

PART A
Explanatory Note

1. Introduction

Terrorist acts at sea, much like piracy, include violent acts that interfere with shipping. The similarities have caused scholars in public international law to question whether terrorism falls within the definition of piracy. It was concluded that these are two distinct crimes. This is because terrorists do not work for ‘private ends’ as they are not interested in seizing a ship for financial or other gains.¹ Thus, the concept of terrorism is contrary to the definitions of piracy provided in both the *Convention of the High Seas 1958 (HSC)*² and the *United Nations Convention of the Law of the Seas 1982 (UNCLOS)*³ which requires the four main elements of (1) illegal act of violence, detention, or depredation; (2) private ends; (3) involvement of two ships; and (4) location at the high seas.

The 1985 *Achille Lauro* incident is a prime example of an unlawful event not fully qualifying as piracy. In this case, a cruise-liner was hijacked near the port of Alexandria in Egypt by four armed members of the Palestine Liberation Front, who boarded the vessel as passengers. Their request was for the Israeli Government to release 50 Palestinian prisoners. During the course of events one hostage was killed.⁴ The incident could not be held to be piracy as it lacked the necessary elements of “private ends” and the need for “two ships” as required by the definition of piracy in the HSC and UNCLOS. The incident brought to the fore, the fact that there was an obvious legal lacuna in the law that can only be rectified by the creation of a separate convention to deal with maritime terrorism.⁵

The International Maritime Organisation (IMO) was given the mandate by its Member States to create regulations to curb terrorism against ships.⁶ In response, the IMO formulated The *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988*

¹ Reto A Durler, ‘Suppression of the Unlawful Acts Against Maritime Navigation Ssafety’ in David J Attard and others. (eds), *The IMLI manual on international maritime law: Volume II: Shipping Law* (II. Oxford University Press 2016) 429.

² Convention on the High Seas 1958 (Geneva, adopted 29 April 1958, entered into force 30 September 1962) 450 UNTS 11 (HSC).

³ United Nations Convention on the Law of the Sea (Montego Bay, opened for signature 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS).

⁴ Ally Laschke, ‘What happened during the hijacking of the Italian cruise ship Achille Lauro in 1985?’ (2012) <http://www.palestinefacts.org/pf_1967to1991_achille_lauro/> accessed 22 April 2019.

⁵ Durler (n 1).

⁶ *ibid.*

*(SUA Convention 1988)*⁷ and the *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platform 1988 (SUA Protocol 1988)*⁸.

Further, the more recent attacks on the *USS Cole in 2000 and the Limburg in 2002*, along with the terrorist attack of September 11th 2001 alarmed the international community as they highlighted the fact that weapons and communication devices used for terrorism have become more technologically advanced and more effective.⁹ It was clear that the *SUA Convention 1988* and the *SUA Protocol 1988* were not sufficient to combat these modern forms of terrorism.

Therefore, the IMO, in an attempt to alleviate the restrictiveness of the 1988 Convention, adopted the *2005 Protocol to the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention 2005)*¹⁰, and the *2005 Protocol to the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (SUA Protocol 2005)*¹¹ to strengthen and expand the provisions of the 1988 Conventions, in order to cope with these contemporary terrorist threats.¹²

Importantly, it is noted that the SUA Conventions and Protocols do not include the word terrorism. This because there are many forms of terrorism in public international law and to define terrorism is to limit its scope.¹³ Therefore, the United Nations has take the approach of addressing each type of terrorism in specified conventions. The SUA Conventions and Protocols applies terrorism from a maritime perspective.

⁷ Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, adopted 10 March 1988, entered into force 1 March 1992) 1678 UNTS 221 (SUA Convention 1988).

⁸ Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, adopted 10 March 1988, entered into force 1 March 1992) 1678 UNTS 304 (SUA Protocol 1988).

⁹ Durler (n 1) 434.

¹⁰ 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (London, adopted 14 October 2005, entered into force 28 July 2010) IMO Doc. LEG/CONF.15/21 (SUA Convention 2005).

¹¹ 2005 Protocol to the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (London, adopted 14 October 2005, entered into force 28 July 2010) IMO Doc. LE/CONF.15/22 (SUA Protocol 2005).

¹² Durler (n 1) 435.

¹³ *ibid* 429.

