

EXPLANATORY NOTE

Unlawful acts against the safety of ships and the security of their passengers and crews have been a great menace to maritime security and thus of grave concern to the international community. To counter threats and dangers in the sea, universal cooperation is necessary to establish a preventive as well as reactive legal measures in order to combat such behaviors.

Therefore, maritime security has been accorded a greater significance today as States seek to respond to diverse threats in the ocean.

The scope accorded to the term maritime security depends on who is using the term or in what context it is being used. The United Nations Secretary-General has acknowledged that there is no agreed definition of ‘maritime security’, and has instead identified what activities are commonly perceived as threats to maritime security.

In his 2008 report on *Oceans and the Law of the Sea*, the United Nations Secretary-General identified seven specific threats to maritime security:

- 1. Piracy and armed robbery against ships
- 2. Terrorist acts involving shipping, offshore installations, and other maritime interests
- 3. Illicit trafficking in arms and weapons of mass destruction (WMD’s)
- 4. illicit trafficking of narcotic drugs and psychotropic substances
- 5. Smuggling and trafficking of persons by sea
- 6. Illegal, unreported, and unregulated fishing (IUU Fishing)
- 7. Intentional and unlawful damage to the marine environment¹

¹ Klein, Natalie; *Maritime Security and Law of the Sea*, Oxford University Press Inc., New York, 2011, p.10.

A great focus has been accorded to maritime terrorism as a threat to maritime security in the last three decades. However, maritime terrorism is a quiet recent phenomenon comparing to the other violent activities, which may interfere with peaceful navigation.

The legal aspect of maritime terrorism has been blurred with the aspects relating to the piracy phenomena.² In order to distinguish them, its necessary to establish that piracy presupposes that a criminal act be exercised by passengers or the crew of one ship against another ship or persons or property on its board.

The act of piracy has been defined in Article 15 of the 1958 Geneva Convention on the High Seas³ and by the Article 101 of the 1982 United Nation Convention on the Law of the Sea (UNCLOS).⁴ The two ships is a requirement to constitute a crime of piracy. Moreover, that act of violence must be committed for “private ends” and must take place on the High Seas. Since a criminal act can be carried out for several reasons, it will only be considered as piracy if the violent act was committed for a “private end”. The 1982 UNCLOS followed the definition of piracy in the 1958 Geneva Convention on the High Seas and excluded the political ends to define the crime of piracy. Also the (UNCLOS) recognized a universal jurisdiction over pirates in virtue of Article 105.

The concept of piracy is further restricted in terms of Article 58(2) of the (UNCLOS). It reserves the application of the Articles, which includes the provisions on piracy, to the exclusive economic zone (EEZ) in so far as they are not incompatible with the EEZ regime.⁵

² Ronzitti, Natalino; *Maritime Terrorism and International Law*, 2nd Series, Martinus Nijhoff Publishers, Netherland, 1990, p. 1.

³ Geneva, adopted 27 February 1958.

⁴ Montego Bay, Jamaica, adopted 10 December 1982.

⁵ Burchill, Richard; et.al., *International Conflict and Security Law*, Cambridge University Press, United Kingdom, 2005, p. 271.

1. THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION

1.1. The concept of maritime terrorism

Maritime terrorism was initially understood within the context of piracy whereby any unauthorized act of violence on the high seas would be characterized as piracy.⁶ 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 are acts of violence at the sea undertaken for political or other public reasons.⁷ These acts came to be branded in international law as maritime terrorism.

Despite the lack of a precise internationally agreed definition of the term terrorism, the international community took important steps to counter these threats, and other acts of violence against maritime security. These acts of violence when performed outside the territorial sea were not recognized as crimes over which all States could exercise jurisdiction, unlike piracy. However, they were instead labeled maritime terrorism.⁸ Being aware of that issue, the international community had to create a legal framework that allows States to enforce jurisdiction over these acts of violence.

1.2. The Legal responses to maritime terrorism

1.2.1. Historical background on the counter maritime terrorism framework

The concern about unlawful acts that threaten the safety of ships and the security of their passengers and crews grew during the 1980' s, with reports of crews kidnapped, ships hi-

⁶ Klein, Natalie; op. cit., p. 147.

⁷ Ibid.

⁸ Ibid. p. 147-148.

jacked, and vessels deliberately run aground or blown up by explosives. Passengers were threatened and sometimes killed.⁹

The international community considered the necessity to create a legal framework to combat acts of terrorism at sea resulted from the *Achille Lauro* incident of October 7, 1985. Four Palestinians terrorists hijacked the Italian cruise ship the *Achille Lauro* while the ship was sailing from Alexandria to Port Said, off the coast of Egypt. The hijackers demanded the release of 50 Palestinians imprisoned in Israel in return for the safe release of the 400 passengers on board. When their demands were not met, they murdered a United States national on board.¹⁰

As the circumstances of the incident could not be considered as piracy because the two-vessel requirement is lacking, was not committed on high seas, and was committed for political ends, the hijackers were not considered as pirates under international law. Therefore the concerned States were entitled to exercise jurisdiction over the offenders according to the criminal laws applicable within the domestic law of each of the concerned State.¹¹

The *Achille Lauro* incident awakened the maritime community to the requisite legal measures in order to prevent such unlawful acts to be committed against passengers and crews on board ships.

1.2.2. Measures taken for the suppression of unlawful acts

The *Achille Lauro* incident also highlighted the issue of extradition and prosecution, since no State is recognized as having priority to exercise jurisdiction over such offences. The International Maritime Organization (IMO) Assembly considered the problem in 1985 and a proposal during the same year by the United States that measures to prevent

⁹ Kraska, James and Pedrozo, Raul; *International Maritime Security*, Martinus Nijhoff Publishers, Leiden, 2013, p. 801.

