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PROTOCOLS OF 2005 TO THE CONVENTION CONCERNING SAFETY OF MARITIME NAVIGATION AND TO THE PROTOCOL CONCERNING SAFETY OF FIXED PLATFORMS ON THE CONTINENTAL SHELF

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

PROTOCOL OF 2005 TO THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION (THE "2005 SUA PROTOCOL") AND THE PROTOCOL OF 2005 TO THE PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF (THE "2005 FIXED PLATFORMS PROTOCOL") (TOGETHER, "THE PROTOCOLS"), ADOPTED BY THE INTERNATIONAL MARITIME ORGANIZATION DIPLOMATIC CONFERENCE IN LONDON ON OCTOBER 14, 2005, AND SIGNED BY THE UNITED STATES OF AMERICA ON FEBRUARY 17, 2006

OCTOBER 1, 2007.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate.

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *October 1, 2007.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (the "2005 SUA Protocol") and the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (the "2005 Fixed Platforms Protocol") (together, "the Protocols"), adopted by the International Maritime Organization Diplomatic Conference in London on October 14, 2005, and signed by the United States of America on February 17, 2006. I also transmit, for the information of the Senate, the report of the Department of State with respect to the Protocols.

The Protocols are an important component in the international campaign to prevent and punish maritime terrorism and the proliferation of weapons of mass destruction and promote the aims of the Proliferation Security Initiative. They establish a legal basis for international cooperation in the investigation, prosecution, and extradition of those who commit or aid terrorist acts or trafficking in weapons of mass destruction aboard ships at sea or on fixed platforms.

The Protocols establish the first international treaty framework for criminalizing certain terrorist acts, including using a ship or fixed platform in a terrorist activity, transporting weapons of mass destruction or their delivery systems and related materials, and transporting terrorist fugitives. The Protocols require Parties to criminalize these acts under their domestic laws, to cooperate to prevent and investigate suspected crimes under the Protocols, and to extradite or submit for prosecution persons accused of committing, attempting to commit, or aiding in the commission of such offenses. The 2005 SUA Protocol also provides for a shipboarding regime based on flag state consent that will provide an international legal basis for interdiction at sea of weapons of mass destruction, their delivery systems and related materials, and terrorist fugitives.

I recommend that the Senate give early and favorable consideration to the Protocols, subject to certain understandings that are described in the accompanying report of the Department of State.

GEORGE W. BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, May 29, 2007.

THE PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, subject to understandings set forth in the enclosed overview, the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (the 2005 SUA Protocol) and the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (the 2005 Fixed Platforms Protocol) (together, "the Protocols") adopted by the International Maritime Organization (IMO) on October 14, 2005, and signed on behalf of the United States on February 17, 2006. The Protocols are an important component in the international campaign to prevent and punish maritime terrorism and the proliferation of weapons of mass destruction. They provide a legal basis for international cooperation in the investigation, prosecution, and extradition of those who commit or aid terrorist acts or trafficking in weapons of mass destruction aboard ships at sea or on fixed platforms.

As of March 29, 2007, 18 States have signed both the 2005 SUA Protocol and the 2005 Fixed Platforms Protocol, subject to ratification. In addition, two States have acceded to the 2005 SUA Protocol. A detailed overview analysis of the provisions is enclosed with this Report. Recommended legislation necessary to implement the Protocols is being prepared for separate submission to the Congress. The Departments of Justice, Homeland Security, and Defense join in recommending that these Protocols be transmitted to the Senate at an early date for its advice and consent to ratification, subject to the understandings to Articles 3 and 4(5) of the 2005 SUA Protocol and to Article 2 of the 2005 Fixed Platforms Protocol. I recommend that these Protocols be transmitted to the Senate for its advice and consent to ratification.

Respectfully submitted,

CONDOLEEZZA RICE.

Enclosures: As stated.

PROTOCOL OF 2005 TO THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION AND PROTOCOL OF 2005 TO THE PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF

OVERVIEW

The Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation ("2005 SUA Protocol") and the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf ("2005 Fixed Platforms Protocol") (together, "the Protocols") are an important component in the international campaign to prevent and punish maritime terrorism and the proliferation of weapons of mass destruction. The Protocols amend two International Maritime Organization (IMO) counterterrorism agreements to which the United States is party: the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation ("the Convention"), and its accompanying protocol, the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf ("the 1988 Protocol"), both done at Rome, March 10, 1988, S. Treaty Doc. 101–1. The Convention and 1988 Protocol seek to ensure that all individuals who commit acts of terrorism that endanger the safe navigation of a ship or the safety of a fixed platform will be prosecuted in the State in which they are found, or extradited to another State for prosecution. The Convention and 1988 Protocol require States Parties to criminalize certain terrorist acts involving the safety of maritime navigation and fixed platforms, and they create a series of obligations relating to those offenses with the object of bringing the perpetrators to justice.

Following the terrorist attacks of September 11, 2001, the international community recognized the urgent need for a more effective international regime to combat maritime terrorism and to conduct maritime interdictions of weapons of mass destruction. To this end, the United States led the effort to negotiate the Protocols for over three years in the IMO. The resulting Protocols fill several gaps in the existing treaty framework for combating global terrorism. The Protocols require States Parties to criminalize under their domestic laws certain acts, including using a ship or a fixed platform in terrorist activity, transporting weapons of mass destruction ("WMD"), their means of delivery or related materials, and transporting terrorist fugitives. The Protocols also incorporate many of the provisions in recent counterterrorism conventions to which the United States is already a party, such as the 1999 International Convention for the Suppression of the Financing of Terrorism ("Terrorism Financing Convention"), S. Treaty Doc. 106–49, and the 1997 Inter-

national Convention for the Suppression of Terrorist Bombings ("Terrorist Bombings Convention"), S. Treaty Doc. 106–6. Like prior conventions, the Protocols require Parties to extradite or submit for prosecution persons accused of committing, attempting to commit, or aiding in the commission of such offenses. The 2005 SUA Protocol also creates a shipboarding regime based on flag state consent similar to agreements that the United States has concluded bilaterally as part of the Proliferation Security Initiative ("PSI") (see www.state.gov/t/isn/cl0390.htm). This shipboarding regime will provide an international legal framework to facilitate interdiction on waters seaward of the territorial sea of any State of WMD, their means of delivery and related materials, and terrorist fugitives.