2. The SUA Convention 1988

The *SUA Convention* was adopted on the 10th March 1988 and entered into force on 1st March 1992.¹⁴ The objective of the Convention is to ensure the cooperation of all States to fight international crime on a national level.¹⁵

Article 1 of the Convention defines a ship as ‘*a vessel of any type whatsoever not permanently attached to the seabed, including dynamically supported craft, submersibles, or any other floating craft*’. This broad definition implies that the Convention applies to all vessels except, according to *Article 2*, warships, government owned or operated ships used for non-commercial purposes and ships that are withdrawn from navigation or has been laid up. Added, *article 4* states that the convention applies where the ship is navigating or is scheduled to navigate into, through or from waters beyond the territorial sea.

One of the main features of the Convention is the threshold for acts of violence. The mere likelihood of an act endangering the safe navigation of the victim ship is enough to constitute an offence. This is an example of enhanced provisions in comparison to the UNCLOS.¹⁶

Additionally, the Convention widens the scope of international unlawful crimes by criminalising a particular set of acts. For instance, under *article 3*, any person who seizes or exercises control over a ship by force or the threat thereof or any other form of intimidation commits an offence. Second, any act of violence against a person on board a ship, if that act is likely to endanger the safe navigation of the ship shall be deemed an offence. Any person that communicates false information that endangers the safe navigation of a ship or injures or kills any person in connection with the commission or attempted commission of an offence under *article 3* also commits an offence.

Further, *article 8* of the Convention extends the roles and responsibilities of the master of the ship to include the responsibility to surrender an offender to an appropriate authority. The master of the

¹⁴ IMO, ‘Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf’ (1988) <<http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/SUA-Treaties.aspx>> accessed 1 November 2018.

¹⁵ Durler (n 1) 429.

¹⁶ Markiyan Z Kulyk, ‘Piracy, Hijacking and Armed Robbery against Ships’ in David J Attard and others (eds), *The IMLI manual on international maritime law: Volume III: Marine Environmental Law and Maritime Security Law* (III. Oxford University Press 2016) 405.

vessel may deliver and produce evidence against anyone who has committed or is believed to have committed an offence under the Convention to the authorities of any other State party.

Furthermore, *article 11* of the Convention makes provision for offences listed in *article 3* to be deemed extraditable between parties of the Convention. It reads these offences into any extradition treaty created by the parties to the Convention.

SUA Protocol of 1988

During the course of the diplomatic conference for the adoption of the SUA Convention 1988, it was acknowledged that fixed platform are also vulnerable to terrorist attacks.¹⁷ The conference decided to adopt the SUA Protocol of 1988 simultaneously with the SUA Convention 1988.

The Protocol, by virtue of its *article 2*, duplicates most of the offences listed in the SUA Convention, but applies them exclusively to fixed platforms on the Continental Shelf.

It is noteworthy that the Protocol can only be ratified by States that are parties to the SUA Convention itself.

3. SUA Convention 2005

The 2005 Protocol were adopted on the 14th October 2005 and entered into force by 28th July 2010. Due to the bombing of the *USS Cole* in the year 2000, the French *Limburg* in 2003, the *Superferry 14* in 2004 and other incidents such as *9/11*, the international community recognised the technological advancement in terrorist activities and therefore saw the need for advanced laws to protect society. The *2005 Protocol to the SUA Convention*, in accomplishing this mandate, sought to widen the scope of the SUA Convention 1988.

Article 3bis of the *2005 Protocol* adds offences such as the use of explosives, radioactive material or biological (BCN) weapons against or on a ship, in a manner that causes or is likely to cause death or serious injury or damage; the use of the ship in a manner that may cause death, serious injury or damage; it criminalises the transportation of certain explosive materials with the knowledge that the material is to be used in a terrorist attack.

¹⁷ Durler (n 1) 433.

The new Convention, through *article 8bis*, provides procedures for a State party to board a ship flying the flag of another State party to the Convention. The permission for boarding must be sought from the flag State, upon reasonable grounds that the ship or a person on board the ship is, has been or is about to be involved in the commission of a crime itemised by the Convention.

SUA Protocol 2005

Much like the *SUA Protocol of 1988*, its *2005 Protocol* simply extends the more modern offences provided for in the *2005 Protocol to the SUA Convention* to that of fixed platform on the continental shelf. This is done through its article *2bis* and *2ter*.

