



IMO
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**SUPPRESSION OF UNLAWFUL ACTS AGAINST
THE SAFETY OF MARITIME NAVIGATION
ACT NO. 2015**

**A Legislation Drafting Project submitted in partial fulfillment of the
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DEDICATION

To the memory of my father, Jacob Ochogwu Onoja, and sister, Grace Emmanuel Ogbanje.

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PART I

EXPLANATORY NOTE

1.0. Introduction

The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 (1988 SUA Convention)¹ and its Fixed Platforms Located on the Continental Shelf Protocol, 1988 (1988 SUA Protocol)² were adopted under the auspices of the International Maritime Organisation (IMO) to fill the gap in the international legal regime to combat maritime terrorism which became noticeable following the *Achille Lauro* incident of 1985³. The two instruments, commonly referred to as the ‘SUA treaties’, were subsequently consolidated into the 2005 SUA Convention⁴ and 2005 SUA Protocol,⁵ respectively, and they have since become an important part of the legal framework for the investigation, arrest, and prosecution of terrorists and pirates, and also for international cooperation as regards the extradition of offenders.⁶

This explanatory note serves in Part I to provide an outline of the 2005 SUA Convention and Protocol, their antecedents and general framework. The need for the Convention and Protocol to be acceded to by Nigeria and incorporated in her domestic laws forms the subject of Part II of the work. Lastly, a draft **Suppression of Unlawful Acts against the Safety of Maritime Navigation Act** has been prepared and attached as Part III.

¹ Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Rome, 10 March 1988, entry into force: 1 March 1992, 165 States Parties.

² Protocol of 1988 for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, Rome, 10 March 1988, entry into force: 1 March 1992, 152 States Parties.

³ See Table 1 in page 5 for a brief on the incident.

⁴ Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, London, 14 October 2005, entry into force: 28 July 2010, 33 States Parties.

⁵ Protocol of 2005 to the Protocol of 1988 for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, London, 14 October 2005, entry into force: 28 July 2010, 29 States Parties.

⁶ Article 15 of the 2005 SUA Convention provides that the Convention is to be read and interpreted as a single instrument with the 1988 SUA Convention. The Article provides further that the 2005 provisions and the 1988 Convention shall be called the ‘Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005 (2005 SUA Convention)’.

2.0. SUA Treaties

The 2005 SUA Convention is one of three treaties⁷ adopted by the United Nations to confer universal jurisdiction on States in order to enable them exercise control over persons, situations and events outside their territory or where there is no territorial linkage or nationality. The other two are the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances⁸ and the 2000 United Nations Convention against Transnational Organised Crime 2000.⁹

State parties are obliged under the above treaties to enact national laws which would create relevant offences, confer mandatory and optional grounds for jurisdiction in respect of the offences so as to have a jurisdictional well where authority can be exercised irrespective of territorial limit. Such domestic legislations shall also consider the treaty as an extradition treaty for the relevant offences where domestic legislation requires extradition treaty before extradition, and to extradite or submit an offender for prosecution in his own State. States shall also remove the political exception rule to extradition for relevant offences in the domestic law.

The treaties came into being following the inability of the United Nations Convention on the Law of the Sea (UNCLOS)¹⁰ to adequately address emerging pirate and terrorist threats in the late 1980s and early 1990s. The Italian cruise ship *Achille Lauro* incident, especially, fell outside the scope of the definition of piracy under Article 101 of the Convention leading to calls for treaties that would adequately address it.

The 1988 SUA Convention provides the legal basis for action to be taken against persons committing unlawful acts against ships, including 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.

⁷ Referred to as the ‘Super Treaties’ by Professor David Attard in one of his seminal lectures on Universal Jurisdiction delivered at the International Maritime Law Institute, Malta, on 12 November 2014.

⁸ United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 20 December 1988, entry into force: 11 November 1990, 189 States Parties.

⁹ United Nations Convention against Transnational Organised Crime, New York, 15 November 2000, entry into force: 29 September 2003, 185 State Parties.

¹⁰ United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982, entry into force: 16 November 1994, 167 States Parties.

The 1988 SUA Protocol extends the application of the SUA Convention to unlawful acts against the safety of fixed platforms located on the continental shelf. Only parties to the 1988 SUA Convention may become Parties to this Protocol.¹¹

The 2005 SUA Convention amends the original treaty by broadening the list of offences to include, inter alia, the offence of using a ship itself in a manner that causes death or serious injury or damage and the transport of any explosive or radioactive material, any BCN weapon or any equipment, materials or software that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose. It also introduces provisions for the boarding of ships where there are reasonable grounds to suspect that the ship or a person on board the ship is, has been, or is about to be, involved in committing an offence regulated by the Convention.

The 2005 SUA Protocol extends the scope of provisions on the new offences to fixed platforms located on the continental shelf, as appropriate.

Only States Parties to the 1988 SUA Convention can become Parties to the 2005 SUA Convention.¹² Only Parties to the 2005 SUA Convention can become Parties to the 2005 Protocol.¹³ The IMO Secretariat prepared the consolidated texts of the 1988 SUA treaties, as amended by the 2005 Protocols, for the purpose of facilitating their incorporation into national law.

Although Nigeria ratified the 1988 SUA Convention and its Protocol, it is yet to accede to the 2005 SUA and the 2005 Protocol. The country has so far implemented the 1988 SUA Convention and its Protocol by the inclusion of the provisions of Article 3 (which criminalised maritime-related terrorist acts) in its **Terrorism (Prevention) Act No. 10, 2011** and **Terrorism (Prevention)(Amendment) Act, 2013**.

The accession and incorporation of the 2005 SUA Convention and 2005 SUA Protocol into the domestic laws of the country is the focus of this work.

¹¹ Article 5(6), 1988 SUA Protocol.

¹² Article 17(4), 2005 SUA Convention.

¹³ Article 5, 2005 SUA Protocol.

3.0 Threats to Maritime Navigation

Shipping accounts for the transportation of over 90 percent of world trade in volume terms. The seas also host important economic infrastructure such as deep-water offshore oil and gas production platforms, underwater fibre-optic cables and pipelines.¹⁴ In view of their importance as the nerve centre of world trade, the safety and security at sea of vessels, cargo, passengers and crew, and maritime infrastructure and facilities have remained of paramount concern to the international community. Major maritime threats include piracy and ship hijacking, use of the sea by terrorists, smugglers, international criminal and extremist organisations, low-intensity or irregular maritime militia. Two of the most violent of these threats are piracy and terrorism.

Piracy as a general term constitutes a particular form of maritime violence usually characterised by aggression, plunder, hostage-taking and death. Pirate attacks threaten seafarers, the security of navigation and the marine environment, and also had the potential to disrupt the provision of humanitarian aid, fishing tourism and marine scientific research.¹⁵

Terrorism, on the other hand, has been described as ‘political piracy’.¹⁶ The concept of maritime terrorism was initially understood within the context of piracy whereby any unauthorised act of violence on the high seas would be characterised as piracy.¹⁷ However, as the formal definition of piracy under international law came to be understood as limited to acts of violence perpetrated for financial purposes, there were still acts of violence at sea undertaken for political reasons. These violent acts, if performed outside the territorial sea, were not recognised as crimes over which all States could exercise jurisdiction, as is the case with piracy. Instead, these acts came to be branded as maritime terrorism. Maritime terrorism has been described as ‘the systematic use or threat to use acts of violence against international shipping and maritime services by an individual or group to induce fear and

¹⁴ Martinage, Robert; ‘Under the Seas: The Vulnerability of the Commons,’ *Foreign Affairs*, Vol. 94, No. 1, (January/February 2015), p. 117.

¹⁵ Mallia, Patricia; ‘The Fight Against Piracy and Armed Robbery Against Ships Off the Coast of Somalia: International Cooperation Illustrated’, in Gutierrez, Norman A. Martinez, ed.; *Serving the Rule of International Maritime Law: Essays in Honour of Professor David Attard*, Routledge, New York, United States, 2010, p. 216.

¹⁶ Keyuan, ZOU; *New Developments in the International Law of Piracy*, Chinese Journal of International Law, (2009), paragraph 13.

¹⁷ Klein, Natalie; *Maritime Security and the Law of the Sea*, Oxford University Press, Oxford, England, 2011, p. 147.

intimidation in a civilian population in order to achieve political ambitions or objectives.’¹⁸ There is, however, no internationally recognised definition of terrorism.

The issues surrounding maritime terrorism and the rights of States to prescribe and enforce jurisdiction over these acts of violence outside the territorial sea came most strongly to the fore in contemporary international law with the hijacking of the *Achille Lauro* and the murder of a United States national on board by Palestinian Liberation Forces in 1985.

Terrorist acts have become more common since the *Achille Lauro* incident. The Tamil Tigers (Liberation Tigers of Tamil Eelam-LTTE) particularly utilised terrorist attacks against shipping as part of their liberation struggle; inter-island ferries in the Philippines have been targeted by terrorists; and, guerrillas alleged to be affiliated with Al Qaeda launched a suicide attack in 2000 against the US Navy destroyer *Cole* in Yemen, and an attempted attack against the *USS Sullivan* in 1999.

Subsequent to the September 11, 2001 attack on the World Trade Centre, New York (‘September 11’), a terrorist attack was perpetrated against the French supertanker *Limburg* as it neared a Yemeni port as well as on approach to the Iraqi oil loading terminal of Khawr al Amaya through the use of small vessels packed with explosives. Attacks have also been perpetrated at various ports through car bombs, parcel bombs, and suicide bombers.¹⁹ A timeline of select incidents affecting maritime navigation is contained in Table 1 below.

Table 1: Timeline of Select Terrorist Incidents that Affected the Maritime Industry Worldwide

YEAR	VESSEL/FACILITY	NATURE OF TERRORIST ATTACK
1974	Oil installation at Pulau Bukom Besar Island, Singapore	In January 1974 two members of the Japanese Red Army and two members of the Popular Front for the Liberation of Palestine attempted to blow up an oil installation on Singapore’s Pulau Bukom Besar Island. After causing minor damage, the attackers seized the crew of a ferry boat as hostages. The hostages were eventually released in exchange for safe transit for the attackers to Kuwait.
1974	Greek Freighter	The Greek freighter was hijacked off Karachi, Pakistan by persons who demanded the release of the persons convicted in

¹⁸ Joyner, Christopher C.; ‘Suppression of Terrorism on the High Seas: The 1988 IMO Convention on the Safety of Maritime Navigation’, *Israel Yearbook on Human Rights*, Vol. 19, (1989), p. 341, 348.