As of March 29, 2007, 18 States have signed both the 2005 SUA Protocol and the 2005 Fixed Platforms Protocol, subject to ratification. In addition, two States have acceded to the 2005 SUA Protocol. The 2005 SUA Protocol will enter into force 90 days after the date on which 12 States have expressed their consent to be bound. The 2005 Fixed Platforms Protocol will enter into force 90 days following the date on which three States have expressed their consent to be bound. However, the 2005 Fixed Platforms Protocol may not enter into force before the 2005 SUA Protocol enters into force.

Because the 2005 Fixed Platforms Protocol incorporates all of the provisions of the 2005 SUA Protocol, except those relating to transport offenses and the shipboarding regime, which are not relevant in the context of fixed platforms, this report first addresses the provisions of the 2005 SUA Protocol. It then details which of the 2005 SUA Protocol provisions are incorporated into the 2005 Fixed Platforms Protocol, with the intention that the same description of the underlying provisions also applies to their operation in the 2005 Fixed Platform Protocol. Finally, this analysis will also summarize the few additional provisions of the 2005 Fixed Platforms Protocol.

THE 2005 SUA PROTOCOL

Definitions

Article 1 of the 2005 SUA Protocol defines, for the purposes of the Protocol, the terms "Convention," "Organization," and "Secretary-General" as the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, the IMO, and the IMO Secretary-General, respectively.

Article 2 of the 2005 SUA Protocol amends Article 1 of the Convention to include and define additional terms used in the Convention. "Transport" means to initiate, arrange, or exercise effective control, including decision-making authority, over the movement of a person or item. "Serious injury or damage" means serious bodily injury; extensive destruction of a place of public use, State or government facility, infrastructure facility, or public transportation system, resulting in major economic loss; or substantial damage to the environment, including air, soil, water, fauna, or flora. Article 2 defines "BCN weapons" as biological weapons, chemical weapons, and nuclear weapons and other nuclear explosive devices. The definitions of biological and chemical weapons are drawn from the Convention on the Prohibition of the Development, Production, and

Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction ("BWC"), S. Treaty Doc. 92–29, and the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction ("CWC") S. Treaty Doc. 103–21. Article 1 also defines "toxic chemical" and "precursor" in the same manner as the CWC. The United States is a party to the BWC and the CWC.

Article 1 also provides that the terms "place of public use," "State or government facility," "infrastructure facility," and "public transportation system" have the same meaning as is given to those terms in the Terrorist Bombings Convention, and that the terms "source material" and "special fissionable material" have the same meaning as is given to those terms in the Statute of the International Atomic Energy Agency ("IAEA"), TIAS 3873. Those definitions are as follows:

- "place of public use" means those parts of any building, land, street, waterway or other location that are accessible or open to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public. (Terrorist Bombings Convention, Article 1(5)).
- "State or government facility" includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties. (Terrorist Bombings Convention, Article 1(1)).
- "infrastructure facility" means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel, or communications. (Terrorist Bombings Convention, Article 1(2)).
- "public transportation system" means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo. (Terrorist Bombings Convention, Article 1(6)).
- "source material" means uranium containing the mixture of isotopes occurring in nature; uranium depleted in the isotope 235; thorium; any of the foregoing in the form of metal, alloy, chemical compound, or concentrate; any other material containing one or more of the foregoing in such concentration as the Board of Governors shall from time to time determine; and such other material as the Board of Governors shall from time to time determine. (IAEA Statute, Article XX(3)).
- "special fissionable material" means plutonium-239; uranium-233; uranium enriched in the isotopes 235 or 233; any material containing one or more of the foregoing; and such other fissionable material as the Board of Governors shall from time to time determine; but the term "special fissionable material" does not include source material. (IAEA Statute, Article XX (1)).

Exclusions and exceptions

Article 3 of the 2005 SUA Protocol adds Article 2*bis* to the Convention to address the interaction of the Convention with other rights, obligations, and responsibilities of States and individuals. Paragraph 1 provides that nothing in the Convention shall affect other rights, obligations and responsibilities of States 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. Paragraph 1 is based on the similar provisions contained in Article 19(1) of the Terrorist Bombings Convention and Article 21 of the Terrorism Financing Convention, but adds specific reference to international human rights and refugee law to take into account the interests of seafarers.

Paragraph 2 of Article 2*bis* contains two important exceptions to the applicability of the Convention with respect to activities of armed forces and other military forces of a State. It states that the Convention does not apply to: (i) "the activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law"; and (ii) "the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law." This exception restates similar language in Article 19(2) of the Terrorist Bombings Convention.

The first exception is meant to exclude from the Convention's scope the activities of national and sub-national armed forces, so long as those activities are in the course of an "armed conflict." To ensure that suspected offenders cannot claim the benefit of the "armed conflict" exception in Article 2*bis*(2) to avoid extradition or prosecution under the Convention, it would be useful for the United States to articulate an understanding clarifying the scope of this exception, consistent with the understandings it included in its instrument of ratification for the Terrorist Bombings Convention with respect to the similar provision in Article 19(2) of that Convention and in its instrument of ratification for the Terrorism Financing Convention with respect to the reference to the undefined term "armed conflict" in Article 2(1)(b) of that Convention. Both of those understandings were based upon the widely accepted provision in paragraph 2 of Article 1 of Protocol II Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protections of Victims of Non-International Armed Conflicts ("Additional Protocol II"), S. Treaty Doc. 100–2, which states that "armed conflict" does not include "internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature." Including an understanding that specifies the scope of "armed conflict" in a manner consistent with Additional Protocol II would help to counter attempts by terrorists to claim protection from this exception in circumstances for which it is not intended. As in Article 19 of the Terrorist Bombings Convention, Article 2*bis*(1) and (2) use the term "international humanitarian law," which is not used by the United States and could be subject to varied interpretations. Accordingly, it would be appropriate for the United States to include an understanding that, for the purposes of this Convention, this phrase has the same substantive

meaning as the phrase "law of war." I therefore recommend that the following understandings to Article 3 of the 2005 SUA Protocol be included in the United States instrument of ratification:

> The United States of America understands that the term "armed conflict" in Article 3 of the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (which adds, *inter alia*, paragraph 2 of Article 2*bis* to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation) does not include internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.
>
> The United States further understands that the term "international humanitarian law" in Article 3 of the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (which adds, *inter alia*, paragraphs 1 and 2 of Article 2*bis* to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation) has the same substantive meaning as the "law of war."