4. The Importance of incorporating the SUA Convention into the Laws of Guyana

As a member of the United Nations (UN) and the IMO, Guyana is urged to assist these international organisations to accomplish their mandate. Resolution 40/61 of the UN General Assembly appeals to all UN Member States to:

‘contribute to the progressive elimination of causes underlying international terrorism and to pay special attention to all situations...that may give rise to international terrorism and may endanger international peace and security’¹⁸

In February 2018, the IMO completed an audit of Guyana’s Maritime Administration Department (MARAD). One of the four main areas of improvement revealed by the audit was the ratification and incorporation of international conventions¹⁹. Among the list of conventions that Guyana was advised to incorporate into its national laws were the SUA Convention 1988 and the SUA Protocol 1988 on fixed platforms on the continental shelf, as Guyana had already acceded to these.

Guyana has been a party to the SUA Convention 1988 and the SUA Protocol 1988 since April 30th 2003 and has not yet enacted domestic legislation to incorporate the provisions of the Convention. Further, Guyana has recently acceded to the SUA Convention 2005 on the February 20th 2019, and

¹⁸ Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation 3 October 1988.

¹⁹ Ranetta La Fleur, ‘IMO’s audit of MARAD reveals limited areas for improvement’ (2018)

<<https://dpi.gov.gy/imos-audit-of-marad-reveals-limited-areas-for-improvement/>> accessed 02/13/2019.

this Convention will therefore enter into force in May 2019.²⁰ It is basic principle of international law that a State party to a treaty must ensure that its own domestic laws and practices reflect the requirements of the treaty.²¹ Therefore, it is imperative that Guyana incorporates the Convention in order to fulfil its international obligation.

Additionally, included in the list of conventions that Guyana is advised to ratify by the IMO is the SUA Protocol on Fixed Platforms 2005. Though Guyana has recently ratified the SUA Convention 2005 it did not ratify the SUA Protocol 2005. This is disheartening as the Protocols for the Suppression of Unlawful Acts against the Safety of Fixed Platforms on the Continental Shelf (1988 & 2005) would need to work together to be efficient. These two are particularly important to Guyana because Guyana is about to make its entrance into the league of oil and gas producing nations. The most recent record of more than 5 billion oil-equivalent barrels discovered offshore²² Guyana leaves one *New York Times* article to name Guyana as ‘*the next big oil producer in the Western Hemisphere*’²³. The article further states that Guyana is attracting some of the world’s biggest oil companies as investors. It is therefore in Guyana’s best interest to sustain and even increase such attractions by making its laws comparable with that of international standards. It is plausible to foresee oil investors being more inclined to invest in a State that has legal stability, especially in relation to maritime security.

An example of a crime that both the SUA Protocols 1988 and 2005 work together to prevent and/or punish is an incident similar to the 2008 attack on a platform offshore Nigeria. In this case, armed militants attempted to bomb the control room of the Royal Dutch Shell platform. During the ordeal an American on board the platform was kidnapped. The incident caused the Company’s production to be cut by 400,000 barrels a day. The kidnapping would be punishable under *article 2* of the SUA Protocol 1988 while the attempted bombing would be punishable under *article 2bis* of the

²⁰ International Maritime Organisation (IMO), ‘Records of Instruments Received’ (Recent Ratifications) <<http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>> accessed 19 March 2019.

²¹ United Nations, ‘Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities’ <<https://www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilities.html>> accessed 25 January 2019 Chap.5.

²² ‘ExxonMobil makes 10th oil discovery offshore Guyana’ *Stabroek News* (3 December 2018) <<https://www.stabroeknews.com/2018/news/guyana/12/03/exxonmobil-makes-10th-oil-discovery/>> accessed 01/22/2019.

²³ Krauss, Clifford, ‘With a Major Oil Discovery, Guyana Is Poised to Become a Top Producer’ *New York Times* (01/13/2017) <<https://www.nytimes.com/2017/01/13/business/energy-environment/major-oil-find-guyana-exxon-mobile-hess.html>> accessed 2 December 2019.

SUA Protocol 2005. Therefore, implementation of both Protocols would be beneficial to effectively combat similar crimes.

