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**Incorporation of the Convention for the Suppression of
Unlawful Acts Against the Safety of Maritime Navigation (2005
SUA Convention) into the Laws of Bangladesh.**

**A Legislation Drafting Project submitted in partial fulfillment
of the requirements for the award of the Degree of Master of
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Explanatory Note

Introduction

Terrorism has been the gravest concern in today's world. Maritime sector is not an exception from the threat of terrorism. There is no internationally agreed definition of the

term 'terrorist'. However, one thing is certain: that is that a terrorist act is generally considered to be committed for a political purpose.

Maritime security is focused on the maritime transport system and relates to the safe arrival of cargo at its destination without interference or being subjected to criminal activities.¹ Although the international concern for the security of ships, cargoes, passengers, and crews has been growing steadily over past several years, it was the *Achille Lauro* incident which awakened the maritime community to the real threat that terrorism could pose to the industry.

Achille Lauro Hijacking: The Genesis of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention), 1988

One of the most dramatic acts of maritime terrorism to instigate an international legal response was the 1985 hijacking of the *Achille Lauro*.² On October 07, the Italian-flag cruise ship was seized by four members of the Palestine Liberation Front (PLF) while sailing from Alexandria to Port Said. The hijackers boarded the ship in Genoa, posing as tourists, and managed to smuggle on board automatic weapons, grenades and other explosives.³

The hijackers held the crews and passengers hostage, and demanded the release of 50 Palestinians imprisoned in Israel in return for the safe release of passengers on board. In addition, the hijackers threatened to blow up the ship if any rescue mission is attempted. On the next day, they killed one wheelchair-bound passenger when their demand was not met. This incident constituted the first genuine maritime terrorist acts in the modern times.

The outrage resulted from the incident prompted a quick response from the international community.⁴ Barely a month later, on 20 November 1985, the Assembly of the International Maritime Organization (IMO) adopted Resolution A. 584(14) titled *Measures to Prevent Unlawful Acts Which Threaten the Safety of Ships and Security of Their Passengers and Crews*. The Resolution directed the IMO Maritime Safety

¹ Klein, Natalie; *Maritime Security and The Law of the Sea*, Oxford University Press, Oxford, 2011, p.151.

² Ibid.

³ Tuerk, Helmut; *Combating Terrorism at Sea-The Suppression of Unlawful Acts Against the Safety of Navigation*, *International & Comparative Law Review*, University of Miami, Special Issue, Spring, 2008, p. 338.

⁴ Ibid, p. 339.

Committee (MSC) as follows: “in co-operation with other committees, as required, to develop, on a priority basis, detailed and practical technical measures, including both shoreside and shipboard measures, which may be employed by Governments, port authorities and administrators, ship-owners, ship operators, ship masters and crews to ensure the security of passengers and crews on board ships.

Accordingly on 26th September 1986, the MSC approved MSC/Circ.443, titled *Measures to Prevent Unlawful Acts Against Passengers and Crews on Board Ships*. The measures discussed in MSC/Circ.443 became known as the IMO “security recommendations” because nothing in MSC/Circ.443 was mandatory. However, need for comprehensive legal measures setting out rules relating to arrest, prosecution and detention of those responsible for maritime terrorism was apparent.

Many people expressed the view that legal measures against the terrorist act needed to be taken urgently in order to prevent the recurrence of such acts in the future. While taking legal measures against the terrorist act, a question arose whether the act constituted ‘piracy’. After analysing the issues, the Legal Advisors from the foreign ministries of Austria, Italy and Egypt opined that the act did not meet two important criteria to constitute piracy i.e. ‘private end’ and ‘two vessel requirement’ as defined in article 15 of the Geneva Convention on High Seas, 1958⁵ and article 101 of the United Nations Convention on the Law of the Sea (UNCLOS), 1982⁶. There was an obvious legal lacuna which would have to be filled by creating a specific convention relating to maritime terrorism.⁷ There existed no convention dealing with maritime terrorism as it had never been a serious international problem before the incident.