¹⁹ Attacks on the Israeli port of Ashdod, and the Pakistani ports of Karachi and Gwadar).

		Greece of an Athens airport attack. The crew members taken as hostages were released when the death sentences of those prisoners were reduced to life imprisonment.
1985	<i>Achille Lauro</i>	<p>On October 7, 1985, members of the Palestine Liberation Front (PLF), a faction of the Palestine Liberation Organisation (PLO), hijacked the <i>Achille Lauro</i> while sailing from Alexandria to Port Said, Egypt. The hijackers had boarded the <i>Achille Lauro</i> in Genoa, Italy, managing to smuggle on board automatic weapons, grenades and other explosives, and intending to stay aboard as passengers until the cruise liner reached Ashdod, Israel. In Israel, they ‘planed either to shoot up the harbour to take Israelis hostage’. The Palestinians intended to hold the Israelis as hostages to bargain for the release of 50 Palestinians held in Israeli jails.</p> <p>The four PLO members aborted their plans and seized the ship when the crew discovered their weapons after the <i>Achille Lauro</i> left Alexandria. On the high seas, while holding the ship’s crew and passengers hostage, the hijackers threatened to kill the passengers unless Israel released 50 Palestinian prisoners. They also threatened to blow up the ship if anyone attempted a rescue mission. On the afternoon of October 8, 1985, Israel not having met their demands, the hijackers killed an American passenger on board.</p> <p>The hijackers were eventually apprehended and some of the perpetrators of the <i>Achille Lauro</i> were brought to justice in Italian courts.</p>
1988	<i>City of Poros</i>	In July 1988 three members of the Abu Nidal organisation boarded the vessel at a resort island, posing as passengers bound for Athens. Once at sea they opened fire with firearms and grenades, killing nine persons and wounding nearly 100. They then jumped overboard and were picked by a small vessel operated by an accomplice.
2000	<i>USS Cole</i>	On October 12, 2000, the United States Navy guided-missile destroyer, <i>USS Cole (DDG-67)</i> , was targeted by a suicide attack while it was being refuelled in the port of Aden, Yemen. Two members of Al-Qaida drove towards the <i>USS Cole</i> with a small craft containing 200-300 kilograms of explosives. Despite numerous warnings and prohibitions, the boat

		approached and when it hit the <i>USS Cole</i> , it exploded killing 17 and wounding 39 American sailors.
2001	World Trade Centre, New York, US	Use of seized aircraft by terrorists as impact and incendiary weapons in attacks in September 2001 against the World Trade Centre in New York.
2002	<i>Limburg</i>	Use of an explosive laden ship to attack the oil tanker <i>Limburg</i> in 2002.
2004	<i>SuperFerry 14</i>	Bombing in February 2004 of the vessel <i>SuperFerry 14</i> . After sailing from Manila Bay on a domestic route, a bomb concealed in a television set exploded. 116 persons among the almost 900 passengers and crew on board died as a result of the explosion, resulting fire and sinking of the vessel. Responsibility for the attack was claimed by the Abu Sayyaf separatist group.

Following the *Achille Lauro* incident and September 11, there was cognisance of the range of terrorist acts that could be perpetrated, and that the existing legal regimes were inadequate to meet these threats.

4.0 International Legal Instruments to Combat Maritime Crimes

The most important treaty which codified the international law of piracy was the Convention on the High Seas (HSC),²⁰ which contains eight provisions concerning the suppression of piracy on the high seas. It was eventually superseded by UNCLOS which simply incorporated the anti-piracy provisions of the 1958 Convention without any change. UNCLOS was an effort by the international community to reach agreement on one instrument on a comprehensive regime dealing with all matters relating to the law of the sea. This Convention provides for the peaceful uses of the sea and the area of the seabed, ocean floor and the subsoil thereof and sets out a legal framework within which all activities in the oceans and seas must be carried out. The provisions of UNCLOS establish different maritime zones, whose maximum breadth is measured from a set of baselines along the coast of a State.²¹

²⁰ Convention on the High Seas, Geneva, 29 April 1958, entry into force: 30 September 1962, 63 States Parties.

²¹ These zones, especially the territorial sea and continental shelf, are relevant in establishing the scope of application of both the SUA Convention and Protocols.

The high seas provisions dealing with the prohibition of transporting slaves and piracy found in the HSC have largely been incorporated in Part VII of UNCLOS.²² States are obliged to cooperate in the suppression of piracy,²³ and can use their warships and military aircraft or similar governmentally authorised ships or aircraft to seize a pirate ship or aircraft and arrest pirates.²⁴

Although it was still in the ratification process in 1985, when the *Achille Lauro* hijacking occurred, both its provisions and those of the HSC were examined at that time for guidance concerning vessel hijacking and the murder of a passenger as international crimes. The legal framework for the repression of piracy under international law is set out in Articles 100-107 of UNCLOS. These Articles, which are based on Articles 14 to 21 of the HSC, are generally considered to reflect customary law of the sea applicable to all States. Article 101 UNCLOS defined acts of piracy to consist of ‘illegal acts of violence, 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 on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft’.

This legal definition of piracy must be distinguished from the concept of armed robbery against ships. This is a term used by the IMO in its Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships.²⁵ This code, which has no legal status, defines armed robbery against ships as ‘any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State’s internal waters, archipelagic waters and territorial sea; and any act of inciting or of intentionally facilitating an act described above’.

The *Achille Lauro* case involved numerous controversies concerning whether Italy and Egypt had agreed to forego prosecution, whether such a promise was conditioned on no one being harmed during the seizure, concerning the role of the Palestinian Liberation Organisation, concerning legal obligation of the States involved with regard to extradition and international cooperation, and concerning whether the hijacking was a universal offence under

²² Articles 99 and 100-107, UNCLOS.

²³ Article 100, UNCLOS.

²⁴ Article 105, UNCLOS.

²⁵ Assembly Resolution A.1025 (26).

international customary law or only an offence depending on its definition by the national law of the various States involved.

The possibility of establishing universal jurisdiction was then related to the Convention on the High Seas provision on piracy. However, the *Achille Lauro* incident could not be characterised as piracy because the crimes were not committed for pirate ends²⁶ and did not involve a pirate ship. Another controversial issue was related to the fact that as the terrorists with their weapon freely boarded the *Achille Lauro* in Italy the crimes could not be considered as entirely perpetrated in the high seas, thus creating a further impediment to the exercise of universal jurisdiction.

Also, in the *City of Poros*²⁷ incident, two elements of the definition of piracy found in the HSC and the UNCLOS were either missing or in doubt. The element of persons from one ship attacking another ship was absent. In addition, the violence was indisputably committed for a political purpose and not for economic gain, so the element that the violence be 'committed for private ends' also seems to be lacking.

When the *Achille Lauro* and *City of Poros* incidents were analysed it was evident that they could not be classified as piracy. Neither customary maritime law nor the then applicable HSC treated such incidents as international crimes and no universal instrument required their criminalisation or dealt with issues of jurisdiction and criminal justice cooperation. Moreover, it was evident that this gap in international law would not be filled even when the UNCLOS would come into effect, as its definition of piracy was the same as that in the HSC.

Accordingly, consideration was given to the need for an additional international instrument to address this new manifestation of terrorist violence. That task was vested in the IMO.

4.1 International Maritime Organisation

The International Maritime Organisation (IMO) is a specialised agency of the United Nations established in Geneva in 1948 to adopt treaties and recommendations containing rules and standards for the safety of navigation and the prevention of marine pollution from ships. One

²⁶ Pirates are motivated by private interest to attack ships on the high seas or in territorial waters. See Kraska, *ibid*, p 358.

²⁷ See Table 1.

of its stated goals is to ‘encourage the general adoption of the highest practicable standards in matters concerning maritime safety ...’²⁸ While ‘maritime safety’ refers to the prevention and suppression of risks affecting maritime navigation in general, the notion of maritime security is associated with risks to navigation resulting of wilful misconduct, thereby including prevention and suppression of all intentional unlawful acts affecting maritime navigation.

The Organisation has been particularly active in the adoption of guidelines to prevent and suppress piracy and armed robbery against ships. It has adopted several international conventions relevant to piracy for its member countries to implement, including the SUA treaties, International Convention for the Safety of Life at Sea (SOLAS),²⁹ the International Convention on Standards of Training, Certification and Watch-keeping for Seafarers, and the International Ship and Port Facility Security Code (ISPS Code).³⁰

5.0 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988 SUA Convention)

Within days of the resolution of the *Achille Lauro* hijacking in October 1985, the IMO Assembly adopted Resolution A. 584 (14) on 20 November 1985 condemning the hijacking and directing the IMO Maritime Safety Committee to develop technical security measures. The United Nations General Assembly, on 9 December 1985, adopted Resolution 40/61, which requested the IMO to ‘study the problems of terrorism aboard or against ships with a view to making recommendations on appropriate measures’.

Following proposals received from some governments and the International Transport Workers Federation for an international maritime safety convention modelled on the Tokyo³¹ and Montreal Conventions³² and the 1979 Convention Against the Taking of Hostages,³³ an Ad Hoc Preparatory Committee was created to work on the convention. The result of the Committee’s work is the Convention for the Suppression of Unlawful Acts against the Safety

²⁸ Article 1 of the IMO Convention.

²⁹ Adopted in 1974, entered into force 25 May 1980. 162 State Parties.

³⁰ Entered into force 1 July 2004.

³¹ Convention on Offences and Certain Other Acts Committed on Board Aircraft. Adopted in Tokyo 14 September 1963, entered into force 4 December 1969. 186 State Parties.

³² Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, adopted in Montreal, Canada on September 23, 1971. Entered into force 26 January 1973. 188 State Parties.

³³ Adopted by the General Assembly of the United Nations on December 17, 1979. Entered into force 3 June 1983. 174 State Parties.

of Maritime Navigation (and its Fixed Platforms Located on the Continental Shelf Protocol) adopted in Rome on 10 March 1988.

The reason for the development of the Convention is well enshrined in its preamble which notes the worldwide escalation of acts of terrorism in all its forms and underscores the need to develop international cooperation between states in devising and adopting effective and practical measures for the prevention of all unlawful acts against the safety of maritime navigation, and the prosecution and punishment of their perpetrators.