In addition to its international legal obligation, Guyana has a constitutional duty under *article 32* of the *Constitution of the Cooperative Republic of Guyana Cap 1:01* to ‘*combat and prevent crime and other violations of the law*’. Inherent in the State’s duty to protect public property is the duty to criminalise certain acts that may threaten the safety of life and property. Thus, the SUA Conventions and Protocols assist the State in fulfilling this duty through the SUA Conventions by outlining acts that should be deemed criminal.

Further, Guyana ratified the *United Nations Convention on the Law of the Sea (UNCLOS)* on November 16th 1993²⁴ and following the Convention’s entry into force in November 1994, Guyana adopted the piracy provisions, i.e. articles 100-107 and right of visit article 110, into its national laws. This is evidenced through the *Hijacking and Piracy Act Cap 10:08* of Guyana. However, Guyana has not updated its laws since and therefore the legal lacuna that SUA was created to rectify is still evident in the laws of Guyana. For instance, the *Hijacking and Piracy Act* requires there to be at least two ship for there to be an offence under the Act. With the incorporation of the SUA Conventions and the Protocols, such gaps would be filled and this provides for a more up-to-date and holistic legal system.

²⁴ Yoshifumi Tanaka, *The international law of the sea* (Second edition, Cambridge University Press 2015) 29.

PART B

**DETAILS ON THE SUPPRESSION OF UNLAWFUL ACTS AGAINST
FIXED PLATFORMS AND THE SAFE NAVIGATION OF SHIPS ACT**

5. Details of the Suppression of Unlawful Acts against Fixed Platforms and the Safe Navigation of Ships Act.

The following *Suppression of Unlawful Acts against Fixed Platforms and the Safe Navigation of Ships Act 2019* is being proposed in order to incorporate the *Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988, its 2005 Protocol, along with the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf 1988* and its *2005 Protocol* into the laws of Guyana. It provides clear and direct rules that govern the criminalisation of certain maritime related acts that may not be seen as piracy. These acts constitutes a breach Guyana's maritime security as they may endanger life and property, disrupt maritime traffic or negatively affect economic activities such as oil and gas production. It allows for the penalisation of those persons who commit an offence under the said Act by imprisonment and the payment of fines.

It is understood that the elements of the crimes generated by this Act are distinct from the crimes provided for by the current *Hijacking and Piracy Act* and therefore, it is necessary, to avoid confusion on the part of law enforcement and the judiciary, to have separate Acts.

According to the IMO Audit, a national maritime strategy is needed in Guyana. A national maritime strategy includes cooperation between institutions or agencies in the achievement of calculated aims to develop the maritime sector of the country. It would particularly be of assistance in the implementing of this Act and other maritime legislation in Guyana.

The effective implementation of the *Suppression of Unlawful Acts against the Safe Navigation of Ships and Fixed Platforms Act* necessitates a cross-sectoral approach. It may demand recording and reporting of unlawful incidents against ships and platforms through MARAD as this is one of MARAD's functions.

In addition, coordination is needed between the Police Force and Coast Guard in their capacity as enforcers of the law in accordance with *article 208A* of the *Defence Act of Guyana Cap 15:01* and *articles 18 and 19* of the *Police Act of Guyana Cap 16:01*, in relation to arrest of offenders.

Article 208A of the Defence Act reads as follow:-

Without prejudice to the generality of subsection (2) the members of the Coast Guard shall—

(a) enforce the provisions of every law relating to—

(v) the internal waters, territorial sea, continental shelf, exclusive economic zone and fishery zone of Guyana;

(vi) safety at sea;

Added, the Director of Public Prosecution (DPP), under *article 187* of the *Constitution of Guyana Cap 1:01*, is given the power to ‘*institute and undertake criminal proceedings against any person, before any court-martial, in respect of any offence against the laws of Guyana*’.

The Judiciary also plays a major role in relation to prosecution of offenders.

This list of participants in the effective implementation of this Act is not closed as the Act gives power to the Minister of Public Security to make further regulations where necessary.

The Act is divided into four Parts and sixteen sections as explained below.

PART I- Preliminary

Section 1. Name of Act

Section 1 provides that the name of the Act is the *Suppression of Unlawful Acts against Fixed Platforms and the Safe Navigation of Ships Act*.