The position of the three Legal Advisors was also supported by the International Transport Workers Federation, which called for an international convention on ship hijacking to mirror those conventions already in force in the case of civil aviation hijacking.⁸ Particular reference was made to the Hague Convention for the Suppression of Unlawful Seizure of Aircraft, 1970,⁹ which commits the Contracting States to making such hijackings punishable by ‘severe penalties’.¹⁰

As a consequence, Austria, Italy and Egypt proposed to elaborate a new international convention specifically dealing with maritime terrorism modelled on existing anti-terrorism conventions, particularly the Hague and Montreal Conventions.¹¹ Following the draft of Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971,¹² three sponsoring countries called the draft “Convention on Suppression of Unlawful Acts Against the Safety of Maritime Navigation”.

In November, 1986, the IMO Council unanimously agreed that the matter deserves an urgent consideration by the Organization. As per the suggestion made by the sponsoring countries, an Ad Hoc Preparatory Committee was established to prepare a draft convention on the basis of the draft prepared by the three States. The Committee concluded its work within one year and the **Convention for the Suppression of**

⁵ Convention on the High Seas, 1958, done at Geneva on 29 April 1958.

⁶ United Nations Convention on the Law of the Sea, 1982, done at Montego Bay on 10 December 1982.

⁷ Tuerk, Helmut; Combating Terrorism at Sea-The Suppression of Unlawful Acts Against the Safety of Navigation, *International & Comparative Law Review*, University of Miami, Special Issue, Spring, 2008, p. 343

⁸ *Ibid*, p.344.

⁹ Convention for the Suppression of Unlawful Seizure of Aircraft, done at Hague on 16 December 1970.

¹⁰ Tuerk, Helmut; *loc. cit.*

¹¹ *Ibid*.

¹² Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.

Unlawful Acts Against the Safety of Maritime Navigation¹³ was adopted on 10 March, 1988 by a diplomatic conference held in Rome.

During the deliberations on the Convention, the United States of America (USA) proposed that fixed platforms located on the continental shelf also needed to be protected from the terrorist acts. Upon the proposal, the Ad Hoc Committee addressed the issue by adopting the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platform Located on the Continental Shelf, 1988¹⁴ (SUA Protocol 1988), a supplementary to the Convention.

9/11 Terrorist Attacks

The terrorist attacks on the United States on 11 September 2001 have undoubtedly transformed the global security environment, and these changes necessarily extend to the maritime domain.¹⁵ These coordinated and new pattern of terrorist acts posed a serious threat to international shipping. On 20 November 2001, the IMO Assembly adopted Resolution A. 924 (22) titled *Review of Measures and Procedures to Prevent Acts of Terrorism Which Threaten the Security of Passengers and Crews and the Safety of Ships* calling on states to review measures and procedures to prevent acts of terrorism that threaten the security of passengers and crews and safety of ships.¹⁶ The committees were

¹³ **Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988.**

¹⁴ Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platform Located on the Continental Shelf, done at Rome on 10 March 1988.

¹⁵ Tsamenyi, Martin; et al., "International Legal Regulatory Framework for Seafarers and Maritime Security Post-9/11" in Herbert-Burns, Rupert; et al. (Ed.), *Lloyd's MIU Handbook of Maritime Security*, CRC Press, 2010, p.233.

¹⁶ *Ibid*, p.234.

given tasks of reviewing the instruments and determining whether they needed to be updated.

After 11 September 2001, the international regulatory framework for seafarers has been substantially modified to address global maritime security concerns, resulting primarily in the adoption of the International Ship and Port Facility Security (ISPS) Code.¹⁷

ISPS Code

A diplomatic conference held in December 2002 adopted a series of new security measures. The International Ship and Port Facility Security (ISPS) Code was adopted and made in mandatory part in the amended International Convention for the Safety of Life at Sea (SOLAS Convention), 1974.¹⁸

The ISPS Code is a comprehensive set of measures designed to enhance the security of ships and port facilities.

