



IMO

INTERNATIONAL MARITIME LAW INSTITUTE

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**A Bill for an Act to give effect to the IMO Convention
for Suppression of Unlawful Acts Against the Safety of
Maritime Navigation 1988 and the Protocol to the
Convention 2005.**

**A Legislation Drafting Project submitted in partial fulfillment of the
requirements for the award of the Degree of Master of Laws (LL.M.) at the
IMO International Maritime Law Institute**

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EXPLANATORY NOTE
SAFETY OF MARITIME NAVIGATION ACT 2009

INTRODUCTION

Historically, the security and safety of the vessel, its cargo, passengers and crew has been a concern since vessels started going to sea and the advent of world trade. Maritime Safety has been on the International Maritime Organization (IMO) agenda since the Organization was established in 1948 as International Maritime Consultative Organization (IMCO).

The issue has become more disturbing since the 1980's, and the unlawful acts which threaten the safety of ships and the security of its passengers and crews have started to gain more importance. It is recalled that from earliest times the vessel, cargo, passengers and crew were jointly and severally exposed to **pirates** who can be said to constitute the earliest group of terrorists known to marine transportation. Safety measures such as carrying of some arms and ammunition became standard, recognized and authorized practice on sea-going vessels.

Over the years, this became the rather basic and rudimentary self-help security approach to shipping aimed at ensuring safety of the ship and cargo travelling across the seas from one part of the world to the other. Concern about unlawful acts that threaten the safety and security of their passengers and crew grew during

the 1980s, and it motivated states to negotiate and subsequently adopt the Convention for Suppression of Unlawful Acts Against the Safety of Maritime Navigation SUA 1988. This concern stemmed from reports of crews being kidnapped, ships being hijacked, deliberately run aground, or blown up by explosives.

Due to these developments especially, following the **Achille Lauro** hijacking incident on 7 October 1985 in the Mediterranean Sea, by four heavily armed Palestinian terrorists who hijacked the Italian cruise ship Achille Lauro which was carrying more than 400 passengers and crew. The hijackers demanded that Israel free 50 Palestinian prisoners. After two days of negotiations, the hijackers surrendered in exchange for a guarantee of safe passage out of Egypt. Originally planned by the Palestine Liberation Movement's Abu Abbas group as a mission to smuggle arms and explosives into Israel via the sea, it turned out to be a hostage – taking incident when the Achille Lauro's crew inadvertently uncovered the Palestinian plot.

The terrorists took control of the vessel and demanded, among other things, the release of their confederates held in Israeli jails and safe passage for themselves. In the course of the high drama, one of the terrorists killed an unarmed and disabled American tourist Leon Klinghoffer and threw his body overboard with his wheelchair.¹ When an Egyptian jet aeroplane tried to fly the hijackers to freedom,

¹ M Halberstam 'Terrorism on the high seas: The Achille Lauro, Piracy and the IMO Convention on Maritime Safety'.(1988) 82 AJIL 269-310. See also M. Jacobsson 'Terrorism at sea' in P.K. Mukherjee, M Q Mejia and G M (eds) Maritime violence and other security issues at sea (WMU Publications Malmo Sweden 2002),157-164 and M J

US Navy fighters intercepted and forced it to land in Sicily, where the terrorists were taken into custody by the Italian authorities.²

In response to the Achille Lauro, hijacking, and in order to address specific problems relating to piracy and armed robbery, the IMO was requested by the United Nations General Assembly to carry out a study on the problem of terrorism aboard or against ships, in order to make recommendations on appropriate measures.

The Governments of Austria, Egypt, and Italy made a proposal in November 1986 that IMO prepare a convention on the subject of unlawful acts against the safety of maritime navigation, a convention that would eventually “provide the legal basis for action to be taken against persons committing unlawful acts against ships” such as “the seizure of ships by force, acts of violence against persons on board ships and the placing of devices on board which are likely to destroy or damage the ship.”³

They submitted a draft proposed convention, which would fill the gap in the present system on the suppression of such act. To supplement their efforts, the

Bazyler ‘Capturing Terrorists in the ‘Wild Blue Yonder’: International Law and the Achille Lauro and Libyan Aircraft Incidents’ (1986) 8 Whittier L Rev 685-708.

² <http://law.jrank.org/pages/7363/Hijacking-Ship-Hijacking.html>>Hijacking - Ship Hijacking

³ International Maritime Organization, Legal Committee (LEG), 90TH session, 18-29 April 2005. http://www.imo.org/About/mainframe.asp?topic.id=280&doc_id=4832, retrieved 21 April 2006.