Section 2. Definitions

Section 2 provides definitions to a number of technical words and phrases used in the Act. Where a word or term is not defined it shall be given its ordinary meaning or it shall be interpreted by the Court. One critical definition to highlight is the definition of a person. The word person connotes legal entities that possess legal personality, therefore the Act is applicable to companies.

Part II- Offences

Section 3. Offences against a ship or fixed-platform.

Section 3 illegalises any act that may be done with the aim of causing damage to a fixed platform or endanger the safe navigation of a ship.

Section 4. Punishment for unlawful use of ship to transport certain materials and discharge of BCN weapons from fixed platforms.

Section 4 prohibits the use or discharge of explosives, radioactive materials and BCN weapons. It proscribes the use of explosives, radioactive materials and BCN weapons on board a fixed platform or ship and the transporting of such materials in particular instances. Further, it sets out the punishment for persons who commit the offences referred to in this Section.

Section 5. Accessory to an offender and attempt of an offence.

Section 5 criminalises the attempt, participation, organising and contributing to any of the offences set out in Sections 3 and 4 and provides for the appropriate punishment for such acts.

Section 6. Offences against the person.

Section 6 sets out the punishments for causing death or injury to any person whilst carrying out an offences provided for in Sections 3(1), 4 or 5(1).

Part III- Jurisdiction

Section 7. Jurisdiction.

This Section expounds on the Court's geographic jurisdiction. The court will have jurisdiction in instances where a crime provided for in the Act is committed in Guyana. This includes Guyana's Internal Waters, Territorial Sea and Exclusive Economic Zone. Jurisdiction can only exceed these zones in particular circumstances.

Section 8. Exemption

The Act does not apply to warships, government ships used as naval auxiliary or for customs or police purposes or ships withdrawn from navigation or are laid up. It is to be noted that the Minister of Public Security, subject to Section 16, can make regulations to allow for this Act to apply to these vessels.

Part IV- Miscellaneous

Section 9. Power to Arrest

Section 9 allows for arrests to be made by Police Officers, Coast Guard Officers or any person authorised by the Minister of Public Security.

Section 10. Provision to allow master to deliver an accused and evidence to a foreign State.

Section 10 provides for the Master of any ship flying the flag of Guyana to deliver to any State Party to the 1988 SUA Convention, 1988 SUA Protocol, 2005 SUA Convention or the SUA Protocol 2005, any person whom he reasonably believes to have committed an offence under this Act.

Section 11. Provision for extradition.

Section 11 states that persons who commit an offence under Sections 4 or 5 may be extradited. Where there is no Extradition Treaty between Guyana and the Requesting State the Convention for the Suppression of Unlawful Acts of Violence against the Safety of Maritime Navigation, 2005 (2005 SUA Convention) shall be a legal basis for such extradition, provided that the Requesting State is a State Party to the Convention.

Section 12. Provision for mutual legal assistance.

This Section allows the Convention for the Suppression of Unlawful Acts of Violence against the Safety of Maritime Navigation, 2005 (2005 SUA Convention) to be used as a legal basis for providing mutual assistance to State Parties to the Convention, provided that there is no Mutual Assistance Treaty between Guyana and the Requesting State.

Section 13. Provision for boarding a ship.

Section 13 allows for the Convention for the Suppression of Unlawful Acts of Violence against the Safety of Maritime Navigation, 2005 (2005 SUA Convention) to be used as a legal basis for boarding and search of any ship flying the Flag of a State that is a Party to the Convention. This is subject to the fact that there is no Boarding and Searching Agreement between Guyana and the Flag State of the ship.

Section 14. Protection of an accused where extradition or mutual legal assistance could subject the accused to discrimination.

This Section seeks to protect the human rights of the accused, as the competent authority is not obliged to extradite or provide legal assistance to a Requesting State if the competent authority, upon reasonable grounds, believes the request is made in order to prosecute or punish the accused on discriminatory grounds.

Section 15. Power to delegate.

Section 15 gives the Minister of Public Security to delegate responsibilities arising from the implementation of this Act to the Chief of Staff of the Armed Forces or the Commissioner of Police.

Section 16. Power to make regulations.

The Minister of Public Security is empowered under this section to make any regulations that may be necessary in relation to the successful application of this Act.