The Convention, which applies to ships ‘navigating into, through, or from waters beyond the outer limit of the territorial sea of a single State, or beyond the lateral limits of its territorial sea with adjacent States’,³⁴ also excluded warships and crafts used by the police and customs from the scope of its application.³⁵ Reference was made to the 1982 United Nations Convention on the Law of the Sea to define ‘territorial sea’ and the scope of application of the Convention and its Protocol. The Convention is therefore not limited to offenses committed on the high seas or in an exclusive economic zone. It applies to offenses committed in maritime zones under the territorial sovereignty of coastal states (territorial sea and archipelagic waters) as well as in maritime zones outside the territorial sovereignty of coastal states (high seas or exclusive economic zone).

Article 3(1) of the Convention defined offences under the Convention to include acts of seizure of ships, violence against persons on board ships, endangering safe navigation or causing damage or destruction to ships, destroying maritime navigation facilities, and injuring or killing any person in connection with the commission of offences under the treaties. States Parties are required to make the acts criminal offenses under their domestic law punishable by serious penalties.³⁶

State Parties agree to establish jurisdiction over the offenses when they take place in their territory;³⁷ when the offense takes place in other places where they have criminal jurisdiction (on a ship or aircraft registered in their State);³⁸ and when an alleged offender is present in

³⁴ Article 4(1), SUA Convention 1988.

³⁵ Article 2(1), SUA Convention 1988.

³⁶ Article 5, SUA Convention 1988.

³⁷ Article 6(1)(b), SUA Convention 1988.

³⁸ Article 6(1)(a), SUA Convention 1988.

their territory.³⁹ If the persons who are alleged to have committed an offense under the Convention enter the territory of a State Party, that State Party is required to take the alleged offenders into custody,⁴⁰ and either extradite them to another State Party, or prosecute them in its courts. This is referred to as the obligation to ‘extradite or prosecute’.⁴¹ State Parties agree that the Convention itself can serve as the legal basis for the extradition of alleged offenders to another State Party, so that extradition is possible even if there is no extradition treaty between the two States Parties.⁴²

States Parties are obligated to afford one another the greatest measure of cooperation in connection with criminal proceedings to prosecute the offenders.⁴³

5.1 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (1988 SUA Protocol)

The Fixed Platforms Located on the continental Shelf Protocol to the Convention 1988 also defined ‘fixed platforms’ and the ‘continental shelf’ in relation to UNCLOS. As a necessary appendage to the 1988 SUA Convention, the Protocol stipulates in its opening Article that the provisions of Articles 5 and 7 and of Articles 10-16 of the Convention shall also apply mutatis mutandis to the offences created in Article 2 of the Protocol, and defines the locations as either on board ships or against fixed platforms located on the continental shelf. Article 1(3) defines a fixed platform as an artificial island, installation or structure permanently attached to the seabed for the purpose of exploration or exploitation of resources or for other economic purposes.

Very much in line with the SUA Convention, Article 2 outlines the various categories of offences committable under the Protocol. Again, offences relating to seizure, damage, injury and death are all covered. Article 3 deals with jurisdictional matters while Article 4 preserves the rules of international law pertaining to fixed platforms located on the continental shelf.

³⁹ Article 6(2)(a), SUA Convention 1988.

⁴⁰ Article 7, SUA Convention 1988.

⁴¹ Article 10, SUA Convention 1988.

⁴² Article 11, SUA Convention 1988.

⁴³ Article 12, SUA Convention 1988.

6.0 Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005 SUA Convention)

The continued vulnerability of maritime transport to terrorist attacks was demonstrated by the bombing in February 2004 of the vessel *SuperFerry 14*.⁴⁴ Furthermore, after the use of unlawfully seized aircraft as impact and incendiary weapons in terrorist attacks on World Trade Centre, New York, the United States in September 2001 (9/11) and of an explosive laden ship to attack the oil tanker *Limburg* in 2002, the IMO Legal Committee produced draft amendments to the SUA Convention and its Fixed Platforms Located on the Continental Shelf Protocol. The Fixed Platforms Protocol, in particular, was developed as a direct response to the 9/11 events with the broadening of the list of offences covered by the original SUA to include the use of a vessel as a weapon as well as a mode of transporting weapons of mass destruction.⁴⁵

Amendments to both instruments were adopted in October 2005 at a Diplomatic Conference on the Revision of the SUA Treaties. One of the significant aspects of the 2005 SUA Convention is that it broadens the list of offenses by adding three new categories of new offenses. The first category of new offenses concerns acts of maritime terrorism such as using a ship as a weapon or as a means to carry out a terrorist attack.⁴⁶ These new offenses require specific knowledge and intent. They also require a ‘terrorist motive’-the purpose of the acts must be to intimidate a population or compel a government to do or abstain from doing an act.⁴⁷ These new offenses update the categories of acts that might endanger the safety of ships engaged in international maritime navigation.

The second category of new offenses are non-proliferation offenses that are intended to strengthen the international legal basis to impede and prosecute the trafficking on the high seas in commercial ships of BCN (Biological, Chemical and Nuclear) Weapons, their delivery systems, and related materials. The non-proliferation provisions require States Parties to criminalise transport on the high seas of BCN and certain related materials, as well as nuclear materials and equipment.⁴⁸ This category of new offenses goes beyond the scope

⁴⁴ Discussed in Table 1, page 9 above.

⁴⁵ Article 3bis(1)(a), Fixed Platforms Protocol 2005

⁴⁶ Article 3bis(1)(a), SUA Convention 2005.

⁴⁷ *Ibid.*

⁴⁸ Article 3bis(1)(b), SUA Convention 2005.

of the 1988 SUA Convention, which dealt only with acts that threaten the safety of maritime navigation. It establishes a new tool to combat the proliferation of BCN.

The third category of new offenses establishes a new tool for dealing with persons who commit offenses under the other United Nations terrorism conventions. It makes it an offense to transport any person by sea who has committed an offense under the 1988 SUA Convention, the 2005 SUA Convention, or any of the other UN Terrorism conventions when intending to assist that person evade criminal prosecution.⁴⁹ This category of offenses also goes beyond the scope of the 1988 SUA Convention, which was founded exclusively on acts that endangered the safety of maritime navigation. This offense also requires specific knowledge and intent' to ensure that innocent seafarers and masters are not made criminals. The UN terrorism conventions concerned are listed in Annex I.

The 2005 SUA Convention also contains what are commonly called non-discrimination articles. These articles provide that the conventions do not impose an obligation to extradite or to afford mutual legal assistance if the requested State has substantial grounds for believing that a request for extradition has been made for the purpose of prosecuting or punishing a person on account of a discriminatory motive or that compliance with the request would cause prejudice to person.⁵⁰

There is also the obligation of States Parties to furnish evidentiary assistance. Article 12 of the 1988 SUA Convention establishes that State Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings. The 2005 SUA Convention adds provisions on transfer of offenders serving sentence in a State Party to another State Party for the purposes of identification, testimony or provision of assistance in obtaining evidence for the investigation or prosecution of offences set forth in the convention.

6.1 Other Important Elements of 2005 SUA Convention

1. *Relationship of the 2005 SUA Convention to non-proliferation instruments:*

Paragraph 3 of Article 2 *bis* preserved the rights, obligations and responsibilities of State Parties under the following three multilateral treaties dealing with weapons of mass destruction:

⁴⁹ Article 3*ter*, SUA Convention 2005.

⁵⁰ Article 11*ter*.

- The Treaty on the Non-Proliferation of Nuclear Weapons of 1968. This instrument entered into force in 1970;
- The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction of 1972. The Convention entered into force in 1973;
- The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction of 1992. The Convention entered into force in 1997.

A reason for specifically mentioning these three multilateral instruments is that a number of provisions of the 2005 SUA Convention dealing with BCN weapons potentially interact with provisions of those three treaties. The 2005 SUA Convention draws its definitions of BCN weapons from the earlier disarmament treaties. It seeks to control the proliferation of BCN weapons and related materials to non- state actors by means of international maritime transport. The 2005 SUA Protocol language makes clear that the application of those disarmament instruments to their States Parties is in no way weakened, amended or superseded by the 2005 Protocol to the 1988 SUA Convention.

2. *Liability of Legal Entities:* The 2005 SUA Convention imposes liability on legal entities in Article 4 of the SUA 2005 Convention in view of the new offences created in Articles 3 *ter* and 3 *quater* which are likely to involve shipping companies, freight forwarders, manufacturers and other legal entities, and masters of vessels or other responsible persons. Article 5 of 2005 SUA Convention provides that each State Party, in accordance with its domestic legal principles, shall 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.

3. *Boarding and Search Provisions Concerning BCN weapons and other Offences in the 2005 SUA Convention:* The 2005 SUA Convention added boarding and search rules and safeguards to the 1988 SUA Convention. According to the procedure provided for in Article 8 *bis*, a requesting State Party may board a foreign ship when it has reasonable grounds to suspect that that ship or any person on board has been or is about to be involved in the commission of an offence under the Convention.⁵¹ The requesting State Party may only board the vessel in question after it has received authorisation from its flag State.⁵² The flag State may also approve the requesting State to exercise powers of arrest, detention and prosecution.⁵³ A State Party may notify the IMO Secretary-General that it would allow authorisation to board and search a ship flying its flag, its cargo and persons on board if there is no response from the flag State within four hours.⁵⁴ A State Party can also notify that it authorises a requesting Party to board and search the ship, its cargo and persons on board, and to question the persons on board to determine if an offence has been, or is about to be, committed.⁵⁵ The Convention limits the use of force and includes important safeguarding measures when a State Party takes action against the ship.⁵⁶
4. *Rejection of the political offence exception in Article 11 bis of the 2005 SUA Convention:* The political offence exception has come to be regarded as inappropriate in counter-terrorism instruments. Article 11 *bis* of the 2005 SUA Convention expressly excludes the possibility of a State Party applying the political offence exception to offences established by the SUA Convention to deny requests for extradition or mutual legal assistance.

6.2 The Protocol of 2005 to the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (2005 SUA Protocol)

This Protocol updates the original SUA Protocol to the extent appropriate to its more limited subject matter. Editorial changes are made in a number of Articles and additional offences are

⁵¹ Article 8*bis*(5), SUA Convention 2005.

⁵² Article 8*bis*(5)(c), SUA Convention 2005.

⁵³ Article 8*bis*(8), SUA Convention 2005.

⁵⁴ Article 8*bis*(8)(d), SUA Convention 2005.

⁵⁵ Article 8*bis*(8)(e), SUA Convention 2005.

⁵⁶ Article 8*bis*(10).

created in a new Article *2bis* dealing with BCN weapons. New means of committing or participating in an offence established in Articles 2 and *2bis* of the 1988 SUA Protocol as amended are defined in Article *2ter*. Those means are essentially identical to the other means of committing or participating in an offence established in Article *3quater* of the 2005 SUA Convention.