Maritime Safety Committee (MSC) of the IMO issued a circular (MSC/Circ.443) on” **measures to prevent unlawful acts against passengers and crew on board ships**”.

According to the circular, governments, port authorities, administrators, ship owners, shipmasters, and crews should take appropriate measures to prevent unlawful acts that may threaten passengers and crews. The SUA Convention contains a list of these unlawful acts and obliges states parties to either prosecute or extradite alleged offenders.

The SUA Convention 1988

In March 1988, at a conference in Rome the Maritime Safety Committee of the IMO subsequently articulated these safety measures into what became known as the **1988 Convention for the Suppression of Unlawful acts against Safety of Maritime Navigation (SUA Convention)**. The aim of the Convention as evident from its preamble which states:

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

The SUA Convention is very similar to the 1970 Hague Convention on the Suppression of Unlawful Acts Against the Safety of Civil Aviation often called “the Hijacking Convention”⁴ with reciprocity of powers for prosecution or extradition of alleged offenders by Contracting States, (such as Tokyo or Montreal Convention)⁵.

Provisions were made in order to ensure that appropriate action including prosecution and punishment, should be undertaken against the perpetrators of such maritime offenses as described in the Convention (in a similar manner as other international conventions had established rules for the suppression of unlawful acts against air navigation).

In a few words, the SUA Convention creates an obligation for the State on the territory of which the alleged offender is liable for an act listed in the Convention, either to prosecute or to extradite him. Each State Party should criminalize the offenses likely to endanger the safety of navigation enumerated, and establish penal jurisdiction over these acts, in accordance with the Convention (i.e. in respect of offenses committed by one of its nationals, on board ships flying its flag, or on its territory or in its territorial sea). Each State Party has liberty to define one of its nationals, and regarding offenses committed with the intent to compel to do or abstain from doing any act.

⁴ Convention for the suppression of Unlawful Seizure of Aircraft [Hijacking Conventions], 860 U. N. T. S. 105, entered into force Oct. 14, 1971.

⁵ Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircrafts (1963) and Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971).

The primary purpose of the SUA Convention and its protocol 2005 is to make sure that people committing unlawful acts against ships will not be given shelter in any country, but will either be prosecuted or extradited to a relevant country where they will stand trial. In other words, its purpose is to ensure that appropriate action is taken against persons committing unlawful acts against ships. ‘Unlawful acts’ include the seizure of ships by force; acts of violence against persons on board ships, and the placing of devices on board a ship which are likely to destroy or damage it.

Much as the SUA Convention was introduced in the best interest of international shipping however only a few nations such as UK, USA and Canada adopted it into their domestic legislations. Nigeria ratified the Convention but is yet to domesticate it till date. The IMO Recommendations to governments clearly stated that it was the ultimate responsibility of owners, masters and ship operators to take **“seamanlike precautions”** when their ship navigate in areas where the threat of piracy and armed robbery exists (MSC/Circ. 622 Rev. 1 of 16/6/999). It was a fact that no maritime terrorist activity had been registered after the entry into force of the SUA Convention, with the exception of the case of hijacking on board the cruise line vessel “City of Poros”. The end of this period was not only distinguished by the September 11, 2001 tragedy, but also by two terrorist bombing against two important ships: one berthed in Aden (USS “Cole”, in October 2000) and another proceeding at sea in the vicinity of Yemen (M/V “Limburg”, on October 6th, 2002). The latter was a French tanker.

An analysis of the Statistics for pirates attacks reported during the years 1998-2000 showed that out 317 attacks, there were 32 (meaning 10.1 % of the cases) where SUA Convention could have been invoked but was not.⁶

This was the state of security concern when the infamous **September 11, 2001** terrorist attack occurred in the United States and triggered off a strong wave of security alertness in civil aviation, which sporadically extended to maritime navigation. The United Nations in response to this incident passed **Resolution 1373** which set out measures which member states must take to prevent and suppress the financing of terrorist acts and international terrorism.

2005 Protocol to the SUA Convention

Before September 11, 2001, terrorism had “⁷been on the agenda of the United Nations for decades” Various international conventions had already addressed at different levels, various aspects of the activities related to terrorism or proliferation of nuclear or “biological weapons” BCN substances. The UN Security Council had

⁶ R C Beckman ‘ Combating piracy and armed robbery against ships in Southeast Asia: the way forward’ (2002) 33 ODIL 317- 341.