¹⁰ Ibid.

¹¹ Ronzitti, Natalino; *op. cit.*, p.2.

such unlawful acts should be developed by IMO was supported. The next year the Maritime Safety Committee (MSC) issued a circular titled *Measures to prevent unlawful acts against passengers and crews on board ships*.¹² The IMO Assembly also adopted a resolution that called for development of measures to prevent unlawful acts that threaten the safety of ships, and their passengers and crew.¹³ Member States of the IMO sought to strengthen the legal regime applicable to international seagoing vessels.

In November 1986, the Governments of Austria, Egypt, and Italy proposed the adoption of a treaty under the auspices of the IMO creating a framework on the subject of maritime terrorism 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 the international community as a whole.”¹⁴ The three States called the international community’s attention to the requirement for a convention on maritime terrorism in order to fill the gap in the legal framework of the fight against these unlawful acts. The draft text prepared was based on the Hostage Convention, and the Hague and Montreal Convention against airplane hijacking and hostage taking and submitted it to the IMO.¹⁵

These efforts led to the adoption of the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988 SUA Convention) and of the 1988 Protocol for Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (1988 SUA Protocol).

¹² IMO Doc. MSC/Circ. 443, *Measures to prevent Unlawful Acts against Passengers and Crews on Board Ships*, September. 26, 1986.

¹³ IMO Doc. A. 584(14), *Measures to Prevent Unlawful Acts which Threaten the Safety of Ships and the Security of Their Passengers and Crew*, November. 20, 1985.

¹⁴ Klein, Natalie; op. cit., p. 151-152.

¹⁵ Convention against the Taking of Hostages, Dec. 17, 1979. Hague Convention on Suppression of Unlawful Seizure of Aircraft, Dec. 16, 1970. Montreal Convention of Suppression of Unlawful Acts against the Safety of Civil Aviation, September. 23, 1971.

2. THE ADOPTION OF THE 1988 SUA CONVENTION AND THE 1988 SUA PROTOCOL

The adoption of the 1988 SUA Convention, also known as the Rome Convention, is of major importance as it identified certain unlawful acts against ships and provided bases by which States could establish jurisdiction over the perpetrators of those unlawful acts. The primary focus of the Convention is clearly international terrorism. Simultaneously a Protocol that followed the same pattern was negotiated and adopted at the same time relative to the unlawful acts against fixed platforms located on the continental shelf. Similar to the 1988 SUA Convention, the 1988 SUA Protocol identified offences and established jurisdiction over them. The SUA Convention and the SUA Protocol were adopted by the IMO on the March 10, 1988, and it entered into force on March 1, 1992.

2.1 The 1988 SUA Convention

The Convention does not employ terminologies such as piracy and maritime terrorism due to difficulties in defining them. It uses the simple term “unlawful acts” in which both the crime of piracy and maritime terrorism can be covered. The SUA Convention criminalizes offences, which do not fall within the definition of piracy under the UNCLOS.¹⁶ It focused on specific acts of human conduct that do injury to international governance and stability. The main purpose of the Convention is to ensure that appropriate action is taken against persons who commit unlawful acts against ship.

Under Article 3 of the 1988 SUA Convention, defines the offences as follows:

- ‘1. Any person commits an offence if that person unlawfully and intentionally:*
- *(a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or*

¹⁶ Ahmad Ibrahim; Assessing the Viability of the 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Kulliyah of Laws, International Islamic University Malaysia, Australian Journal of Basic and Applied Sciences 2012.

- (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 that 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 navigation 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 he knows to be false, thereby endangering the safe navigation of a ship; or*
- (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)'.*

The list of new criminal offences established by Article 3 requires implementation through national legislation by State Parties.¹⁷

The scope of application under Article 4 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.” Accordingly, the Convention is not applicable if the ship is navigating within the territorial sea of a single State. However, it still applies when the offender or the alleged offender is found in the territory of a State Party. Therefore, this Convention is applicable to offences committed not only on the high seas but also in the territorial sea and even in the internal waters of a State.

Article 2 exempts from the Convention warships and other government ships operated for non-commercial purpose, and ships that are *withdrawn from navigation or laid up*.

¹⁷ Kraska, James; op. cit., p. 806.

According to Articles 5 and 6 of the 1988 SUA Convention, a State Party is required to take necessary measures for criminalizing offenders¹⁸ and to establish jurisdiction over the offences committed 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.¹⁹ Furthermore, a State Party may also establish its jurisdiction over any offence when 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.²⁰ The 1988 SUA Convention enables States Parties to establish jurisdiction over the offences, when the offender is present in its territory and it does not extradite him.²¹

According to Article 10 of the SUA Convention, if the custodial State does not extradite the offender, then that Party is obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

Article 11 of the 1988 SUA Convention states that offences set forth in this Convention are considered as extraditable crimes in existing and upcoming extradition treaty between States Parties.²² Nonetheless, if there is no extradition treaty between States Parties, the requested State Party may, at its option, consider this Convention as a legal basis for extradition.²³ Moreover, extradition shall also be subject to the other conditions provided by the law of the requested State Party.²⁴

¹⁸ Article 5.

¹⁹ Article 6 (1).

²⁰ Article 6 (2).

²¹ Article 6 (4).

²² Article 11 (1).

²³ Article 11 (2).

²⁴ Article 11 (3).