In essence, the Code takes the approach that ensuring the security of ships and port facilities is a risk management activity and that, to determine what security measures are appropriate, an assessment of the risks must be made in each particular case.¹⁹ The purpose of the Code is to provide a standardised, consistent framework for evaluating risk, enabling Governments to offset changes in threat with changes in vulnerability for ships and port facilities through determination of appropriate security levels and corresponding security measures.²⁰

¹⁷ Ibid, p.239.

¹⁸ International Convention for the Safety of Life at Sea (SOLAS), 1974, done at London on 01 November 1974.

¹⁹ Website of International Maritime Organization.

<http://www.imo.org/ourwork/security/instruments/pages/ispscode.aspx> last accessed on 13 January 2013.

²⁰ Ibid.

2005 SUA Protocols

In compliance with the aforementioned Resolution of the IMO Assembly, in October 2002, the Legal Committee began re-examining the provisions of the 1988 SUA Convention and Protocol and the other legal instruments on the basis of a draft text submitted by an open-ended Correspondence Group. The conclusion was that the categories of unlawful acts set forth in these legal instruments were too narrow and would require expansion in order to cope with modern day terrorist threats, including threats from biological, chemical and nuclear weapons or material.²¹ It was further acknowledged that these instruments did not include provisions that would allow law enforcement officials to board foreign flag ships on the high seas, either to search for alleged terrorists or their weapons, or to render assistance to a vessel suspected of being under attack.²²

The IMO Legal Committee completed its work amending the Convention and the Protocol in April 2005. The amendments were adopted by consensus on 14 October 2005 at the International Conference on the Revision of SUA Treaties. By the decision of the Conference, the original 1988 SUA Convention and Protocol, which were amended respectively by the two 2005 SUA Protocols, constitute single instruments now called the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005 (the 2005 SUA Convention) and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 2005 (the 2005 SUA Fixed Platforms Protocol).²³

²¹ Tuerk, Helmut; Combating Terrorism at Sea-The Suppression of Unlawful Acts Against the Safety of Navigation, *International & Comparative Law Review*, University of Miami, Special Issue, Spring, 2008, p.356.

²² *ibid*, p. 356.

²³ *ibid*, p.357.

The Core Provisions Introduced by the Protocol

New Categories of Offences

One of the significant aspects of the 2005 SUA Protocol is that it broadens the list of offences by adding three categories of new offences.²⁴

The first category of new offences concerns acts of maritime terrorism such as using the ship as a weapon or as a means to carry out a terrorist attack.²⁵ These type of new offences require a terrorist motive-the purpose of the acts must be to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.²⁶

The second category of new offences focuses on the transportation of materials that could be used in a terrorist attack.²⁷ The offences include the shipping of BCN (biological, chemical and nuclear) weapons, source material not covered by the International Atomic Energy Agency's comprehensive safeguards agreement, other explosive or radioactive material to be used in a terrorist attack or such a threatened attack, and any equipment, materials or software or related technology that is intended to contribute to the design, manufacture or delivery of a BCN weapon.²⁸

The third category of new offences establishes a new tool for dealing with persons who commit offences under nine other UN anti-terrorism conventions²⁹ as found in the Annex of the Convention. A person also commits an offence within the meaning of the Convention if that person unlawfully and intentionally transports another person onboard a ship knowing that the person has committed an act that constitutes an offence set forth in the anti-terrorism conventions listed in the Annex.³⁰

Boarding Provisions

An important innovation is the new article 8bis covering cooperation and procedures to be followed if a State Party desires to board a ship flying the flag of another State when the requesting State Party has reasonable grounds to suspect that the ship or a person on board the ship is, has been, is about to be involved in, the commission of an offence under the Convention.³¹

Boarding can only take place the express consent of the flag State. Also, if the flag State decides to give its consent to the boarding, it may impose conditions on the boarding State.³²

The new boarding provisions contain the most comprehensive set of "safeguards" ever included in any international agreement of this nature.³³ Among the safeguards are the following:

²⁴ Tsamenyi, Martin; et al., "International Legal Regulatory Framework for Seafarers and Maritime Security Post-9/11" in Herbert-Burns, Rupert; et al. (Ed.), *Lloyd's MIU Handbook of Maritime Security*, CRC Press, 2010, p.192

²⁵ Art. 3bis (1) (a), 2005 SUA Convention.