⁷ See UN website, section “UN action to counter terrorism”, which adds: “Thirteen international conventions have been elaborated within the framework of the United Nations system relating to specific terrorist activities. Member States through the General Assembly have been increasingly coordinating their counter- terrorism efforts and continuing their legal norm setting work. The Security Council has also been active in countering terrorism through resolutions and by establishing several subsidiary bodies. At the same time a number of programmes, offices and agencies of the United Nations system have been engaged in specific operational actions against terrorism further assisting Member States in their efforts

already declared the global character of terrorist activities and called on nations to intensify efforts against terrorism⁸.

An international global framework had been laid down against terrorism before September 11, through various conventions such as the; UN Convention for the Prevention of Punishment of Crimes against Internationally Protected Agents (1973), UN Convention against the Taking of Hostages (1979), UN Convention against the Financing of Terrorism (adopted January 10th, 2000).

For the purpose of counter proliferation of bacteriological, nuclear and chemical (BCN) substances the relevant instrument were the UN Convention on the Physical Protection on Nuclear Materials (1980), the UN 1993 Chemical Weapons Convention (CWC), the UN 1972 Biological Weapons Convention (BWC). In respect of nuclear non proliferation control, the Nuclear Non- Proliferation treaty (NPT 1968) is also an important relevant international instrument.

These international Conventions are still valid today and form a legal anti-terrorist corpus to which the SUA Convention refers. This Corpus has been increased after September 11, 2001.

Following the tragic events of September 11, 2001, the shipping industry realized that a more stringent and comprehensive set of security measures was needed. The IMO realizing that maritime transportation caters for over ninety per cent

⁸ Resolution 1269 (1999).

(90%) of world trade was most vulnerable to such terrorist attacks as that perpetrated on September 11, 2001, responded by adopting Resolution A.924 (22) calling for a thorough review of measures and procedures for combating acts of violence and crime at sea⁹. This led to the introduction of more stringent maritime security regulations to enhance ship and port security known as **the International Ship and Port Facility Security (ISPS) Code**. This was adopted by the IMO in December 2002, by a Diplomatic Conference on Maritime Safety.

Moreover IMO legal Committee's three years work on amending the SUA Convention started in 2002.¹⁰ The aim is to strengthen the SUA treaties by substantial amendment, in order to provide an appropriate response to the increasing risk caused to maritime navigation by international terrorism.

In 2002, the 85th Session of the IMO Legal Committee held a preliminary exchange of views on the text of draft proposed amendments to the SUA Convention; it remained a central issue on the agenda of the 89th session of the legal committee. The Diplomatic Conference on the Revision of the SUA Treaties met at the IMO from 10-14 October 2005 at London and adopted the amendments in the form of protocols to the SUA treaties (the 2005 protocols). The Convention as it currently stands, is here referred to as SUA 2005 in conformity with Article

⁹ International Maritime Organization 'Review of measures and procedures to prevent acts of terrorism which threaten the security of passengers and crews and the safety of ships' Resolution A, 924(22) 22 January 2002.

¹⁰ IMO's Legal Committee undertook the amendment of SUA Convention in a process that began in early 2002 and ended in late 2005. Displaying an enormous spirit of cooperation in their approach to final negotiations'. S. Speares 'IMO member nations bury differences to pass updated anti- terrorism treaties' Lloyds list 17 Oct. 2005.

15(2) of the protocol 2005.¹¹ The Convention consist of 24 Articles and an Annex which lists 9 other international treaty instruments on terrorism cross referred to in the new Article 3ter.

The scope of offences included in the protocol has been expanded with a new Article 2bis. A person commits an offence if that person unlawfully, when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act. Most significantly, the 2005 Protocol to the SUA Convention includes in Article 3(bis) a variety of new offences related to the intentional and unlawful carriage, use or operation of biological, chemical and nuclear weapons (BCN) weapons aboard vessels or in the territorial waters of signatory states, with the intention to intimidate or compel a government, population or international organization to carry out or abstain from any act or policy against its wishes.

The new offences extend to the use or carriage of radioactive material knowingly intended to be used in nuclear explosive activity, and to any equipment materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon. The Protocol also included as an offence to carry aboard persons known to have committed an offence by the SUA Convention, or any of the nine treaties listed in the Annex.

¹¹ Article 15(2) provides that "Article 1 to 16 of the Convention, as revised by this protocol, together with Article 17 to 24 of this Protocol and the Annex thereto, shall constitute and be called the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation,2005" (2005 SUA Convention).