The United States included substantially identical understandings in its instrument of ratification for the Terrorist Bombings Convention and, with respect to the meaning of "armed conflict," in its instrument of ratification for the Terrorism Financing Convention.

Given the importance of protecting the flexibility of the United States to conduct legitimate activities against all lawful targets, the second exception in paragraph 2 of Article 2*bis* was also an important objective of the United States when negotiating the Protocols. This provision exempts from the Convention's application "the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law." This language is consistent with Article 19(2) of the Terrorist Bombings Convention. Although this exclusion might be thought to be implicit in the context of the Protocols, the negotiators thought it best to articulate the exclusion explicitly. It is intended to exclude all official acts undertaken by U.S. and other State military forces from the scope of criminal offenses. Because the Convention does not impose criminal liability for the official activities of State military forces, it similarly does not impose criminal liability for persons, including non-military, policy-making officials of States, who direct, organize, or otherwise act in support of the activities of State military forces. Recognizing the importance of this provision, I recommend that the following understanding to Article 3 of the 2005 SUA Protocol be included in the United States instrument of ratification:

> The United States of America understands that, pursuant to Article 3 of the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (which adds, *inter alia*, paragraph 2

of Article 2*bis* to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation), the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005, does not apply to:

(a) the military forces of a State, which are the armed forces of a State organized, trained, and equipped under its internal law for the primary purpose of national defense or security, in the exercise of their official duties;

(b) civilians who direct or organize the official activities of military forces of a State; or

(c) civilians acting in support of the official activities of the military forces of a State, if the civilians are under the formal command, control, and responsibility of those forces.

Paragraph 3 of Article 2*bis* states that nothing in the Convention shall affect the rights, obligations, and responsibilities of States Parties under the Treaty on the Non-Proliferation of Nuclear Weapons ("NPT"), TIAS 6839, the CWC, or the BWC. Article 2*bis*(3) is discussed below in the "New Offenses" section under the heading "Non-proliferation provisions."

Paragraphs 1–4 of Article 4 of the 2005 SUA Protocol make several minor technical amendments to Article 3 of the Convention. Paragraph 1 amends the chapeau of paragraph 1 of Article 3 of the Convention to insert the clarifying words "within the meaning of this Convention." Paragraph 2 corrects the grammatical construction of subparagraph 1(f) of Article 3 of the Convention. Paragraphs 3 and 4 together delete the accomplice liability provisions from Article 3(1)(g) and 3(2)(a) and (b) of the Convention, because Article 3*quater*, a new provision added by the 2005 SUA Protocol, includes attempt and accomplice liability within a more comprehensive framework for accessory offense liability. Paragraph 4 retains subparagraph 2(c) of Article 3 of the Convention as paragraph 2 of that article.

New offenses

Paragraphs 5–7 of Article 4 of the 2005 SUA Protocol also create four new categories of offenses under the Convention: using a ship in a terrorist offense; transportation of WMD, delivery systems, and related items; transportation of a terrorist fugitive; and accessory offenses. It does so principally by adding three new articles to the Convention: Article 3*bis*, 3*ter*, and 3*quater*.

Article 4(5) of the 2005 SUA Protocol adds Article 3*bis* to the Convention.

Counterterrorism offenses

Article 3*bis*(1)(a) makes it an offense for a person to unlawfully and intentionally, with the purpose of intimidating a population, or compelling a government or an international organization to do or abstain from doing any

act: (i) use against or on a ship or discharge from a ship any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage; (ii) discharge, from a ship, oil, liquefied natural gas, or other hazardous or noxious substance in such quantity or concentration that causes or is likely to cause death or serious injury or damage; (iii) use a ship in a manner that causes death or serious injury or damage; or (iv) threaten to commit any offense set forth in (i)–(iii).

Non-proliferation provisions

Article 3b*is*(1)(b) makes it an offense to transport on board a ship:

> (i) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or abstain from doing any act; or
>
> (ii) any BCN weapon, knowing it to be a BCN weapon as defined in Article 1; 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 be used for such purpose.

These nonproliferation offenses make significant advances to counterterrorism efforts by filling a gap in the existing international treaty framework. The Convention requires criminalization of certain transports of nuclear-related items associated with nuclear weapons or nuclear explosive devices and thus provides a complementary law enforcement element to the nuclear nonproliferation regime. Article 3*bis*(1)(b)(iv) of the Convention goes beyond the NPT in requiring criminalization of the transport of equipment, materials or software or related technology that significantly contributes to the design or manufacture of delivery systems for nuclear weapons (other than those of NPT nuclear-weapon States Parties). The nonproliferation offenses further the objectives of, and are complementary with, the nonproliferation obligations set forth in United Nations Security Council Resolutions 1540 (2004) and 1673 (2006).

Article 3*bis*(2) constitutes an important nonproliferation "savings clause" by specifying that nuclear transport activities remain permissible under the Convention in certain circumstances, notwithstanding the wording of the offenses in Article 3*bis*(1)(b). Article 3*bis*(2) states that it

shall not be an offense within the meaning of the Convention to transport an item or material covered by Article 3*bis*(1)(b)(iii) or, insofar as it relates to a nuclear weapon or other nuclear explosive device, Article 3*bis*(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 NPT 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 NPT, 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 NPT, "the holding of such weapon or device is not contrary to that State Party's obligations under that Treaty."