2.2 The 1988 SUA Protocol

The Protocol negotiated and adopted at the same time addressing terrorist acts against fixed platforms on the Continental Shelf similarly identified offences and established jurisdiction over them.²⁵

It may happen that an unlawful act takes place against a fixed platform on the continental shelf of a coastal State, such as artificial islands, fixed installations or pipelines. In such instances, the coastal State is allowed to take every forceful measure it deems proper in order to prevent and repress such action.²⁶ The measures employed by the coastal State have to be defined as police actions, since they are aimed at ensuring the safety of objects located in a zone where both the UNCLOS and customary law give sovereign rights to the coastal State.²⁷

According to the Protocol, a fixed platform has been defined to mean “*an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes*”.²⁸

Article 2 defines several offences in terms of the Protocol.

‘1. Any person commits an offence if that person unlawfully and intentionally:

- *(a) seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation; or*
- *(b) performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety; or*
- *(c) destroys a fixed platform or causes damage to it which is likely to endanger its safety; or*

²⁵ Klein, Natalie; op. cit., p. 152.

²⁶ Klein, Natalie; op. cit., p. 101.

²⁷ Ronzitti, Natalino; op. cit., p. 6.

²⁸ Article 1.3.

- (d) *places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or is likely to endanger its safety; or*
- (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)'.*

In terms of Article 2.2 a person who attempts to commit any of the offences set forth above or abets another to commit any of the offences set forth above is also said to commit an offence.

Similar to the 1988 SUA Convention, in terms of Article 3.1 and 3.2 of the Protocol, there is a positive obligation on each State Party to take measures as may be necessary to establish its jurisdiction over the offences set out in Article 2, in the situations enumerated in the said provisions.

Further where the offender is present in its territory the State shall establish its jurisdiction over the offences or in the alternative extradite him to any of the State Parties, which have established jurisdiction-Article 3.4.

Article 1.1 provides that the provisions of Articles 5 and 7 and of Articles 10 to 16 of the SUA Convention shall also apply *mutatis mutandis* to the offences set forth in Article 2 of the Protocol where such offences are committed on board or against fixed platforms located on the continental shelf.

Greater enforcement powers for the protection of platforms have been accorded under the 1988 Protocol, however it anticipates that existing rules of international law will continue to apply to situations not covered by its terms.²⁹

The offences set in the 1988 SUA Convention and Protocol were significant at the time of adoption, as they not only drew from the preceding terrorism treaties to recognize offences in the maritime context but also elaborated on that earlier work. Although the Convention filled the lacunae identified in response to the *Achille Lauro* incident, there

²⁹ Klein, Natalie; *op. cit.*, p. 103.

were still a number of limitation and weaknesses in the Convention.³⁰ The Convention aiming to deal with “suppression” of unlawful acts, there is a little in the 1988 SUA Convention that supports this purpose.

Therefore, it is unsurprising that the Convention was considered ripe for review with increasing interest in protecting against the occurrence of terrorist attacks and proliferation of weapon of mass destruction (WMD).³¹

3. LEGAL RESPONSES TO THE NEW FORMS OF TERRORISM

The technology development led to the elaboration of new means used by terrorists’ attacks. The unlawful acts against maritime security will also rely on advanced technology for their operations.

In the wake of the terrorist attacks against the United States on September 11, 2001 it had become apparent that the 1988 Convention and its related Protocol required updating. Thus the IMO Assembly on November 20, 2001, unanimously adopted resolution titled “*Review of Measures and Procedures to Prevent Acts of Terrorism which Threaten the Security of Passengers and Crews and the Safety of Ships*”.³² The UN Security Council adopted resolution 1368 and 1373, committing States to combat terrorism “in all its forms and manifestation”³³ At the same time, contracting Governments to the International Convention for the Safety of Life at Sea Convention (SOLAS), 1974 who were attending the Assembly, agreed to hold a diplomatic conference on maritime security to adopt any new regulations that might be deemed necessary to enhance ship and port security and prevent shipping from becoming a target of international terrorism. Eleven resolutions were adopted at this Conference, and brought in several amendments to the Annex of the (SOLAS), 1974.

The most far-reaching change was the introduction of a new Chapter XI-2, on ‘*Special measures to enhance maritime security*’. This Chapter enshrines the new International

³⁰ Ibid. p. 152.

³¹ Ibid. p. 154.

³² Resolution A. 924(22).

³³ Kraska, James; op. cit., p. 820.

Ship and Port Facility Security Code or what is now commonly referred to as the ISPS Code. The text of the ISPS Code is set out in the Annex to Conference resolution 2, which was also adopted on 12 December 2002. The ISPS Code contains detailed security related requirements for Governments, Port Authorities and Shipping Companies in a mandatory section-Part A, together with a series of guidelines about how to meet these requirements in a second, non-mandatory section-Part B.³⁴

Major amendments to the 1988 Convention and its related Protocol were adopted by the Diplomatic Conference on the Revision of the SUA Treaties held from October 10 to 14, 2005. The amendments were crafted in the form of Protocols to the SUA treaties (the 2005 Protocols); the 2005 Protocols were Adopted by a Diplomatic Conference of the IMO on October 14, 2005, and entered into force on July 28, 2010.³⁵

Both the 1988 SUA Convention and the 2005 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005 SUA Convention) are to be read as a single integrated treaty, which is also referred to as the 2005 SUA Protocol.³⁶ The same nomenclature applies to the 2005 Protocol 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 is referred to as the 2005 Protocol.³⁷

³⁴ Hamza, Riyaz; Lecture Note on Maritime Security- Terrorism, IMO International Maritime Law Institute, March 2014.

³⁵ Kraska, James; *op. cit.*, p. 821.

³⁶ 2005 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. Adopted in London, UK on October 14, 2005.

³⁷ 2005 Protocol to the 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf. Adopted in London, UK on October 14, 2005.

