



IMO
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**A Proclamation to Incorporate the International
Convention for the Suppression of Unlawful Acts
against the Safety of Maritime Navigation 1988 as
amended by the 2005 Protocol thereto into the
Laws of Ethiopia**

**A Legislation Drafting Project submitted in partial fulfillment of the
requirements for the award of the Degree of Master of Laws (LL.M.) at
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Dedication

For

My wife: ADDU-KIA

PART ONE

Explanatory Note

1. Overview of the SUA Convention

Concerns about unlawful acts that threaten the safety of ships and the security of their passengers and crews have begun to grow since the 1980s. Reports of crews being kidnapped, hijacked, run aground, or targeted by explosives, and, specially the hijacking of the 'Italian-flag cruise ship *Ahille Lauro*'¹ in 1985 induced the UN General Assembly to adopt resolution 40/61 in the same year whereby States were urged to cooperate in contributing to the denunciation of causes underlying maritime terrorism.

Accordingly, in response to the *Achille Lauro* incident, the Governments of Austria, Egypt and Italy made a proposal in November that the IMO assumes responsibility to prepare a convention on the subject of unlawful acts against safety of maritime navigation.² The Assembly of the IMO adopted Resolution A584/14 whereby governments, maritime administrations, ship owners, masters and crews were urged to take appropriate measures to prevent unlawful acts that may threaten safety of maritime navigation.³ Hence, States negotiated and subsequently adopted the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention 1988).⁴

The SUA Convention 1988 for the first time addressed terrorism at sea; and it has focused on the reaction to a terrorist act rather than its prevention, representing 'cooperative law enforcement regime' whereby States Parties to it shall assume respective responsibility to its implementation.⁵

¹ Roach, J. Ashley ; « PSI and SUA : An Update » ; in Myron H. Nordquist, et al (Eds.) *Legal Challenges in Maritime Security*; Heidleberg, May 2007(Martinus Publishers, Boston 2008), p. 281

² http://www.nti.org/e_research_docs/inventory/pdfs/maritime.pdf accessed on 23 November 2009.

³ Tuerk, Helmut ; « Combating Terrorism at Sea : in supra foot note 1, p. 41

⁴ The SUA Convention was adopted on 10 March 1988 in Rome ; entered into force on 01 March 1992; 144 States are party to it- not including the 2005 Protocol to it.

⁵ Nelson, Dolliver; "The *Virginus* Revisited"; op. cit. in foot note 1, at p. 24

Meanwhile, the rules of international law relating to piracy are not applicable to maritime terrorism; and, it has been clear that the ‘two-vessel requirement’ and the ‘private ends’ criterion in the rules of piracy do not apply to the cases of unlawful acts/offences which are covered by the SUA Convention.⁶ As the purpose motivating the unlawful act is not relevant, an offense under the SUA Convention overlaps somewhat with piracy, although the scope of the SUA Convention is necessarily much wider.

The SUA Convention applies to ships navigating or scheduled to navigate into, through, or from waters beyond the territorial sea of a single State, or beyond the lateral limits of its territorial waters with adjacent States, or when the alleged offender is found in territory of a State Party. Accordingly, the Convention is applicable to ships on international voyage operating or scheduled to operate seaward of any State’s territorial sea. Moreover, warships or government ships used for naval or police purposes are excluded from the scope of the Convention.⁷

According to the provisions of Article 3 of the SUA Convention 1988, any person commits an offense if that person unlawfully and intentionally commits, attempts to commit, threatens to commit, or abets the seizure or exercise of control over the ship by force or threat of force or any form of intimidation; or commits any of the following acts if it endangers or is likely to endanger the safe navigation of that ship: an act of violence against a person on board; destroying a ship or damaging its cargo; placing or causing to be placed on a ship a device or substance likely to destroy the ship or cause damage to the ship or its cargo; destroying or seriously damaging maritime navigational facilities or seriously interfering with their operation; or communicating information he knows to be false. It is also an offense to injure or kill any person in connection with the commission or attempted commission of any of the previous offenses.

In the Convention, offenses are enumerated but not categorized according to their severity or seriousness. Article 5 simply provides that States Parties must prescribe appropriate penalties for the offenses according to the gravity of each offense. That is to say that the national legislation has to ensure sanctions to be commensurate to the

⁶ Op. cit. in footnote 1 p. 50.

⁷ Article 2

respective offenses. For the purpose of categorizing the offenses in accordance with their magnitude and the respective penalties, the main divisions can be formulated into two groups: offenses against the safety of ships and offenses against the persons on board a ship.