The protocol further notes that the transportation of nuclear materials is not considered an offence if such item or material is transported to or from the territory of, or is otherwise transported to under the control of, a State Party to the treaty on the Non Proliferation of Nuclear weapons (subject to conditions).

The protocol also includes articles addressing boarding procedures. Article 8bis covers co-operation and procedures to be followed if a State party desires to board a ship flying the flag of a state party when the requesting party has reasonable grounds to suspect that the ship or a person on board the ship, has been, or is about to be involved in, the commission of an offence under the Convention. Article 11bis covers the rights of extradition under the treaty, and states that none of the offences should be considered for purposes of extradition as political offence.

The importance of Nigeria's Ratification of SUA 1988 and Protocol 2005.

Piracy off the Somali coast has been an issue of serious concern to international shipping since the beginning of Somalia's civil war in the early 1990s. Since 2005, many international organizations including the International Maritime Organization and the world food program, have expressed concern over the rise of acts of piracy. Piracy has contributed to a rise in shipping costs and impeded the delivery of food and shipments. Piracy is a serious problem for shipping, considering the spate of pirates' activities on the high seas.

No vessel seems immune from the pirate attacks plaguing international shipping in the waters bordering the lawless coast of Somalia. Over 80 attacks against ships in the area were reported last year with about 17 ships and 300 crewmen still being held hostage. The attacks have troubled the maritime industry for years but it was a story that remained mostly below the radar until September (2008), when pirates grabbed a Ukrainian cargo ship loaded with ammunition and 33 battle tanks.

On November 18, 2008, another high profile vessel was taken, a Saudi Aramco oil tanker. The 318,000 ton, Very Large Crude Carrier (VLCC), MV Sirius Star,¹² laden with a cargo of about 2 million barrels of crude oil -- about one quarter of Saudi Arabia's daily production -- bound for the United States and its crew of 19, was seized about 450 miles from the Somali coast. The hijacking renewed calls in the international community for action against the pirates.

Nigeria fully understands and shares the determination of the international community to combat terrorism, in particular its linkages with weapons of mass destruction (WMD), the means of their delivery and related dual –use materials. As such Nigeria considers terrorism as a threat to international peace and security and, in this context, has supported enforcement military measures out of its territory, as well as prescriptive international measures. Nigeria has supported all global and African legal initiatives and policies against terrorism and non proliferation of WMD and related technologies, and has ratified most of the international conventions designed to fight terrorism.

¹² <Saudi-us-relations.org/article/2008/loi/081118-pirates-hijacking.html>.

Nigeria is in agreement with the SUA Convention and Protocol to ensure the safety of maritime navigation and the use of the seas against the threat of terrorism, in adopting practical legal measures to prevent and combat the spread of terrorism, including when directed against shipping, and develop a comprehensive legal frame work for the security of shipping, ships and passengers and crews.

There is also a legal obligation for Nigeria having ratified the SUA convention 1988 to domesticate the convention and its protocol which is necessary in order to determine how terrorist-related maritime issues and concerns could be addressed more efficiently and extensively and to ensure proper consistency between the maritime specific provisions and the emerging global anti-terrorist policy, because as a responsible State holding a position of leadership in the continent of Africa, Nigeria has always endeavored to live up to its international responsibilities. Therefore domesticating and implementing the SUA Convention and its 2005 Protocol should not be an exception.

It is commendable that a Presidential Implementation Committee on Maritime Safety and Security (PICOMSS) under the chairmanship of the Honorable Minister of State for Transportation is now in place for implementation of the ISPS Code. It is anticipated that this initiative will include processes for domestication of the amended SOLAS and SUA Conventions to which Nigeria is signatory.

It is envisaged that the task of this Committee would include public enlightenment, setting the national security levels amongst other responsibilities. It is probably apt

to say that the buck stops at the doorstep of the National Assembly, which is charged with the constitutional responsibility for translating international conventions into national legislation. It cannot be over-emphasized that time is indeed of the essence in domesticating the SUA convention and protocol and other maritime conventions into Nigerian law.

The Process of Domestication of International Conventions in Nigeria

The position of Nigerian law on the application of international conventions or treaties is laid down by the Constitution of the Federal Republic Of Nigeria of 1999, which states clearly 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.”

Section 12 (2) further states:

“The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.”

This means that until a separate law is passed by both houses of the Nigerian National Assembly, an international treaty shall remain unenforceable in Nigerian courts. With regards to Maritime Conventions, the Merchant Shipping Act 2007 reposes general responsibility on the Minister of Transportation through Section 1 (1) which states that “Subject to the provision of this Act, the Minister shall have the general superintendence of the matters to which this Acts relates.”