This nonproliferation savings clause in Article 3*bis*(2), coupled with the general provision in Article 2*bis*(3) declaring that the Convention shall not affect the rights and obligations of States Parties under the NPT, ensures that the Convention is consistent with the rights and obligations of the States Parties to the NPT (except to the extent that the Convention goes beyond the NPT with respect to nuclear weapon delivery systems). As provided in Article 3*bis*(2), the Convention would not require criminalization of the transport to or from the territory of, or under the control of, an NPT State Party of source or special fissionable material, or of equipment or material especially designed or prepared for the processing, use or production of special fissionable material, as long as the resulting transfer or receipt of such items or materials is not contrary to the NPT obligations of the NPT State Party. This is the case even when a non-NPT party is on the "other end" of the transport to or from (or under the control of) the NPT State Party.

I recommend that the following understanding to Article 3 and Article 4(5) of the 2005 SUA Protocol be included in the United States instrument of ratification to clarify the applicability of new Article 2*bis*(3) and Article 3*bis*(2) of the Convention to the offense in new Article 3*bis*(1)(b)(iii) of the Convention:

The United States of America understands that:

(a) Article 3 and Article 4(5) of the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation ("the 2005 SUA Protocol") (which add, *inter alia*, Article 2*bis*(3) and Article 3*bis*(2), respectively, to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (together referred to as "the NPT savings clauses")) protect from criminality under the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005, the transport of source or special fissionable material, or equipment or material especially designed or prepared for the processing, use, or production of special fissionable material

(i) from the territory of, or otherwise under the control of, a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons ("NPT") to the territory of, or otherwise under the control of, another NPT State Party or a state that is not an NPT party, and

(ii) from the territory of, or otherwise under the control of, a state that is not an NPT party to the territory of, or otherwise under the control of, an NPT State Party,

where the resulting transfer or receipt of such items or materials is not contrary to the NPT obligations of the NPT State Party.

(b) The following are illustrative examples of transport of source or special fissionable materials (hereinafter referred to collectively as "nuclear material") and especially designed or prepared equipment or material that would not constitute offenses under the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005, by virtue of the savings clauses:

- Transport of nuclear material (from either an NPT State Party or a non-NPT party) to an NPT nuclear-weapon State Party, regardless of whether the nuclear material will be under safeguards in the NPT nuclear-weapon State Party, because the resulting receipt of the item or material is not contrary to the NPT obligations of the nuclear-weapon State Party;
- Transport of nuclear material to a non-nuclear weapon State Party to the NPT for non-nuclear use without safeguards, in accordance with the provisions of the recipient country's IAEA comprehensive safeguards agreement (INFCIRC 153) allowing for exemption of the nuclear material from safeguards or the non-application or termination of safeguards (*e.g.*, for specified *de minimis* amounts, or use in a non-proscribed military activity which does not require the application of IAEA safeguards or in a non-nuclear use such as the production of alloys or ceramics);
- Transport of nuclear material or especially designed or prepared equipment, as described in Article 4(5) of the 2005 SUA Protocol (which adds Article 3*bis*(1)(b)(iii) to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation), from an NPT State Party to a non-NPT party, so long as the relevant material is for peaceful purposes and placed under IAEA safeguards, consistent with the NPT State Party's obligations under Article III.2 of the NPT. If the nuclear material transferred for peaceful purposes is subject to an INFCIRC/66 safeguards agreement or other IAEA safeguards arrangement but is not required by that agreement actually to be under safeguards (*e.g.*, under an exemption for *de minimis* amounts or provision permitting safeguards termination for non-nuclear use), the transport would not constitute an offense under Article

3*bis*(1)(b)(iii) of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005.

Transport of terrorist fugitives

Article 4(6) of the 2005 SUA Protocol adds Article 3*ter* to the Convention. Article 3*ter* makes it an offense for a person to unlawfully and intentionally transport another person on board a ship knowing that the person has committed an act that constitutes an offense under Article 3, 3*bis* or 3*quater* or an offense set forth in one of the treaties listed in the Annex to the Convention, and intending to assist that person to evade criminal prosecution. The Annex is added to the Convention by Article 7 of the 2005 SUA Protocol. The inclusion of such an Annex mirrors the approach to the Terrorist Financing Convention. The United States is party to all nine of the instruments currently listed in the Annex, and the provisions for amending the instruments listed in the Annex are provided by Article 22 of the 2005 SUA Protocol, outlined more fully below. Although accessory provisions in the existing counterterrorism conventions and protocols may criminalize aiding and abetting a fugitive to flee during the course of a crime, this provision would criminalize assisting a fugitive to avoid apprehension after the crime has been completed.

Accessory offenses

A comprehensive framework creating criminal liability for accessory offenses is provided in Article 3*quater*, which is added to the Convention by Article 4(7) of the 2005 SUA Protocol. Subparagraph (a) of Article 3*quater* makes it an offense to kill or injure any person in connection with any offense under Articles 3(1), 3*bis*, or 3*ter* of the Convention. Subparagraph (b) of Article 3*quater* makes it an offense to attempt to commit an offense under Articles 3(1), 3*bis*(1)(a)(i)–(iii), or 3*quater*(a) of the Convention. Subparagraphs (c) and (d) of Article 3*quater* make it an offense to participate as an accomplice or organize or direct others in connection with any offense under Articles 3, 3*bis*, 3*ter*, or 3*quater*(a) or (b). Finally, subparagraph (e) of Article 3*quater* makes it an offense to contribute to the commission of one or more offenses under Articles 3, 3*bis*, 3*ter*, or 3*quater*(a) or (b) by a group of persons acting with a common purpose. These accessory offenses are substantially the same as those provided for by the Terrorist Bombings Convention and the Terrorist Financing Convention. They will strengthen the ability of the international community to investigate, prosecute, and extradite those who conspire or otherwise contribute to the commission of offenses under the Convention.

