**Part A**

**The Bahamas: History, Laws and Legislative Process**

**The Bahamas – Brief History**

The Bahamas are an archipelago of 700 islands and 2,400 uninhabited islets and cays lying 50 miles off the east coast of State of Florida, U.S.A. The islands of The Bahamas extend approx. 760 miles. However, only 30 of the islands are inhabited. The most populated island is New Providence (80 sq. miles) upon which the capital of Nassau is situated. Other Bahamian islands include Grand Bahama, Abaco, Andros, Eleuthera, Cat Island, Bimini, Exuma and San Salvador.

The Bahamas obtained its independence from Great Britain on 10 July 1973. Further, it has retained its status as a member of the British Commonwealth and recognizes Queen Elizabeth II as Sovereign. Therefore, Governor General and Queen’s Representative for The Bahamas is Mr. Arthur D. Hanna. The Head of State is Prime Minister Hubert A. Ingraham, who was elected as leader in the 2007 parliamentary elections.

The population of The Bahamas is approximately Three Hundred Thousand (300,000). The Bahamas is economically dependent upon three industries which include tourism, financial services and shipping.

**The Bahamas Ship Registry**

In 1994, the Government of The Bahamas recognized the need for a review of its ship registration arrangements. As a result, the Government recommended the creation of a semi-autonomous public corporation with a focus on ship registry services. The corporation which is now known as ‘The Bahamas Maritime Authority’ or ‘BMA’ is the responsible authority for the administration of the Bahamas Ship Register.

The functions of the BMA involve the registration of vessels under The Bahamas Flag; adherence and compliance of relevant domestic and international shipping legislation; collection of ship registration fees and to represent The Bahamas in a technical capacity at the International Maritime Organization (hereinafter ‘IMO’). The offices of BMA are divided into sections which include ship inspections, manning and crew licensing, casualties & investigations, marine policy and finance and administration.

There are approximately 1700 vessels registered under The Bahamas Flag which include Passenger Vessels, Car Carriers, Bulk Carriers, Oil & Chemical Tankers General Cargo Ships and Container Ships.

**Reasons for The Bahamas to ratify the 2005 SUA Protocol**

In August of 2008, the Ministry of Foreign Affairs of The Bahamas enforced the country’s commitment to combat terrorism by concluding a bilateral agreement with the United States of America. The core element of the agreement is to ensure that all Bahamas registered vessels are protected from, and further are not used as, weapons of mass destruction (WMDs) whilst at sea or within a port. The agreement is particularly useful for the islands of The Bahamas who considers the United States of America to be one of its closest geographical neighbors.

Further, as a member of the United Nations (UN) and the IMO Council, The Bahamas shares the determination of the international community to combat terrorism, in particular its link with WMDs, their related use and means of delivery. Related use and means of delivery of WMDs would include consideration of the use of vessels registered under various flags worldwide.

Pursuant to IMO Assembly Resolution A 924(22) which is the ‘Review of Measures and Procedures To Prevent Acts of Terrorism which threaten the Security of Passengers and Crews and the Safety of Ships’, The Bahamas expressed its agreement to ensure the safety of maritime navigation and the use of the seas against the threat of terrorism. Commitment to this agreement is the adoption of practical legal measures to prevent and combat the spread of terrorism, in particular when directed against the shipping industry. Finally, to ensure that a comprehensive framework is developed and implemented for the safety and security of Bahamas registered ships, their passengers, crews, ports and the shipping industry as a whole.

The Bahamas is a signatory to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigations, 1988 (hereinafter ‘*1988 SUA Convention’*) and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 1988 (hereinafter ‘*1988 SUA Protocol’*).Once a comprehensive framework is put into place, The Bahamas intends to ratify the 2005 Protocol for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (hereinafter ‘*2005 SUA Protocol’*) to reflect its continuing efforts to combat terrorism against maritime terrorism.

**Suppression of unlawful acts – a brief overview**

It is submitted that the *1988 SUA Convention* is the treaty which provides the basis for the suppression of unlawful acts against the safety of maritime navigation.

The 1988 SUA Convention was adopted in Rome of the same year. The development of this Convention arose as a result of the hijacking of the Italian cruise liner *Achille Lauro[[1]](#footnote-2)* in October 1985. Following the hijacking, Italy, Austria and Egypt tabled a proposal at IMO for a convention which would ‘provide the legal basis for action to be taken against persons committing unlawful acts against ships such as the seizure of ships by force, acts of violence against persons on board ships and the placing of devices on board which are likely to destroy or damage the ship’.

The development of the 1988 SUA Convention meant that appropriate action could be taken against persons found to have committed unlawful acts against ships. These include the seizure of ships by force; acts of violence against persons on board ships; and the placing of devices on board a ship which is likely to damage or destroy it.[[2]](#footnote-3)

The *1988 SUA Protocol* extends the requirements of the 1988 SUA Convention to fixed platforms such as those engaged in the exploitation of oil and gas.[[3]](#footnote-4)There is also the *2005* *Protocol to the 1988 SUA Protocol*, which broadens the range of existing offences within the 1988 SUA Protocol.[[4]](#footnote-5)

However, the focus of this draft project will be upon the *2005 Protocol to the 1988 SUA Convention.* In brief, as a result of the tragic events of 11 September 2001, IMO responded by convening a conference in order to revisit the issue of the prevention of unlawful acts which threatened the safety of ships and the security of their passengers and crews by terrorism.

The 2005 Protocol includes widens the range of existing offences, the introduction of boarding provisions and extradition procedures.

Taking into account the above, it will also be necessary to amend the following Laws of the Commonwealth of The Bahamas:

→The Penal Code, 1927 (**Volume II, Chapter, 84**)

→The Explosives Act, 1970 (**Volume IV, Chapter 215**)

→The Merchant Shipping Act, 1976 (**Volume V, Chapter 268**)

**→**The Merchant Shipping (Oil Pollution) Act, 1976 (**Volume V, Chapter 275**)

**→**Defence and Security Purposes (Regulation), 1989 (**Volume IV, Chapter 212**)

→The Extradition Act, 1994 (**Volume II, Chapter 96**)

A more detailed consideration of the relevant amendments is provided within subsequent pages of this draft.

**Legislative Process to Embody an International Treaty into the Laws of the Commonwealth of The Bahamas**

The process of incorporation of a treaty is found within the Constitution of the Commonwealth of The Bahamas (hereinafter ‘the Constitution’) and was adopted as a result of The Bahamas Independence Order 1973.

The introduction of a Bill(s) which is subsequently incorporated into Bahamian law is facilitated through the Parliamentary process (**Chapter V of the Constitution).** The Parliament of The Bahamas shall consist of Her Majesty who is represented in the person of the Governor-General (**Article 32 of the Constitution)**, a Senate and a House of Assembly (**Article 38 of the Constitution)**.