Consequent upon the aforementioned, the proper process of domestication of the SUA convention is that the Nigerian Maritime and Safety Administration Agency (NIMASA) after consultation with other parastatals under the Transportation Ministry, would prepare a draft Bill which would be presented to the Minister of Transportation, who will in turn through the legal adviser pass is on to the Ministry of Justice.

The Federal Ministry of Justice would look through the draft for the purpose of fine tuning after which draft would be forwarded to both houses of the National Assembly. It then goes through the first, second, and third readings, the Committee stage, public hearings etc. (all this can be quite time consuming and may span several months).

Once this process is concluded, the draft bill is passed into law with the assent of the President of the Federal Republic of Nigeria. It is usual for the National Assembly to graciously, upon passage of the bill, grant the Minister Powers to make regulations or guidelines for the implementation of the law.

Upon the passage of the bill by both houses of the National Assembly, it is taken for Presidential assent after which it is published in the National gazette, whereupon it becomes law recognized and enforceable in Nigerian courts.

Matters relating to maritime safety and security generally are under the purview of the Nigerian Maritime Administration and Safety Agency (NIMASA) as supervised by the Federal Ministry of Transportation.

The Merchant Shipping Act (MSA) 2007 lays down the authority given to the Minister to promulgate the appropriate rules, regulations and orders to give force of law to international conventions domesticated in Nigeria. The relevant provisions of the (MSA) 2007 are highlighted as follows.

Section 1 (2) The Minister may by writing under his hand, delegate any of the powers or duties of a routine nature conferred on him under the MSA 2007,

Section 2 (1) The Agency of Government established and responsible for Maritime Safety Administration and Security shall be the implementing agency for this Act.

The draft project is designed to reflect as closely as possible, the reality of lawmaking in Nigeria. Therefore it is composed of the draft bill domesticating the SUA convention and its amendment. The focus would be on non-derogation from the core principles of the convention. In coming into force, this Act will undertake

the position of the primary law on suppression of unlawful acts against the safety of maritime navigation in Nigeria.

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SCHEDULE 1

**SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY OF
MARITIME NAVIGATION ACT, 2009.**

A BILL FOR

AN ACT TO IMPLEMENT THE INTERNATIONAL MARITIME
ORGANISATION CONVENTION FOR SUPPRESSION OF UNLAWFUL
ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION AND
OTHER MATTERS RELATED THERETO.

[1 September 2009]

Commence-
ment.

Be it enacted by the National Assembly of the Federal Republic of Nigeria and by
the authority of same as follows-

PART 1

SHORT TITLE AND INTERPRETATION

1. This Act may be cited as the Safety of Maritime Navigation Act, 2009.

Short
title

2. (1) In this Act-

(a) “**Ship**” means a vessel of any type whatsoever not permanently
attached to the sea-bed, including dynamically supported craft,
submersibles, or any other floating craft.

Interpreta-
tion

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

(c) **“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

(d) **“BCN weapons”** means:

- (i) biological weapons, which are:
 - (a) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or
 - (b) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

- (ii) chemical weapons, which are, together or separately:
 - (a) toxic chemicals and their precursors,
except where intended for:
 - (i) industrial, agricultural, research,
medical, pharmaceutical or other
peaceful purposes; or
 - (ii) protective purposes, namely those
purposes directly related to protection
against toxic chemicals and to protection
against chemical weapons; or
 - (iii) military purposes not connected with the use
of chemical weapons and not dependent on
the use of the toxic properties of chemicals
as a method of warfare; or
 - (iv) law enforcement including domestic riot
control purposes, as long as the types and
quantities are consistent with such purposes;
or
 - (b) munitions and devices specifically designed to
cause death or other harm through the toxic
properties of those toxic chemicals specified in
subparagraph (ii)(a), which would be released as a

result of the employment of such munitions and devices; or

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

- (iii) Nuclear weapons and other nuclear explosive devices.

(e) **“chemical toxic”** 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.

(f) **“precursor”** means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multi-component chemical system.

(g) **“Organization”** means the International Maritime Organization (IMO).