Criminalization and jurisdiction under domestic law

Article 5(1) of the 2005 SUA Protocol modifies Article 5 of the Convention to add the offenses enumerated in Articles 3, 3*bis*, 3*ter*, and 3*quater* to the list of criminal offenses that States Parties must make punishable by appropriate penalties that take into account their grave nature.

Article 5(2) of the 2005 SUA Protocol adds to the Convention a new provision, Article 5*bis*, to ensure liability for legal entities as well as persons. Article 5*bis* requires States Parties, in accordance with their domestic legal principles, to take the necessary measures to enable a legal entity located in their territory or organized under their laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offense under the Convention. Such liability may be criminal, civil, or administrative and is without prejudice to the criminal liability of individuals having committed the offenses. Further, States Parties must ensure that legal entities held liable for offenses under Article 5*bis* are subject to effective, proportionate and dissuasive criminal, civil, or administrative sanctions, which may include monetary sanctions. This provision is identical to Article 5 of the Terrorism Financing Convention.

Article 6 of the 2005 SUA Protocol makes conforming amendments to Article 6 of the Convention, which requires States Parties to establish jurisdiction over the offenses set forth under the Convention. Each State Party is now required to establish jurisdiction over offenses under Articles 3, 3*bis*, 3*ter*, and 3*quater*. Article 8(1) of the 2005 SUA Protocol makes a similar conforming amendment to Article 8, paragraph 1, of the Convention to permit the master of a ship to deliver to the authorities of any other State Party any person who the master has reasonable grounds to believe has committed an offense under Article 3, 3*bis*, 3*ter*, or 3*quater*. Both provisions simply update the Convention provisions to include the full range of offenses under the Convention as revised by the 2005 SUA Protocol.

Innocent parties

The 2005 SUA Protocol was drafted to ensure that innocent seafarers will not be subject to criminal prosecution under the Convention simply for being on board a vessel that was engaged in or used for illegal purposes. This is the case even where the seafarer had mere knowledge of the criminal activity.

The offenses enumerated in Article 3*bis*(1)(b) (the transport provisions described above) apply by virtue of the definition of "transport" in Article 2 of the 2005 SUA Protocol (amending Article 1 of the Convention) to those persons who initiate, arrange, or exercise effective control, including decision-making authority, over the movement of a person or item. This definition would exclude from criminal liability seafarers and employees on shore, except in

those rare cases where they are actively engaged in the criminal activity.

The individual offenses added by the 2005 SUA Protocol contain subjective elements that would exclude innocent carriers and seafarers from their reach. For example, under the provision that covers certain dual use items (Article 3*bis*(1)(b)(iv)), the transporter must have the intention that the dual use item will be used in the design, manufacture, or delivery of a BCN weapon. In most situations, a seafarer, for example, would not have the requisite general knowledge and intent, let alone the additional specific intent required under this provision. When containers are ordinarily sealed and loaded at port, a seafarer would not know what is in the containers. In order for a seafarer to be held criminally liable, a prosecuting State must prove, for example, that the seafarer (1) knew what the item was, (2) intentionally initiated, arranged, or exercised effective control, including decision-making authority, over the movement of the item by, for example, smuggling the item on board or placing the item in a container to be loaded on the ship, and (3) intended that the item would be used in the design, manufacture, or delivery of a BCN weapon.

Shipboarding

Article 8(2) of the 2005 SUA Protocol adds Article 8*bis* to the Convention. Article 8*bis* creates a shipboarding regime by establishing a comprehensive set of procedures and protections designed to facilitate the boarding of a vessel suspected of being involved in an offense under the Convention. The boarding procedures do not change existing international maritime law or infringe upon the traditional principle of freedom of navigation. Instead, the procedures eliminate the need to negotiate time-consuming ad hoc boarding arrangements when facing the immediacy of ongoing criminal activity. Additionally, the boarding regime builds upon existing regimes under bilateral and multilateral agreements to which the United States is a party, including agreements with respect to fisheries, narcotics, illegal migrants, and WMD interdiction.

The first three paragraphs of Article 8*bis* set forth general parameters for the shipboarding regime. States Parties must cooperate to the fullest extent possible to prevent and suppress offenses under the Convention, in conformity with international law, and to respond to requests under the boarding regime as expeditiously as possible (paragraph 1). This provision is derived from Article 17(1) of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988 Vienna Narcotic Drug Convention), S. Treaty Doc. 101–4, and Article 7 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (Migrant

Smuggling Protocol), S. Treaty Doc. 108–16. The United States is a party to both Conventions.

Each request should, if possible, contain the name of the suspect ship, the IMO identification number, the port of registry, the ports of origin and destination, and any other relevant information (paragraph 2). In addition, each State Party must take into account the dangers and difficulties involved in boarding a ship at sea and searching its cargo, and give consideration to whether other appropriate measures agreed between the States concerned could be more safely taken in the next port of call or elsewhere (paragraph 3).

The United States will implement its obligations to "cooperate to the fullest extent possible" under Article 8*bis*(1) by designating a competent authority at the national level for making, receiving, processing, and responding to boarding. requests under the Convention, as we have done for counternarcotics, migrant, fisheries, WMD interdictions, and other similar law enforcement agreements. The competent authority, who will most likely be the Commandant of the U.S. Coast Guard, will execute its obligations through a national level command or operations center, which will have immediate access to all national vessel registry data, as well as procedures established for real-time U.S. Government coordination, including the Maritime Operational Threat Response Plan. See further the discussion of Article 8*bis*(15) below.