Measures to establish jurisdiction over the offenses shall be taken when the offense is committed against or on board a ship flying the flag of the State at the time the offense is committed; in the territory of that State, including its territorial sea; by a national of that State; by a stateless person whose habitual residence is in that State; in an attempt to compel that State to do or abstain from doing any act; or when a national of that State is seized, threatened, injured, or killed.⁸ during the commission of the offense.⁸

The 1988 SUA Convention's provisions deal primarily with measures to be taken after illegal acts have taken place, that is, the apprehension, conviction and punishment of those who commit offenses, rather than the prevention or suppression of those unlawful acts. Only one provision of the Convention provides for that States Parties « ...cooperate in the prevention of the offenses... by taking all practical measures to prevent preparations in their respective territories for the commission of those offenses within or outside their territories ...» and to exchange information, to coordinate to prevent the commission of those offenses.⁹

The other important provisions of the 1988 Convention are those found in Article 10, which require States Parties to extradite or prosecute. There is no absolute duty for a State Party to extradite; and, “[i]n the absence of specific extradition treaties in force between the requesting and the requested States the latter may at its option consider the Convention as a basis for extradition.”¹⁰

There are two types of jurisdictions which are established by the Convention: mandatory and discretionary in accordance with Articles 6(1) and 6(2) respectively. The former one is for those offenses committed against or on board a ship flying the flag of that State at the time of commission of the offense and; in the territory of that State, or by

⁸ Article 6

⁹ Article 13.

¹⁰ Tuerk, op. cit. in footnote 3 at p. 55

a national of that State. The latter type of jurisdiction *may* be established by that State over an offense committed by a stateless person whose habitual residence being that State, or when the offense is committed, a national of that State falls victim. Article 6(3) further provides for the obligation of a State Party to take appropriate measures to establish jurisdiction “where the alleged offender is present in its territory and it does not extradite the alleged offender to any of the States Parties which have established their jurisdiction.”

Meanwhile, the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf was adopted on 10 March 1988, and entered into force on 01 March 1992. The Protocol extends the requirements of the SUA Convention to fixed platforms such as those engaged for the exploitation of offshore oil and gas.¹¹

The traumatic events of terrorist attacks in the USA on September 11, 2001 have exposed the vulnerability of global transport infrastructure “both as a potential target for terrorist activity and, perhaps even more alarmingly, as a potential weapon of mass destruction.”¹²

The perils to commercial shipping activities have been explained by an increased danger of possible coordinated efforts by terrorists and pirates, particularly when such occurrences affect the strategic sea routes. In the light of these growing concerns, the IMO Assembly in November 2001 adopted Resolution A. 924(22) which is followed by the efforts of the Legal Committee in October 2002 to revise the provisions of the 1988 SUA Convention.¹³ The Committee completed its work on the draft amendment Protocol in April 2005 and it was adopted on 14 October 2005 by an International Conference on the Revision of the SUA Convention; hence, the 1988 SUA Convention was amended by the 2005 SUA Protocol.¹⁴

¹¹ http://www.imo.org/Conventions/mainframe.asp?topic_id=259&doc_id=686 accessed on 07 January 2010

¹² Balkin, Rosalie ; « The International Maritime Organization and Maritime Security » ; 30 Tul. Maritime Law Journal 1, 5, 2006 ; at p. 16.

¹³ Tuerk, op. cit. in footnote 3 at p. 63.

¹⁴ *Ibid.* at p. 65.

Basically, there were two Protocols which were adopted in the aforementioned Conference. One of these is the 2005 Fixed Platform Protocol to the 1988 SUA Protocol which is described above. However, this Protocol is not relevant for this Drafting Project, considering that Ethiopia, being a landlocked country, has hardly any vested interest in incorporating the Fixed Platform Protocol into its national legal regime. That is to say, for the purpose of incorporating the SUA Convention into the Laws of Ethiopia, this Drafting Project focuses on the 1988 SUA Convention and its 2005 Protocol as a package (the reference hereinafter of the SUA Convention shall mean to indicate both the 1988 Convention and its 2005 Protocol).

The changes brought about by the 2005 Protocol relate to new provisions included into the SUA Convention that significantly enlarge the offenses covered by the 1988 Convention. The preamble of the Protocol acknowledges the need for suppressing additional terrorist acts of violence against the safety and security of international maritime navigation.

The 2005 Protocol has provisions for enclosure of additional offenses into the regime of the SUA Convention.¹⁵ Some of the new offenses are those in relation to the intentional and unlawful carriage of, use or operation of biological, chemical and nuclear weapons (BCN weapons) aboard vessels, and other related materials as well as carriage of persons aboard who are known to have committed an offense under the SUA Convention. The Protocol provides for ship boarding procedures as a mechanism by which the international community may enforce the provisions of Article 3bis.¹⁶ Furthermore, new provisions on the rights of extradition under the Convention are included by the Protocol.¹⁷

2. Underlying Reasons for Ethiopia to Accede to the SUA Convention

Ethiopia is a longtime member State of IMO and a party to several international conventions on maritime safety, security and protection of the marine environment. The history of the country as a landlocked State has come to fore following the decision of its former province, Eritrea, to secede in 1993. This historic event has left Ethiopia without a

¹⁵ Article 3bis.