Table 2: Outline of the provisions of the 1988 and 2005 SUA⁵⁷

ELEMENT	CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION (1988 SUA CONVENTION)	PROTOCOL OF 2005 TO THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION (2005 SUA CONVENTION)
I. Scope of application	<ul style="list-style-type: none"> • The Convention applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single state, or the lateral limits of its territorial sea with adjacent States; [Article 4(1)] • In other cases the Convention nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State mentioned in the first paragraph (this regulation applies mainly to situations when a crime was committed within borders/waters of a single state but an offender managed to escape to a different country); [(Article 4(2))] • The Convention does not apply to vessels used for military, customs or police purposes and to ships which are withdrawn from 	<ul style="list-style-type: none"> • The Convention applies in the same manner as the 1988 SUA Convention, with the following additional elements; • The Convention does not apply to the activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law; [(Article 2bis (2))] • The Convention does not apply to the activities undertaken by military forces of a State in the exercise of their official duties (inasmuch as they are governed by other rules of international law). [(Article 2bis (2))]

⁵⁷ Adapted from the Counter-Terrorism Legal Training Curriculum (Transport-Related (Civil aviation and Maritime) Terrorism Offences), UNODC, (2014), p. 114-120. www.unodc.org. accessed 13-04-2015.

	<p>navigation or laid up.</p> <p>[Article 2]</p>	
II. Jurisdiction	<p>Each State Party shall establish its jurisdiction over the offences mentioned in the Convention when the offence is committed:</p> <p>[(Article 6(1))]</p> <ul style="list-style-type: none"> • against or on board a ship flying the flag of the State at the time the offence is committed; or • in the territory of that State, including its territorial sea; or • by a national of that State. <p>A State Party may also establish its jurisdiction over an offence when:</p> <p>[(Article 6(2))]</p> <ul style="list-style-type: none"> • it is committed by a stateless person whose habitual residence is in that State; or • during its commission a national of that State is seized, threatened, injured or killed; or • it is committed in an attempt to compel that State to do or abstain from doing any act. <p>Each State Party shall establish its jurisdiction when the alleged offender is present in its territory and it does not extradite him.</p> <p>[(Article 4(2))]</p>	<p>Each State Party shall or may establish its jurisdiction according to the same rules as contained in the 1988 SUA Convention, taking into account the extended list of crimes in the 2005 SUA Convention (see part III “Criminalization”).</p> <p>(Article 5)</p> <p>Moreover, each State Party in accordance with its domestic legal principles, shall 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.</p> <p>(Article 5bis)</p>
III. Criminalization	<p>According to the Convention, any person commits an offence if that person unlawfully and intentionally:</p> <ul style="list-style-type: none"> (a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or (b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or 	<p>Within the meaning of the 2005 SUA Convention, any person commits an offence if that person unlawfully and intentionally:</p> <ul style="list-style-type: none"> 1. Commits one of the offences mentioned in paragraphs (a) to (f) in the column on the left regarding the 1988 SUA Convention; <p>[(Article 3(1))]</p>

	<p>(c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or</p> <p>(d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or</p> <p>(e) (e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or</p> <p>(f) communicates information which that person knows to be false, thereby endangering the safe navigation of a ship; or</p> <p>(g) injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in paragraphs (a) to (f).</p> <p>[(Article 3(1))]</p> <p>The following actions also constitute an offence under the Convention:</p> <ul style="list-style-type: none"> • an attempt to commit any of the offences set forth in paragraphs (a) to (f); • abetting the commission of any of the offences set forth in paragraphs (a) to (f) perpetrated by any person; • acting as an accomplice of a person who commits such an offence; • threat, with or without a condition, 	<p>2. 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 (b), (c) and (e) in the column on the left, if that threat is likely to endanger the safe navigation of the ship in question;</p> <p>[(Article 3(2))]</p> <p>3. 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 abstain from doing any act:</p> <p>[(Article 3bis (1)(a))]</p> <p>(A) uses against or on a ship or discharges from a ship any explosive, radioactive material or BCN (biological, chemical or nuclear) weapon in a manner that causes or is likely to cause death or serious injury or damage; or</p> <p>[(Article 3bis (1)(a)(i))]</p> <p>(B) discharges, from a ship, oil, liquefied natural gas or other hazardous or noxious substance (other than mentioned in point (A)), in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or</p> <p>[(Article 3bis (1)(a)(ii))]</p> <p>(C) uses a ship in a manner that causes death or serious injury or damage; or</p> <p>[(Article 3bis (1)(a)(iii))]</p>
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	<p>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 (b), (c) and (e), if that threat is likely to endanger the safe navigation of the ship in question.</p> <p>[(Article 3(2))]</p>	<p>(D) threatens, with or without a condition, as is provided for under national law, to commit one of the offences mentioned in points (A), (B) and (C);</p> <p>[(Article 3bis (1)(a)(iv))]</p> <p>4. Transports on board a ship:</p> <ul style="list-style-type: none"> any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause,, with or without a condition, as is provided for under national law, 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 <p>[(Article 3bis (1)(b)(i))]</p> <ul style="list-style-type: none"> any BCN weapon, knowing it to be a BCN weapon; or <p>[(Article 3bis (1)(a)(ii))]</p> <ul style="list-style-type: none"> 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
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		<p>[(Article 3bis (1)(a)(iii))]</p> <ul style="list-style-type: none"> 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. <p>[(Article 3bis (1)(a)(iv))]</p> <p>5. Transports another person on board a ship knowing that the person has committed an act that constitutes one of the above and below mentioned offences or an offence set forth in any treaty listed in the Annex to the 2005 SUA Convention and intending to assist that person to evade criminal prosecution;</p> <p>(Article 3ter)</p> <p>6. Injures or kills any person in connection with the commission of any of the offences mentioned in points 1, 3 (A), (B) and (C), 4 and 5.</p> <p>(Article 3quater (a))</p> <p>Any person also commits an offence within the meaning of the Convention if that person:</p> <p>7. Attempts to commit any of the offences mentioned in points 1, 3, 4 and 6.</p> <p>[(Article 3quater (b))]</p> <p>8. Participates as an accomplice in any of the above mentioned offences;</p> <p>[(Article 3quater (c))]</p> <p>9. Organizes or directs others to commit</p>
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		<p>any of the offences mentioned in points 1, 2, 3, 4, 5, 6 and 7.</p> <p>[(Article 3^{quater} (d))]</p> <p>10. Contributes to the commission of one or more offences mentioned in points 1, 2, 3, 4, 5, 6 and 7 by a group of persons acting with a common purpose, intentionally and either:</p> <p>[(Article 3^{quater} (e))]</p> <ul style="list-style-type: none"> • with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of any of the offences mentioned in points 1, 2, 3, 4 and 5; or • in the knowledge of the intention of the group to commit any of the offences mentioned in points 1, 2, 3, 4 and 5.
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Table 3: Outline of the provisions of the 1988 and 2005 Fixed Platform on the Continental Shelf Protocols

ELEMENT	PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF (1988 SUA PROTOCOL)	PROTOCOL OF 2005 TO THE PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF (2005 SUA PROTOCOL)
I. Scope of application and jurisdiction	<p>Each State Party shall establish its jurisdiction over the offences mentioned in the Protocol when the offence is committed:</p> <ul style="list-style-type: none"> • against or on board a fixed platform while it is located on the continental shelf of that State; (Article 1) • by a national of that State. [(Article 3(1)(b))] <p>A State Party may also establish its</p>	<p>Each State Party shall or may establish its jurisdiction according to the same rules as contained in the 1988 SUA Protocol, taking into account the extended list of crimes in the 2005 SUA Protocol (see part II “Criminalization”).</p> <p>[(Article 1(1))]</p> <p>Moreover, each State Party in accordance with its domestic legal principles, shall 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</p>

	<p>jurisdiction over any such offence when:</p> <ul style="list-style-type: none"> it is committed by a stateless person whose habitual residence is in that State; or [(Article 3(2)(a))] during its commission a national of that State is seized, threatened, injured or killed; or [(Article 3(2)(b))] it is committed in an attempt to compel that State to do or abstain from doing any act. [(Article 3(2)(c))] <p>Each State Party shall establish its jurisdiction when the alleged offender is present in its territory and it does not extradite him. [(Article 3(4))]</p> <p>Moreover, the Protocol applies in every case in which the offender or alleged offender is found in the territory of a State Party other than the State in whose internal waters or territorial sea the fixed platform is located. [(Article 1)]</p>	<p>responsible for management or control of that legal entity has, in that capacity, committed an offence set forth in the Protocol. Such liability may be criminal, civil or administrative.</p> <p>The Protocol applies in the same manner as the 1988 SUA Protocol, with the following additional elements:</p> <ul style="list-style-type: none"> the Protocol does not apply to the activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law; the Protocol does not apply to the activities undertaken by military forces of a State in the exercise of their official duties (inasmuch as they are governed by other rules of international law).
II. Criminalization	<p>According to the Protocol, any person commits an offence if that person unlawfully and intentionally: (Article 2)</p> <p>(a) seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation; or</p> <p>(b) performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety; or</p> <p>(c) destroys a fixed platform or causes damage to it which is likely to endanger its safety; or</p> <p>(d) places or causes to be placed on a fixed</p>	<p>Within the meaning of the 2005 SUA Protocol, any person commits an offence if that person unlawfully and intentionally:</p> <p>1. Commits one of the offences mentioned in paragraphs (a) to (d) listed in the column on the left regarding the 1988 SUA Protocol;</p> <p>2. 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 (b) and (c) in the column on the left, if that threat is likely to endanger the safety of the fixed platform;</p>