- (h) **“Secretary-General”** means the Secretary-General of the Organization.
- (i) **“territorial waters”** of Nigeria has the meaning given to it under the Territorial Waters (Amendment) Act 1998.
- (j) **“Nigerian waters”** shall include territorial waters, waters of the Exclusive Economic zone.
- (k) **“Exclusive Economic Zone”** has the meaning given to it under Economic Zone Act Cap 116, Laws of the Federation of Nigeria 1990.
- (l) **“Convention”** means the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, signed at Rome on the 10th day of March 1988 as amended by the 2005 Protocol;
- (m) **“Convention State”** means a State Party to the Convention;
- (n) **“enforcement officer”** means a person so designated to be an enforcement officer for the purposes of this Act;

(o) **“enforcement unit”** means the department within the Nigerian Maritime Administration and Safety Agency charged with the responsibility of enforcing the provisions of this Act;

(p) **“stateless person”** means a person whose habitual residence is in Nigeria but he does not have nationality of any country.

(2) For the purposes of this Convention:

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

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

3. Application

(1) This Act shall apply to the whole of Nigeria including the limit of the Territorial Waters, the Continental Shelf, the Exclusive Economic Zone or any other maritime zone of Nigeria within the meaning of the Territorial Waters (Amendment) Act 1998.

(2) Save as otherwise provided, it shall also apply –

- (a) to any offence under section 4 committed outside Nigeria by any person;
- (b) to a ship, if that ship is navigating or scheduled to navigate into, through, or from waters beyond the outer limits of the territorial waters of Nigeria or the lateral limits of its territorial waters with adjacent States; and
- (c) when the offence is committed on board a ship in the territorial waters of Nigeria.

(3) Notwithstanding anything contained in Section 3 (1), this Act shall apply only to offences committed by an offender or alleged offender –

- (a) when such an offender is found in the territory of a Convention state;
- (b) when such an offender is found in the territory of a state other than the Convention state.

(4) Nothing in this section shall affect the rights, obligations and responsibilities of States and individuals, 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.

PART II

OFFENCES

4. Offences relating to safety of maritime navigation

Offences
relating to
safety of
maritime
navigation

- (1) Any person who intentionally –
- (a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation;
 - (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;
 - (c) destroys a ship or causes damage to a ship or cargo which is likely to endanger the safe navigation of such ship;
 - (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;

(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, thereby endangering the safe navigation of a ship;

commits an offence and is liable to a fine not exceeding N10, 000,000 or to a term of imprisonment not exceeding fifteen years or both.

(2) Any person who in the course of commission of or in attempt to commit, any of the offences specified in clauses (a) to (f) –

(i) causes death to any person;

(ii) causes grievous hurt to any person;

(iii) causes injury to any person;

(iv) seizes or threatens a person; or

(v) threatens to endanger a ship;

commits an offence and shall upon conviction be punished with term of imprisonment not exceeding twenty years.

5. Offences in relation to BCN weapons

Offences
in relation
to BCN
weapons

- (1) Any person who commits an act –
 - (a) when the purpose of the act, by its nature or context is intended to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act –
 - (i) uses against or on a ship or discharges from a ship any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage;
 - (ii) discharges, from a ship, oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by subparagraph(a)(i), in such quantity or concentration that causes or is likely to cause death or serious injury or damage;
 - (iii) uses a ship in a manner that cause death or serious injury or damage; or
 - (iv) threatens, with or without a condition, as is provided for under national law, to commit an offence set forth in subparagraph (a)(i),(ii) or (iii)or;

(b) transports on board a ship –

- (i) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, 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;
- (ii) any BCN weapon, knowing it to be a BCN weapon as defined in section 2; or
- (iii) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to an IAEA comprehensive safeguards agreement; or
- (iv) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose;

commits an offence and is liable to a fine not exceeding N 20,000,000 or imprisonment for life.

Provided that it shall not be an offence within the meaning of this Act to transport an item or material covered by Section 5 (b) (iii) or, insofar as it relates to a nuclear weapon or other nuclear explosive device or Section (b) (iv), if such item or material is transported to or from the territory of, or is otherwise transported under the control of, a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons where –

- (a) the resulting transfer or receipt including internal to a state, of the item or material is not contrary to such State Party's obligations under the Treaty on the Non –Proliferation of Nuclear Weapon; 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 States Party's obligations under that Treaty.

6. Parties to offences

(1) When an offence is committed under this Act, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say –

Parties to
offences

- (a) every person who actually does the act or makes the omission which constitutes the offence;

- (b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;
- (c) every person who aids or abets another person in committing the offence; or
- (d) any person who counsels or procures any other person to commit the offence ;

and in the last mentioned case he may be charged either with committing the offence or with abetting or procuring its commission.

(2) A conviction of abetting or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.