¹⁶ Article 8bis.

¹⁷ Article 11bis.

sea coast of its own. Despite that, the country still owns the largest cargo shipping industry in the region with an even growing interest in the maritime trade.

Associated to this, Ethiopia has been for long without any clear policy on maritime affairs except those specifically related to shipping trade. It is as recent as since 2007 that the country's maritime affairs administration has begun to be taken seriously. To this end, the Government promulgated a series of legislation dealing with various aspects of the country's interest and its commitment in the international maritime fora; a Government office responsible for the administration of the maritime sector has been established following the promulgation of the enabling legislation.¹⁸

Geographically, Ethiopia is located in the Horn of Africa; its major sea route for its maritime trade is the Gulf of Aden which is one of the busiest and strategic maritime routes in international maritime navigation. Thus, the safety and security of the maritime navigation in the Gulf of Aden is of great importance to Ethiopia's maritime trade activities. This maritime route has recently been known, however, for the infamous acts of the Somali pirates off the Coast of Somalia. Violent attacks against crews, which are associated with high incidents of piracy and ship-hijacking, have increased by 35 percent in the last few years. The State of Somalia has been facing political disorder for a very long period and it has "neither the capability nor the will to counter organized crime groups" which are attacking vessels across the region.¹⁹

As far as the impact of these unlawful acts along the Coast of Somalia are concerned, one of the hijacking incidents off the Coast which targeted *MV Golden Nori*, a Japanese-flag chemical tanker, in late October 2007 was a different incident than the ordinary act of piracy.²⁰ It involved the case of seizing dangerous cargo possibly one which once into the hands of terrorist groups in the already instable region could have been used for terrorist acts. This is a good example of the potential scenario of a dangerous-cargo ship falling into the hands of hijackers, which would call upon Ethiopia to take part in the

¹⁸ Federal Democratic Republic of Ethiopia ; « Maritime Sector Administration Proclamation », no. 549/2007 entered into force on 4th December 2007.

¹⁹ Davis, Anthony M. ; *Terrorism and the Maritime Transportation System* ; WingSpan Press, Livermore, CA ; the USA, 2008 ; at p. 119.

²⁰ *Ibid.* at "p. 121.

international efforts towards the protection of and the safety and security of the maritime navigation.

Furthermore, the fact that there are such growing incidents of ships being detained, hijacked, crews being injured and killed leading to a real danger to targeting ships navigating in the Gulf of Aden maritime route is, of course, a serious concern for Ethiopia which has its ships passing through these areas. Therefore, the country has good reasons to rely on an international legal regime that enables it to tackle these threats to its maritime interest.

From the perspectives of the whereabouts of the perpetrators of the unlawful acts, it helps to note that Ethiopia and Somalia are neighbouring States which share a common border of 1,600 Kilometers. Along the border, there is a Somali Regional State as one of the Federal States of Ethiopia, which is inhabited by a population of more than 4.5 million Somali tribe, and they are nationals of Ethiopia- apart from those who reside in the territory of the sovereign State of Somalia. This being the case, there is hard-to-control movement of people in between the two bordering areas which makes it highly possible for the wanton movements of the offenders in the Ethiopian territory. Ratifying the Convention would give a chance to Ethiopia to establish jurisdiction in accordance with the relevant provisions of the SUA Convention to adjudicate cases involving suspected offenders.

As the networks of these perpetrators of unlawful acts endangering the safety of maritime navigation in the region grow, their acts could not simply be considered as piracy; and, seeing from the recent incidents, the worst for the safety of maritime navigation is yet to come. Hence, the prosecution or extradition provisions of the SUA Convention have proved particularly useful in connection with piracy occurrences in the Horn of Africa; and, it has been noted that except for Ethiopia, Eritrea, and Somalia, all States within a thousand nautical miles of the Gulf of Aden are parties to the Convention.²¹

²¹ <http://www.uscg.mil/cgjournal/message.asp?Id=118> accessed on December 24, 2009.

In this respect, it is highly probable that Ethiopia could face situations in addition to what happened previously wherein its ships would fall under attack, its nationals would be killed, injured on board a ship, or commit an offense which may fall within the scope of the SUA Convention, or suspected offenders be found in its territory, or preparations for the commission of offenses against the safety of maritime navigation be made in its territory. Such situations are all covered by the SUA Convention and legal procedures agreed to in advance under these kinds of international conventions are very helpful to minimize post-attack unnecessary grudges among States.

It is also important to note that the ratification and implementation of the global anti-terrorism instruments is called upon in the UN Security Council Resolution 1373(2001) and the Counter Terrorism Committee, without regard to whether or not a State possessed a sea coast.²²

Furthermore, the UN Security Council Resolution 1838, S/RES/1838 (2008), §2. October 7, 2008 called on States “to issue to ships entitled to fly their flags, as necessary, advice and guidance on appropriate precautionary measures to protect themselves from attacks or threat of attack when sailing in waters off the Coast of Somalia....” Another of its Resolution 1846 of December 2, 2008 also urged States to make use of SUA Convention in prosecuting offenders along the Coast of Somalia.