	<p>platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety; or</p> <p>(e)injures or kills any person in connection with the commission or the attempted commission of any of the offences set forth in paragraphs (a) to (d).</p> <p>The following actions also constitute an offence under the Protocol:</p> <ul style="list-style-type: none"> • an attempt to commit any of the offences set forth in paragraphs (a) to (d); • abetting the commission of any of the offences set forth in paragraphs (a) to (d) perpetrated by any person; • acting as an accomplice of a person who commits such an offence; • threat, 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 (b) and (c), if that threat is likely to endanger the safety of the fixed platform. 	<p>[[Article 2(2)]]</p> <p>3. 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 abstain from doing any act:</p> <p>[[Article 2bis]]</p> <p>(A)uses against or on a fixed platform or discharges from a fixed platform any explosive, radioactive material or BCN (biological, chemical or nuclear) weapon in a manner that causes or is likely to cause death or serious injury or damage; or</p> <p>[[Article 2bis (a)]]</p> <p>(B) discharges, from a fixed platform, oil, liquefied natural gas or other hazardous or noxious substance (other than mentioned in point (A)), in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or</p> <p>[[Article 2bis (b)]]</p> <p>(C) threatens, with or without a condition, as is provided for under national law, to commit one of the offences mentioned in points (A) and (B);</p> <p>[[Article 2bis (c)]]</p> <p>4. Injures or kills any person in connection with the commission of any of the offences mentioned in points 1 and 3.</p> <p>Any person also commits an offence within the meaning of the Protocol if that person:</p> <p>[[Article 2ter)]]</p> <p>5. Attempts to commit any of the offences mentioned in points 1, 3 (A) and (B) and 4.</p> <p>6. Participates as an accomplice in any of the</p>
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		<p>above mentioned offences.</p> <p>7. Organizes or directs others to commit any of the offences mentioned in points 1, 2, 3, 4 and 5.</p> <p>8. Contributes to the commission of one or more offences mentioned in points 1, 2, 3, 4 and 5 by a group of persons acting with a common purpose, intentionally and either:</p> <ul style="list-style-type: none"> • with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of any of the offences mentioned in points 1, 2 and 3; or • in the knowledge of the intention of the group to commit any of the offences mentioned in points 1, 2 and 3.
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PART II

7.0 The Need For The Ratification And Domestication Of The 2005 SUA Treaties By Nigeria

Nigeria is yet to ratify the 2005 SUA Convention and the 2005 Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf. Article 17 of the 2005 SUA Convention provides that the Convention shall be open for signature from 14 February 2006 to 13 February 2007 and shall thereafter remain open for accession. In view of the fact that the period allowed by the Convention for signature has elapsed, Nigeria may need to signify its consent only by accession. There are at present thirty-one States-Parties to the Convention and 29 States-Parties to the Fixed Platform Protocol.

The need for Nigeria to accede to the Convention and incorporate same into her domestic laws is informed by a number of considerations. Nigeria is one of the coastal States on the Gulf of Guinea which is one of the three prime global pirate hotspots. The country is the worst affected with violent gangs that prey on ships at anchor and navigating through her territorial waters and high seas with fatalities being recorded.⁵⁸ Nigeria experienced over 293 pirate attacks between 2003 and 2008.⁵⁹ These attacks have affected freight and insurance premiums on cargo destined for Nigeria.⁶⁰

Piracy manifests as low-intensity insurgency when it comes to oil exploration. Oil installations in Nigeria have come under attack by pirates and terrorists with oil production in Nigeria dropping by 20 percent at the peak of attacks in 2006 costing the Nigerian economy approximately US\$202 million.⁶¹ Although most of the attacks were on onshore facilities and those within the territorial waters of Nigeria, the stakes went up in 2008 when the Bonga oil platform, an FPSO producing about 202,000 barrels of crude oil per day and located about 120 nautical miles offshore Nigeria, was attacked by a militant group, the Movement for the Emancipation of the Niger Delta (MEND). The operator of the platform, Shell, was forced to

⁵⁸ *Two Dead in Gulf of Guinea Hijackings*, HIS Safety at Sea, Daily News E-mail, 12 February 2015.

⁵⁹ Haywood, Robert and Spivak, Roberta; *Maritime Policy*, Routledge, New York, United States, 2012.

⁶⁰ Lisa Otto, *Piracy in Gulf of Guinea: Attacks on Nigeria's Oil Industry Spill Over in the Region*, (2011). <http://www.consultancyafrica.com/index>. Accessed 01-05-2015.

⁶¹ Lisa Otto, *ibid*.

shut it down for three weeks. MEND has been classified as a terrorist organisation.⁶² Nigeria is at present estimated to be losing about one million barrels of crude oil per day to attacks on its oil installations and oil theft.⁶³

The vulnerability of the country's offshore oil installations to attack by pirates and terrorists can be gleaned from the profile of the platforms in the table below.

Table 4: Nigeria's Offshore Oil Fields

BONGA (Dev. Cost-\$3.6bn)						
Operator	Partners	Discovery (Year)	Commence Production (Year)	Current Production (Oil) (bpd)	Platform	Location Offshore
Shell	Exxon, Agip, ELF	1996	2005	202,000	FPSO	120km/75nm*
ERHA (Dev. Cost-\$3.6bn)						
ExxonMobil	Shell	1999	2006	150,000	FPSO	97km/60nm
AGBAMI (Dev. Cost-\$3.5bn)						
Chevron	Statoil, Petrobas, Famfa	1999	2008	250,000	FPSO	70nm
AKPO (Dev. Cost-\$1.08bn)						
TOTAL	CNOOC, Petrobas, NNPC, Sapetro	2000	2009	175,000	FPSO	124nm
ABO (Dev. Cost-\$400mn (cost of FPSO)						
Agip	Oando	1997	2003	45,000	FPSO	55nm
USAN						
TOTAL	Chevron, Esso, Nexen	2002	2012	180,000	FPSO	100km
EGINA						
TOTAL	NNPC, CNOOC, Sapetro, Petrobas	2003	2017	200,000	FPSO	150km
AMENAM KPONO						
TOTAL	ExxonMobil, NNPC	1990	2003	125,000	FSO/Fixed Platform	19nm/30km

⁶² Kraska, James and Pedro, Raul; *International Maritime Security Law*, Martins Nijhoff, Leide, The Netherlands, 2013, p. 1.

⁶³ Buhari: *Victory Offers Mixed Messages for Gulf of Guinea Shipping*, HIS Maritime Safety at Sea, Daily News E-Mail (2 February 2013).

OKORO						
Afren	Amni	1973	2008	18,872	FPSO	12km/7.5nm
OYO (Dev. Cost-\$1bn)						
Agip	GAMAC Energy	1995	2009/2010	25,000	FPSO	70km/43nm

*nm - nautical miles

There is therefore an overwhelming need for Nigeria to accede to the Convention and incorporate same in her domestic laws to ensure the arrest and prosecution of persons involved in unlawful activities that threaten maritime transport off her coast and to also ensure that offenders do not find refuge in the country. In the *US v Shi*,⁶⁴ the prosecution of Shi was upheld because the need of the United States to be able to fulfil treaty obligations and the historical need to deal with crimes on the high seas provided a constitutional justification for the domestic statute under which Shi was properly prosecuted.

8.0 Incorporation of 2005 SUA Convention and Protocol in Nigeria's Domestic Legislation

Although Nigeria ratified the 1988 SUA Convention and the Fixed Platform Protocol and also incorporated the offences created in the treaties in its **Terrorism (Prevention) Act No. 10, 2011** and the **Terrorism (Prevention)(Amendment) Act, 2013**, the country is yet to accede to the 2005 SUA Convention and its Fixed Platforms Located on the Continental Shelf Protocol. The implication of this is that the amendments/additions introduced by the 2005 SUA and 2005 Fixed Platform Located on the Continental Shelf Protocol would not be enforced by courts Nigeria since the country is not a party to the treaties.

A new legislation to be known as **The Suppression of Unlawful Acts against the Safety of Maritime Navigation Act** is proposed here to implement the 2005 SUA Convention and Fixed Platforms Protocol in Nigeria. A new standalone Act is preferred to a further amendment of the Terrorism (Prevention) Act, 2011 in order to ensure that the essence of the treaties is adequately captured in view of the peculiarities and nuances of the maritime sector. It is necessary to state that although the Terrorism (Prevention) Act incorporated the criminalisation element of 1988 SUA Convention and its Fixed Platforms Protocol and provided for the court to exercise jurisdiction for the offences created under the treaties,

⁶⁴ 525 F. 3rd 709 (9th Cir. 2008).

sufficient attention was not given in the Act in defining its scope of application within the maritime zones established by UNCLOS. Furthermore, the Act failed to establish mandatory and optional grounds of jurisdiction, and incorporate the ‘extradite-or-prosecute’, exclusion of political offences and other extradition provisions as required by the SUA Convention.

It is also pertinent to point out further that since Nigeria did not accede to the 2005 SUA Convention and Fixed Platform Protocol, neither the 2011 Act nor the amended 2013 Act could incorporate the additional offences created by the 2005 SUA Convention. The two Acts could also not make provision for liability of legal entities and provide for ship boarding, mutual assistance and international cooperation which are key elements of the 2005 SUA Convention. It is therefore essential to enact an Act to deal with these.

The Terrorism (Prevention) Act was enacted by Nigeria to implement the provisions of the Convention on the Prevention and Combating of Terrorism 1999⁶⁵ and the Convention on the Suppression of the Financing of Terrorism 1999.⁶⁶ The offences created by 1988 SUA Convention were only included in view of the fact that the Convention has elements of terrorism. Lumping SUA treaties together with other terrorism conventions in one legislative instrument would make for an unwieldy mix. A new legislation dedicated to giving effect to the SUA treaties is therefore preferred.

The proposed **The Suppression of Unlawful Acts against the Safety of Maritime Navigation Act** shall incorporate the provisions of the 2005 SUA Convention and its 2005 Protocol in the terms earlier discussed.

9.0 The Process of Domestication of International Conventions in Nigeria

The position of Nigerian law on the introduction of international conventions or treaties into domestic legislation is laid down by the Constitution of the Federal Republic of Nigeria 1999 which states in Section 12(1) that ‘no treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly’.

⁶⁵ Adopted in Algiers, Algeria 14 July 1999, entered into force 6 December 2002. 15 State Parties.

⁶⁶ Adopted in New York 9 December 1999, entered into force 10 April 2002. 186 State Parties.

This means that until a separate law is passed by the National Assembly, an international treaty shall remain unenforceable in Nigerian courts. Nigeria maintains a bicameral legislature at the national level comprising the Senate and House of Representatives which together constitute the National Assembly. Both houses must pass a bill before it becomes law.

The first step for Nigeria to take in respect of the implementation of the 2005 SUA Convention and its Fixed Platforms Protocol would be for the country to accede to the treaties by the deposit of appropriate instrument of accession with the IMO Secretary General as required under Article 17 of the Convention.

Upon accession, a draft Suppression of Unlawful Acts against the Safety of Maritime Navigation Bill would be prepared by the Federal Ministry of Justice and sent to relevant agencies (Nigerian Ports Authority, Nigerian Maritime Administration and Safety Agency, Office of the Security Adviser to the President, the Inspector-General of Police, Attorney-General and Minister of Justice, Ministry of Defence, Ministry of Foreign Affairs, Federal Ministry of Transport, Nigerian Navy) for their comments.