The Senate shall consist of sixteen members (**Article 39 (1) of the Constitution**).

Nine Senators shall be appointed by the Governor General acting in accordance with the advice of the Prime Minister (**Article 39 (2) of the Constitution**). Four Senators shall be appointed by the Governor General acting in accordance with the advice of the Leader of the Opposition (**Article 39 (3) of the Constitution**).

Three Senators shall be appointed by the Governor General acting in accordance with the advice of the Prime Minister after consultation with the Leader of the Opposition (**Article 39 (4) of the Constitution**).When the Senate meets after any general election, and before it proceeds to the dispatch of any other business, the Senate shall elect a Senator to be President of the Senate (**Article 44 (1) of the Constitution**).

The House of Assembly shall consist of thirty-eight members or such greater number of members as may be specified by an Order made by the Governor General (**Article 46 (1) of the Constitution**).The members of the House of Assembly shall be known as “Members of Parliament” and shall be persons who, being qualified for election as Members of Parliament in accordance with the provisions of the Constitution (**Article 46 (2) of the Constitution**).

When the House of Assembly first meets after any general election, and before it proceeds to the dispatch of any other business, the House of Assembly shall elect one member who is not either a Minister or Parliamentary Secretary, to be the Speaker of the House (**Article 50 (1) of the Constitution**).

When involved in the law-making process, the underlying principle which Parliament must focus upon is to ensure that the laws which are either made or incorporated into Bahamian law are laws that sustain the peace, order and good government of The Bahamas (**Article 52 (1) of the Constitution**).

Further, the power of Parliament to make laws shall be exercised by Bills which are passed by both the Senate and House of Assembly and subsequently assented to by the Governor General in accordance with Article 63 of the Constitution (**Article 52(2) of the Constitution**).In accordance with Article 52(2) of the Constitution the **practical procedure** of presenting a Bill before Parliament is as follows:

■ The relevant Minister instructs his Permanent Secretary (hereinafter ‘PS’) to prepare a

Memorandum for legislation proposal and a request for Cabinet approval;

■Cabinet considers the Memorandum and decides on its policy;

■If approved by Cabinet, the Secretary of the Cabinet will send extracts of the Cabinet’s

Conclusions to the Ministry for action;

■The Minister instructs the PS to make a request to the Director of Legal Affairs (hereinafter

‘DLA’) to draft the legislation;

■Once drafted the DLA will send the draft Bill with draft Objections and Reasons to the Minister

via the PS;

■When the Minister is satisfied with the draft the PS forwards it to the DLA for preparation for

Cabinet;

■The DLA produces the draft and returns the final draft document to the Minister via the PS;

■The Minister ten presents the Bill to cabinet under cover of a Memorandum explaining and

commenting on it;

■If the Bill is approves, the Cabinet’s Conclusions allows the Bill to proceed to presentation in

Parliament without any further reference to Cabinet;

■The Bill is then subsequently introduced to Parliament by the respective Minister for

introduction of the Bill by way of First Reading.

All questions or matters which are proposed and put forward for decision within either the Senate or House of Assembly, shall be deemed to be passed and approved if the question or matter obtains a majority of the votes of the members present and voting (**Article 58 (1) of the Constitution)**.

The person who presides in either the Senate or House of Assembly (which would be either the Speaker of the House or President of the Senate) shall not cast a vote unless the votes cast are equally divided, in which case either the Speaker or the President (whichever is applicable) shall have and exercise a casting vote (**Article 58 (2) (a) of the Constitution**).

Under Article 59 of the Constitution, a member of the Senate or House of Assembly may introduce a Bill or propose a motion for debate. The Bill or proposal for debate shall then be debated and disposed of in accordance with the rules of procedure of the Senate or House of Assembly.

The Executive Authority of The Bahamas is vested in Her Majesty who is represented in the person of the Governor General (**Article 71 (2) of the Constitution**). A branch of the Executive Authority is the Cabinet which is vested with the general direction and control of the government of The Bahamas and is also collectively responsible for Parliament (**Article 72 (1) of the Constitution)**.

Under Article 72 (2) of the Constitution, the Cabinet shall consist of the Prime Minster and not less than eight other Ministers (of whom one shall be the Attorney General).

Except on the recommendation of the Cabinet signified by a Minister, neither the House of Assembly nor the Senate may proceed upon a Bill which in the opinion of the person presiding, makes provision for imposing or increasing any tax, an imposition of a charge on the Consolidated Fund or any public fund or altering any charges or for compounding or remitting any debt due to The Bahamas (**Articles 59 (3) and (4) of the Constitution)**.

A Bill shall not become law until the Governor General has assented on behalf of Her Majesty and has signed it in token of such assent (**Article 63 (1) of the Constitution)**.

However a Bill cannot be presented to the Governor General unless it has been passed by both the Senate and House of Assembly either without amendment or with such amendments only as are agreed by both the Senate and the House of Assembly (**Article 63 (2) of the Constitution**).

A Bill that is presented to the Governor General must be endorsed with certificates of the President of the Senate and the Speaker of the House of Assembly. The certificates reflect the fact that the Bill has been passed by the requisite majorities of both the Senate and the House of assembly. The Bill must also be endorsed with a certificate of the Parliamentary Registrar which confirms that the Bill has been approved by the majority of electors voting on the Bill.

**Part B**

**The 2005 Protocol for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation**

As mentioned previously, the 2005 Protocol supports the international treaty framework for combating and prosecuting individuals who use a ship as a weapon or means of committing a terrorist attack, or transport by ship terrorists or cargo intended for use in connection with weapons of mass destruction programs and also established the mechanism to facilitate the boarding in international waters of vessels suspected of engaging in such activities.

The 2005 Protocol requires twenty States to sign it without reservation before it enters into force. As of 25 November 2008,eight States have signed this Protocol.

On 10 to 14 October 2005, a Diplomatic Conference on the Revision of the 1988 SUA Convention and 1988 SUA Protocol was held at IMO for the purpose of amending the aforementioned Convention and Protocol.

The 2005 Protocol has been amended whilst taking into account the current view of terrorism within the contemporary world. This includes provision for new offences that involve ship boarding procedure and extradition.

*The New Offences*

The main purpose of the succeeding offenses is to provide the legal basis for action to be taken against persons committing unlawful acts against ships on the basis the world’s current view of terrorism. These acts include the seizure of ships by force; acts of violence against persons on board ships; the placing of devices on board which are likely to destroy or damage the ship; the transportation of explosive devices or radioactive material; biological, chemical or nuclear (BCN) weapons; and any equipment, materials or software which contribute towards the design or manufacturing of BCN weapons.