From the Convention’s perspective, the SUA Convention itself in its preamble quotes the UN General Assembly Resolution 40/ 61- concerning the unequivocal condemnation of all acts of terrorism- referring to the need for “all States [to] contribute to the progressive elimination of causes underlying international terrorism.”

Accordingly, the Ministry of Foreign Affairs of Ethiopia instructed the Maritime Affairs Authority in May 2009 to prepare draft legislation for the ratification and incorporation of the SUA Convention 2005 into the laws of the country. This is a good coincidence to show that what restrained the country from ratifying such important international conventions is not related to lack of willingness to do so, but the shortage of

²² UN Office on Drugs and Crime ; « Legislative Guide to the Universal Anti-Terrorism Conventions Protocols » ; New York,2003. at p.18.

trained maritime legal personnel to propose to the government the importance of adhering to these kinds of instruments. Hence, there is a practical need on the part of the Government of Ethiopia to accede to the SUA Convention 2005.

3. Legislative Process of Incorporating an International Convention into the Laws of Ethiopia, with Particular Emphasis on the Incorporation of the SUA Convention into the Laws of Ethiopia

The ratification process in Ethiopia in general

Taking into account the legal process and Ethiopia's experience of adhering to international treaties/ conventions, the authoritative legal document to this effect is the Constitution of the country.²³ The form of Government in Ethiopia is Parliamentary and the State structure is Federalism. Ethiopia follows the Civil Legal System, and its major body of national laws is the legacy of the French legal system from which it adopted codes of laws during the 1960s when Ethiopia compiled its first codes of laws on penal, civil and maritime legal regimes.

In accordance with Article 51(8) of the Constitution, the authority to initiate, negotiate and implement international treaties/ conventions is given to the Federal Government, as distinguished from the regional governments within the federal system. The House of Peoples' Representatives (the Parliament) of Ethiopia is the highest legislative body of the State.²⁴ The Parliament shall have the power to ratify international treaties once they are concluded by the Federal Government.²⁵ Once treaties are ratified by the Parliament, they are part and parcel of the national laws of the country. Hence, ratification is always a necessity for such instruments to be part of the laws of the country; and by ratification alone they shall without the need to enact national legislation, enter into force. From the above, it can be noted that Ethiopia follows the monist approach with regards to the incorporation of international instruments.

The Chief of the Federal Government is the Prime Minister, and he/ she is the person authorized to initiate negotiations, to sign and conclude treaties representing

²³ The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation no. 1, 1995; entered into force on 21st August 1995.

²⁴ Ibid., Article 55(1).

²⁵ Ibid., Article 55(12).

the State.²⁶ However, the Prime Minister has delegated this function to the Minister of Foreign Affairs by the operation of a separate legislation to this effect.²⁷ Accordingly, the actual power to initiate, negotiate and sign treaties is exercised by the Minister of Foreign Affairs.

The ratification of international treaties in Ethiopia is a legal procedure whereby the Parliament issues a legislation acknowledging that a particular treaty is hereby adhered to by the country and that it shall be part of the laws of the country. Such a ratification legislation issued by the Parliament shall serve as an authoritative instrument to give legal enforceability to the treaty text which shall be annexed to the legislation. Therefore, the instrument of ratification shall be issued under the signature of the Minister of Foreign Affairs for the purpose of deposition.

Hierarchically, the ratification legislation is primary legislation. Thus, by making the treaty part of the laws of the country, the treaty provisions shall prevail over any other laws of the country. That is to say, the rules of interpretation of laws shall apply in such a way that no other laws, except the Constitution, shall be enforced if they contradict the treaty. Moreover, since Ethiopia is a State Party to the Vienna Convention on the Law of Treaties (1969), the latter shall be taken into account for the purpose of interpretation of the SUA Convention provisions.

At the implementation phase, the responsibility to follow-up the implementation of the treaty shall be on the relevant ministry/ ministries as to be stipulated by the ratification legislation, depending on the subject matter of the treaty. A subsidiary legislation may be issued by the Council of Ministers in accordance with the provisions of Article 77(1) of the Constitution on limited matters and for the purpose of detailing the duties and responsibilities of the State machinery in the course of implementing the primary legislation. Such subsidiary legislation is referred to as Regulations.

²⁶ Ibid., Article 74(1)

²⁷ 'Definition of Powers and Duties of the Executive Organs of the FDRE; Proclamation no. 471/ 2005; Article 25(5).