After collation of the comments, meetings of all the agencies and the Federal Ministry of Justice would be held under the auspices of the Federal Ministry of Transport for the harmonisation of positions of all the agencies on the Bill before a draft executive bill is prepared and sent to the Federal Executive Council for approval. The Federal Executive Council comprises the President of the Federation as Chairman and the Ministers and State Governors as members. The Council would deliberate on the draft, with the Minister of Transport making a presentation on the contents and the need for the enactment of the Bill into law to fulfil Nigeria's international obligations and for the protection of maritime transport in the territorial sea of the country and the high seas.

Upon approval by the Federal Executive Council, the bill would be presented as an Executive Bill to the National Assembly where it will go through the process of First, Second and Third Readings, Committee Stage and Public Hearings before both chambers (Senate and House of Representatives) of the legislative house.

If the Bill is passed, it shall take effect upon Presidential Assent. It is then published in the National Gazette, whereupon it becomes law recognised and enforceable in Nigerian courts.

10.0 Draft Legislation

A draft **Suppression of Unlawful Acts against the Safety of Maritime Navigation Act** has been prepared and forms Part III of this work. The draft is designed to reflect as closely as possible the reality of law making in Nigeria. The focus would be on non-derogation from the core principles of the Convention. Upon coming into force, this Act will take the position of the primary legal instrument on suppression of unlawful acts against the safety of maritime navigation in Nigeria.

The draft instrument has eleven parts and twenty-three sections. Part I of the Act sets out the scope of application. The scope of application of the 2005 SUA Convention (Article 4) was captured in Section 1(2)(b) and 1(3)(a) of the Act.

Part II of the Act creates relevant offences in line with the offences created in Articles 3, *3bis*, *3quater* and *3ter* of the Convention and Articles 2, *2bis* and *2ter* of the Fixed Platforms Protocol. The offences include offences against the safety of ships (Section 2), offences in relation to BCN weapons and the use of ships to cause death or injury (Section 3), offences in relation to transporting BCN weapons on board ships (Section 3[2]), transporting offenders on board ships (Section 4) and causing death or injury in connection with the commission of offences under the Act or attempting, participating, organising or contributing to the commission of an offence under the Act (Section 5). Appropriate penalties were also prescribed in compliance with Article 5 of the Convention which obliges States Parties to impose appropriate penalties which take into account the grave nature of the offences.

Part III vests in the Federal High Court jurisdiction for the trial of offences under the Act (Sections 6-10). Mandatory and optional grounds of jurisdiction are dealt with here in compliance with Article 6 of the Convention (Article 3 Fixed Platform Protocol) which requires State Parties to establish jurisdiction.

Part IV of the Act covers extradition. In Section 11, offences created under the Act are deemed extraditable offences; in Section 11(3), the Convention shall serve as extradition treaty where no such treaty exists between Nigeria and a Convention; Section 11(7) deals

with the rights of a person in respect of whom an extradition request has been made; Section 12 covers the political offence exception rule; and in Section 14, the obligation of Nigeria to prosecute or extradite an alleged offender is set out. Power is also granted Nigeria in Part IV to refuse extradition where there are grounds to believe an extradition request was made to persecute an offender on grounds of political opinion, gender, race, ethnic nationality, or religion. This Part is in compliance with Articles 10, 11, 11*bis* and 11*ter* of the Convention.

In Part V, the master of a vessel registered in Nigeria may deliver a suspected offender to a Convention State (Section 16). The Part also makes provision for the formalities to be followed in making such delivery. This is in compliance with Article 8 of the Convention.

The liability (criminal or civil) of legal entities located in Nigeria for offences committed by persons in the management and control of such entities when acting in that capacity is the focus of Part VI of the Act. This Part aims to ensure compliance with Article 5*bis* of the Convention.

Part VII deals with ship boarding, information sharing and mutual assistance (Sections 19 and 19). In line with Article 8*bis* of the Convention, this Part contains sections dealing with requests received for boarding Nigeria-flagged ships suspected to be involved in the commission of an offence under the Act, information to be provided in such requests, mode of boarding, authorisations for boarding, detention of suspect ships, and liability for damages and losses in respect of such boardings.

Part VIII deals with powers of arrest, investigation and prosecution.

In Part IX, provision is made for necessary amendments in view of the fact that certain provisions of the Act may affect existing Acts, such as the Extradition Act, 1967 and the Terrorism (Prevention) Act, 2011 and Terrorism (Prevention) (Amendment) Act, 2013.

Lastly, interpretations come within the purview of Part X.

Effort was made in the draft law to capture all the requirements of the treaties.

**SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF
MARITIME NAVIGATION ACT, 2015**

EXPLANATORY MEMORANDUM

This Act provides for the enforcement of the provisions of the 2005 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol of 2005 (2005 SUA Convention) to the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (2005 SUA Protocol); and to make other provisions ancillary to the treaties.

The Act also prescribes penalties for violating any of the provisions.

SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF
MARITIME NAVIGATION ACT 2015

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SCHEDULE II

SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION ACT, 2015

A Bill for an Act to Give Effect to the 2005 Convention for Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005 SUA Convention) and the Protocol of 2005 to the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (2005 SUA Protocol) which supplements that Convention; and to make other provisions for the safety of maritime navigation and other facilities ancillary thereto; and for amendment of relevant existing Acts; and for connected purposes.

(1st May 2015) *Commencement*

WHEREAS a Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 2005 and the 2005 Protocol to the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf were adopted in London on March 10, 2005:

AND WHEREAS the Federal Republic of Nigeria intends to accede to the said Convention and Protocol by depositing an instrument of accession with the Secretary-General of the International Maritime Organisation:

AND WHEREAS it is necessary to make legislative provision to give effect to the Federal Republic of Nigeria's obligations under the aforesaid Convention and Protocol:

ENACTED by the National Assembly of the Federal Republic of Nigeria-

PART I

SCOPE OF APPLICATION

1. Application

(1) This Act shall apply-

(a) To all ships flying the flag of the Federal Republic of Nigeria; or

(b) To all ships navigating or scheduled to navigate into, through, or from waters beyond the outer limits of the territorial waters of Nigeria or the lateral limits of its territorial waters with adjacent States; or

(c) To all fixed platforms located on the continental shelf of the Federal Republic of Nigeria; or

(2) Notwithstanding anything contained in paragraph (1), this Act shall also apply to offences committed by an offender or alleged offender-

(a) When such offender is found in the territory of a Convention State; and

(b) When such an offender is found in the territory of a State other than the Convention State.

(3) Nothing in this Section shall affect the rights, obligations and responsibilities of States and individuals under international law, nor the activities of armed forces during an armed conflict or activities undertaken by military forces of a State in the exercise of their official duties.

(4) Nothing in this Act shall affect the rights, obligations and responsibilities of the Federal Republic of Nigeria under the treaties contained in Schedule I of this Act.

(5) This Act shall not apply to:

(i) A warship; or

(ii) a ship owned or operated by a State when being used as a naval auxiliary or for customs or police purposes; or

- (iii) a ship which has been withdrawn from navigation or laid up.
- (6) Nothing in this Act affects the immunities of warships and other government ships operated for non-commercial purposes.

PART II

OFFENCES AGAINST THE SAFETY OF SHIPS AND FIXED PLATFORMS

2. Offences against the safety of ships and fixed platforms

- (1) Any person who unlawfully and intentionally-
 - (a) Seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
 - (b) Performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or
 - (c) Destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of such ship; or
 - (d) Places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or
 - (e) Destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or
 - (f) Communicates information which that person knows to be false and under circumstances in which such information may reasonably be believed, thereby endangering the safe navigation of a ship; or

- (g) Seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation; or
- (h) Performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety; or
- (i) Destroys a fixed platform or causes damage to it which is likely to endanger its safety; or
- (j) Places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety

commits an offence and is liable on conviction to life imprisonment.

- (2) Any person who threatens, 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 2(b), (c), (d), (e) and (f), if the threat is likely to endanger the safe navigation of the ship or the safety of the fixed platform

commits an offence under this Act and is liable on conviction to imprisonment for a term of not less than twenty years.

3. Offences in relation to BCN weapons and use of ships to cause death or injury

- (1) Any person who unlawfully and intentionally commits any of the following acts, when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or abstain from doing any act:

- (i) Using against or on a ship or a fixed platform, or discharging from a ship or a fixed platform any explosive, radioactive material or BCN weapon in

a manner that causes or is likely to cause death or serious injury or damage; or

- (ii) Discharging, from a ship or fixed platform, oil, liquefied natural gas or other hazardous or noxious substance, which is not covered by subparagraph 1(a)(i), in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or
- (iii) Using a ship in a manner that cause death or serious injury or damage; or
- (iv) Threatens to commit an act set forth in subparagraph (1)(i), (ii) or (iii)

commits an offence under this Act and is liable on conviction to imprisonment for a term of not less than twenty years.

(2) Any person who unlawfully and intentionally transports on board of a ship-

- (i) Any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organisation to do or to abstain from doing any act; or
- (ii) Any BCN weapon, knowing it to be a BCN weapon; or
- (iii) Any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to an IAEA comprehensive safeguards agreement; or
- (iv) Any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose

commits an offence under this Act and is liable on conviction to imprisonment for a term of not less than twenty years.

Provided that it shall not be an offence within the meaning of this Act to transport an item or material covered by paragraph 2(iii) or, insofar as it relates to a nuclear weapon or other nuclear explosive device, paragraph 2(iv), if such an item or material is transported to or from the territory of, or is otherwise transported under the control of, a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons where:

- (a) The resulting transfer or receipt, including internal to a state, of the item or material is not contrary to such State Party's obligations under the Treaty on the Non-Proliferation of Nuclear Weapons; and
- (b) If the item or material is intended for the delivery system of a nuclear weapon or other nuclear explosive device of a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons, the holding of such weapon or device is not contrary to that State Party's obligations under that Treaty.

4. Transporting Offenders on board ships

- (1) Any person who unlawfully and intentionally transports another person on board a ship, knowing that the person has committed an act that constitutes an offence set forth in Sections 2 and 3 or an offence set forth in any treaty listed in Schedule II, and intending to assist that person to evade criminal prosecution commits an offence under this Act and is liable on conviction to imprisonment for a term of not less than twenty years.