*Actions that constitute an offence*

Under **Article 4(2)** of the 2005 Protocol, an offence is committed *if a person communicates information which that person knows to be false, thereby endangering the safe navigation of a* *ship.* Article 4(2) replaces the wording of Article 3, paragraph 1(f) of the 1988 SUA Convention.

Under **Article 4(4)** of the 2005 Protocol, an offence is committed if a *person threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraphs 1 (b), (c) and (e)[[5]](#footnote-6), if that threat is likely to endanger the safe navigation of the ship in question.* Article 4(4) replaces the wording of Article 3, paragraph 2 of the 1988 SUA Convention.

**Article 4(5)** of the 2005 SUA Protocol has similarly been added as **Article 3*bis*** of the 1988 SUA Convention.Article *3bis* is further detailed below.

**Article 3*bis:***

Article 3*bis* criminalizes the use of a ship to intimidate a population or compel a government or international organization by

■ *using on, against or discharging from a ship explosive, radioactive material, or biological, chemical or nuclear weapons;*

*■oil, liquefied natural gas or other hazardous or noxious substances are discharged from the ship;*

*■uses the ship in a manner that causes death or serious injury or damage;*

*■transports on a ship any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, death or personal injury*

**Article 4(6)** of the 2005 SUA Protocol, has similarly been added as **Article 3*ter*** of the 1988 SUA Convention. Article 3*ter* is detailed below*.*

**Article 3*ter*:**

Article 3*ter* criminalizes the transport of fugitives who have committed an offence under article 3, 3*bis*, or 3*quater* or transports a fugitive who has committed an offence as provided under the 12 UN terrorism conventions and protocols.

**Article 4(7)** of the 2005 SUA Protocol, has similarly been added as **Article 3*quater*** of the 1988 SUA Convention. Article 3*quater* is detailed below.

**Article 3*quater***

Article 3*quater* a person commits an offence if that person

■*unlawfully and intentionally injures or kills any person* as per article 3,3*bis or* 3*ter*;

■*attempts to commit an offence* as per article 3,3*bis* or 3*ter*;

■*participates as an accomplice in an offence* as per article 3, 3*bis* or 3*ter*;

■*organizes or directs others to commit an offence* as per article 3, 3*bis* or 3*ter*;

■*contributes to the commission of one or more offences* as per article 3, 3*bis* or 3*ter*

*Liability of Legal Entities*

**Article 5*bis***

A legal entity will be held liable *when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence* set forth in the SUA Convention and corresponding Protocol.

*The Ship Boarding Procedure*

**Article 8** of the 2005 SUA Protocol regulates procedures to be followed for the boarding of vessels suspected to have committed, are currently committing or about to commit offences.

Also included within Article 8, is a comprehensive set of procedures and protections that must be followed if a State Party wishes to board a vessel that is suspected of committing or attempting to commit a violation. Before such boarding takes place, the authorization and cooperation of the respective Flag State is required. The wording under Article 8 of the 2005 SUA Protocol has been added as Article 8*bis* of the 1988 SUA Convention.

The main content of Article 8 *bis* is outlined below.

*Co-operation between States and obligation of expeditious response:*

1) States Parties shall co-operate to the fullest extent possible to prevent and suppress unlawful acts covered by this Convention (Article 8 *bis* 1).

*Request for assistance from the Flag State:*

2) A State Party who has reasonable grounds to suspect that an offence covered by this Convention, is being or about to be committed, may request the assistance of other States Parties in preventing or suppressing that offence (Article 8 *bis* 4).

*Ship boarding request from a Third Party*

3) Whenever law enforcement or other authorized officials of a State Party encounter a ship flying the flag or displaying marks of registry of another State Party located seaward of any State’s territorial sea, and the requesting Party has reasonable grounds to suspect that the ship or a person on board the ship has been involved or is about to be involved in the commission of an offence set forth in Article 3, 3 *ter* or 3 *quater*, and the requesting Party desires to board (Article 8 *bis* 5).

4) The States Parties shall respond to requests pursuant to Article 8 *bis* as expeditiously as possible (Article 8 *bis* 1).

5) The flag States shall either authorize the requesting Party to board and to take appropriate measures; conduct the boarding and search with its own law enforcement; conduct the boarding and search together with the requesting Party or decline to authorize a boarding and search (Article 8 *bis* 4(c) ).

*Advanced authorization provided by the Flag State*

6) Upon or after depositing its instrument of ratification, acceptance, approval or accession, a State Party may notify the Secretary-General that, with respect to its ships, the requesting Party is granted authorization to board and search the ship, if an offence set forth in Article 3,3*bis,* 3*ter,* or 3 *quarter* has been, or is about to be committed, if there is no response from the first Party within four hours of acknowledgement of receipt of a request to confirm nationality (Article 8 *bis* 4 (d) ).

7) Upon or after depositing its instrument of ratification, acceptance, approval or accession, a State Party may notify the Secretary-General that, with respect to ships, the requesting Party is authorized to board and search a ship, if an offence set forth in Article 3, 3*bis,* 3*ter*, 3 *quater* has been, is being or is about to be committed (Article 8 *bis* 4 (e) ).

8) Where evidence of conduct as described in Article 3, 3*b*is, 3*ter,* 3 *quarter* is found as the result of any boarding conducted pursuant to Article 8*bis*, the flag State may authorize the requesting Party to detain the ship, cargo, and persons on board pending receipt of disposition instructions from the Flag States (Article 8*bis* 6).

*Liable for any damage or loss*

9) States Parties shall be liable for any damage, harm or loss attributable to them arising from measures taken pursuant to this Article when:

i) the grounds for such measures prove to be unfounded , provided that the ship has not committed any act justifying the measures taken; or

ii) such measures are unlawful or exceed those reasonably required in the light of available information to implement the provisions of this article. States Parties shall provide effective recourse in respect of such damage, harm or loss.

*Taking Appropriate Measures to ensure that the law enforcement are empowered*

10) Each State Party shall take appropriate measures to ensure that its law enforcement or other authorized officials, and law enforcement or other authorized officials of other States Parties acting on its behalf, are empowered to act pursuant to this Article.

*Connection*

11) Upon or after depositing its instrument of ratification, acceptance, approval or accession, each State Party shall designate the authority, or where necessary, authorities to receive and respond to requests for assistance, for confirmation of nationality, and for authorization to take appropriate measures (Article 8 *bis* 15).

*Extradition Procedure*

**Article 10** of the 2005 SUA Protocol which replaces Article 11 of the 1988 SUA Convention,

includes the new offence of extradition.