3.1 The 2005 SUA Convention

The 2005 SUA Convention permit an international recognition of an expanded range of terrorist offences (encompassing concerns related to the proliferation of the WMD) and procedures for exercising jurisdiction in the face of these suspected offences at sea.³⁸

While the 1988 SUA Convention, had for the purpose of the Convention, only defined the term ship, the 2005 SUA Convention has brought in several new definitions in Article 1.

Primary amongst this is the definition of a 'BCN weapon' (biological, chemical and nuclear weapon). The term 'toxic chemical' has also been further defined and so has the term 'precursor'.

Further as per Article 1(c) 'serious injury or damage' has been defined to mean

(i) serious bodily injury; or

(ii) extensive destruction of a place of public use, State or government facility, infrastructure facility, or public transportation system, resulting in major economic loss;
or

(iii) substantial damage to the environment, including air, soil, water, fauna, or flora.

The scope of application set out in the Convention (Article 4) and the exclusions from the scope of application defined therein (Article 2) remain the same as regards to the 2005 SUA Convention as well.

However, the exclusions have been further expanded upon in terms of Article *2bis*.

Article *2bis.1* makes clear that the measures contemplated in the SUA Convention and its Protocol supplement other obligations under international law. This Article provides that the Convention does not affect other rights, obligations and responsibilities of States and

³⁸ Klein, Natalie; op. cit., p.170.

individuals under international law, in particular the purposes and principles of the UN Charter, International Human Rights Law, International Refugee Law and International Humanitarian Law.³⁹

Another important amendment is found in Article *2bis.2*. This new provision excludes the application of the Convention to the activities of armed forces during an armed conflict. More importantly, there is an exclusion of military forces even when there is not a state of conflict, because the Convention provides that it will not apply to military forces of a State in the exercise of their official duties.

Another new provision which reflects the post 9/11 concerns about weapons of mass destruction (WMDs) and about the vessel itself being used as weapon of mass destruction, is found in Article *2bis.3*.⁴⁰

However, the most far-reaching changes brought about by the 2005 Convention were in the category of offences.

Among the unlawful acts covered by the SUA Convention in Article 3 are 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.

The 2005 Protocol to the SUA Convention expands the offences by adding new Articles *3bis*, *3ter* and *3quarter*. It creates four new types of offences under the Convention:

- (1) using a ship in a terrorist offence; (2) transportation of (WMD) or their delivery systems, and related materials or items; (3) transportation of a terrorist fugitive;
- (4) inchoate offences.

In general terms, it contains counterterrorism offenses, including using a ship or discharge from a ship as a weapon in a manner that causes or is likely to cause death or serious injury or damage.⁴¹

³⁹ Hamza, Riyaz; Lecture Note on Maritime Security- Terrorism, IMO International Maritime Law Institute, March 2014.

⁴⁰ Ibid.

In addition to a counter proliferation offenses, including transport on a ship any explosives or other WMD, such as BCN weapons or materials, or related materials, equipment, or software.⁴²

Each of the aforementioned offenses are recognized as crimes, subject to the persons involved having formed the *unlawfully and intentionally* and *the purpose to intimidate a population or compel a government from taking or not taking any action*.⁴³

Article 3bis.2 provides that the transportation of nuclear material is not considered an offence 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.

In terms of Article 3ter, a person also commits an offence if that person unlawfully and intentionally transport another person on board a ship knowing that the person has committed an act that constitute an offence under the Convention or in terms of the treaties listed in the annex.

Article 5 has been amended and reads thus: *‘Each State Party shall make the offences set forth in Articles 3, 3bis, 3ter and 3quarter punishable by appropriate penalties which take into account the grave nature of those offences.’*

A new Article requires Parties to take necessary measures to enable a legal entity located in its territory or organized under its laws (this could be for example a company or organization), to be made liable and to face sanctions when a person responsible for management or control of that legal entity has, in that capacity, committed an offence under the Convention. Such liability may be criminal, civil or administrative.⁴⁴

⁴¹ Article 3bis.1.(a).

⁴² Article 3bis.1.(b).

⁴³ Article 3bis.1.

⁴⁴ Article 5bis.1.

Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.⁴⁵

Further each State Party shall ensure that legal entities liable in accordance with paragraph 1 are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions.⁴⁶

It is however open for governments to decide whether this liability will be criminal, civil or administrative, and if the sanctions can also include monetary sanctions.

In terms of Article 6 there is a positive obligation on each State Party to take measures as may be necessary to establish its jurisdiction over the offences set out in Articles 3, *3bis*, *3ter* and *3quarter*, in the situations enumerated in the said provisions.

As can be seen the basis of jurisdiction remains the same in both the Convention and Protocol.

As per Article 7, the obligation imposed on a State in whose territory an alleged offender is found to take him into custody remains unaltered.

Article 8 of the 1988 SUA Convention setting out the responsibilities and roles of the master of the ship, flag State and receiving State in delivering to the authorities of any State Party any person believed to have committed an offence under the Convention, including the furnishing of evidence pertaining to the alleged offence, also remains the same.⁴⁷

What was missing from the 1988 SUA Convention was a means effectively to apprehend offenders. Since the adoption of the 2005 treaty, ship-boarding procedures had been included in other multilateral treaties. The 2005 SUA Protocol include a procedure to

⁴⁵ Article 5bis.2.

⁴⁶ Article 5bis.3.

⁴⁷ Kraska, James; op. cit., p. 833.

allow State to board ships marks a shift from merely providing lawful bases to establish jurisdiction to creating means to exercise jurisdiction.⁴⁸

The new Article 8bis in the 2005 SUA Convention covers co-operation and procedures to be followed if a State Party desires to board a ship flying its flag, when ‘*the requesting Party*’ has reasonable grounds to suspect that the ship or a person on board the ship is, has been, or is about to be involved in, the commission of an offence under the Convention.