PART C

LAWS OF GUYANA

**THE SUPPRESSION OF UNLAWFUL ACTS AGAINST FIXED PLATFORMS AND
THE SAFE NAVIGATION OF SHIPS ACT**



LAWS OF GUYANA

THE SUPPRESSION OF UNLAWFUL ACTS AGAINST FIXED PLATFORMS AND THE SAFE NAVIGATION OF SHIPS ACT

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY

1. Short Title.
2. Interpretation.

PART III

OFFENCES

3. Offences against a ship or fixed-platform.
4. Punishment for unlawful use of ship to transport certain materials and discharge of BCN weapons from fixed platforms.
5. Accessory to an offender and attempt of an offence.
6. Offences against the person.

PART III

JURISDICTION

7. Jurisdiction.
8. Exemptions.

PART IV

MSCCELLANEOUS

9. Power to arrest.
10. Provision to allow master to deliver an accused and evidence to a foreign State.
11. Provision for extradition.

12. Provision for mutual legal assistance.
13. Provision for boarding a ship.
14. Protection of an accused where extradition or mutual legal assistance could subject the accused to discrimination.
15. Power to delegate.
16. Power to make regulations.

1 of 2019

An act for the incorporation of the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 and its 2005 Protocol; along with the Protocol for Suppression of Unlawful Acts against the Safety of Fixed Platform 1988 and its 2005 Protocol into the laws of the Co-operative Republic of Guyana.

[27th February 2019]

Part I

PRELIMINARY

Short title 1. This Act may be cited as the Suppression of Unlawful Acts against Fixed Platforms and the Safe Navigation of Ships Act.

Interpretation 2. In this Act –

“BCN weapon” means:

(i) “biological weapons”, which are: -

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

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

- (a) toxic chemicals and their precursors, except where intended for-
 - i. industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; or

- ii. protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or
- iii. military purposes not connected to with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or
- iv. law enforcement including domestic riot control purposes, as long as the types and quantities are consistent with such purposes;

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

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

(iii) nuclear weapons and other nuclear explosive devices.

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

‘IAEA’ means the International Atomic Energy Agency

“minister” means the Minister of Public Security.

“person” means entities having juridical personality as well as an individual natural persons.

“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.

“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.

“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.

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

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

PART II OFFENCES

Offences against a ship or fixed platform.

3. (1) Every person who unlawfully and intentionally -
 - (a) seizes or exercises control over a ship or fixed platform by force or threat thereof or any other form of intimidation; or
 - (b) performs an act of violence against a person on board a ship if that act is likely to endanger the navigation of that ship; or
 - (c) performs an act of violence against a person on board a fixed platform if that act is likely to endanger the safety of that fixed platform; or
 - (d) 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
 - (e) destroys a fixed platform or causes damage to that fixed platform which is likely to endanger the safety of that fixed platform; or
 - (f) 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
 - (g) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or is likely to endanger the safety of that fixed platform; or
 - (h) 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
 - (i) communicates information which that person knows to be false, thereby endangering the safe navigation of a ship; or

(j) communicates information which that person knows to be false, endangering the safety of a fixed platform;

commits an offence and is liable on conviction on indictment to no less than fifteen years imprisonment together with a fine of no less than ten million dollars.

(2) Every person who unlawfully and intentionally, threatens, with or without condition, to commit any of the offences set forth in paragraphs (b), (c), (d), (e) and (h) of subsection 4(1), with the aim of compelling another person to do or refrain from doing any acts, provided such threat is likely to endanger the safety of the fixed platform or the safe navigation of the ship commits an offence and is liable on conviction on indictment to no less than ten years imprisonment together with a fine of no less than one million dollars.

(3) Every person who unlawfully and intentionally transports another person on board a ship knowing that the person has committed an act that constitutes an offence set forth in subsections (1) of this Section, intending to assist that person to evade criminal prosecution, commits an offence and is liable on conviction on indictment to no less than ten years imprisonment together with a fine of no less than one million dollars.

