempt or threat to commit unlawful acts intended to cause damage, harm or loss of life.

Form of Incorporation into Maltese Law.

When incorporating an international convention it is important that one takes into account the substance of the convention and the legal framework within which it is to be

incorporated, otherwise, you can end up with different provisions, regulating the same issue and conflicting with each other. What follows is a resume of the relevant Maltese

legislation which have to be taken into consideration when incorporating the SUA Convention.

Relevant Maltese Legislation

Merchant Shipping (Port State Control) Regulations S.L. 234.38

Article 3 of the Merchant Shipping (Port State Control) Regulations provides that the Regulations are applicable to any ship and her crew calling at a port in Malta or at an off-shore installation or anchored off such a port or such an installation, however, it is not applicable with respect to Maltese registered ships.

Criminal Code Chapter 9

The Criminal Code was recently amended to bring it in line with international developments especially as regards international terrorism. Sub-title *IV A* of the Criminal Code was added by *Act VI.2005.2*. Article 238A provides that the;

- (a) taking away of the life or liberty of a person;
- (b) endangering the life of a person by bodily harm;
- (c) bodily harm;
- (d) causing extensive destruction to a state or government facility, a public transportation system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger life or to cause serious injury to the property of any other person or to result in serious economic loss;
- (e) seizure of aircraft, ship or other means of public or goods transport;
- (f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons;
- (g) research into or development of biological and chemical weapons;

- (h) release of dangerous substances, or causing fires, floods or explosions endangering the life of any person;
- (i) interfering with or disrupting the supply of water power or any other fundamental natural resource endangering the life of any person.
- (j) threatening to commit any of the acts in paragraph (a) to (i)

committed willfully and where committed with the aim of (a) seriously intimidating a population; or (b) unduly compelling a Government or international organization to perform or abstain from performing any act, or (c) seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization, then such act shall be regarded as an act of terrorism. If the accused is found guilty of an act of terrorism, he shall be liable on conviction to the punishment of imprisonment from five years to life.

Any person, who with the intention of committing any of the acts listed from (a) to (j), either commits the offence of aggravated theft^{†††} or the offence of extortion^{†††} or blackmail^{§§§} or commits an offence of forgery^{****} shall be liable on conviction to the punishment of imprisonment for five years to life. Similarly, any person who incites, aids or abets any of the aforementioned offences shall be liable on conviction to the punishment offence incited, aided or abetted.

Article 328J then provides for the liability of the corporation for terrorist acts committed by a person being in a position of director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such a body or having an authority to take decisions on behalf of that body or having authority to exercise control within that body and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that body corporate. The body corporate

^{†††} Article 261

^{†††} Article 113

^{§§§} Article 250

^{****} including the offence in Article 188

shall be liable to the punishment of fine (*multa*) of not less than LM 5000 and not more than LM 1000000. The body corporate shall also be liable for an act of terrorism where

the lack of control or supervision by a person mentioned in Article 121D has made possible the commission of the offence for the benefit of the body corporate. Therefore even if the persons mentioned in Article 121D do not themselves commit the offence, if the offence benefits the body corporate and it is proved that there was lack of supervision or control by the persons responsible for the management and administration of the company, then the body corporate shall be liable to the punishment of fine (*multa*) of not less than LM 5000 and not more than LM 1000000.

Article 5 of the Criminal Code provides for the exercise of jurisdiction by the Maltese criminal courts. This Article has been supplemented by Article 328M which provides that without prejudice to the provisions of Article 5, the courts in Malta shall also have jurisdiction over the offences listed in this sub-title where –

- (a) the offence is committed even if only in part in the territory of Malta or on the sea in any place within the territorial jurisdiction of Malta;
- (b) the offender is a Maltese national or permanent resident in Malta;
- (c) the offender is a person suspected or convicted of an offence laid down in this sub-title and whose surrender or extradition to another country for such an offence is refused by Malta even if there is no provision according to the laws of Malta other than the present provision in virtue of which the criminal action may be prosecuted in Malta against that person;
- (d) the offence is committed for the benefit of a legal person established in Malta;
- (e) the offence is an offence under Article 328B or an offence under article 328D which involves a terrorist group even if the terrorist group is based or pursues its criminal activities outside Malta;
- (f) the offence is committed against the institutions or people of Malta or against an institution of the European Union or a body set up in accordance with the Treaties and based in Malta;

Article 5 sub-articles (b) and (i) of Chapter 9 are the relevant sections on the basis of which the Maltese courts can exercise jurisdiction and take cognizance of an action brought in front of such courts with respect to an offence committed on board a Maltese registered ship when such offence takes place beyond the territorial waters of Malta.