This being said, the power to issue laws on penal/ criminal matters is only that of the Parliament²⁸. This is of relevance particularly, in relation to the incorporation of the SUA Convention into the Laws of Ethiopia. Hence, the Council of Ministers and the respective Ministry/ Ministries which are entrusted with the implementation of international treaties ratified by the country shall have such responsibilities, mainly, preparing draft laws which need be issued by the Parliament and issuing subsidiary legislation that falls within the realm of their authority for the purpose of assigning duties and delegating powers to the different organs of the State machinery to facilitate the course of implementation.

Incorporation of the SUA Convention into the national laws of Ethiopia

The provisions of the SUA Convention are non-self executing, and therefore, in any event, would require detailed legislative action through a transformation process for meaningful implementation regardless, whether that State Party follows monistic or dualistic approach. In the case of SUA, the Convention requires State Parties to provide for appropriate legal sanctions for the offences prescribed by the Convention.²⁹ In this respect, “the first and most important step is to determine which Convention provisions need to be extracted for insertion into the [national] legislation.”³⁰

It is important to note that not all of a Convention provisions shall be re-written into the national legislation, for basically the Convention “speaks to its State Parties [while] domestic legislation speaks to its citizenry, i.e., the recipients and users of the legislation.”³¹ Hence, not all Convention provisions require national legislation; because, in many cases the provisions of the Convention are addressed to the State Parties. Applying this factor to the SUA Convention scenario, Article 5 of the Convention provides for that State Parties shall make the offences set forth in Articles 3, 3bis, 3ter and 3quater punishable by providing appropriate penalties. Accordingly, the relevant national legislation shall be the one that prescribes those offenses

²⁸ Constitution, op. cit., in footnote 16; Article 55(5).

²⁹ Proshanto K. Mukherjee; “Transformation of Conventions into National Legislations”; in Proshanto K. Mukherjee et al(Eds.); Maritime Violence and other Security Issues at Sea; Malmo, WMU, August, 2002, at p. 71.

³⁰ Ibid.

³¹ Ibid.

stipulated in the Convention and the penalties to be prescribed considering the grave nature of the offenses.

In the SUA Convention, the offenses are prescribed but it is left to State Parties to provide for sanctions by their domestic laws. Moreover, the SUA Convention lists down the offenses not in accordance with their severity or seriousness. Thus, it is expected that State Parties categorize the offenses in accordance with their gravity and prescribe the ensuing penalties thereto.

The other provisions of the SUA Convention which need be incorporated into the penal law regime of a State Party are those that establish jurisdiction. Article 6 of the Convention stipulates that State Parties establish jurisdiction to prosecute offenses under the Convention.

This being said, the transformation of the SUA Convention into the Laws of Ethiopia shall have the following procedural picture: As Ethiopia is going to be party to the SUA Convention by way of accession, since it did not become party to it during the time period when the Convention was open for signature, draft legislation will be prepared for the ratification of the SUA Convention 2005. Such legislation shall be submitted to the Parliament for approval. This draft legislation is, as mentioned above, a primary legislation, and as such, it shall provide for the incorporation of those matters which are prescribed by the Convention to be addressed by the national laws of the country. Accordingly, this legislation shall provide for:

- the offenses;
- the penalties prescribed thereto;
- jurisdiction;
- extradition procedures;
- respective powers and duties of the different organs of the Government in their assignment for the implementation of the Convention;
- transitional provisions on the amendment of existing laws that are going to be affected by the SUA Convention;
- the power of the Council of Ministers to issue subsidiary legislations to detail the implementation of the Convention provisions;

- Miscellaneous.

Taking into account that Ethiopia is a landlocked country, those provisions of the Convention, which deal with matters such as ship boarding functions which are expected to be performed by a State Party that is coastal State through its law enforcement machinery to this effect (coast guard and/ or naval force), shall not be strictly transformed into the national laws of the country, without prejudicing however that Ethiopia will accede to the Convention in its entirety. However, provisions of the Convention will be incorporated into Ethiopia's national legislation to the extent of their importance and necessity for exchange of information and assistance to other State Parties. Further, there will be provisions in the national legislation regarding the implementation of Ethiopia's Convention obligation with respect to authorizing a requesting State Party to board a ship flying the flag of Ethiopia and to take appropriate law enforcement measures where "the requesting [State] 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 offense set forth in article 3, 3bis, 3ter or 3quater," in accordance with the provisions of Article 8bis(5).

Finally, the Draft Project shall be conducted in consideration with the relevant provisions of existing laws, which need be amended so as to be compatible to the respective provisions of the SUA Convention. Accordingly, the following legislations shall be affected in this regard:

- **The Penal Code of Ethiopia (1957)** - the Code does not have provisions which specifically deal with offences to maritime navigation. However, it has general provisions on criminal offences, assessment of penalties and rules of extradition which are relevant for the incorporation of the SUA Convention provisions in this respect. Thus, the incorporation of the SUA Conventions provisions shall have the effect of inclusion of additional offences and to make them punishable within the ambit of the Code.
- **The Maritime Code of Ethiopia (1960)** - this Code was enacted when

Ethiopia used to be a coastal State. It is a body of both private and public laws, while it is mainly a merchant shipping law. The code does not have detail provisions on offences to safety against maritime navigation. Thus, the incorporation of the SUA Convention provisions shall prevail over and amend the provisions of the Code.