5. Parties to Offences

- (1) A person also commits an offence within the meaning of this Act if that person:
 - (a) Unlawfully and intentionally injures or kills any person in connection with the commission of any of the offences set forth in Sections 2(1), Section 3 or Section 4; or

- (b) Attempts to commit an offence set forth in Section 2(1), Section 3(1)(i)(ii) or (iii), or subparagraph (1)(a) of this Section; or
- (c) Participates as an accomplice in an offence set forth in Section 2, Section 3, Section 4, or subparagraph (1)(a) or (b) of this Section; or
- (d) Organises or directs others to commit an offence set forth in Section 2, Section 3, Section 4, or subparagraph (1) (a) or (b) of this Section; or
- (e) Contributes to the commission of one or more offences set forth in Section 2, Section 3, Section 4 or subparagraph (a) or (b) of this Section, by a group of persons acting with a common purpose, intentionally and either:
 - (i) With the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence set forth in Section 2, 3 or 4; or
 - (ii) in the knowledge of the intention of the group to commit an offence set forth in Section 2, 3 or 4

and shall be liable on conviction to the same term of imprisonment or other punishment as specified in applicable Sections 2, 3 or 4.

PART III

JURISDICTION

6. (1) The Federal High Court shall have the sole jurisdiction to try an offence and impose penalties specified in this Act.
- (2) The Federal High Court shall have jurisdiction with respect to any of the offences set forth in Sections 2, 3, 4 or 5 of this Act if they have been attempted or committed:

- (i) on board or against a ship registered in or flying the flag of the Federal Republic of Nigeria or a fixed platform located on the continental shelf of the Federal Republic of Nigeria at the time the offence is committed; or
- (ii) by a citizen of the Federal Republic of Nigeria; or
- (iii) in the territory of Nigeria, including its territorial waters; or
- (iv) by a stateless person whose habitual residence is in Nigeria, whether the act constituting the offence is committed within or outside the Federal Republic of Nigeria.

(3) In addition, the Federal High Court shall have jurisdiction for any of the offences set forth in Sections 2, 3, 4 or 5 of this Act, whether the act constituting the offence is committed within or outside the territory of the Federal Republic of Nigeria, if:

- (i) The person accused of or suspected of the commission of such offence is present in the territory of Nigeria and is not extradited to any State requesting extradition for the same conduct; or
- (ii) During the commission of the offence, a citizen of the Federal Republic of Nigeria is seized, threatened, injured or killed; or
- (iii) The offence was committed in an attempt to compel the Government of the Federal Republic of Nigeria to do or abstain from doing any act; or

7. (1) On being satisfied that the circumstances so warrant, the Federal Government of Nigeria or any other authority designated by it, shall take the person referred to in Section 8 and 9, and present in the territory of Nigeria, into custody or take measures, in accordance with the law for the time being in force, to ensure his presence in Nigeria for such time as is necessary to enable any criminal or extradition proceeding to be instituted.

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

(2) The person in custody referred to in Section 9 shall be entitled to be visited by the Convention State of which he is a national.

8. The Minister of Foreign Affairs shall notify the Secretary-General of the jurisdiction established under this Act and shall thereafter publish the notice in the Official Gazette.

PART IV

EXTRADITION

9. Extraditable Offences

(1) The offences under Sections 2, 3, 4 or 5 of this Act shall be deemed to have been included as extraditable offences in the Extradition Act and provided for in all the extradition treaties made by the Federal Republic of Nigeria with Convention States which extend to, and are binding on Federal Republic of Nigeria, on the date of commencement of this Act.

(2) Where there is, on the commencement date of this Act, an extradition arrangement in force between the Government of the Federal Republic of Nigeria and a Convention State, such arrangement shall, for the purposes of the Extradition Act, be deemed to include provision for extradition in respect of the offences described in sections 2, 3, 4 or 5 of this Act.

(3) Where there is no extradition arrangement between the Government of the Federal Republic of Nigeria and a Convention State, the Minister of Foreign Affairs may, by Order published in the Gazette, treat the Convention, for the purposes of the Extradition Act, as an extradition arrangement between the Government of the

Federal Republic of Nigeria and such Convention State providing for extradition in respect of the offences described in sections 2, 3, 4 or 5 of this Act.

- (4) Where the Government of the Federal Republic of Nigeria accedes to request by a Convention State for the extradition of a person accused of an offence described in section 2, 3, 4 or 5 of this Act, the act constituting such offence shall, for the purposes of the Extradition Act, be deemed to have been committed not only in the place where it was committed but also within the jurisdiction of the requesting Convention State.
- (5) The offences set forth in Sections 2, 3, 4 or 5 shall be treated, for the purposes of extradition between Nigeria and any Convention State, as if they had been committed in a place within the jurisdiction of Nigeria or the Convention State requesting extradition.
- (6) Notwithstanding the provisions of paragraph (1), no person shall be liable to be surrendered under the Extradition Act in respect of an act or omission that amounts to a crime to which that paragraph applies if that act or omission occurred before the date on which the crime was deemed by that paragraph to be an offence described in the relevant extradition treaty.
- (7) If the surrender of any person is sought in respect of any act or omission that amounts to a crime described in sections 2, 3, 4 or 5, the Attorney-General and Minister of Justice of the Federation, or the court before which that person is brought, in deciding whether to order the surrender of that person, must have due regard to whether the country that is seeking the surrender will give effect to the following rights of that person-
 - (a) the right to communicate, without delay, with the nearest appropriate representative of the country of which that person is a citizen or is habitually resident; and
 - (b) the right to be visited by a representative of the country referred to in paragraph (a).

10. The offences set forth in Sections 2, 3, 4 or 5 of this Act shall not be regarded as political offences for the purpose of this Act, notwithstanding the provisions of Section 3 of the Extradition Act.
11. 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 or inspired by political motives.
12. If another state claims jurisdiction with regard to an act that is an offence under this Act, and the alleged offender is not promptly brought to trial in Nigeria, the alleged offender shall, subject to the provisions of Extradition Act of Nigeria, be extradited to a requesting State.
13. If more than one request is received from Convention States who have established jurisdiction for offences under this Act for extradition of an alleged offender that Nigeria decides not to prosecute, the alleged offender may, subject to the provisions of Extradition Act, be extradited to one of the requesting states, provided that the ship in respect of which the act or omission relates was flying the flag of one of those Convention State.

Provided that Nigeria shall not have an obligation to extradite or afford mutual assistance under this Act if there are substantial grounds for believing that a request for extradition for offenses set forth in Sections 2, 3, 4 or 5 of this Act or for mutual assistance with respect to the offenses has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with the request would cause prejudice to that person's position for any of these reasons.

PART V

DELIVERY OF DETAINED PERSONS

14. (1) The master of a ship registered in the Federal Republic of Nigeria may deliver to the appropriate authorities of a country that is a Convention State any person whom the master has reasonable grounds to believe has committed a crime under in this Act.

(2) The master may, subject to paragraphs (3) and (4), deliver a person arrested and detained under paragraph (1) to the appropriate authorities in any other Convention State.

(3) Before delivering a person arrested and detained under paragraph (1) to the appropriate authorities in a Convention State, the Master shall notify those authorities of his or her intention to do so.

(4) Where the master delivers a person arrested and detained under paragraph (1) to the appropriate authorities in a Convention State, he or she shall furnish to those authorities the evidence in his or her possession supporting the commission of an offence under this Act by that person.

(5) Where the master of the ship registered in another Convention State delivers to a police officer in the Federal Republic of Nigeria a person arrested and detained on that ship on suspicion of having committed an offence corresponding to an offence under this Act, it shall be the duty of such police officer to take such person into custody, unless the police officer has reasonable grounds to believe that such a person has not committed the offence as alleged. Where a police officer refuses to take such person into custody, he or she shall give written reasons for such refusal.

(6) The master of a ship registered in the Federal Republic of Nigeria who fails, without reasonable cause, to comply with paragraphs (3) or (4) commits an offence under this Act and shall be liable to imprisonment for a term not exceeding five years.

PART VI

LIABILITY OF LEGAL ENTITIES

15. (1) A legal entity located or having its principal place of business in the territory of Nigeria or organised under the Companies and Allied Matters Act or any other law

regulating corporate entities shall be liable when a person responsible for management and control of that entity has in that capacity committed an offence under this Act.

- (2) A legal entity found liable in accordance with paragraph (1) shall pay a fine not exceeding ten million naira.
- (3) The application of paragraph (1) of this section is without prejudice to the personal responsibility of those individuals or persons as perpetrators of or accomplices to the offence.
- (4) Where a legal entity is convicted of an offence under this Act, it is liable to the forfeiture of any assets, funds or property used or intended to be used in the commission of the offence and the court may issue an order to windup the entity or withdraw the practice licence of the entity and its principal officers or both.
- (5) Where the court orders the entity to be wound up, its assets and properties shall be transferred to the Federation Account of the Federal Republic of Nigeria.
- (6) A person responsible for the management and control of a legal entity or an officer or employee of a legal entity who has instigated or connived in the commission of an offence under this Act shall be liable on conviction to imprisonment for a term of not less than ten years or fine of five million naira or both.
- (7) Nothing contained in paragraphs (1) and (5) of this section shall render any person liable to punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

PART VII

SHIP BOARDING AND MUTUAL ASSISTANCE

16. Ship boarding

- (1) If law enforcement or authorised officials of another Convention State encounter a ship flying the flag or registered in the Federal Republic of Nigeria located seaward of any State's territorial sea and the officials of the Convention State have 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 under this Act and the Convention State desires to board the ship, the Convention State shall request the Government of the Federal Republic of Nigeria to confirm the nationality of the suspect ship.
- (2) The request for confirmation of nationality of the suspect ship in paragraph (1) shall contain the name of the suspect ship, the IMO ship identification number, the port of registry, the ports of origin and destination, and any other relevant information.
- (3) The Attorney-General of the Federation may, with the approval of the President, respond expeditiously to requests for confirmation of nationality and other requests received from another Convention State in respect of vessels flying the flag or registered in Nigeria.
- (4) If the nationality of the suspect ship in paragraph (1) is confirmed by the Attorney-General of the Federation, the Convention State shall request authorisation from the Government of the Federal Republic of Nigeria to board and to take appropriate measures with regard to that ship which may include stopping, boarding and searching the ship, its cargo and persons on board, and questioning the persons on board in order to determine if an offence under this Act has been, is being or is about to be committed.