Punishment for
unlawful use of
ship to transport

4. (1) Every person who unlawfully and intentionally –

certain materials
and discharge of
BCN weapons
from fixed
platforms

- (a) with the purpose of intimidating a population or compelling a government or an international organisation 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) uses against or on a fixed platform or discharges from a fixed platform any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death, serious injury or damage; or
 - (iii) discharges from a ship, oil, liquefied natural gas, or other hazardous or noxious substances which is not covered by subparagraph (a) (i), in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or
 - (iv) discharges, from a fixed platform any oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered subparagraph (a)(ii), in such quantity or concentration that causes or is likely to cause death, serious injury or damage; or
 - (v) uses a ship in a manner that causes death, serious injury or damage; or

- (vi) threatens, with or without a condition, to commit an offence set forth in subparagraph (a)(i), (ii), (iii), (iv) or (v); or
- (b) transports on board a ship –
 - (i) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, with or without a condition, death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organisation to do or abstain from doing any act; or
 - (ii) any BCN weapon, knowing it to be a BCN, knowing it to be a BCN weapon as defined in subsection (2) of this Act; or
 - (iii) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to an IAEA comprehensive safeguards agreement; or
 - (iv) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose;

commits an offence and is liable on conviction on indictment to less than twenty-five years imprisonment together with a fine of no less than ten million dollars.

(2) Notwithstanding the provisions of subsection (4)(1), it shall not be an offence within the meaning of this Act to transport an item or material covered by paragraph (1)(b)(iii) of the said Section or, insofar as it relates to nuclear weapon or other nuclear explosive device, paragraph (1)(b)(iv), if such item or material is transported to or from the territory of, or is otherwise transported under the control of, a State Party to the Treaty of the Non- Proliferation of Nuclear Weapons where -

(a) the resulting transfer or receipt, including internal to a State, of the item or material is not contrary to such State Party's obligations under the Treaty on the Non-Proliferation of Nuclear Weapons and,

(b) if the item or material is intended for the delivery system of a nuclear weapon or other nuclear explosive device of a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons, holding of such weapon or device is not contrary to that State Party's obligations under the Treaty.

(3) Every person who unlawfully and intentionally transports another person on board a ship knowing that the person has committed an act that constitutes an offence set forth in subsections (1) of this Section, intending to assist that person to evade criminal prosecution, commits an offence and is liable on conviction on indictment to no less than ten years imprisonment together with a fine of no less than five million dollars.

Accessory to and attempt of an offence.

5. (1) Every person who –
- (a) attempts to commit an offence set forth in Section 3(1), 4(1)(a)(i), (ii), (iii), (iv) or (v), or subparagraph (a) of this subsection; or
 - (b) participates as an accomplice in an offence set forth in Section 3, 4, or subparagraph (a) and (b) of this subsection; or
 - (c) organises or directs others to commit an offences set forth in Sections 3, 4, subsection (2) of this Section or subparagraphs (a) and (b) of this subsection; or
 - (d) contributes to the commission of one or more offences set forth in Section 3, 4, subparagraphs (a) and (b) of this subsection or subsection (2) of this section, by a group of persons acting with a common purpose, intentionally and either –
 - (i) with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves

the commission of an offence set forth in Section 3, 4, or subsection (2) of this Section; or

- (ii) with knowledge of the intention of the group to commit an offence set forth in Section 3, 4, or subsection (2) of this Section

commits an offence and is liable on conviction on indictment to no less than twenty-five years imprisonment together with a fine of no less than one million dollars.

(2) Every person who unlawfully and intentionally transports another person on board a ship knowing that the person has committed an act that constitutes an offence set forth in subsections (1) of this Section, intending to assist that person to evade criminal prosecution, commits an offence and is liable on conviction on indictment to no less than ten years imprisonment together with a fine of no less than one million dollars.

Punishment for causing personal injury or death.

- 6. Every person who, in connection with the commission of any offence set forth in Section 3(1), 4 or 5(1), unlawfully and intentionally –
 - (a) kills any person, commits an offence and is liable on conviction on indictment to no less than twenty-five years imprisonment together with a fine of no less than fifteen million dollars; or

(b) injuries any person commits an offence and is liable on conviction on indictment to no less than fifteen years imprisonment together with a fine of no less than fifteen million dollars.

PART III

JURISDICTION

Jurisdiction

7. (1) A Court in Guyana shall have jurisdiction to try any offence under this Act provided that the offence is committed by any person within Guyana, including the Internal Waters and Territorial Sea or Exclusive Economic Zone.