- **Maritime Sector Administration Proclamation (2007)** - The incorporation of the SUA Convention provisions shall expand the duties and responsibilities of the State machinery. Accordingly, the incorporation legislation shall have new provisions on the responsibility of the respective organs of the Government to achieve the effective implementation of the Convention

PART TWO

**FEDERAL GAZETTE
OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA**

Proclamation No. _____.

**A PROCLAMATION TO RATIFY AND INCORPORATE THE
INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF
UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME
NAVIGATION**

WHEREAS, the International Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 1988 and the Protocol to it were adopted by the IMO Diplomatic Conference held in March, 1988 and October, 2005 respectively;

WHEREAS, the Parliament of the Federal Democratic Republic of Ethiopia ratified the Convention at its ___ session held on ___ day of the month of ___ in the year _____;

COGNIZANT OF, the need to incorporate the Convention provisions into the laws of Ethiopia in order to ensure that appropriate action is taken against the seizure of ships; 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;

CONSIDERING THAT, offences under the Convention are made punishable by appropriate penalties which take into account the grave nature of those offences and establish jurisdiction for the adjudication of cases in accordance with due process of law;

NOW, THEREFORE, in accordance with Article 55(1) and (12) of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows:

PART ONE:
GENERAL RULES

Article 1
Short Title

This Proclamation shall be cited as “The International Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation Ratification and Incorporation Proclamation No. _____.”

Article 2
Ratification and Incorporation of the Convention

The International Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 1988 and its Protocol of 2005 (hereinafter referred to as “the Convention”) is hereby ratified and the provisions of the Convention are incorporated hereunder.

Article 3
Definition

(1) For the purpose of this Proclamation, the definition of words shall be the one that is accorded by the Convention.

(2) Subject to the provisions of sub-article (1) of this Article, for the purpose of this Proclamation, the definition of words shall be as follows:

- (a) Notwithstanding the provisions of Article 1 of the Ethiopian Maritime Code of 1960, “ship” means a vessel of any type whatsoever not permanently attached to the sea-bed, including floating craft.
- (b) “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.
- (c) “act of violence” means:
- (i) any act done in Ethiopia which constitutes the offence of murder, attempted murder, manslaughter, or assault; or
- (ii) any act done outside Ethiopia which is punishable under Ethiopian law as is mentioned in paragraph (i) above;
- (d) “unlawfully” refers:
- (i) in relation to the commission of an act in Ethiopia that constitutes an offence under Ethiopian law; and
- (ii) in relation to the commission of an act outside Ethiopia that is punishable under Ethiopian law.
- (e) Unless mentioned otherwise “the Minister” shall refer to the Minister responsible for the maritime transport sector of the Federal Democratic Republic of Ethiopia.
- (f) Unless mentioned otherwise “the Director General” shall refer to the Director General of the Maritime Affairs Authority of the Federal Democratic Republic of Ethiopia.

PART TWO **OFFENCES AND PENALTIES**

Article 4 **Scope of Application**

- (1) Offences enumerated in the provisions Article 3, 3bis, 3ter and 3quater of the Convention are made offences in accordance with the provisions of this Proclamation and the general provisions of the Penal Code of Ethiopia (1960).
- (2) Without prejudice to the provisions of sub-article (1) of this Article, the provisions of this Proclamation do not apply in relation to any warship or any other ship used as a naval auxiliary or in customs or police service, or any act committed in relation to such a warship or such other ships unless:

- (a) the person committing the offences against such ships, is an Ethiopian national or is found to reside or domicile in Ethiopia;
 - (b) the unlawful act is committed in Ethiopia; or
 - (c) the ship, against which the act is committed, is used in the customs service or for the services of the police to which Ethiopia is involved in accordance with regional, bilateral and international cooperation agreements with other States.
- (3) The provisions of this Proclamation shall apply regardless of:
- (a) whether the ship referred to in the relevant provisions of this Proclamation sails under the Ethiopian flag or the flag of other States;
 - (b) whether any such unlawful acts and offences are committed in Ethiopia or elsewhere; and
 - (c) whether or not the person committing such acts and offences, as are mentioned in this Proclamation, is an Ethiopian national or not; as long as that person is found in the territory of Ethiopia, or is permanently residing in Ethiopia, or is domiciled in Ethiopia.

Article 5

Hijacking and Destroying Ships

- (1) A person who unlawfully, by the use of force or by threats of any kind, seizes a ship or exercises control of it commits the offence of hijacking of a ship.
- (2) A person commits an offence if that person unlawfully and intentionally:
- (a) destroys a ship;
 - (b) damages a ship or its cargo so as to endanger, or is likely to endanger the safe navigation of the ship;
 - (c) commits on board a ship an act of violence which is likely to endanger the safe navigation of the ship; or

(d) places or causes to be placed on a ship any device or substance which is likely to destroy the ship or is likely so to damage it or its cargo as to endanger its safe navigation.