Pursuant to paragraph 4 of Article 8*bis*, if a State Party has reasonable grounds to suspect that an offense under Articles 3, 3*bis*, 3*ter*, or 3*quater* of the Convention has been, is being, or is about to be committed involving a ship flying its flag, it may request the assistance of other States Parties in preventing or suppressing that offense. The States Parties so requested shall use their best endeavors to render such assistance within the means available to them. This provision is derived from Article 17(2) of the 1988 Vienna Narcotic Drug Convention and Article 8(1) of the Migrant Smuggling Protocol. This provision does not obligate the United States to board or take law enforcement actions on foreign flagged ships, except to the extent it is required to use best endeavors to render assistance within the means available to it upon request of a flag State to assist in prevention or suppression of an offense specified under the Convention. The absence of a reference in paragraph 4 to "marks of registry" (both "flying its flag" and "displaying marks of registry" are used in paragraph 5) is of no consequence because each refers to indicia of the nationality of the vessel permissible, as reflected in Articles 5 and 6 of the 1958 Convention on the High Seas ("High Seas Convention"), TIAS 5200, and Articles 91 and 92 of the United Nations Convention on the Law of the Sea, ("Law of the Sea Convention"), S. Treaty Doc. 103–39. See Article 8*bis*(5)(a), (b) and (d).

Paragraph 5 of Article 8*bis* sets forth the procedures for shipboarding. Whenever law enforcement or other authorized officials of a State Party ("the requesting Party") encounter a ship flying the flag or displaying the marks of registry of another State Party ("the first Party"), located seaward of any State's territorial sea, and the requesting Party has reasonable grounds to suspect that the ship or a person on board the ship has been, is or is about to be involved in the commission of an offense under Articles 3, 3*bis*, 3*ter*, or 3*quater* of the Convention, and the requesting Party desires to board, it shall take the following steps. It shall request, in accordance with paragraphs 1 and 2, that the first Party confirm the claim of nationality (subparagraph (a)). If nationality is confirmed, the requesting Party shall ask the first Party (hereinafter "the flag State") for authorization to take appropriate measures, which may include stopping, boarding, and searching the ship, its cargo and persons on board, and questioning the persons on board (subparagraph (b)).

The flag State may, pursuant to subparagraph (c) of Article 8*bis*(5), authorize the requesting Party to board and to take appropriate measures described in subparagraph (b), conduct the boarding and search with its own law enforcement or other officials, conduct the boarding and search together with the requesting Party, or decline to authorize a boarding and search. Paragraph 8*bis*(5)(c) expands on the provisions of Article 17(4) of the 1988 Vienna Narcotic Drug Convention and Article 8(2) of the Migrant Smuggling Protocol. Nothing in Article 8*bis*(5) requires the flag State to provide any such authorization. Moreover, subparagraph (c) makes clear that the requesting Party may not take any measures set forth above without the express authorization of the flag State. A flag State may also impose certain restrictions on the requesting Party's board and search measures, in accordance with Article 8*bis*(7), discussed more fully below.

A State Party may provide advance consent to board ships flying its flag or displaying its mark of registry pursuant to subparagraphs (d) or (e) of Article 8*bis*(5) by notification to the IMO Secretary-General. A notification pursuant to Article 8*bis*(5)(d) would grant the requesting Party authorization to board and search a ship, its cargo and persons on board, and to question the persons on board in order to locate and examine documentation of its nationality and determine if an offense under Articles 3, 3*bis*, 3*ter*, or 3*quater* of the Convention has been, is being, or is about to be committed, if there is no response from that State Party, within four hours of acknowledgement of its receipt of a request to confirm nationality. Notification pursuant to Article 8*bis*(5)(e) would provide general advance consent for other States Parties to board and search such ships, their cargo and persons on board, and to question the persons on board in order to determine if an offense under Articles 3, 3*bis*, 3*ter*, or 3*quater* of the Conven-

tion has been, is being, or is about to be committed. These optional notifications may be withdrawn at any time. Advance consent pursuant to either subparagraph (d) or (e) is not authorization for detention of the vessel, cargo, or persons on board or any other enforcement action. The United States will not file a notification with the IMO Secretary-General granting either such form of advance consent.

Under paragraph 6 of Article 8*bis*, when the requesting Party boards and finds evidence of the conduct described in Articles 3, 3*bis*, 3*ter* or 3*quater*, the flag State may authorize the requesting Party to detain the ship, cargo, and persons on board pending receipt of disposition instructions from the flag State. The requesting Party must in all cases promptly inform the flag State of the results of a boarding, search, and detention conducted pursuant to Article 8*bis*, including discovery of evidence of illegal conduct that is not subject to the Convention.

Paragraph 7 of Article 8*bis* permits a flag State to subject its authorization under paragraphs 5 or 6 to conditions, including obtaining additional information from the requesting Party and relating to responsibility for and the extent of measures to be taken. This provision builds on the text of Article 17(6) of the 1988 Vienna Narcotic Drug Convention and Article 8(5) of the Migrant Smuggling Protocol. Paragraph 7 also prohibits the requesting State from taking any measures without the express authorization of the flag State, except when necessary to relieve imminent danger to the lives of persons or when otherwise derived from bilateral or multilateral agreements.

Paragraph 8 of Article 8*bis* reaffirms explicitly that, for all boardings under Article 8*bis*, the flag State retains the right to exercise jurisdiction over a detained ship, cargo, or other items and persons on board, including seizure, forfeiture, arrest, and prosecution. However, the flag State may, subject to its constitution and laws, consent to the exercise of jurisdiction by another State Party that has jurisdiction under Article 6 of the Convention.

Paragraph 9 of Article 8*bis* sets forth overarching principles for the use of force by officials acting under the shipboarding regime. It directs States Parties to avoid the use of force "except when necessary to ensure the safety of its officials and persons on board, or where the officials are obstructed in the execution of the authorized actions." It also specifies that any such use of force "shall not exceed the minimum degree of force which is necessary and reasonable in the circumstances." The language of Article 8*bis*(9) is drawn from Article 22(1)(f) of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, S. Treaty Doc. 104–24, to which the United States is a party. Article 8*bis*(9) is also similar to use of force provi-

sions in other maritime law enforcement agreements to which the United States is a party. As such, this use of force provision reflects and is consistent with current practice on the use of force in international law and U.S. maritime law enforcement.