²⁶ Ibid.

²⁷ Art. 3bis (1) (b), 2005 SUA Convention.

²⁸ Ibid.

²⁹ Tsamenyi, Martin; et al., "International Legal Regulatory Framework for Seafarers and Maritime Security Post-9/11" in Herbert-Burns, Rupert; et al. (Ed.), *Lloyd's MIU Handbook of Maritime Security*, CRC Press, 2010, p.192.

³⁰ Art. 3ter, 2005 SUA Convention.

³¹ Art. 8bis (4), 2005 SUA Convention.

³² Art. 8bis (5) (c), 2005 SUA Convention.

(a) Use of force must be avoided except when necessary to ensure the safety of its officials and persons on board or where the officials are obstructed in the execution of authorized actions, and any use of force must not exceed the minimum necessary and reasonable in the circumstances.³⁴

(b) The boarding State must take due account of the need not to endanger the safety of life at sea and the safety and security of the ship and its cargo³⁵ and must take reasonable steps to avoid a ship being unduly delayed or detained.³⁶

(c) The boarding State must take due account of the need not to prejudice the commercial and legal interests of the flag State,³⁷ and must advise the master of its intention to board and afford him the opportunity to contact the owner and the flag State.³⁸

(d) For all boardings, the flag State retains the right to exercise jurisdiction over a detained ship, cargo, or other items and over persons, including seizure, forfeiture, arrest, and prosecution.³⁹

(e) The boarding State is liable for damage, harm, or loss attributable to it when the grounds for the boarding prove to be unfounded or when the measures taken are unlawful or exceed those reasonably required in the circumstances.⁴⁰

The boarding provisions also contain safeguards relating to human rights and protection of the environment. The boarding State must ensure that all persons on board are treated in accordance with the applicable provisions of international law, including international human rights.⁴¹ Also, the boarding State must ensure that any measure taken with regard to the ship and its cargo is environmentally sound under the circumstances.⁴²

Extradition Provisions

Article 11bis states that, for the purposes of extradition, none of the offences shall be regarded as a political offence or as an offence connected herewith or inspired by political motives. According to Article 11ter, the obligation to extradite or afford mutual legal assistance need not apply if the requested State Party has substantial grounds for believing that the request for extradition has been made for the purpose of 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.

³³ Tsamenyi, Martin; et al., "International Legal Regulatory Framework for Seafarers and Maritime Security Post-9/11" in Herbert-Burns, Rupert; et al. (Ed.), *Lloyd's MIU Handbook of Maritime Security*, CRC Press, 2010, p.195.

³⁴ Art. 8bis (9), 2005 SUA Convention.

³⁵ Art. 8bis (10)(a)(iv), 2005 SUA Convention.

³⁶ Art. 8bis (10)(a)(ix), 2005 SUA Convention.

³⁷ Art. 8bis (10)(a)(v), 2005 SUA Convention.

³⁸ Art. 8bis (10)(a)(viii), 2005 SUA Convention.

³⁹ Art. 8bis (8), 2005 SUA Convention.

⁴⁰ Art. 8bis (10)(b), 2005 SUA Convention .

⁴¹ Art. 8bis (10)(a)(ii), 2005 SUA Convention.

⁴² Art. 8bis (10)(a)(vi), 2005 SUA Convention.