(2) Notwithstanding paragraph (1), the Court's jurisdiction will extend to acts and omissions committed outside of Guyana, if the said act or omission constitutes an offence under this Act and if -

(a) the person who commits the act or omission is

(i) a citizen of Guyana; or

(ii) a stateless person who is habitually resident in Guyana;

(b) the act or omission is committed on board or against a ship flying the flag of Guyana at the time it is committed; or

(c) the act or omission is committed to compel the Government of Guyana to do or refrain from doing any act; or

(d) the act or omission is committed against a citizen of Guyana who is seized, threatened, injured or killed during the commission of an offence; or

(e) the offender, subsequent to the commission of the offence, is found in Guyana.

Exemptions

8. Notwithstanding article 3, nothing in this Act shall apply to -
- (a) warships; or
 - (b) government ships being used as a naval auxiliary or for customs or police purposes; or
 - (c) ships that are withdrawn from navigation or laid up.

PART IV

CONFERMENT OF POWERS

Power to arrest

9. (1) An arrest of a person who has committed, is committing or is suspected, upon reasonable grounds, of committing an offence under this Act may be arrested without a warrant by –
- (a) any police officer ; or
 - (b) any coast guard officer in any of Guyana’s maritime spaces; or
 - (c) any other person that the Minister so authorises.

Provision to allow master to deliver an accused and evidence to a foreign state.

10. (1)The master of any ship that flies the flag of Guyana may deliver to the authorities of any State Party (the receiving State) to the *Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation (SUA Convention) 1988*; the *Protocol of 2005 to the Convention for the Suppression of Unlawful Acts of Violence Against*

the Safety of Maritime Navigation; the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf 1988; or the 2005 Protocol to the SUA Convention vis-à-vis the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, any person who the master has reasonable grounds for believing has committed an offence under this Act;

(2) When carrying on board any person whom the master intends to deliver in accordance with paragraph (1) of this Section, the master is obliged, where practicable and if possible, before entering the territorial sea of the receiving State, to give notification to the authorities of the receiving State of his intention to deliver such person and reasons therefor.

(3) Subject to the provisions of this section, the master of such ship shall provide any evidence in his possession in relation to the alleged offences to the receiving State.

Provision for
Extradition.

11. (1) The offences set forth in Sections 4 and 5 shall be deemed to be included as extraditable offences in any extradition treaty existing between Guyana and any State Party to the Convention for the Suppression of Unlawful Acts of Violence against the Safety of Maritime Navigation, 2005 (2005 SUA Convention).

(2) Where there is no extradition treaty between Guyana and another State Party to the Convention for the Suppression of Unlawful Acts of Violence against the Safety of Maritime Navigation, 2005 (2005 SUA Convention), the said Convention shall be considered as a legal basis for extradition in respect of the offences set forth in Sections 4, 5, 6 and 7.

Provision for
mutual legal
assistance.

12. Where there is no treaty in relation to mutual assistance in criminal matters between Guyana and another State Party to the Convention for the Suppression of Unlawful Acts of Violence against the Safety of Maritime Navigation, 2005 (2005 SUA Convention), the said Convention shall be considered as a legal basis for providing mutual assistance to the State Party in question.

Provisions for boarding a ship.

13. Where there is no treaty in relation to boarding and searching of ships between Guyana and another State Party to the Convention for the Suppression of Unlawful Acts of Violence against the Safety of Maritime Navigation, 2005 (2005 SUA Convention), the said Convention shall be considered as a legal basis for the boarding and search of ships belonging to the State Party in question.

Protection of an accused where extradition or mutual legal assistance would subject the accused to discrimination.

14. Notwithstanding the provisions of this Act, the competent authority concerned with the extradition and mutual legal assistance shall not be obliged to extradite or provide legal assistance where, upon reasonable grounds, it is believed that the request has been made for the purpose of prosecuting or punishing the person accused on account of that person's race, religion, nationality, ethnic origin, political opinion or gender, or that the compliance with such request would cause prejudice to that person's position for any of the aforesaid reasons.

Delegation of powers.

15. The Minister shall delegate duties to the Chief of Staff of the Armed Forces or the Commissioner of Police accordingly.

Power to make regulations

16. The Minister may make regulations for carrying out the provisions of this Act.