*Extraditable offences*

1) The offences contained within Articles 3*bis*, 3*ter*, and 3*quater* shall be recognized as extraditable offences in an extradition treaty that exists between States Parties. Further, the offences listed in the aforementioned Articles, will be included as extraditable offences in every extraditable treaty that is concluded between States Parties (Article 10(1)(1)).

*Extradition that is conditional on the existence of a treaty*

2) State Parties that receive a request for extradition from another State Party with which it has

no extradition treaty, the State Party which has received the request may, if it wishes, to use the

1988 SUA Convention as the legal basis for extradition. Further, extradition shall be subject to

the other conditions provided by the law of the requested State Party (Article 10 (1)((2)).

*Extradition that is not conditional on the existence of a treaty*

3) In such circumstances, States Parties shall recognize the offences contained within Articles 3,

3*bis,*3*ter,* and 3*quater* as extraditable offences, subject to the laws of the requested State Party

(Article 10 (1) (3)).

*Extraditable Offences and Jurisdiction*

4) The offences contained within Article 3, 3*bis,* 3*ter* and 3*quater* shall be treated not only as if

they had been committed in the place in which they occurred but also within the jurisdiction of

the State Party requesting extradition (Article 10 (1)(4)).

*Extraditable Offences shall not be regarded as political offences*

5) None of the offences contained within Article 3, 3*bis,*3*ter* and 3*quater* shall be regarded as

a political offence or as an offence inspired by political motives. Therefore a request for

extradition will not be refused on the sole ground that it concerns a political offences; or an

offence connected with a political offence or an offence inspired by political motives (Article 10

(2)).

*Reasons for which an extraditable offence may not be imposed*

6) An obligation to extradite shall not be imposed, if the requested State Party has substantial

grounds for believing that the request for extradition has been made for the purposes of

prosecuting a person as a result of their race, religion, nationality, ethnic origin, political opinion

or gender, or if compliance with the request for extradition would prejudice that person’s

position in relation to the aforementioned reasons (Article 10 (3)).

**Amending the Laws of The Bahamas**

It will be necessary for the Government of The Bahamas to amend its laws in order to incorporate the 2005 Protocol into its domestic legislation in order to avoid unforeseen terrorist acts and incidents which could significantly affect The Bahamas’ maritime infrastructure.

**The legislation for** Article 1, **Article 3, Article *3bis*, Article 3*ter,* and 3*quater, Article 5, Article 8bis& Article 11***

As previously mentioned, Article 3, Article 3*bis,* Article 3*ter*, Article 3*quater,* Article 5*,*

Article *8bis and* Article 11 introduced new offences. As a result, the relevant Bahamas Statute Laws[[6]](#footnote-7) outlined below, will be amended:

→The Penal Code, 1927 (**Volume II, Chapter, 84**)

→The Explosives Act, 1970 (**Volume IV, Chapter 215**)

→The Merchant Shipping Act, 1976 (**Volume V, Chapter 268**)

**→** The Merchant Shipping (Oil Pollution) Act, 1976 (**Volume V, Chapter 275**)

**→**TheDefence and Security Purposes (Regulation), 1989 (**Volume IV, Chapter 212**)

→ The Extradition Act, 1994 (**Volume II, Chapter 96)**

Having mentioned the types of offences as per Articles 3, 3*bis*, 3*ter*, 3*quater* and 5*bis* above, the offences will now be given further consideration in conjunction with the existing Bahamas National Laws; and also the aspect of amending these laws with a view of implementing the 2005 SUA Protocol into domestic legislation.

***Explosive Material***

The 2005 SUA Protocol provides that any person shall not use against or discharge from a ship any explosive material. If this act is committed, States will punish the person who commits the crime, attempts to commit the crime, intimidates others to commit the crime of transporting any explosives materials.

The Bahamas’ Penal Code makes provision for persons who commit criminal offences including those who attempt to commit or intimidates others to commit a crime. However, the aspect of ‘transportation’ will need to be incorporated within the Penal Code. Therefore, it will be amended.

Further, Bahamas National Laws provide for the ‘Transportation and Importation of Explosives’ under **Volume IV, Chapter 215** of the Statute Laws. However, this provision does not take into account the use of explosives for the purpose of intimidating a population, or compelling a government or international organization to abstain or doing an act. Therefore, this provision will be amended.

***Radioactive Materials and Nuclear Weapons***

The 2005 SUA Protocol provides that any person shall not use against or discharge from a ship any radioactive materials or nuclear weapons. If this act is committed, States will punish the person who commits the crime, attempts to commit the crime, intimidates others to commit the crime of transporting any radioactive materials and nuclear weapons.

The Bahamas’ Penal Code makes provision for persons who commit criminal offences including those who attempt to commit or intimidates others to commit a crime. However, the aspect of ‘transportation’ will need to be incorporated within the Penal Code. Therefore, it will be amended.

Further, ‘nuclear weapons’ and the transportation of such weapons as defined under Article 1, are not referred to within the Bahamas Penal Code. Therefore the Code will be amended to take this aspect into account.

***Biological Weapons***

The 2005 SUA Protocol provides that any person shall not use against or discharge from a ship any biological weapons. If this act is committed, States will punish the person who commits the crime, attempts to commit the crime, intimidates others to commit the crime of transporting any biological weapons.

The Bahamas’ Penal Code makes provision for persons who commit criminal offences including those who attempt to commit or intimidates others to commit a crime. However, the aspect of ‘transportation’ will need to be incorporated within the Penal Code. Therefore, it will be amended.

Further, ‘biological weapons’ and the transportation of such weapons as defined under Article 1, are not referred to within the Bahamas Penal Code. Therefore the Code will be amended to take this aspect into account.

***Chemical Weapons***

The 2005 SUA Protocol provides that any person shall not use against or discharge from a ship any chemical weapons. If this act is committed, States will punish the person who commits the crime, attempts to commit the crime, intimidates others to commit the crime of transporting any chemical weapons.

The Bahamas’ Penal Code makes provision for persons who commit criminal offences including those who attempt to commit or intimidates others to commit a crime. However, the aspect of ‘transportation’ will need to be incorporated within the Penal Code. Therefore, it will be amended.

Further, ‘chemical weapons’ and the transportation of such weapons as defined under Article 1, are not referred to within the Bahamas Penal Code. Therefore the Code will be amended to take this aspect into account.

***Oil, Liquefied Natural Gas and Other Hazardous or Noxious Substances***

The 2005 SUA Protocol provides that any person shall not use against or discharge from a ship any oil, liquefied natural gas or other hazardous or noxious substances. If this act is committed, States will punish the person who commits the crime, attempts to commit the crime, intimidates others to commit the crime of transporting any oil, liquefied natural gas or other hazardous or noxious substances.