(3) Nothing in paragraph (d) of sub-article (2) of this Article is to be construed as limiting the circumstances in which the commission of any act may:

(a) constitute an offence under paragraph (a), (b) or (c) of sub-article (2); or

(b) constitute preparing, attempting or conspiring to commit, or aiding, abetting, counseling, procuring or inciting the commission of such an offence.

Article 6

Offences of Terrorist Acts against Maritime Navigation

(1) A person commits an offence when he intentionally and unlawfully, to intimidate the public or any other population, or to compel the Ethiopian Government or any other government or an international organization to do or to abstain from doing any act,

(a) uses against or on a ship or discharges from a ship any explosive, radioactive material or biological or chemical weapons or nuclear weapons and other nuclear explosive devices (hereinafter referred to as “BCN weapon”) in a manner that causes or is likely to cause death or serious injury or damage; or

(b) discharges, from a ship, oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by paragraph (b) of sub-article (1), in such a quantity or concentration that causes or is likely to cause death or serious injury or damage; or

(c) uses a ship in a manner that causes death or serious injury or damage; or

(d) threatens, with or without a condition, to commit an offence set forth in paragraphs (a), (b) or (c) of this sub-article; or

- (e) transports on board a ship any explosive or radioactive material that is intended to be used to cause, or in a threat to cause, death or serious injury or damage; or
 - (f) transports on board a ship any BCN weapon; or any other material or equipment or software or related technology that is intended to be used in a nuclear explosive activity;
 - (g) transports another person on board a ship knowing that the person commits has committed an act that constitutes an offence set forth in this Article and intending to assist that person to evade criminal prosecution.
- (2) A person commits an offence if that person unlawfully and intentionally:
- (a) injures or kills any person in connection with the commission of any of the offences set forth in sub-article (1); or
 - (b) attempts to commit an offence; or participates as an accomplice in any attempt or in an offence set forth in sub-article (1) or paragraph (a) of sub-article (2); or
 - (c) organizes or directs others to commit an offence or contributes in an offence set forth in sub-article (1); or paragraph (a) or (b) of sub-article (2).

Article 7

Offences of Endangering Safe Navigation and Ancillary Offences

- (1) A person commits an offence if that person unlawfully and intentionally:
- (a) destroys or damages any property to which this sub-article applies; or
 - (b) seriously interferes with the operation of such property, where the destruction, damage or interference is likely to endanger the navigation of a ship.
- (2) The provisions of sub-article (1) of this Article shall apply to offences to any property used for the provision of maritime navigation facilities,

including any apparatus or equipment so used, whether it is on board a ship or elsewhere.

(3) A person commits an offence if that person intentionally and unlawfully communicates information which he knows to be false, and in particular, where the communication of that information endangers the safe navigation of a ship.

(4) Notwithstanding the provisions of sub-article (3) of this Article and without prejudice to the provisions Article 4, acts required by law or acts done in the course of performing lawful duties which comprise of communication of information do not constitute an offence and are not punishable where the person charged of such acts can prove that he acted in good faith.

(5) A person commits an offence if that person in order to compel another person to do or abstain from doing any act, threatens some other person to do or abstain from doing, in relation to any ship, an act which is an offence by virtue of the provisions of Articles 5 or 6 or sub-articles (1), (2) or (4) of this Article.

Article 8 **Penalties**

(1) The court when deciding cases brought to it shall observe the general rules of the Penal Code in adjustment of penalties.

(2) Offences in Article 5 are punishable with rigorous imprisonment from five to twenty years.

(3) Offences in Article 6 are punishable with rigorous imprisonment for life; and, the offences in Article 6 (1e) and (2) are punishable with rigorous imprisonment for life, or death.

(4) Offences in sub-article (1), (2), (3), or (5) of Article are punishable with simple imprisonment not exceeding three years and fine not exceeding one hundred thousand Ethiopian Birr.

(5) The court shall increase the penalties prescribed in this Article in cases of aggravating circumstances, recidivism and concurrent offences. This

provision shall apply where those offences are committed by a crew member against or on board a ship.

(6) Where a legal entity is involved in the commission of the offences prescribed under the provisions of this Proclamation, the court shall decide that such entity be punished by payment of fine not exceeding five hundred thousand Ethiopian Birr.

PART THREE **JURISDICTION AND EXTRADITION**

Article 9 **Jurisdiction**

(1) The Federal High Court of Ethiopia shall have jurisdiction to hear any case brought to it if an offence, under the provisions of Part Two of this Proclamation, is committed:

- (a) against or on board a ship flying the flag of Ethiopia;
- (b) within the territory of Ethiopia;
- (c) by an Ethiopian national; or
- (d) by a person who is physically present in the territory of Ethiopia, who is resident of Ethiopia, or whose domicile is in Ethiopia at the time of arrest.