Article 8bis.1 provides that States Parties shall co-operate to the fullest extent possible to prevent and suppress unlawful acts covered by this Convention, in conformity with international law, and shall respond to requests pursuant to the Article as expeditiously as possible.

The express authorization and co-operation of the flag State is required before such a boarding can be carried out.⁴⁹

Upon or after depositing its instrument of ratification, acceptance, approval or acceptance a State Party may notify the IMO Secretary-General that it would allow authorization 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.⁵⁰ A State Party may also notify that it authorizes 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.⁵¹

⁴⁸ Klein, Natalie; op. cit., pp. 173-174.

⁴⁹ Article 8bis.5.(c)

⁵⁰ Article 8bis.5.(d).

⁵¹ Article 8bis.5.(e).

The use of force is to be avoided except when necessary to ensure the safety of officials and persons on board, or where the officials are obstructed in the execution of authorized actions.⁵²

Article 8bis includes important safeguards when a State Party takes measures against a ship in terms of this Article. The safeguards include: not endangering the safety of life at sea; ensuring that all persons on board are treated in a manner which preserves basic human dignity and in keeping with international human rights law; taking due account of safety and security of the ship and its cargo; ensuring that measures taken are environmentally sound; and taking reasonable efforts to avoid a ship being unduly detained or delayed.⁵³

A new Article 11*bis* states that none of the offences should be considered for the purposes of extradition as a political offence.

A new Article 11*ter* states that the obligation to extradite or afford mutual legal assistance need not apply if the request for extradition is believed to have 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.⁵⁴

Lastly, a new Article 12bis covers the conditions under which a person who is being detained or is serving a sentence in the territory of one State Party may be transferred to another State Party for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences.

⁵² Article 8bis.9.

⁵³ Article 8bis.10.

⁵⁴ Hamza, Riyaz; Lecture Note on Maritime Security- Terrorism, IMO International Maritime Law Institute, March 2014.

3.2 The 2005 SUA Protocol

While revisions to the 1988 Protocol were undertaken in 2005 to expand the range of offences, third States were not given any authority to intervene to protect a fixed platform on the continental shelf of a coastal State.⁵⁵

A new Article *2bis* broadens the range of offences included in the Protocol. A person commits an offence if that person unlawfully and intentionally, 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, uses against or on a fixed platform or discharges from a fixed platform any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage; or discharges from a fixed platform, oil, liquefied natural gas, or other hazardous or noxious substance, in such quantity or concentration, that it causes or is likely to cause death or serious injury or damage; or threatens, with or without a condition, as is provided for under national law, to commit an offence.

A new Article *2ter* includes the offences of unlawfully and intentionally injuring or killing any person in connection with the commission of any of the offences; attempting to commit an offence; participating as an accomplice; organizing or directing others to commit an offence.

4. THE REASONS TO IMPLEMENT THE 2005 TREATIES IN THE EGYPTIAN LEGISLATION

Today, the combating of maritime terrorism and unlawful acts against the safety of navigation has to be given a greater significance. Egypt has to face these threats in a

⁵⁵ Klein, Natalie; op. cit., p.103.

preventive manner rather than reactive. Especially that the geographical location of Egypt has always been a target to terrorist attacks throughout its history.

Egypt has long coastline along the Mediterranean and the Red Sea. In addition to the Suez Canal's vital importance. It is an artificial sea-level waterway running north to south across the Isthmus of Suez in Egypt to connect the Mediterranean Sea and the Red Sea. It is one of the world's most heavily used shipping lanes. The ability to respond to maritime threats has hence a fundamental importance to international shipping.

Moreover, considering the impact of the *Achille Lauro* incident that had place on the Egyptian territorial waters necessitated the authorities to improve maritime security. Hence, Egypt ratified the 1988 SUA Convention and its related Protocol by virtue of a presidential decree number 416 in 1993, and has been published in the Egyptian official journal on April 15, 15th edition.

It is therefore of utmost importance to Egypt a consideration of a review on the existing legal measures to prevent and suppress unlawful acts against ships and fixed platforms located on the continental shelf. The implementation of the revised version of the SUA treaties in the domestic legal order is measure to improve maritime security, in order to achieve the purpose to counter-terrorism.

5. THE IMPLEMENTATION PROCEDURES OF THE 2005 TREATIES INTO EGYPTIAN LAW

The implementation of international convention in the Egyptian legal system according to the constitutional amendments drafted in January 2014, is by virtue of its Article 151.

The President of the Republic shall represent the State in its foreign relations and conclude treaties and ratify them after the approval of the House of Representatives. Such treaties shall acquire the force of law following their publication in accordance with the provisions of the Constitution.

Therefore, once the House of Representatives approve the proposal, the President is advised to ratify the SUA treaties.

Finally, a Law-Decree for such ratification shall be endorsed by the President and published with the treaty in the Egyptian Official Gazette's annex AL Waka'a AL-Misrya.

Egypt following the monist system has been approved by Court of Cassation, which stated that *Agreements entered into force by Egypt shall have the full authority of the national legislation.*⁵⁶

Therefore, The treaty is automatically binding the Egyptian authorities, domestic courts, and citizens.

However, the SUA treaties expressly provide that the offences stated therein have to be criminalized by State Parties.

Moreover, according to Article 95 of the Constitution, *Penalties are personal. There shall be no crime or punishment except pursuant to a law, and a penalty may only be inflicted by a court judgment. Penalty shall only be imposed for acts committed after the effective date of the law imposing it.*

Therefore, it is imperative that a separate law be adopted to give effect to the provisions of the SUA treaties.

This law will be proposed to the House of Representatives in order to be approved.

⁵⁶ Judgement No. 137 on 8 March 1956, Cass. Repertoire of Decisions, pt. 3. at 274.