Our law does not provide for a Maritime Security Regime. It is my firm belief that the incorporation of the SUA Convention must be done through an Act. A proposed short title to such regime would be '*Maritime Security Act*' accompanied with a longer title '*To give effect to the Convention for the suppression of unlawful acts against the safety of Maritime navigation*' which defines the scope of the Act. It is highly unsatisfactory to have different parts of the SUA Convention applied or incorporated into different legislations such as the Criminal Code, the Extradition Act and the Merchant Shipping Act. In fact such a segregation of provisions may prejudice the effective contextual interpretation of the Convention itself.

Building on the previous incorporations of the Tokyo Convention^{††††}, Hague Convention^{‡‡‡‡}, and Montreal Convention^{§§§§} into one single Act,^{*****} the same procedure of incorporation should be followed in respect of the SUA Convention. This is also the approach adopted in foreign jurisdictions where the Convention has been incorporated.

Sub-division of the proposed *Maritime Security Act*

Part I	Preliminary
Part II	Provisions giving effect to the Rome Convention (1988)
Part III	Provisions giving effect to the Protocol of the Rome Convention (2005)

†††† 1963

‡‡‡‡ 1970

§§§§ 1971 and the Montreal Protocol 1988

***** Civil Aviation (Security) Act Chapter 353

Part IV General

Important Provisions to be included in the *Maritime Security Act*:

1. Provision/s to incorporate the offences established under the Rome Convention and its Protocol.
2. Provision/s to establish the jurisdiction of the Maltese Courts over such Offences.
3. Provision/s relating to the jurisdiction of the Convention countries for Extradition purposes.
4. Provision/s as to evidence in connection with the vessel/s involved
5. Provisions establishing the rights and obligations of the flag-state. (*though not necessary*)

The Protocol of 2005 urges States to take appropriate measures to ensure the effective implementation of the relevant instruments, in particular through the adoption of legislation. As highlighted above, the underlying principle on which the Convention's rationale is based is that of *aut dedere aut judicare*, therefore an effective legal regime of incorporation should include, firstly; provisions to criminalize the acts under Maltese law and consequently to establish the jurisdiction of the local courts over such offences and secondly, if unwilling to prosecute the offender within the Maltese jurisdiction, to provide a legal basis on which an extradition request from another State party, which is willing and able to prosecute the alleged offender, can be entertained.

Larry Gauci

11/12/2005

CHAPTER XXX

MARITIME SECURITY ACT

An Act to give effect to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005 (2005 SUA Convention) and to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 2005 (2005 SUA Fixed Platforms Protocol).

(20th January, 2006)^{††††}

Enacted by ACT ___ of 2006

^{††††} See Government Notice No _____

Preliminary

Short title. **This Act may be cited as the Maritime Security Act.**

Interpretation. 1(1). In this Act, unless the context otherwise requires, the following expressions shall have the following meanings, that is to say:

“act” includes omission and a reference to committing an act includes a reference to an omission;

“amending Protocols” means the Protocol of 2005 to the Convention for 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.

“authorized person” means any person authorized by the Port Security Officer, or the Port Authority on the advice of the Commissioner of Police, or the Commander, Armed Forces of Malta, or the Director of the Merchant Shipping Directorate, or the Chairman, Malta Maritime Authority, to perform the duties under this Act, on board ships, fixed platforms or the ship-port interface and other restricted areas as may be designated to such person from time to time;

“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.

“Convention” means the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988;

“Convention State” means a State which is a State party to the Convention, or its Protocol and the amending Protocols.

Cap. 352.

“designated authority” unless the context otherwise provide, means the Malta Maritime Authority or any other authority which the Minister may designate from time to time.