(5) The Attorney-General of the Federation may, with the approval of the President, respond to the request for authorisation from the Convention State to board the suspect ship in terms of the following:

- (i) Authorise the Convention State to board the suspect ship and take appropriate measures set out in paragraph (4) subject to conditions which may include the provision of additional information by the Convention State; or
- (ii) That officials of a security agency of the Federal Republic of Nigeria shall conduct the boarding and search; or
- (iii) That officials of a security agency of the Federal Republic of Nigeria shall conduct the boarding and search together with the Convention State, subject to the conditions Nigeria may impose in accordance with paragraph (i).

(6) A Convention State may detain a ship registered in the Federal Republic of Nigeria, cargo and persons on board the ship pending receipt of disposition instructions from the Government of the Federal Republic of Nigeria when evidence of conduct described in Sections 2, 3, 4, and 5 of this Act is found as the result of any boarding conducted pursuant to Part VII of this Act.

Provided that the Convention State shall promptly inform the Government of the Federal Republic of Nigeria of the results of a boarding, search and detention conducted pursuant to this Act and the discovery, if any, of evidence of illegal conduct that is not subject to this Act found on the ship.

(7) Boarding of a ship suspected to have been involved in the commission of a crime under this Act may be carried out in the ship's next port of call or elsewhere within the territorial waters of Nigeria if it is established that it would not be safe to board the ship having regard to the dangers and difficulties involved in boarding a ship at sea.

- (8) A ship boarded pursuant to this Act may be detained along with its cargo or other items on board and may be liable to seizure, forfeiture, arrest and prosecution further to an order of the Federal High Court made pursuant to this Act.
- (9) The Convention State shall not use force except when necessary in carrying out authorised actions under this Act to ensure the safety of persons on board the ship. Any use of force pursuant to this Act shall not exceed the minimum degree of force which is necessary and reasonable in the circumstances.

17. Safeguards

- (1) When a Convention State conduct a boarding or search of a ship or take any other measures against a suspect ship or persons on board the ship pursuant to this Act, it shall-
- (i) Take account of the need not to endanger the safety of life at sea;
 - (ii) Take due account of the safety and security of the ship and its cargo;
 - (iii) Take due account not to prejudice the commercial or legal interest of the Federal Republic of Nigeria;
 - (iv) Ensure that all persons on board are treated in a manner which preserves their basic human dignity;
 - (v) Ensure, within available means, that any measures taken with regard to the ship or its cargo is environmentally sound under the circumstances;
 - (vi) Ensure that the master of the ship is, or has been, afforded the opportunity to contact the ship's owner, manager or the representatives of the Federal Republic of Nigeria;
 - (vii) Take reasonable efforts to avoid a ship being unduly detained or delayed.

18. Any injury to, damage or loss of life attributable to measures taken pursuant to Section 20 of this Act shall be remedied in accordance with the laws of the Federal Republic of Nigeria.
19. (1) Any measure taken pursuant to this Section shall be carried out by law enforcement or other authorised officers from warships or military aircraft, or from ships or aircraft clearly marked and identifiable as being on government service and authorised to that effect.
- (2) Security agencies or other authorised officers carrying out law enforcement under this Act shall provide appropriate government-issued identification documents for examination by the master of the ship upon boarding.
20. This Section shall not apply to or limit boarding of ships conducted by any Convention State in accordance with international law, seaward of the territorial waters of the Federal Republic of Nigeria, including boardings based upon the right of visit, the rendering of assistance to persons, ships and property in distress or peril, or an authorisation from the Government of the Federal Republic of Nigeria to take enforcement or other action.
21. Upon ratification, accession or approval of the Convention and Protocol by the Federal Republic of Nigeria, the Minister of Foreign Affairs shall notify the Secretary-General and thereafter cause such notice to be published in the Official Gazette of the following:
- (i) That with respect to ships registered in or flying the flag of the Federal Republic of Nigeria, a requesting Convention State is granted authorisation to board and search the ship, its cargo and persons on board and to question the persons on board in order to locate and examine documentation of the ship's nationality and determine if an offence set forth in this Act has been, is being or is about to be committed, if there is no response from the Attorney-General of the Federation within four (4) hours of acknowledgement of receipt of request from the Convention State.

- (ii) That notifications made pursuant to paragraph (i) may be withdrawn at any time.
- (iii) That the Attorney-General of the Federation and Inspector-General of Police are authorised to make, receive and respond to requests for assistance, for confirmation of nationality, and for authorisation to take appropriate measures pursuant to this Act.

PART VIII

CONFERMENT OF POWERS

22. Powers of Arrest, Investigation and Prosecution

- (1) Subject to the general powers of the Attorney-General of the Federation to institute and undertake criminal proceedings on behalf of the Federal Government of Nigeria, he may delegate his power to any agency charged with the responsibility of terrorist investigation or any other agency to institute criminal proceedings against any person in respect of offences categorised in this Act.
- (2) For the purpose of consolidating criminal proceedings under subsection (1) of this section, the security agencies shall collaborate and cooperate with the investigating agency in the investigation or prosecution of any offence in this Act.
- (3) For the purpose of this Act, the Attorney-General of the Federation may, by notification in the Official Gazette, confer on any Officer of a security agency of the Federal Republic of Nigeria or any other officer powers of arrest and investigation under this Act.
- (4) Any unauthorised person may, on grounds of urgency and without warrant, proceed with the arrest of any person, where there is a reasonable cause to suspect that, any of the offences referred to under this Act has been, or is about to be committed.

- (5) Where an authorised person suspects, with reasonable cause, that a person who is about to board a ship intends to commit any of the offences under this Act and or in relation to a ship, such authorised person may-
- (a) Prevent the person from boarding the ship or from travelling on board the ship;
 - (b) Without warrant, board the ship and remove the person from it; or
 - (c) Without warrant, arrest the person.

PART IX

AMENDMENTS AND DURATION

23. Amendments

- (1) The Attorney-General of the Federation of Nigeria may by regulation amend Schedules I and II to reflect any amendment to the convention to which the Government of the Federal Republic of Nigeria has not objected as provided for in the Convention.
- (2) Section 40 of the Terrorism (Prevention) Act, 2011 is amended by-
- (a) Deleting ‘Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation’ and ‘Protocol for the Suppression of Unlawful Acts against Fixed Platforms located on the Continental Shelf’ from the definition of the phrase ‘counter terrorism convention’.
- (3) Section 19(g) of the Terrorism (Prevention)(Amendment) Act, 2013 is amended by-
- (a) Deleting ‘Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988’ and ‘Protocol for the Suppression of Unlawful

Acts against the Safety of Fixed Platforms located on the Continental Shelf, 1988' from the list of agreements.

(4) The Extradition Act, 1967 is hereby amended in terms of the provisions of Part IX of this Act.

24. Duration

This Act shall continue in force until the day to be appointed by the President by publication in a Gazette following the termination of the Convention or denunciation thereof by the Government of the Federal Republic of Nigeria, and no longer.

PART X

INTERPRETATION

25. In this Act-

‘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; or

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

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

(iii) nuclear weapons and other nuclear explosive devices.

‘Convention’ means the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation signed at London in October 2005 and the 2005 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf 2005.

‘Convention State’ means a State which is declared by the Minister of Foreign Affairs, by Order published in the Gazette, to be a party to the Convention and Protocol.

‘Government’ means the Government of the Federal Republic of Nigeria or any state within Nigeria.

‘Inspector-General of Police’ means The Inspector-General of Police of Nigeria or any officer delegated by him.

‘Nigerian Waters’ shall include territorial waters, waters of the Exclusive Economic Zone Act CAP 116, Laws of the Federation of Nigeria 1990.

‘Organisation’ means the International Maritime Organisation (IMO).

‘Precursor’ means any chemical reactant which takes part of 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.

‘President’ means the President of the Federal Republic of Nigeria.

‘Secretary-General’ means the Secretary-General of the Organisation.

‘Security agency’ means the-

- (a) Nigeria Police Force;
- (b) Department of State Services;
- (c) Economic and Financial Crimes Commission;
- (d) National Agency for the Prohibition of Traffic in Persons;
- (e) National Drug Law Enforcement Agency;
- (f) National Intelligence Agency;
- (g) Nigeria Customs Service;
- (h) Nigeria Immigration Service;

- (i) Defence Intelligence Agency;
- (j) Nigeria Security and Civil Defence Corps;
- (k) Nigeria Maritime Administration and Safety Agency; and
- (l) Any other agency empowered by an Act of the National Assembly.

‘Serious injury or damage’ means:

- (i) Serious bodily injury;
- (ii) Extensive destruction of a place of public use, State or government facility, infrastructure facility, or public transportation system, resulting in major economic loss; or
- (iii) Substantial damage to the environment, including air, soil, water, fauna, or flora.

‘Ship’ means a vessel of any type whatsoever not permanently attached to the seabed, and includes a hovercraft, hydrofoil, submarine or other floating craft but does not include a warship, a ship owned or operated by a State and being used as a naval auxiliary or for customs or police purposes or a ship which has been withdrawn from navigation;

‘Stateless Person’ means a person whose habitual residence is in Nigeria but he does not have the nationality of any country.

‘Territorial waters’ of Nigeria has the meaning given to it under the Territorial Waters (Amendment) Act 1998.

‘Terrorist’ means any person involved in the offences under Sections 1-14 of the Terrorism (Prevention) Act, 2011.

‘Terrorist investigation’ means an investigation of offences under the Terrorism (Prevention) Act, 2011.

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

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

‘Warship’ means a ship belonging to the armed forces of a State and bearing distinguishing external marks, under the command of an officer duly commissioned by the Government of that State, and manned by a crew which is under regular armed services discipline.

For the purposes of this Convention:

- a. the terms ‘place of public use’, ‘State or Government facility’, ‘infrastructure facility’, and ‘public transportation system’ have the same meaning as given to those terms in the International Convention for the Suppression of Terrorist Bombings, done at New York on 15 December 1997; and
- b. the terms ‘source material’ and ‘special fissionable material’ have the meaning as given to those terms in the Statute of the International Atomic Energy Agency (IAEA), done at New York on 26 October 1956.

PART XI

CITATION

26. This Act may be cited as the Suppression of Acts against the Safety of Maritime Navigation Act, 2015.

SCHEDULE I

1. Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London and Moscow on 1 July 1968.
2. The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and on their Destruction, done at Washington, London and Moscow on 10 April 1972.
3. The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, done at Paris on 13 January 1993.

SCHEDULE II

- i. 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.
- ii. 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.
- iii. Convention for the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.
- iv. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
- v. Convention on the Physical Protection of Nuclear Material, done at Vienna on 26 October 1979.
- vi. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression

of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.

- vii. 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.
- viii. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.
- ix. International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.