Draft Law

LAW NO.OF YEAR 2014

ON

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

**IN THE NAME OF THE PEOPLE
THE PRESIDENT OF THE REPUBLIC
THE PEOPLE’S ASSEMBLY HAS RATIFIED THE FOLLOWING LAW
WHICH WE HAVE SANCTIONED AND PROMULGATED**

IT IS HEREBY DECIDED

ARTICLE 1

This Law shall be called The Suppression of Unlawful Acts Against the Safety of Maritime Navigation and Fixed Platforms Located on the Continental Shelf Law No.....of Year 2014 and it shall come into force 30 days following the date of publication in the Official Gazette unless the law provide otherwis.

Definitions

ARTICLE 2

1. For the purposes of this Law:

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

(d) “BCN weapon” means:

(i) “biological weapons” , which are:

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

(ii) “chemical weapons”, which are, together or separately:

(1) toxic chemicals and their precursors, except where intended for:

(A) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; or

(B) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or

(C) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or

(D) law enforcement including domestic riot control purposes, as long as the types and quantities are consistent with such purposes;

(2) munitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in sub-paragraph (ii)(1), which would be released as a result of the employment of such munitions and devices;

(3) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in sub-paragraph (ii)(2).

(iii) nuclear weapons and other nuclear explosive devices.

(e) “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.

(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 multicomponent chemical system.

(g) “territory” means the territories of the Arab Republic of Egypt.

(h) “territorial waters” means the limits of sea declared under the Maritime Zones Presidential Decree No.180 of the Arab Republic of Egypt.

(i) “Government” means the Government of the Arab Republic of Egypt.

(j) “Convention” means the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005.

(k) “State Party” means the State Party to the Convention and/or Protocol.

(l) “Protocol” means the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 2005.

(m) “fixed platform” means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes.

(n) “continental shelf” means the the limits of the continental shelf as declared under the articles of the Maritime Zones Presidential decree No. 1051 in 1958 of the Arab Republic of Egypt.

2. For the purposes of this Law:

- 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.
- c. the term “explosive” has the same meaning as given to the term in Article 102(a) in the penal code

Scope of Application

ARTICLE 3

1. This Law applies to:

- (a) all ships flying the flag of the Arab Republic of Egypt;
- (b) all ships which are navigating or are scheduled to navigate into, through or from waters beyond the outer limit of the territorial waters of the Arab Republic of Egypt, or the lateral limits of its territorial waters with adjacent States; and
- (c) fixed platforms located on the continental shelf of the Arab Republic of Egypt.

2. This Law does not apply to:

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

3. Nothing in this Law affects the immunities of warships and other government ships operated for non-commercial purposes.

4. Nothing in this Law shall affect other rights, obligations and responsibilities of the Government and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international human rights, refugee and humanitarian law.

5. This Law shall not apply to all lawful activities of the armed forces of the Arab Republic of Egypt during an armed conflict and to all lawful activities of the armed forces of the Arab Republic of Egypt in the exercise of their official duties.

Offences

ARTICLE 4

Any person commits an offence within the meaning of this Law:

1. if that person 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 that 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, thereby endangering the safe navigation of a ship.

2. if that person threatens, with or without a condition, as is provided for under the domestic law of the Arab Republic of Egypt, 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 article 4 paragraphs 1 (a), (b), (c), (d) and (e), if that threat is likely to endanger the safe navigation of the ship in question.

ARTICLE 5

Any person commits an offence within the meaning of this Law if that person unlawfully and intentionally:

- (a) when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act:
 - (i) uses against or on a ship or discharges from a ship any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage; or
 - (ii) discharges, from a ship, oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by sub-paragraph (a) (i), in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or
 - (iii) uses a ship in a manner that causes death or serious injury or damage; or
 - (iv) threatens, with or without a condition, as is provided for under national law, to commit an offence set forth in sub-paragraph (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, 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
 - (ii) any BCN weapon, knowing it to be a BCN weapon as defined in article 2 paragraphe 1(d); 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.

ARTICLE 6

Any person commits an offence within the meaning of this Law:

if that person unlawfully and intentionally transports any person on board a ship knowing that the person has committed an act that constitutes an offence set forth in articles 4, 5 and 7 or an offence set forth in any treaty listed in the Annex, and intending to assist that person to evade criminal prosecution.

ARTICLE 7

Any person commits an offence within the meaning of this Law 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 articles 4, 5 or 6; or
- (b) attempts to commit an offence set forth in article 4, 5 or 6; or
- (c) participates as an accomplice in an offence set forth in articles 4, 5 or 6 or subparagraphs (a) and (b) of this article; or
- (d) organizes or directs others to commit an offence set forth in articles 4, 5 or 6 or subparagraphs (a) and (b) of this article; or
- (e) contributes to the commission of one or more offences set forth in articles 4, 5 or 6 or subparagraphs (a) and (b) of this article, 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 articles 4, 5 or 6; or
 - (ii) in the knowledge of the intention of the group to commit an offence set forth in articles 4, 5 or 6.

ARTICLE 8

It shall not be an offence within the meaning of this Law to transport an item or material covered by article 5 sub-paragraph (b) (iii) or, insofar as it relates to a nuclear weapon or other nuclear explosive device, or article 5 sub-paragraph (b) (iv), if such item or material is transported to or from the territory of, or is otherwise transported under the control of the Arab Republic of Egypt where:

- (a) the resulting transfer or receipt, including internal to the Arab Republic of Egypt, of the item or material is not contrary to the obligations of the Government 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 on the Non-Proliferation of Nuclear Weapons, the holding of such weapon or device is not contrary to the obligations of the Government under that Treaty.