The Bahamas’ Penal Code makes provision for persons who commit criminal offences including those who attempt to commit or intimidates others to commit a crime. However, the aspect of ‘transportation’ will need to be incorporated within the Penal Code. Therefore, it will be amended.

Further, ‘oil, liquefied natural gas and other hazardous or noxious substances’ and the transportation of such substances, are not referred to within the Bahamas Penal Code, the Merchant Shipping Act or Merchant Shipping (Oil Pollution) Act. Therefore the Code and corresponding Acts will be amended to take this aspect into account.

***Any Source material, Special fissionable material, Material especially designed or prepared for the processing, use or production of special fissionable material***

The 2005 SUA Protocol provides that any person shall not use against or discharge from a ship any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material. If this act is committed, States will punish the person who commits the crime, attempts to commit the crime, intimidates others to commit the crime of transporting any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material.

The Bahamas’ Penal Code makes provision for persons who commit criminal offences including those who attempt to commit or intimidates others to commit a crime. However, the aspect of ‘transportation’ will need to be incorporated within the Penal Code. Therefore, it will be amended.

Further, ‘any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material’ and the transportation of such materials are not referred to within the Bahamas Penal Code. Therefore the Code will be amended to take this aspect into account.

***Any equipment, materials or software or related technology for BCN weapons***

The 2005 SUA Protocol provides that any person shall not use against or discharge from a ship any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon. If this act is committed, States will punish the person who commits the crime, attempts to commit the crime, intimidates others to commit the crime of transporting any equipment, materials, or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon.

The Bahamas’ Penal Code makes provision for persons who commit criminal offences including those who attempt to commit or intimidates others to commit a crime. However, the aspect of ‘transportation’ will need to be incorporated within the Penal Code. Therefore, it will be amended.

Further,‘any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon’ and the transportation of such weapons as defined under Article 1, are not referred to within the Bahamas Penal Code. Therefore the Code will be amended to take this aspect into account.

***A Ship***

The 2005 SUA Protocol provide that any person shall not use a ship in an unlawful manner which may cause or is likely to cause death, or serious injury or damage. If this act is committed, States will punish the person who commits the crime, attempts to commit the crime, or intimidates others to commit the crime.

Neither the Penal Code nor The Bahamas Merchant Shipping Act makes provisions for a ship which is used in the manner described above. As a result, both the Code and the Act will be amended to take into this aspect.

***The Person Unlawfully and Intentionally Transports***

The 2005 SUA Protocol provides that a person shall not transport any other person who commits an offence which is regulated by the Protocol or Conventions that are related to terrorism.

The Bahamas Penal Code does not have provision for this aspect and will therefore have to be amended.

***Unlawfully and intentionally injures or killed any person related to offenses***

The 2005 SUA Protocol provides that the State shall punish any person who unlawfully or intentionally commits, intentionally injures or kills any person as per the SUA Convention and its Protocol related to terrorism.

The Bahamas Penal Code makes provision for persons who unlawfully and intentionally injures or kills another person or group of persons.

Taking into consideration the above, it will be necessary to amend the above relevant Bahamas legislation in order to facilitate the implementation of the 2005 Protocol.

**The legislation for Article *8bis***

Article 8*bis* provides the comprehensive procedure and safeguards for ship boarding. This Article is related to Article 17.5 of the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* *[[7]](#footnote-8)* (hereinafter the ‘Vienna Drug Convention’). Although The Bahamas is a Contracting Party to the 1988 Vienna Drug Convention, it has not as yet implemented the ship boarding provision of this Convention. In order to address this issue, the Government of The Bahamas will need to establish a legal framework and corresponding criteria for full implementation.

However, the 2005 SUA Protocol requires a state to use its own law enforcement or officials, if it wishes to board and search a vessel. As a result, it will be necessary to provide legislation which will allow The Bahamas law enforcement and authorized officials to take appropriate measures to carry out a boarding and search of a vessel. The Government shall incorporate Article 8*bis* into the Defence and Purposes (Regulation) 1989.

**It will be necessary to amend The Bahamas’ Defence and Purposes (Regulation) 1989**

Procedures such as ship boarding, the defence of Bahamian maritime coasts and protection of Bahamian waters are under the purview of the RBDF. As a result, the Government of The Bahamas will need to address the law pertaining to the use of arms by the RBDF, including the use of arms by the RBDF whilst on a foreign vessel.

**Powers of the Law Enforcement or other Officials**

Under Articles 8*bis* 4, 5 and 7, a state may take appropriate measures with regard to the ship if that state has reasonable grounds to suspect that the ship, or a person in question has been or is about to be involved in the commission of an offence. When applying this principle to The Bahamas, this measure will be carried out by the Royal Bahamas Defence Force (RBDF). The Defence and Purposes (Regulation) 1989 will be amended in order to incorporate the principles as per Articles 8*bis*4, 5 and 7.

Further, a state may authorize the requesting Party to detain the ship, its cargo and persons on board pending receipt of instructions from the flag states.

Bahamas National Law should contain a provision for either its police force or defence force to be afforded the opportunity to seize evidence of illegal conduct if applicable.

The Defence and Purposes (Regulations) 1989 regulates the procedural framework of the RBDF. These Regulations will be amended to take into account the following:

1. Specifying the function or duty of searching a foreign ship on the basis of the 2005 SUA Protocol;
2. Procedure of the search of a foreign ship
3. Procedure of detaining a ship, cargo or to other items and persons on board.

However, there is no existing national law that addresses the issue of providing a legal basis in order to allow a third Party the opportunity to board and search a vessel.

**Detained ship, cargo or other items and persons on board (Article 8*bis*6 and 8)**

The flag state may authorize the requesting State to detain the ship, cargo and persons on board pending receipt of instructions from the flag State (Article 8*bis*6). Furthermore, 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 (Article 8*bis*8).

In order for Bahamian law enforcement agencies to detain a ship, its cargo or other items and persons on board, will have to take action based on the Criminal Procedure Law. However, if such action is taken under Law of Criminal Procedure, the relevant Bahamian law enforcement agency will have to obtain permission from the Bahamian courts in order to proceed in such a manner.

Problems may arise in circumstances where evidence obtained by a flag State are submitted before and subsequently handled by the flag State’s courts. The Government of The Bahamas would need to consider the possibility of such circumstances occurring and providing a waiver enabling a flag State the right to act in such circumstances. Alternatively, it may be necessary for the Government of The Bahamas to obtain a mutual agreement with the relevant flag State to adhere to the laws of the Bahamas prior to boarding a vessel.