(3) Any person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission, the act or mission would have constituted an offence on his part is guilty of an offence of the same kind, and is liable to the same punishment, as if he had himself done the act or made the omission; and he may be charged with doing the act or making the omission.

PART III JURISDICTION

7. Jurisdiction

- (1) Where any act referred to in Section 4 and 5 is committed –
- (a) against or on board –
 - (i) a Nigerian ship at the time of commission of the offence; or
 - (ii) any ship in the territory of Nigeria including its territorial waters;
 - (b) by a stateless person, such act shall be deemed to be an offence committed by such person for the purposes of this Act.

(2) Where an offence under section 4 and 5 is committed and 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 Convention State, such person shall be dealt with in Nigeria in accordance with the provisions of this Act.

(3) On being satisfied that the circumstances so warrant, the Federal Government or any other authority designated by it, shall take the person referred to in subsection (2), 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 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.

(4) Subject to the provisions of sub-section (5), where an offence is committed outside Nigeria; the person committing such offence may be dealt with in respect thereof as if such offence had been committed at any place within Nigeria at which he may be found.

(5) No court shall take cognizance of an offence punishable under this section which is committed outside Nigeria unless –

- (a) such offence is committed on board a ship flying the Nigeria flag at the time the offence is committed;
- (b) such offence is committed on board a ship which is for the time being chartered without crew to a lessee who has his principal place of business or where he has no such place of business, his permanent residence, is in Nigeria;
or
- (c) the alleged offender is a citizen of Nigeria on board a ship in relation to which such offence is committed when it enters the territorial waters of Nigeria or is found in Nigeria.

PART IV

CONFERMENT OF POWERS

8. Powers of investigation

(1) For the purpose of this Act, the Federal Government may, by notification in the Official Gazette, confer on any Gazette Officer of the Enforcement Unit or any other Gazetted Officer of the Federal Government powers of arrest, investigation and prosecution exercisable by a police officer in Nigeria.

(2) All officers of the Nigerian Police Force, the Nigerian Navy and all officers of Government are hereby required and empowered to assist the officer of the Federal Government referred to in subsection (1), in the execution of the provisions of this Act.

(3) Any authorized 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.

(4) Where an authorized person suspects, with reasonable cause that a person who is about to board, or is on board a ship, intends to commit any of the offences under this act and or in relation to a ship, such authorized 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.

Powers
of
investiga
tion

(5) The master of the ship may arrest and detain any person where there is reasonable cause to suspect that such person has committed an offence under this Act.

(6) Such a person may be so detained only until he or she can be delivered to –

(a) an authorized person; or

(b) the appropriate authorities of a Convention State.

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

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

9. Delivery of detained persons

(1) A master of a ship is not liable to –

(a) conviction in any criminal prosecution; or

Delivery of
detained
person

- (b) damages in civil proceedings brought in respect of any action reasonably taken by him under this Act.
- (2) A master of a ship shall deliver to the appropriate authorities of a Convention State, any person detained under section 8 of this Act.
- (3) A master of a ship who intends to deliver such a person shall notify the authorities concerned of the intention to do so and the reasons for such delivery.
- (4) The notification must be given whenever practicable and, if possible before the ship enters the territorial sea of the Convention State.
- (5) On delivery of a person under sub-section (2) the master shall –
 - (a) make to the appropriate authorities of the Convention State such oral or written statements relating to the alleged offences as they may reasonably require; and
 - (b) provide them any other evidence in his or her possession relating to that offence.
- (6) A master who, without reasonable cause, does not comply with subsection (4) or (5) of this section, commits an offence and shall be liable to a fine not exceeding N 500,000.00 or a term of imprisonment not exceeding three years or to both.

10. Powers of search and seizure

(1) An authorized person may search without warrant a ship, if there is reasonable cause to suspect that –

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

(b) a person who has committed such an offence is on the ship.

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

(2) Any person who obstructs or attempts to obstruct, an authorized person while searching a ship commits an offence and shall be liable to a fine not exceeding N 500,000 or a term of imprisonment not exceeding three years or to both.

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

PART V

DESIGNATED COURTS

11. Designated courts

(1) The Federal Government shall, with the concurrence of the Chief Justice of the Federation, specify a court of session to be the designated court for such trial by notification in the Official Gazette.

Designated
courts

(2) A designated court shall, as far as practicable, hold the trial on a day- to-day basis.