“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 and located within an area designated under section 2 of the Continental Shelf Act 1966;

“Maltese ship” means a ship, as so defined in section 3 of the Merchant Shipping Act 1973, wherever found;

“master”, in relation to a ship, means the person having for the time being the command or charge of the ship;

“Minister” means the Minister responsible for Transport and Communications unless otherwise provided;

Cap. 164.

“Police Officer” has the same meaning assigned to it by the Malta Police Ordinance.

“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 multi-component chemical system.

“Protocol” means the 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;

“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, but does not include –

- (a) a warship,
- (b) a ship owned or operated by a State when being used as a naval auxiliary or for customs or law enforcement purposes, or
- (c) a ship which has been withdrawn from navigation or laid up,

and, in relation to a ship which is not a Maltese ship, means such a ship which is in the territorial seas of Malta.

Cap. 226.

“territorial seas” means such area, as so defined in section 3(1) of the Territorial Waters and Contiguous Zone Act.

“toxic chemical” means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans to 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;

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.

Offences.

- 2 (1) Whosoever unlawfully and intentionally –
- (a) seizes or exercises control over a ship or fixed platform by force or threat of force or any other form of intimidation; or
 - (b) commits an act of violence against a person on board a ship or fixed platform if that act is likely to endanger the safe navigation of the ship or the safety of the fixed platform; or
 - (c) destroys a ship or fixed platform; or
 - (d) causes damage to a ship or its cargo which is likely to endanger its safe navigation, or to a fixed platform which is likely to endanger its safety; or
 - (e) places or causes to be placed on a ship or fixed platform, by any means whatsoever, a device or substance which is likely to destroy the ship or fixed platform, or to cause the damage referred to in paragraph (d); or
 - (f) communicates information which that person knows to be false, thereby endangering the safe navigation of a ship; or
 - (g) injures or kills any person in connection with the commission of any offence under this sub-section; or
 - (h) with intent to compel the commission or omission of any act, by a physical or juridical person, threatens to endanger the safe navigation of a ship by doing any of the acts referred to under this section; or
 - (i) attempts to do any of the acts mentioned in this sub-section,

is guilty of an offence under this section and shall be liable on conviction on indictment to imprisonment for life.

Cap. 9

- (2) For the purpose of this section “act of violence” means any act which would constitute any one of the offences under section 211, 212, 214, 216, 217, 218, 220 and 222 of the Criminal Code; or any act whereby an explosion or a nature likely to endanger life, or to cause serious injury to property, is maliciously caused by means of any explosive substance, whether or not any injury to person or property is actually caused; “explosive substance” has the same meaning assigned to it by section 314 of the Criminal Code.

- Offences.
- 3 (1) Whosoever 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 fixed platform or discharges from a ship or 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
 - (ii) discharges, from a ship or fixed platform, oil, liquefied natural gas, or other hazardous or noxious substances, which is not covered by subsection 1(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 to commit any of the aforementioned offences referred to in this subsection; or
- (b) Subject to subsection (2), transports on board a ship;
- (i) any explosive or radioactive material, knowing that it is intended to be used to cause, or threatens 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 article 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.

- (c) kills or injures any person in connection with the commission of any of the offences referred to in this section.
- (d) attempts to commit any of the offences referred to in subsection 1(a)(i), (ii) or (iii), or subsection 1(c) of this section.
- (e) participates, as an accomplice in any of the offences referred to in section 2, section 3 and section 4,

shall on conviction be liable to life imprisonment or to such lesser punishment, being not less than imprisonment for five years, as the court may deem fit.

- (2) It shall not be an offence within the meaning of this Act to transport an item or material covered by subsections (1)(b)(iii) or, insofar as it relates to a nuclear weapon or other nuclear explosive device, subparagraph (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 or other nuclear explosive device of a State party to the Treaty on the Non-Proliferation of Nuclear Weapons, the holding of such weapons or device is not contrary to that State Party's obligations under that Treaty.
- (3) For the purpose of this section "participates as an accomplice" means any act referred to under Section 42 (a) to (e) of the Criminal Code which constitutes the offence of complicity.

Provided that for the purpose of this section "serious injury" means any act which would constitute an offence under section 211, 212, 214, 216, 217, 218, 220 and 222 of the Criminal Code.