**Use of Arms (Article 8*bis*9)**

When The Bahamas’ law enforcement makes a decision to board a suspicious ship, they should arrest suspects who are likely to be terrorists. In addition, it is necessary for law enforcement officials to carry arms in order to defend themselves whenever necessary. Similarly, the Government of The Bahamas must institute measures to regulate the use of arms in such circumstances.

In accordance with Article 8*bis* 9 the use of force shall be avoided except when it is necessary to use arms for the purposes of ensuring the safety of its officials and persons on board, or where law enforcement officials are being obstructed in the execution of authorized actions. The 2005 SUA Protocol permits the use of arms only in cases in relation to matters involving justifiable defence and emergency escape.

**Compensation (Article 8*bis(b))***

The state shall be liable for any damage, harm or loss attributable to them arising from measures and provide the effective resource in respect of such damage, harm or loss. States also shall provide effective resources in respect of such damage, harm or loss.

**Designation of Authority (Article 8*bis*15)**

The state shall designate the authority, or where necessary, authorities to receive and respond to requests for assistance.

**The Defence Law**

The RBDF would be the most suitable authority to designate for the purposes of receiving and responding to requests for assistance because they are fully trained in all aspects pertaining to the protection and defence of The Bahamas’ maritime borders and are familiar with general ship boarding procedures.

**Safeguards for the ship (Article 8*bis*10(a))**

Article 8 *bis* 10 (a) was established to ensure the safety of all persons onboard. Further, to ensure that persons onboard are treated in a manner which respects their basic human dignity, and in compliance with the applicable provisions of international law. Finally, to take into account the relevant commercial, legal and environmental interests when undertaking ship boarding procedures, visits and searches.

**Observing the United Nations Convention on the Law of the Sea[[8]](#footnote-9) (hereinafter ‘UNCLOS’)**

Article 8 *bis* 10 (c), (d) and (e) refers to the jurisdiction of coastal States, the authority of flag States, steps the law enforcement or other authorized officials must take to ensure that they are identifiable as law enforcers. This includes the provision of clearly marked government vessels or aircraft, uniforms and identification documents for examination by the master of the ship upon boarding.

Further, Article 8 *bis* 10 (c), (d) and (e) are derived from Articles 110 (4) &(5) of UNCLOS. Finally, Volume IV, Chapter 211 of The Bahamas Statute Laws addresses the matter of identification of RBDF officers and execution of their duties.

**The legislation for Article 10**

The 2005 SUA Protocol establishes the new offence of extradition and offences which give rise to extradition. Further, the Protocol provides for circumstances where an extradition treaty exists between State Parties; circumstances when an extradition treaty does not exist between State Parties; jurisdictional issues; circumstances involving political offences and reasons by which an obligation to extradite may not be imposed. The laws pertaining to extradition within Volume II, Chapter 96 of the Laws of the Commonwealth of The Bahamas, do not make provision for the offences stipulated within the 2005 SUA Protocol, and would be amended.

THE EXTRADITION ACT 1994

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| The text below reflects existing law. The relevant amendments are underlined and in bold. |

Section 5(2)

Any offence constituted by an act, including an act taking place in The Bahamas that is of a kind over which Contracting States to an international Convention to which The Bahamas is a party are required by that Convention to establish jurisdiction is an extradition offence for the purposes of this Act and shall be deemed to be committed within the jurisdiction of any such Contracting State that appears to a court in The Bahamas having regard to the provisions of the Convention, to be appropriate.

Section 5(3)

Any offence which the Minister under his hand certifies is the subject matter of a request received from an approved State for the purposes of section 8 and that he is satisfied is constituted by acts in furtherance of the possession, distribution, importation or manufacture of dangerous drugs is an extradition offence for the purposes of this Act and of the extradition treaty with that approved State.

**Section 5(3a)**

**Any offence which the Minister under his hand certifies is the subject matter of a request received from an approved State for the purposes of section 8 and that he is satisfied is constituted by acts which incorporate the use of a Bahamas registered ship in order to intimidate a population or compel a physical or juridical person to abstain or do any act.**

**Section 5(3b)**

**Under this Article a person commits an offence if that person unlawfully and intentionally transports another person on board a ship knowing that the person has committed an act that constitutes an offence. A person also commits an offence if that person unlawfully and intentionally kills another, or alternatively attempts to commit, participates as an accomplice, organizes or directs others to commit or contributes to the commission of the offences set forth in Article 5(4).**

THE DEFENCE AND SECURITY PURPOSES (REGULATION) 1989

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| The text below reflects existing law. The relevant amendments are underlined and in bold. |

Section 3 (1)

Where any area is used or to be used for any defence purpose or where it appears to the Governor-General that it is necessary or expedient that he make provision for regulating the use of any area in the public interest, he may make regulations for regulating the use of the area for such defence purpose or for securing the public interest.

Section 3(2)

Without prejudice to the generality of subsection (1), any regulations made under that subsection may prohibit intrusion into such area and all obstruction of or interference with such use nothwithstanding that the regulations injuriously affect or obstruct the exercise of any public or private right and such regulations may, in particular provide for –

~~(a) arrest and detention;~~

**(a) arrest and detention of cargo and persons onboard a ship, aircraft and within vehicles;**

~~(b) control of such areas and the movement of vessels, vehicles and aircraft;~~

**(b) control of such areas, including the boarding and movement of vessels, aircraft and vehicles;**

~~(c) authorizing the entry and search of premises;~~

(c) authorizing the entry and search of premises **of which include vessels, aircraft and vehicles;**

(d) empowering the making of orders and rules and the issuing of notices, licences, permits,

certificates or other documents for the purposes of the regulations.

THE EXPLOSIVES ACT 1970

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| The text below reflects existing law. The relevant amendments are underlined and in bold. |

Section 6

The minister may make regulations for carrying into effect the provisions of this Act and, in particular and without prejudice to the generality of the forgoing –

(a) providing for the appointment of officers for the purpose of carrying out, and supervising the

carrying out, of the provisions of this Act and of the regulations;

(b) regulating the transport and storage of explosives;

(c) regulating the sale and dealing in explosives;

(d) prohibiting the introduction of explosives into any specified areas;

**(da) prohibiting the transport or use of explosives for the purpose of intimidating a**

**population, or compelling a physical or juridical person to abstain or**

**do any act;**

(e) prohibiting or regulating the manufacture of explosives;

(f) regulating the use of explosives and the amount of explosives to be kept in any store;

(g) regulating the disposal of explosives;

(h) prescribing storage charges and the fee to be paid for any licence or permit issued or

examination or inspection made under or in pursuance of the regulations;

(i) providing for the seizure and forfeiture of any explosives in respect of which any offence

against the regulations has been committed;

(j) providing for the issue, suspension or cancellation of blasting licences and permits; and

(k) providing for the punishment of any person who contravenes any of the provisions of the

regulations, or of any order, or the terms, requirements, or conditions of any licence, permit or

authority, lawfully issued under the provisions of this Act or of such regulations:

Provided that no such punishment shall exceed a fine of five hundred dollars, imprisonment for three months or both such fine and imprisonment.