Law Relating to Maritime Piracy/ Maritime Terrorism in Bangladesh

Bangladesh as a maritime nation, largely depends on the sea. As Bangladesh lies in the north of the Bay of Bengal, almost 90% of the goods in and from the country is transported through the sea. Other marine resources like fish, mineral play a vital role in the economy of the country as well.

Following the hijacking and release of *MV Jahan Moni*, a Bangladeshi-flag ship by Somali pirates in 2010, the issue of piracy has become a major concern for the ship owners and insurance companies of Bangladesh. Given the increasing incidence of piracy and armed robbery against ships, there is an urgent need for a domestic legislation on piracy that provides the necessary legal framework for prosecution of persons for piracy-related crimes. Bangladesh does not have a law on piracy neither has it been included as a crime in the Bangladesh Penal Code, 1860. The Code provides for definition and punishment for murder, robbery, deprivation of liberty, physical injury etc. that share some common characteristics with piracy. This fragmented approach does not fully cover the definition of piracy as provided for in Article 101 and other related provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Bangladesh has ratified the Convention in 2001, and thus has become committed to the provisions in the Convention concerning combating the crime of piracy. Bangladesh also acceded to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA), 1988 on 09 June 2005. However, no domestic legislation has been adopted based on the Convention yet.

The provisions of the 2005 SUA Convention are broad enough to prevent those committing piracy as well. It is recommended that new legislation be enacted to deal with piracy. However, in the absence of such legislation the proposed draft law will provide the necessary legal framework to prosecute piracy as well.

The aim of this drafting project is to recommend to the Government the need to accede to the 2005 SUA Convention and to incorporate the provisions of the Convention into the Bangladesh law.

How Bangladesh is Going to Incorporate the Convention into Domestic Law

Bangladesh maintains a dualist approach with regard to application of international law in domestic sphere. No rule of international law by its own force can be applied in the domestic courts of Bangladesh unless an act of Parliament is passed to the effect. International law needs to be incorporated by the Act of the Parliament. Since Bangladesh does not have any act dealing with maritime terrorism, this Act will serve as new law in the field.

An Overview of the Draft Act

The Act has 16 articles.

Article 1 stipulates the title of the Act. The title is “Suppression of Unlawful Acts against the Safety of Maritime Navigation Act, 2013.”

Article 2 of the Act sets out the general explanations.

Article 3 stipulates the scope of application of the Act. This Act applies to the ship navigating or scheduled to navigate into, through or from waters beyond the outer limit of the territorial waters of Bangladesh, or the lateral limits of the territorial waters with the adjacent States. Warship, a state-owned or state-operated ship used as a naval auxiliary or for customs or police purposes, a ship withdrawn from navigation or laid up are not covered by this Act. This Act also excludes the activities of armed forces during an armed conflict.

Article 4 sets out the offences covered by the Act. The acts amounting to offences have two features in common i.e. they are unlawful and intentional. The offences also include act of abetment, attempt and participation as accomplice in committing the offences.

Article 6 enumerates the jurisdiction to the criminal court of Bangladesh. Criminal court will have jurisdiction if the offence is committed against; or committed on board a Bangladeshi-flag ship; or committed in the territory of Bangladesh; or committed by a Bangladeshi national. The court will also have jurisdiction over the offence if it is committed by a stateless person whose habitual residence is in Bangladesh; or if a

Bangladeshi national is seized, threatened, injured or killed during its commission; or the offence is committed in an attempt to compel the Government to do or abstain from doing any act.

Article 7 provides the penalty provisions for the commission of offences under article 4. The sentences range from six month imprisonment to capital punishment. Fine may be imposed together with the imprisonment.

Article 8 deals with the right to appeal. Appeal may be preferred to the High Court Division within 60 days from the order of the sentence.

Article 9 sets out the legal proceedings. Legal proceedings should be done in accordance with the Code of Criminal Procedure, 1898.

Articles 10 and 11 stipulate State obligations in dealing with the offenders. Article 10 sets out Bangladesh's role as the flag State. On the other hand, Article 11 sets out Bangladesh's role as the receiving State.