Provided further that for the purpose of this section “serious damage” includes, but is not limited to, the extensive destruction of a place of public use, State or government facility, infrastructure facility, or public transportation system, resulting in major economic loss; or substantial damage to the environment, including air, soil, water fauna or flora.

4 Whosoever unlawfully and intentionally transports another person on board a ship knowing that the person has committed an act that constitutes an offence under this Act and intending to assist that person to evade criminal proceedings, shall on conviction be liable to life imprisonment or to such lesser punishment, being not less than imprisonment for three years, as the court may deem fit.

5 Whosoever contributes to the commission of one or more offences, referred to in the preceding articles, by a group of persons acting with a common purpose, intentionally and with the specific intent of furthering the criminal activity or criminal purpose of the group or otherwise acting with a common purpose in the knowledge of the intention of the group to commit any of such offences, shall on conviction be liable to imprisonment for life.

Offence
committed by
a body
corporate; or
other persons

6 (1) Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, the body corporate shall be guilty of that offence and shall be liable to the payment of a fine (*multa*) of not less than 500 liri and not more than 50,000 liri.

(2) Any director, manager, secretary or other similar officer of a body corporate, or any person who was purporting to act in any such capacity shall likewise be guilty of an offence under this Act unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

Conspiracy. 7 (1) Any person who conspires with one or more persons in Malta or outside Malta for the purposes of committing, in Malta or on or against a Maltese ship wherever found, any of the offences mentioned in the previous sections shall be guilty of the offence of conspiracy to commit any one or more of such offences.

(2) The conspiracy aforementioned, shall subsist from the moment in which any mode of action whatsoever is planned or agreed upon between such persons.

(3) Any person found guilty of conspiracy under this article shall be liable to the punishment for the completed offence object of the conspiracy with a decrease of one or two degrees.

(4) For the purpose of subsection (3), in the determination of the punishment for the completed offence object of the conspiracy account shall be had of any circumstances aggravating the offence.

Extra-territorial jurisdiction.

8 (1) Subject to the provisions of subsection (2) where an offence under this Act is committed outside Malta, the person committing such offence may be dealt with in respect thereof as if such offence had been committed in Malta.

(2) No court shall take cognizance of an offence punishable under this Act and which is committed outside Malta unless –

- (a) committed on board or against a Maltese ship or
- (b) committed on board or against a fixed platform located on the Maltese continental shelf; or
- (c) committed by or against a national of Malta;

provided that, the court shall have jurisdiction to take cognizance of an offence committed outside Malta, in circumstances other than those mentioned in sub-section (2)(a) and (b), if the Minister for Justice and Home Affairs is satisfied–

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

Power of
arrest and
detention.

- (b) in case a European arrest warrant has been received for the person's arrest for the purpose of bringing proceedings against him or her for such an offence in a Convention state that is a member state of the European Communities and a final determination has been made not to surrender the person to the state concerned; or
- (c) in any other case, that, because of special circumstances, 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.
- 9 (1) An authorized person may on grounds of urgency and without warrant, proceed with the arrest any person, where there is reasonable cause to suspect that, any of the offences referred to under sections 2 and 3 of this Act has been committed or is about to be committed.
- (2) Where an authorized 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 on or in relation to a ship or fixed platform, such authorized person may—
- (a) prevent the person from boarding the ship or fixed platform or from travelling 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.
- (3) 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 reasonable cause to suspect that such person is guilty of an offence under this Act.
- (4) Such a person may be so detained only until he or she can be delivered to –
- (a) an authorized person, or
- (b) the appropriate authorities of a Convention State.

provided that a person so delivered to a member of the Armed Forces shall be delivered, as soon as practicable, to the executive police and shall thereupon be treated as a person arrested without warrant by the executive police, unless the person is brought as soon as practicable, but in all cases not later than forty eight hours after being so delivered to the executive police, before the Court of Magistrates.

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

- (5) 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 any civil proceedings,

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

Delivery of
detained
person to
authorities in
Convention
State.

10

- (1) A master of a ship may deliver to the appropriate authorities of a Convention State any person detained by him or her under section 6.
- (2) A master of a ship who intends so to deliver such a person shall notify the authorities concerned of the intention to do so and the reasons for such delivery.
- (3) The notification must be given whenever practicable and, if possible, before the ship enters the territorial seas of the Convention State.
- (4) On delivery of a person under subsection (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 reasonably require, and
 - (b) give them any other evidence in his or her possession relating to that offence.
- (5) A master who, without reasonable cause, does not comply with subsection (3) and (4) of this section shall on conviction be guilty of an offence and liable to a fine (*multa*) not exceeding 5000 liri or imprisonment for a term not exceeding 1 year or both.