(2) Subject to the provisions of sub-article (1) of this Article, the Court shall have jurisdiction to hear any case brought to it if:

- (a) during the commission of an offence under the provisions of part two of this Proclamation, an Ethiopian national is seized, threatened, injured or killed; or
- (b) an attempt is made to compel the Government to do or abstain from doing any act relevant to part two of this Proclamation.

(3) The Civil bench of the court shall hear and decide civil cases for the claim of compensation brought against the offender in relation to the

commission of the offences prescribed under the provisions of this Proclamation.

(4) Procedural matters in relation to adjudication of cases arising out of this Proclamation shall be governed by the relevant provisions of the Penal and/or Civil Procedure Laws of Ethiopia.

Article 10 **Extradition**

(1) Any foreigner who commits an offence under the provisions of part two of this Proclamation outside the territory of Ethiopia and who takes refuge in Ethiopia may be extradited to a requesting State in accordance with the provisions of existing international treaties to which Ethiopia is Party.

(2) Notwithstanding the provisions of sub-article (1) of this Article, extradition may be made by virtue of the Convention where the requesting State is Party to the Convention, subject to a reciprocity agreement to be made to this effect.

(3) No Ethiopian national having that status at the time of the commission of the offence may, save as is expressly agreed to by virtue of an international treaty to this effect, be handed over to another State. Failing extradition, that person shall be tried by the Ethiopian Court.

PART FOUR **POWERS AND DUTIES OF THE STATE MACHINERY**

Article 11 **Respective Duties and Functions**

(1) The master of a ship flying Ethiopian Flag shall, if he has reasonable ground to believe that a person on board the ship has committed an offence set forth in part two of this Proclamation, deliver that person to the authorities of the receiving State following a prior notification to the

Director General and to the authorities prior to entering the territorial sea of the receiving State.

(2) Where a State Party to the Convention has reasonable grounds to suspect that an offence set forth in part two of this Proclamation is being or is about to be committed involving a ship flying Ethiopian flag, and upon a request by such State is presented to the Ethiopian Government, the Minister is empowered to render the necessary assistance in accordance with the provisions of the Convention.

(3) The Minister and the Director General direct and coordinate the effective implementation of the Convention.

(4) The Director General shall be responsible for the implementation of this Proclamation including the exchange of information with and assistance to other States Parties in relation to cooperation for the prevention and the suppression of unlawful acts covered by the Convention.

(5) The Council of Ministers of the Federal Democratic Republic of Ethiopia may issue the necessary subsidiary legislation for the implementation of this Proclamation.

PART FIVE **MISCELLANEOUS**

Article 12 **Notification**

(1) The Minister of Foreign Affairs of the Federal Democratic Republic of Ethiopia shall notify the Secretary General of IMO for the establishment of jurisdiction as mentioned in Article 9 of this Proclamation.

(2) The Director General shall provide to the Secretary General of IMO any other relevant information in accordance with the provisions of the Convention.

Article 13

Annex

(1) The text of the Convention shall be annexed to this Proclamation and it shall be referred to for authenticity and interpretation of the provisions of this Proclamation.

(2) In case of issues of interpretation arising in the course of implementing the provisions of this Proclamation, reference shall be made to the Convention provisions.

Article 13

Transitional Provisions

The respective provisions of the Penal Code (1957), the Maritime Code (1960), and the Maritime Sector Administration Proclamation (2007) are hereby amended to be read in line with the provisions of this Proclamation.

Article 14

Effective Date

This Proclamation shall come into force upon Publication on the Federal Gazette.

Done at Addis Ababa, this ___ day of the month of _____ in the year _____.

**PRESIDENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF
ETHIOPIA**

ANNEX I

Consolidated text of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and of the Protocol of 2005 to the Convention

*The Federal Democratic Republic of Ethiopia
Office of the Minister of Foreign Affairs*

To: the Secretary General of the IMO

*TO ALL TO WHOM THESE PRESENTS SHALL COME,
GREETINGS;*

INSTRUMENT OF RATIFICATION

WHEREAS, The House of Peoples' Representatives of the Federal Democratic Republic of Ethiopia has seen and examined the International Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 1988 and the 2005 Protocol to it;

WHEREAS, the House approved the ratification of the Convention on its session held on the day of the month of in the year;

NOW THEREFORE, I, , Minister of the Foreign Affairs of the Federal Democratic Republic of Ethiopia, hereby declare that Ethiopia has ratified the Convention and incorporated its provisions into her national laws.

IN WITNESS WHEREOF, I have signed this Instrument and caused the seal of the Government of the Federal Democratic Republic of Ethiopia to be hereunto affixed.

Done at Addis Ababa, this day of the month of in the year .

SIGNED

Minister of Foreign Affairs
The Federal Democratic Republic of Ethiopia