12. Offences triable by designated courts

Offence
triable by
designated
court

(1) Notwithstanding the provisions contained under any other laws –

(a) all offences under this Act shall be triable only by the designated court specified under subsection (1) of section 11;

(b) any person accused of or suspected of the commission of an offence under this Act shall not be admitted to bail except by a judge of the designated Court, and at the discretion of the judge of the court;

(c) the designated court may exercise, in respect of the person forwarded to it under subsection (b), the same power which a Judge having jurisdiction to try a case may exercise, in relation to an accused person in such case who has been forwarded to him;

(d) a designated court may, upon a perusal of a complaint made by an officer of the Federal Government or the State Government, as the

case may be, authorized in this behalf, take cognizance of that offence without the accused being committed to it for trial.

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

13. Proceedings before a designated court

Proceedings
before a
designated
court

The provisions of this Act shall apply to the proceedings before a designated court and the person conducting a prosecution before a designated court shall be deemed to be a Law Officer.

14. Presumption as to offences under sections 4 and 5.

In a prosecution for an offence under section 4 and 5, if it is proved –

- (a) that the arms, ammunition or explosives were recovered from the possession of the accused and there is reason to believe that such arms, ammunition or explosives of similar nature were used in the commission of such offence;
- (b) that there is evidence of use of force, threat of force or any other form of intimidation caused to the crew or passengers in connection with the commission of such offence; or

- (c) that there is evidence of an intended threat of using bomb, fire, arms, ammunition, or explosives or committing any form of violence against the crew, passengers or cargo of a ship, the designated court shall presume, unless the contrary is proved, that the accused had committed such offence.

PART VI

BAIL AND EXTRADITION

15. Bail

Bail

- (1) No person accused of an offence under this Act shall be admitted to bail except by a judge of the designated court.

16. Extradition

Extradition

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

- (2) For the purpose of the Extradition Act, extradition shall not be refused solely on the ground, that any of the offences set forth in the Act, concerns a political

offence or an offence connected with a political or an offence inspired by political motives.

(3) The possession of jurisdiction by Nigeria shall not preclude the extradition of an alleged offender to another state under appropriate circumstances.

(4) If another state claims jurisdiction with regard to an act of maritime violence, 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 the requesting State if multiple States with reasonable jurisdictional claims make request for extradition in the absence of a trial in Nigeria, the alleged offender shall, subject to the provisions of extradition law of Nigeria, be extradited to one of the requesting states.

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

PART VIII

MISCELLANEOUS

17. All officers deemed public officers

All officers
deemed
public officers

Any officer or other person appointed or authorized to act for any purpose under this Act, shall when acting for that purpose be deemed to be a public officer.

18. Protection of public officers

Protection
of public
officers.

(1) No suit, prosecution or legal proceeding shall be maintained against any public officer for or in respect of anything done or intended to be done by the officer in good faith in the exercise or performance, or in the purported exercise or performance, of any power authority or duty conferred or imposed on him under this Act.

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

19. Regulations

Regulations

The Minister shall, in accordance with this Act and as soon as practicable after the commencement of this Act, make regulations for the purposes of the implementation of this Act.

20. Amendment of schedule

Amend-
ment of
schedule

The Minister may by regulation amend the schedule 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.

21. Duration

Duration

This Act shall continue in force until a 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.

I CERTIFY THAT IN ACCORDANCE WITH SECTION 2 (1) OF THE ACTS AUTHENTICATION ACT, CAP. 4, LAWS OF THE FEDERATION OF NIGERIA 1990, THAT THIS IS A TRUE COPY OF THE BILL THAT PASSED THROUGH BOTH HOUSES OF THE NATIONAL ASSEMBLY.

.....

CLERK TO THE NATIONAL ASSEMBLY
DAY OF 2009.

**SCHEDULE 1 TO THE SUPPRESSION OF UNLAWFUL ACTS AGAINST
SAFETY OF MARITIME NAVIGATION BILL, 2009.**

(1) <i>Short title of the Bill</i>	(2) <i>Long Title of the Bill</i>	(3) <i>Summary of Contents of the Bill</i>	(4) <i>Date passed by Senate</i>	(5) <i>Date passed by house of representatives</i>
Safety of Maritime Navigation Act, 2009.	A bill for an Act for Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 2009.	The Bill incorporates the Consolidated text of the Rome Convention on the Suppression of Unlawful Acts the Safety of Maritime Navigation 2005 into the Nigerian Law.	5-01-2009	22-01-2009

I certify that this bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap. 4, Laws of the Federation of Nigeria 1990.

I ASSENT.

.....
Clerk of the National
Assembly.