Paragraph 10 of Article 8*bis* establishes a number of safeguard provisions to protect seafarers and carriers during the conduct of shipboardings. First, subparagraph (a) sets forth a series of safeguards that a State Party taking measures against a ship must respect. These include taking due account of the need not to endanger the safety of life at sea; treating all persons in a manner that preserves their human dignity and complies with applicable provisions of international law; ensuring that a boarding and search is conducted in accordance with applicable international law; taking due account of the safety and security of the ship and cargo; taking due account of the need not to prejudice the commercial or legal interests of the flag State; ensuring, within available means, that any measure taken with regard to the ship or its cargo is environmentally sound; ensuring that any person on board against whom proceedings may be commenced in connection with offenses under the Convention is guaranteed fair treatment, regardless of location; ensuring that the master of a ship is advised of its intention to board, and is, or has been, afforded the opportunity to contact the ship's owner and the flag State at the earliest opportunity; and taking reasonable efforts to avoid undue detention or delay of the ship. These safeguards build on those contained in Article 17(5) of the 1988 Vienna Narcotic Drug Convention and Article 9 of the Migrant Smuggling Protocol.

Subparagraph (b) of Article 8*bis*(10) establishes a framework for liability and recourse arising from any damage, harm, or loss attributable to States Parties taking measures under Article 8*bis*. It clarifies that authorization to board by a flag State shall not per se give rise to its liability. Liability for damage, harm, or loss as a result of shipboarding activities arises under two circumstances: first, when the grounds for shipboarding measures prove to be unfounded, provided that the ship has not committed any act justifying the measures taken; and second, when such measures are unlawful or unreasonable in light of the available information to implement the provisions of Article 8*bis*. States Parties are obligated to "provide effective recourse in respect of any such damage, harm or loss." This provision does not require a State Party to provide a specific remedy, forum, or venue, and it does not require any form of binding dispute resolution. Accordingly, the manner of "effective recourse" remains at the discretion of each State Party. Article 8*bis*(10)(b) of the Convention is consistent with the claims provisions of existing relevant international treaties, including Article 22(3) of the High Seas Convention, and Article 9(2) of the Migrant Smuggling Protocol. As a matter of policy the United States

compensates innocent people whose property is damaged by Federal officers during maritime law enforcement operations. Congress has established mechanisms that permit the United States Navy (10 U.S. Code 2734, 7622; 32 CFR Part 752) and the United States Coast Guard (10 U.S. Code §§ 2733, 2734; 14 U.S. Code 646; 33 CFR Part 25) to consider and pay meritorious claims for damaged property arising from maritime law enforcement operations. These mechanisms are administrative procedures, rather than judicial remedies, which permit the consideration and payment of meritorious claims by Executive Branch agencies. Accordingly, no new legislation is needed to comply with Article 8*bis*(10)(b).

Subparagraph (c) of Article 8*bis*(10) requires any State Party that takes measures against a ship in accordance with the Convention to take due account of the need not to interfere with the rights and obligations and exercise of jurisdiction of coastal States in accordance with the international law of the sea, and the authority of flag States to exercise jurisdiction and control in administrative, technical and social matters involving the ship. This provision builds upon Article 17(11) of the 1988 Vienna Drug Convention, Article 94(1) of the Law of the Sea Convention, and Article 9(3) of the Migrant Smuggling Protocol.

Subparagraphs (d) and (e) of Article 8*bis*(10) designate who may conduct shipboardings consistent with the Convention. Article 8*bis*(10)(d) requires that any shipboarding measure must be carried out by law enforcement or other authorized officials from warships or military aircraft, or from other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect and, notwithstanding Articles 2 and 2*bis* of the Convention, the provisions of Article 8*bis* will apply. This provision reflects the accepted international law rule as set out in Article 17(10) of the 1988 Vienna Narcotic Drug Convention, Article 9(4) of the Migrant Smuggling Protocol, Articles 21 and 23(4) of the High Seas Convention, and Articles 107 and 111(5) of the Law of the Sea Convention and is consistent with U.S. practice. Article 8*bis*(10)(e) defines "law enforcement or other authorized officials" as "uniformed or otherwise clearly identifiable members of law enforcement or other government authorities duly authorized by their government." For the purposes of shipboarding under the Convention, these officials must provide appropriate government-issued identification documents for examination by the master of the ship upon boarding.

The shipboarding provisions under the Convention do not apply to or limit boarding of ships conducted by any State Party in accordance with international law, seaward of any State's territorial sea. Paragraph 11 of Article 8*bis* confirms this understanding of the Convention's applicability. Other lawful shipboarding measures include, but are not limited to, the right of approach and visit, bellig-

erent rights under the law of war, self-defense, the enforcement of United Nations Security Council Resolutions, actions taken pursuant to specific bilateral or multilateral instruments such as counter-narcotics agreements, the rendering of assistance to persons, ships, and property in peril, authorization from the flag State to take action, or the historic role of the armed forces in law enforcement activities on the high seas. In addition, the United States has often employed its military forces abroad to protect U.S. citizens and to enforce provisions of U.S. law. Article 8*bis* would not affect these rights.

Paragraph 12 of Article 8*bis* encourages States Parties to develop standard operating procedures for joint operations and consult, as appropriate, with other States Parties with a view to harmonizing such standard operating procedures. Paragraph 13 allows States Parties to conclude agreements or arrangements between themselves to facilitate law enforcement operations carried out pursuant to Article 8*bis*. This provision is adapted from Article 17(9) of the 1988 Vienna Narcotic Drug Convention and Article 17 of the Migrant Smuggling Protocol. Paragraph 14 requires each State Party to take appropriate measures to ensure that law enforcement or other authorized officials acting on its behalf are empowered to conduct shipboarding activities and take other appropriate measures pursuant to Article 8*bis*.