ARTICLE 9

Any person commits an offence within the meaning of this Law:

1. if that person unlawfully and intentionally:

- (a) seizes or exercises control over a fixed platform by means of force threat or any other form of intimidation; or
- (b) performs an act of violence against a person or persons on board a fixed platform if that act is likely to endanger its safety; or
- (c) destroys a fixed platform or causes damage to it which is likely to endanger its safety; or
- (d) 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;

2. if that person threatens, with or without a condition, as is provided for under the domestic law of the Arab Republic of Egypt, 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 article 9 paragraphs 1 (a), (b), (c) and (d), if that threat is likely to endanger the safety of the fixed platform.

ARTICLE 10

Any person commits an offence within the meaning of this Law if that person unlawfully and intentionally, 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:

- (a) uses against or on a fixed platform or discharges from a fixed platform any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage; or
- (b) discharges, from a fixed platform, oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by subparagraph (a) in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or
- (c) threatens, with or without a condition, as is provided for under national law, to commit an offence set forth in subparagraphs (a) or (b).

ARTICLE 11

Any person commits an offence within the meaning of this Law 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 articles 9 or 10;
- (b) attempts to commit any of the offences set forth in articles 9,10 or article 11(a); or
- (c) participates as an accomplice in any of the offences set forth in articles 9,10 or article 11(a) or (b); or
- (d) organizes or directs others to commit any of the offences set forth in articles 9,10 or article 11(a) or (b); or
- (e) contributes to the commission of one or more of the offences set forth in articles 9,10 or article 11(a) or (b), 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 articles 9 or 10; or
 - (ii) in the knowledge of the intention of the group to commit an offence set forth in articles 9 or 10.

Jurisdiction

ARTICLE 12

(1) The Criminal Court of the Arab Republic of Egypt shall have jurisdiction over the offences set forth in articles 4, 5, 6, 7, 9, 10 and 11 when the offence is committed:

- (a) against or on board a ship flying the flag of the Arab Republic of Egypt at the time the offence is committed; or
- (b) in the territory of the Arab Republic of Egypt, including its territorial waters; or
- (c) fixed platforms located on the continental shelf of the Arab Republic of Egypt; or
- (d) by a national of the Arab Republic of Egypt.

(2) The Criminal Court also establishes its jurisdiction over any such offence when:

- (a) it is committed by a stateless person whose habitual residence is in the Arab Republic of Egypt; or
- (b) during its commission a national of the Arab Republic of Egypt is seized, threatened, injured or killed; or
- (c) it is committed in an attempt to compel the Government to do or abstain from doing any act.

(3) The Criminal Court shall have jurisdiction over the offences set forth in articles 4, 5, 6, 7, 9, 10 and 11 in cases where the alleged offender is present in the territory of the Arab Republic of Egypt and it does not extradite the alleged offender to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.

(4) The Law does not exclude any criminal jurisdiction exercised in accordance with any other acts, rules, order or ordinance of the Arab Republic of Egypt.

Penalty

ARTICLE 13

(1) Any person who is found guilty of committing any of the offences set forth in articles 4, 5, 6, 9 or 10 of this Law shall on conviction be liable to a term of imprisonment not less than fifteen (15) years and not exceeding twenty five (25) years.

(2) Any person who is found guilty of committing any of the offences set forth in articles 7 and 11 of this Law shall on conviction be liable to a term of imprisonment not less than ten (10) years and not exceeding twenty (20) years.

(3) Where death results in connection with commission of any of the offences set forth in this Law, the person shall be guilty of that offence and shall on conviction be liable to life imprisonment.

Legal Procedures

ARTICLE 14

1. Upon being satisfied that the circumstances so warrant, the Authority shall, in accordance with domestic law, take the offender or the alleged offender found in the territory, into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. The Authority shall immediately make a preliminary inquiry into the facts, in accordance with the Code of Criminal Procedur Laws of the Arab Republic of Egypt.

3. Any person regarding whom the measures referred to in paragraph 1 are being taken shall be entitled to:

(a) communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;

(b) be visited by a representative of that State.

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the Arab Republic of Egypt.

State Obligations

ARTICLE 15

1. The master of a ship flying the flag of the Arab Republic of Egypt may deliver to the authorities of any other State Party any person who the master has reasonable grounds to believe has committed an offence set forth in articles 4, 5, 6, 7, 9, 10 and 11.

2. The Government shall ensure that the master of its ship is obliged, whenever practicable, and if possible before entering the territorial sea of the receiving State carrying on board any person whom the master intends to deliver in accordance with paragraph 1, to give notification to the authorities of the receiving State of his intention to deliver such person and the reasons therefor.

ARTICLE 16

1. The Government shall accept the delivery, except where it has grounds to consider that the Law is not applicable to the acts giving rise to the delivery, and shall proceed in accordance with the provisions of article 15. Any refusal to accept a delivery shall be accompanied by a statement of the reasons for refusal.

2. The Government having accepted the delivery of a person in accordance with paragraph 1 may, in turn, request the flag State to accept delivery of that person.

Extradition

ARTICLE 17

1. The offences set forth in article 4, 5, 6, 7, 9, 10 and 11 shall be deemed to be included as extraditable offences in any extradition treaty existing between the Arab Republic of Egypt and any other States Parties. The Government shall undertake to include such offences as extraditable offences in every extradition treaty to be concluded with other States Parties.

2. If the Government receives a request for extradition from another State Party with which it has no extradition treaty, the Government may, at its option, consider the Convention as a legal basis for extradition in respect of the offences set forth in articles 4, 5, 6, 7, 9, 10 and 11. Extradition shall be subject to the other conditions provided by the Extradition Law and other relevant laws of the Arab Republic of Egypt.