Power to
Search and
seizure.

11

- (1) An authorized 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; and

provided that such authorized person may, seize any object believed to be related to or connected with the commission of an offence. Such officer or member may furthermore remove or take copies of any records or extracts from records which may be so related.

(2) Any person who obstructs or attempts to obstruct a police officer or member of the Armed Forces while searching a ship or fixed platform shall on conviction be liable to a fine (*multa*) not exceeding 1000 liri or imprisonment for a term not exceeding six months or both.

(3) the authorized person may arrest without warrant any person who is committing an offence under subsection (2) of this section.

Proceedings
and evidence.

12

(1) Where, in any proceedings relating to an offence under this Act, committed on board a ship, the evidence of any person is required and the court is satisfied that such person cannot be found in Malta, there shall be admissible in evidence before that court any statement relating to the subject-matter of those proceedings previously made on oath by that person and which was so made –

- (a) in the presence of the person charged with the offence; and
- (b) in any other Convention country to an officer having functions corresponding to the functions, in Malta, either of judge or of a magistrate or of a consular officer.

(2) Any such deposition shall be authenticated by the signature of the judge, magistrate or consular officer before whom it was made, and shall be certified by him to have been taken in the presence of the person charged as aforesaid.

(3) It shall not be necessary in any proceedings to prove the signature or official character of the person appearing to have authenticated any deposition, or to have given such a certificate as aforesaid; and such a certificate shall, unless the contrary is proved, be sufficient evidence in any proceedings that the person charged as aforesaid was present at the making of the deposition.

- Double jeopardy. 13 A person who has been acquitted or convicted of an offence outside Malta shall not be proceeded against for an offence under section 2 for the act which constituted the offence of which the person was acquitted or convicted.
- Cap.276. 14 (1) The offences under this Act shall be deemed to have been included as extraditable offences and provided for in all the extradition treaties made by Malta with Convention Countries and which extend to, and are binding on, Malta on the date of the coming into force of this Act.
- (2) Where the Extradition Act does not apply in the case of any foreign State which is a party to the Convention, its Protocol or the amending Protocols, the Minister may make an order providing for the Extradition Act to apply in the case of that State with like effect and subject to like terms and conditions as authorized by section 4 and 7 of the Extradition Act and, for the purposes of such order, that Convention and that Protocol shall be equivalent to the designation of a Commonwealth country under the said section 4 and shall be treated as an arrangement such as is mentioned in the said section 7.
- (3) Where the Extradition Act applies to any State by virtue of an order made under subsection (2), no application for extradition by that State shall relate to any extradition crimes within the meaning of the Extradition Act except offences deemed to be included in the list of extradition crimes pursuant to subsection (1).
- Political offence or offence of a political character. 15 For the purpose of the Extradition Act, extradition shall not be refused solely on the ground, that any of the offences set forth in this 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 imposing 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 if such request would cause prejudice to that person's position for any of the reasons mentioned in this proviso.

- General. 16 (1) Nothing in this Act shall be interpreted, as prohibiting the designated authority from co-operating, with other State parties, to the fullest extent possible to prevent and suppress unlawful acts covered in this Act,
- (2) Any action undertaken by the designated authority pursuant to this section must be exercised in conformity with international law and to the extent applicable, Maltese law.
- (3) Upon reception of a request to confirm nationality, the designated authority shall, as soon as practicable, acknowledge receipt in writing. Such receipt shall be delivered to the requesting state via telex or e-mail.
- (4) If the ship in respect of which the request is made is confirmed to be a Maltese ship, the designated authority shall investigate further any allegations made in respect of such ship.
- provided that, if there is reasonable suspicion that an offence under this Act has been, is being or is about to be committed, on board or against a Maltese ship, the designated authority shall take all measures which it deems necessary and expedient having regard to all the circumstances, in particular, the position of the vessel, the nature of the vessel and any other information relevant to the matter.