Article 12 sets out the provisions of extradition of the alleged offender. The Government has an obligation to include this kind of offences in the Schedule of the Extradition Act, 1974. Pursuant to section 23 of the Extradition Act, this may be done by notification in the official Gazette.

Article 13 and 14 stipulate the provisions to co-operate with other State Parties by way of exchanging information and obtaining evidence.

Article 15 sets out the trial and safeguards of the offender. If not extradite the alleged offender, the criminal court having jurisdiction will proceed in accordance with the Code of Criminal Procedure, 1898. The alleged offender must be guaranteed fair treatment in conformity with applicable provisions of domestic law as well as rules of international law.

Article 16 deals with miscellaneous matters.

The annex contains the international instruments dealing with the terrorism.

Draft Act

THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION ACT, 2013

Short Title and Commencement

ARTICLE 1

The Act shall be called the Suppression of Unlawful Acts Against the Safety of Maritime Navigation Act, 2013; and it shall come into force on the first day of July, 2013.

General Explanations

ARTICLE 2

1. For the purposes of this Act:

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

(1) 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;

(2) 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 territories included in Bangladesh under article 2 of the Constitution of Bangladesh.

(h) “territorial waters” means the limits of sea declared under section 3 of the Territorial Waters and Maritime Zones Act, 1974.

(i) “Government” means the Government of the People’s Republic of Bangladesh.

(j) “Convention” means the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at London on 14 October 2005.

(k) “State Party” means the State Party of International Maritime Organization (IMO).

(l) “Authority” means the authority designated by the Government to act in such capacity.

2. For the purposes of this Act:

- 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 the section 4(1) of the Explosives Act, 1884.

Scope of Application

ARTICLE 3

1. This Act applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial waters of Bangladesh, or the lateral limits of its territorial waters with adjacent States.

2. This Act does not apply to:
 - (a) a warship; or
 - (b) a ship owned or operated by a State 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; or
 - (d) the activities of armed forces during an armed conflict.
3. Nothing in this Act affects the immunities of warships and other government ships operated for non-commercial purposes.
4. Nothing in this Act 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.

Offences

ARTICLE 4

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

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; or

(g) 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 (g) (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 (g) (i), (ii) or (iii); or

(h) 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(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.

2. if that person threatens, with or without a condition, as is provided for under the domestic law of Bangladesh, 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) and (e), if that threat is likely to endanger the safe navigation of the ship in question.

3. 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 article 4 paragraphs 1, 2 or 4 or an offence set forth in any treaty listed in the Annex, and intending to assist that person to evade criminal prosecution.

4. 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 article 4 paragraph 1 or 3 ; or

(b) attempts to commit an offence set forth in article 4 paragraph 1(a), (b), (c), (d), (e), (f), paragraph 1(g) (i), (ii), (iii), or paragraph 4(a) ; or

(c) participates as an accomplice in an offence set forth in article 4 paragraph 1 or 3, or paragraph 4(a) or (b); or

(d) organizes or directs others to commit an offence set forth in article 4 paragraph 1 and 3, or paragraphs 4 (a) or (b); or

(e) contributes to the commission of one or more offences set forth in article 4 paragraph 1 or 3, or paragraph 4 (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 article 4 paragraph 1 or 3; or

(ii) in the knowledge of the intention of the group to commit an offence set forth in article 4 paragraph 1 or 3.

Article 5

It shall not be an offence within the meaning of this Act to transport an item or material covered by article 1 paragraph 1 sub-paragraph (h) (iii) or, insofar as it relates to a nuclear weapon or other nuclear explosive device, paragraph 1 sub-paragraph (h) (iv), if such item or material is transported to or from the territory of, or is otherwise transported under the control of Bangladesh where:

(a) the resulting transfer or receipt, including internal to Bangladesh, 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.