THE MERCHANT SHIPPING (OIL POLLUTION) ACT 1976

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| The text below reflects existing law. The relevant amendments are underlined and in bold. |

Section 3(1)

In this Part “harbor master” includes a dock master or pier master and any person specially appointed by a port authority for the purpose of enforcing the provisions of this Part in relation to the port.

Section 3(2)

~~For the purposes of this Part relating to the discharge of oil or a mixture from a vessel, any~~

~~floating craft (other than a vessel) which is attached to a vessel shall be treated as part of~~

~~that vessel.~~

**For the purposes of this Part relating to the discharge of oil, liquefied natural gas, or**

**other hazardous or noxious substance from a vessel or any floating craft (other than a vessel) which is in such quantity or concentration that causes or is likely to cause death or serious injury or damage.**

THE MERCHANT SHIPPING ACT 1976

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| The text below reflects existing law. The relevant amendments are underlined and in bold. |

Section 167 (1)

Any person who while onboard or while attempting to board a passenger ship in The Bahamas –

(a) being drunk or disorderly, is requested by the owner or any person in his employment to leave the ship, and after having the amount of his fare (if he has paid it) returned or tendered to him, does not comply with the request; or

(b) after warning by the master or other officer of the ship, molests or continues to molest any passenger; or

(c) having gone on board the ship at any place and being requested on account of the ship being full by the owner or any person in his employment to leave the ship before it has left that place, and having had the amount of his fare (if he has paid it) returned or tendered to him, does not comply with that request, or

(d) travels or attempts to travel in the ship without first paying his fare and with intent to avoid payment therefore; or

(e) having paid his fare for a certain distance, knowingly and willfully proceeds in the ship beyond that distance without first paying the additional fare for the additional distance and with intent to avoid payment thereof; or

(f) on arriving in a ship at a point to which he has paid his fare, knowingly and willfully refuses to leave the ship; or

(g) fails when requested by the master or other officer thereof either to pay his fare or exhibit such ticket or other receipt showing the payment of his fare as is usually given to persons travelling by and paying their fare for the ship; or

**(ga) wilfully uses the ship for the purpose of intimidating a population or compels a physical or juridical person to do or refrain from any act; or**

~~(h) willfully does or causes to be done anything in such a manner as to obstruct or injure any part of the machinery or tackle of the ship, or to obstruct, or impede or molest the crew or any of them in the navigation or management of the ship or otherwise in the execution of their duty on or about the ship,~~

**(h) wilfully does or causes to be done anything in such a manner as to obstruct or injure any part of the machinery or tackle of the ship, or to use against or on a ship or discharges from a ship any explosive, radioactive material or biological, chemical or nuclear (BCN) weapon that causes, is likely to cause or threatens to cause death or serious injury or damage; or**

**(ha) wilfully uses any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a biological, chemical or nuclear (BCN) weapon which causes, is likely to cause or threatens to cause death or serious injury or damage; or**

**(hb) willfully discharges from the ship, oil, liquefied natural gas or other hazardous or noxious substance which causes, is likely to cause or threatens to cause death or serious injury or damage; or**

**(hc) willfully uses the ship in a manner that causes death or serious injury or damage; or**

**(hd) willfully obstructs, impedes, or molests the crew or persons responsible for the navigation or management of the ship or otherwise in the execution of their duty on or about the ship,**

shall be guilty of an offence.

THE PENAL CODE 1927

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| The text below reflects existing law. The relevant amendments are underlined and in bold. |

Section 10 (1)

~~Notwithstanding anything contained in any other written law, where any person on board a Bahamian vessel does any act or makes any omission which would be an offence if done or made in The Bahamas, that person shall, regardless of the position of the Bahamian vessel at the time of the act or omission, be guilty of that offence and may be tried by any court which would have had cognizance of the offence had that offence been committed in The Bahamas~~.

Notwithstanding anything contained in any other written law, where any person on board a Bahamian vessel-

**(a) wilfully uses the ship for the purpose of intimidating a population or compels a physical or juridical person to do or refrain from any act; or**

**(b) wilfully does or causes to be done anything in such a manner as to obstruct or injure any part of the machinery or tackle of the ship, or to use against or on a ship or discharges from a ship any explosive, radioactive material or biological, chemical or nuclear (BCN) weapon that causes, is likely to cause or threatens to cause death or serious injury or damage; or**

**(c) wilfully uses any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a biological, chemical or nuclear (BCN) weapon which causes, is likely to cause or threatens to cause death or serious injury or damage; or**

**(d) willfully discharges from the ship, oil, liquefied natural gas or other hazardous or noxious substance which causes, is likely to cause or threatens to cause death or serious injury or damage; or**

**(e) willfully uses the ship in a manner that causes death or serious injury or damage; or**

**(f) willfully obstructs, impedes, or molests the crew or persons responsible for the navigation or management of the ship or otherwise in the execution of their duty on or about the ship,**

That person shall, regardless of the position of the Bahamian vessel at the time of the act or omission, be guilty of that offence and may be tried by any court which would have had cognizance of the offence had that offence been committed in The Bahamas.

(Preamble)

THE EXTRADITION BILL

The above Bill will be laid before Parliament

Day Month Year

Hubert A. Ingraham, Prime Minister of The Commonwealth of The Bahamas

Bill for partial amendments to the Extradition Act, 1994

After Section 5(3) of the Extradition Act 1994, the following subsections are inserted:

**Section 5(3a)**

**Any offence which the Minister under his hand certifies is the subject matter of a request received from an approved State for the purposes of section 8 and that he is satisfied is constituted by acts which incorporate the use of a Bahamas registered ship in order to intimidate a population or compel a physical or juridical person to abstain or do any act.**

**Section 5(3b)**

**Under this Article a person commits an offence if that person unlawfully and intentionally transports another person on board a ship knowing that the person has committed an act that constitutes an offence. A person also commits an offence if that person unlawfully and intentionally kills another, or alternatively attempts to commit, participates as an accomplice, organizes or directs others to commit or contributes to the commission of the offences set forth in Article 5(4).**

(Preamble)