3. If necessary, the offences set forth in articles 4, 5, 6, 7, 9, 10 and 11 shall be treated, for the purposes of extradition between the Arab Republic of Egypt and any other State Party, as if they had been committed not only in the place in which they occurred but also in a place within the jurisdiction of the Arab Republic of Egypt.

4. If the Government receives more than one request for extradition from States which have established jurisdiction in accordance with article 6 and which decides not to prosecute shall, in selecting the State to which the offender or alleged offender is to be extradited, pay due regard to the interests and responsibilities of the State Party whose flag the ship was flying at the time of the commission of the offence.

5. In considering a request for the extradition of an alleged offender pursuant to this Law, the Government shall pay due regard to whether his rights can be effected in the requesting State.

6. With respect to the offences as defined in this Law, the provisions of all extradition treaties and arrangements applicable between the Arab Republic of Egypt and any other State Party are modified to the extent that they are incompatible with the Law.

7. None of the offences set forth in article 4, 5, 6, 7, 9, 10 and 11 shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

8. Nothing in this Law shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the Government has substantial grounds for believing that the request for extradition for offences set forth in articles 4, 5, 6, 7, 9, 10 and 11 or for mutual legal assistance with respect to such offences 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.

Mutual Co-operation with other States Parties

ARTICLE 18

1. The Government shall afford the greatest measure of assistance towards other States Parties in connection with criminal proceedings brought in respect of the offences set forth in articles 4, 5, 6, 7, 9, 10 and 11 including assistance in obtaining evidence at its disposal necessary for the proceedings.

2. The Government shall carry out its obligations towards other States Parties under paragraph 1 in conformity with any treaties on mutual assistance that may exist between them.

3. The Government having reason to believe that the offences set forth in articles 4, 5, 6, 7, 9, 10, 11 will be committed shall, in accordance with the domestic law of Arab Republic of Egypt, furnish as promptly as possible any relevant information in its possession to those States which it believes would be the States having established jurisdiction in accordance with article 6.

ARTICLE 19

1. The Government shall co-operate with other States Parties in the prevention of the offences set forth in articles 4, 5, 6, 7, 9, 10 and 11 particularly by:

- (a) taking all practicable measures to prevent preparation in the territory of the Arab Republic of Egypt for the commission of those offences within or outside its territory;
- (b) exchanging information in accordance with its domestic law, and co-ordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in articles 4, 5, 6, 7, 9, 10 and 11.

2. When, due to the commission of an offence set forth in article 4, the passage of a ship has been delayed or interrupted, and the ship or passengers or crew are present in the territory of the Arab Republic of Egypt, the Government shall exercise all possible efforts to avoid a ship, its passengers, crew or cargo being unduly detained or delayed.

Trial and Safeguards of the Offender or Alleged Offender

ARTICLE 20

1. The Government, if the offender or the alleged offender is found in the territory of the Arab Republic of Egypt, shall, in cases to which article 6 applies, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without delay to the criminal court for the purpose of prosecution.

2. Any person who is taken into custody, or regarding whom any other measures are taken or proceedings are being carried out pursuant to this Law, shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the domestic law of the Arab Republic of Egypt and applicable provisions of international law, including international human rights law.

Miscellaneous

Provisions with Regard to Legal Entities

ARTICLE 21

1. The Government shall take the necessary measures to enable a legal entity located in territory of the Arab Republic of Egypt 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 this Law. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

Boarding Provisions

ARTICLE 22

1. Whenever the law enforcement or other authorized officials of another State Party ("the requesting Party") encounters a ship flying the flag of the Arab Republic of Egypt located seaward of the territorial sea of the Arab Republic of Egypt, and the requesting Party has reasonable grounds to suspect that the ship or a person on board the ship has been, is or is about to be involved in the commission of an offence set forth in articles 4, 5, 6, 7, 9, 10 and 11, the requesting Party shall not board the ship or take any measures without the express authorization of the Arab Republic of Egypt.

2. Whenever the law enforcement or other authorized officials of the Arab Republic of Egypt encounters a ship flying the flag of another State Party located seaward of the territorial sea of the Arab Republic of Egypt, and has reasonable grounds to suspect that the ship or a person on board the ship has been, is or is about to be involved in the commission of an offence set forth in articles 4, 5, 6, 7, 9, 10 and 11, they shall not board the ship or take any measures without the express authorization of the said State Party, made in accordance with the Convention and the Protocol.

3. Where the law enforcement or other authorized officials of another State Party or the law enforcement or other authorized officials of the Arab Republic of Egypt decide to take measures in terms of this Article, they shall:

- (a) take due account of the need not to endanger the safety of life at sea;
- (b) ensure that all persons on board are treated in a manner which preserves their basic human dignity, and in compliance with the applicable provisions of international law, including international human rights law;
- (c) ensure that a boarding and search pursuant to this Article shall be conducted in accordance with applicable international law;

- (d) take due account of the safety and security of the ship and its cargo;
- (e) take due account of the need not to prejudice the commercial or legal interests of the State Party;
- (f) ensure, within available means, that any measure taken with regard to the ship or its cargo is environmentally sound under the circumstances;
- (g) ensure that persons on board against whom proceedings may be commenced in connection with any of the offences set forth in the Act, are afforded the all protections and rights set forth in this Act regardless of the location of the operation;
- (h) ensure that the master of the ship is advised of its intention to board, and is, or has been, afforded the opportunity to contact the ship's owner and the State Party at the earliest opportunity;
- (i) take reasonable efforts to avoid the ship being unduly detained or delayed.

ANNEX

- 1) Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.
- 2) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.
- 3) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.

- 4) International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
- 5) Convention on the Physical Protection of Nuclear Material, done at Vienna on 26 October 1979.
- 6) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.
- 7) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.
- 8) International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.
- 9) International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.