Jurisdiction

ARTICLE 6

(1) The Court of no lower than 2nd class Magistrate of Bangladesh shall have jurisdiction over the offences set forth in article 4 when the offence is committed:

- (a) against or on board a ship flying the flag of Bangladesh at the time the offence is committed; or
- (b) in the territory of Bangladesh, including its territorial waters; or
- (c) by a Bangladeshi national.

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

- (a) it is committed by a stateless person whose habitual residence is in Bangladesh; or
- (b) during its commission a Bangladeshi national 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 Court shall have jurisdiction over the offences set forth in article 4 in cases where the alleged offender is present in the territory of Bangladesh 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 Act does not exclude any criminal jurisdiction exercised in accordance with any other acts, rules, order or ordinance of Bangladesh.

Penalty

ARTICLE 7

1. Whoever commits an offence set out in article 4 paragraph 1 (f), (g) (iv), paragraph 2, 3, 4(b) or (c), upon conviction shall be punished with simple imprisonment for a term not less than six months and not exceeding two years and shall also be liable to fine not less than five thousand Taka and not exceeding ten thousand Taka.

2. Whoever causes serious damage to the matters set out in article 4 paragraph 1 sub-paragraphs (a), (b), (c), (d), or(e), and (g)(i), (ii) or (iii), upon conviction shall be for a

term not less than two years and not exceeding five years and shall also be liable to fine not less than twenty thousand Taka and not exceeding fifty thousand Taka.

3. Whoever causes serious bodily injury to any person by committing offences set out in article 4 paragraph 1 sub-paragraph (g) (i),(ii) or (iii), or article 4 paragraph 4(a),(d) or (e), upon conviction shall be punished with rigorous imprisonment of a term not less than seven years and not exceeding twelve years and shall also be liable to fine not less than twenty thousand Taka and not exceeding fifty thousand Taka.

4. Whoever causes death of any person by committing offences set out in article 4 paragraph 1 sub-paragraph (g) (i), (ii) or (iii), or article 4 paragraph 4(a) or (d), upon conviction shall be punished with death or imprisonment for life.

Appeal

ARTICLE 8

A person convicted of any offence specified in article 4 and sentenced by a court shall have the right of appeal against such sentence:

Provided that such appeal may be preferred within sixty days of the date of the order of the sentence.

Legal Procedures

ARTICLE 9

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 Procedure, 1898.

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 Bangladesh.

State Obligations

ARTICLE 10

1. The master of a Bangladeshi-flag ship 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 article 4.
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 11

1. The Government shall accept the delivery, except where it has grounds to consider that the Act is not applicable to the acts giving rise to the delivery, and shall proceed in accordance with the provisions of article 9. 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 12

1. The offences set forth in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between Bangladesh 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 article 4. Extradition shall be subject to the other conditions provided by the Extradition Act, 1974 and other relevant laws of Bangladesh.
3. If necessary, the offences set forth in article 4 shall be treated, for the purposes of extradition between Bangladesh 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 Bangladesh.
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 the Convention, the Government shall pay due regard to whether his rights as set forth in article 8 paragraph 3, can be effected in the requesting State.

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

7. None of the offences set forth in article 4 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 Act 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 article 4 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 13

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 article 4 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 an offence set forth in article 4 will be committed shall, in accordance with the domestic law of Bangladesh, 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 14

1. The Government shall co-operate with other States Parties in the prevention of the offences set forth in article 4, particularly by:

- (a) taking all practicable measures to prevent preparation in the territory of Bangladesh 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 article 4.

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 Bangladesh, 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 15

1. The Government, if the offender or the alleged offender is found in the territory of Bangladesh, 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, through proceedings in accordance with the Code of Criminal Procedure, 1898.

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 Act, shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the domestic law of Bangladesh and applicable provisions of international law, including international human rights law.

Miscellaneous

Provisions with Regard to Legal Entities

ARTICLE 16

1. The Government shall take the necessary measures to enable a legal entity located in territory of Bangladesh 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 Act. 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.