THE DEFENCE AND SECURITY PURPOSES (REGULATION) BILL

This above Bill will be laid before Parliament

Day Month Year

Hubert A. Ingraham, Prime Minister of the Commonwealth of The Bahamas

Bill for partial amendments to the Defence and Security Purposes (Regulation), 1989

Section 3(2) of the Defence and Security Purposes (Regulation) 1989 is amended

(a) in paragraph (a) by inserting after ‘detention’ the following:

**‘of cargo and persons onboard vessels, aircraft and vehicles’**; and

(b) in paragraph (b) by inserting after ‘areas’ the following:

**‘including boarding and movement of vessels, aircraft and vehicles’** ; and

(c) in paragraph (c) by inserting after ‘premises’ the following:

**‘of which include vessels, aircraft and vehicles’**

(Preamble)

THE EXPLOSIVES BILL

The above Bill will be laid before Parliament

Day Month Year

Hubert A. Ingraham, Prime Minister of the Commonwealth of The Bahamas

Bill for a partial amendment to the Explosives Act, 1970

Section 6 of the Explosives Act, 1970 is amended by inserting after paragraph (d) the following paragraph:

**‘(da) prohibiting the transport or use of explosives for the purpose of intimidating a**

**population, or compelling a physical or juridical person to abstain or**

**do any act;’**

(Preamble)

THE MERCHANT SHIPPING (OIL POLLUTION) BILL

This above Bill will be laid before Parliament

Day Month Year

Hubert A. Ingraham, Prime Minister of the Commonwealth of The Bahamas

Bill for partial amendments to the Merchant Shipping (Oil Pollution) Act, 1976

Section 3 of the Merchant Shipping (Oil Pollution) Act 1976 is amended by repealing subsection (2) and substituting the following subsection:

**Section 3(2)**

**For the purposes of this Part relating to the discharge of oil, liquefied natural gas, or**

**other hazardous or noxious substance from a vessel or any floating craft (other than a vessel) which is in such quantity or concentration that causes or is likely to cause death or serious injury or damage.**

(Preamble)

THE MERCHANT SHIPPING BILL

The above Bill will be laid before Parliament

Day Month Year

Hubert A. Ingraham, Prime Minister of the Commonwealth of The Bahamas

Bill for partial amendments to the Merchant Shipping Act, 1976

Section 167(1) of the Merchant Shipping Act is amended

(a) by inserting after paragraph (g) the following paragraph:

**‘(ga) wilfully uses the ship for the purpose of intimidating a population or compels a physical or juridical person to do or refrain from any act; or’**

(b) by repealing paragraph (h) and substituting the following paragraph:

**‘(h) wilfully does or causes to be done anything in such a manner as to obstruct or injure any part of the machinery or tackle of the ship, or to use against or on a ship or discharges from a ship any explosive, radioactive material or biological, chemical or nuclear (BCN) weapon that causes, is likely to cause or threatens to cause death or serious injury or damage; or’**

(c) by inserting after paragraph (h) the following paragraphs:

**‘(ha) wilfully uses any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a biological, chemical or nuclear (BCN) weapon which causes, is likely to cause or threatens to cause death or serious injury or damage; or’**

**‘(hb) willfully discharges from the ship, oil, liquefied natural gas or other hazardous or noxious substance which causes, is likely to cause or threatens to cause death or serious injury or damage; or’**

**‘(hc) willfully uses the ship in a manner that causes death or serious injury or damage; or’**

**‘(hd) willfully obstructs, impedes, or molests the crew or persons responsible for the navigation or management of the ship or otherwise in the execution of their duty on or about the ship,’**

shall be guilty of an offence.

(Preamble)

THE PENAL CODE BILL

The above bill will be laid before Parliament

Day Month Year

Hubert A. Ingraham, Prime Minister of The Commonwealth of The Bahamas

Bill for partial amendments to the Penal Code, 1927

Section 10 of the Penal Code 1927 is amended

(a) by repealing subsection (1); and

(b) by inserting at the beginning the following:

‘Notwithstanding anything contained in any other written law, where any person on board a Bahamian vessel-’; and

(c) by substituting the following subsections:

**‘(1) wilfully uses the ship for the purpose of intimidating a population or compels a physical or juridical person to do or refrain from any act; or’**

**‘(1a) wilfully does or causes to be done anything in such a manner as to obstruct or injure any part of the machinery or tackle of the ship, or to use against or on a ship or discharges from a ship any explosive, radioactive material or biological, chemical or nuclear (BCN) weapon that causes, is likely to cause or threatens to cause death or serious injury or damage; or’**

**‘(1b) wilfully uses any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a biological, chemical or nuclear (BCN) weapon which causes, is likely to cause or threatens to cause death or serious injury or damage; or’**

**‘(1c) willfully discharges from the ship, oil, liquefied natural gas or other hazardous or noxious substance which causes, is likely to cause or threatens to cause death or serious injury or damage; or’**

**‘(1d) willfully uses the ship in a manner that causes death or serious injury or damage; or’**

**‘(1e) willfully obstructs, impedes, or molests the crew or persons responsible for the navigation or management of the ship or otherwise in the execution of their duty on or about the ship,’**; and

(d) by inserting at the end the following:

‘That person shall, regardless of the position of the Bahamian vessel at the time of the act or omission, be guilty of that offence and may be tried by any court which would have had cognizance of the offence had that offence been committed in The Bahamas.’

***DIAGRAM OF THE BAHAMAS’ PARLIAMENTARY PROCEDURE***

**Stage I**

**Stage II**

**Stage III**

***DIAGRAM OF THE BAHAMAS’ PARLIAMENTARY PROCEDURE – AN ALTERNATIVE METHOD***

1. Achille Lauro Incident: Originally planned by the Palestinian Liberation Movement’s Abu Abbas group as a mission to smuggle arms and explosives into Israel via the sea. It escalated into a hostage-taking incident where the crew of Achille Lauro inadvertently uncovered the Palestinian plot. As a result, the terrorists took control of the vessel and subsequently requested the release of their confederates held in Israeli jails and further requested safe passage for themselves. In the course of the incident the terrorists killed and unarmed disabled passenger and threw him and his wheelchair overboard. [↑](#footnote-ref-2)
2. [www.imo.org/HOME.html](http://www.imo.org/HOME.html) [↑](#footnote-ref-3)
3. Ibid [↑](#footnote-ref-4)
4. Ibid [↑](#footnote-ref-5)
5. Paragraphs 1(b), (c) and (e) refer to ‘transport’, ‘serious injury or damage’ and ‘toxic chemical’ respectively. [↑](#footnote-ref-6)
6. <http://laws.bahamas.gov.bs> [↑](#footnote-ref-7)
7. 1988 [↑](#footnote-ref-8)
8. 1982 [↑](#footnote-ref-9)