Finally, paragraph 15 of Article 8*bis* directs each State Party to designate the appropriate authority or authorities to receive and respond to requests for assistance, confirmation of nationality and authorization to take appropriate measures. This designation, including contact information of the authority or authorities, must be notified to the IMO Secretary-General within one month of becoming a Party. The IMO Secretary-General will inform all other States Parties within one month of such designation. Each State Party is responsible for providing prompt notice through the IMO Secretary-General of any changes in the designation or contact information. This provision is adapted from Article 17(7) of the 1988 Vienna Narcotic Drug Convention and Article 8(6) of the Migrant Smuggling Protocol. As previously mentioned during the discussion of Article 8*bis*(1), the United States will implement its obligations by designating a competent authority at the national level, most likely the Commandant of the U.S. Coast Guard, which will execute our obligations through a national level command or operations center in accordance with established procedures, including the Maritime Operational Threat Response Plan, as we have done for other similar law enforcement agreements.

Article 9 of the 2005 SUA Protocol amends Article 10, paragraph 2, of the Convention by adding specific reference to international law including international human rights law. This amendment is intended to enhance further the safeguards for seafarers. As revised, Article 10(2)

of the Convention would provide that any person who is taken into custody or otherwise subject to proceedings under the Convention shall be guaranteed fair treatment, including all rights and guarantees under the law of the State in which that person is present, "as well as applicable provisions of international law, including international human rights law." This additional text already appears in Article 17 of the Terrorism Financing Convention and in Article 14 of the Terrorist Bombings Convention.

Extradition

Article 10 of the 2005 SUA Protocol makes several revisions to the extradition scheme established under the Convention.

Article 10(1) of the 2005 SUA Protocol revises the first four paragraphs of Article 11 of the Convention to incorporate the offenses set forth in Articles 3, 3*bis*, 3*ter*, and 3*quater* of the Convention into the extradition regime. These provisions, designating the offenses under the Convention as extraditable offenses between States Parties, simply update the extradition obligations to include the new offense articles.

Article (10)(2) of the 2005 SUA Protocol adds a new provision to the Convention, Article 11*bis*, which states that none of the offenses under the Convention shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offense. Accordingly, a request for extradition or mutual legal assistance may not be refused on the sole ground that it is a political offense or an offense connected with a political offense or an offense inspired by political motives. Article 11*bis* thus provides a useful narrowing of the ability to invoke the political offense exception in response to requests for extradition for offenses under the Convention. Many modem U.S. bilateral extradition treaties already contain provisions that bar application of the political offense exception to extradition under multilateral conventions to which similar "prosecute or extradite" obligations apply. Like similar provisions in Article 14 of the Terrorism Financing Convention and Article 11 of the Terrorist Bombings Convention, Article 11*bis* builds on this trend by making the restriction on the invocation of the political offense exception for requests based on offenses under Articles 3, 3*bis*, 3*ter*, and 3*quater* a matter of general application, rather than dependent on the terms of individual bilateral law enforcement treaties between the States Parties.

Article 10(3) of the 2005 SUA Protocol adds Article 11*ter* to the Convention, which provides that the Convention does not impose an obligation to extradite or afford mutual legal assistance if the requested State Party has substantial grounds for believing that such request for extradition or mutual legal assistance 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. This article is similar to provisions already included in a number of existing UN counterterrorism treaties, including Article 12 of the Terrorist Bombings Convention and Article 15 of the Terrorism Financing Convention.

Mutual legal assistance

Article 11(1) of the 2005 SUA Protocol makes conforming changes to Article 12(1) of the Convention, which maintains States Parties' obligations to afford one another assistance in connection with criminal proceedings brought for offenses under the Convention. The amended provision updates the terms of assistance to encompass the new categories of offenses under the Convention as amended by the 2005 SUA Protocol, but it does not change the substantive language describing the degree of assistance required.

Article 11(2) of the 2005 SUA Protocol does, however, establish a system to enhance the assistance that States Parties may provide to each other in connection with offenses under the Convention. It provides for a new article, Article 12*bis*, to govern the transfer of individuals in the custody of one State Party to provide assistance to another State Party in connection with an investigation or prosecution for offenses under the Convention.

Paragraph 1 of Article 12*bis* provides that a person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offenses set forth in Articles 3, 3*bis*, 3*ter*, and 3*quater* may be transferred, if two conditions are met. First, the person in custody must freely give informed consent to be transferred (subparagraph (a)). Second, the competent authorities of both States must agree upon the transfer, subject to such conditions as those States may deem appropriate (subparagraph (b)). Similar provisions for the temporary transfer of persons in custody of one State Party to another State Party are included in Article 16 of the Terrorism Financing Convention, Article 13 of the Terrorist Bombings Convention, and numerous bilateral mutual legal assistance treaties to which the United States is a party.

Paragraph 2 of Article 12*bis* details certain rights and obligations of a State to which a person is transferred pursuant to Article 12*bis*. Under subparagraph (a), the State to which the person is transferred shall have the authority and obligation to keep the transferred person in custody, unless otherwise requested or authorized by the State from which the person was transferred. Subparagraph (b) requires the State to which the person is transferred to implement without delay its obligation to return the person

to the custody of the State from which the person was transferred as agreed in advance, or as otherwise agreed, by the competent authorities of both States. Subparagraph (c) states that return of a person transferred under Article 12*bis* shall not require initiation of extradition proceedings. Finally, subparagraph (d) requires that the person transferred receive credit for service of the sentence being served in the State from which the person was transferred for time spent in the custody of the State to which the person was transferred.

Paragraph 3 of Article 12*bis* establishes a default rule that a person transferred pursuant to Article 12*bis*, whatever that person's nationality, shall not be prosecuted, detained, or subjected to any other restriction of personal liberty in the territory of the State to which that person is transferred for acts or convictions prior to that person's departure from the territory of the transferring State. However, the State Party from which the person was transferred pursuant to Article 12*bis* may agree otherwise, in which case this default rule will not impair the agreement between the State from which the person is transferred and the State to which the person is transferred.

Article 12 of the 2005 SUA Protocol makes conforming changes to Article 13 of the Convention to incorporate references to the new offenses. As amended, Article 13 would provide that States Parties shall cooperate in the prevention of offenses set forth in Articles 3, 3*bis*, 3*ter*, and 3*quater* by taking all practicable measures to prevent preparation in their respective territories for the commission of such offenses and by exchanging information and coordinating measures to prevent the commission of such offenses. Article 13 also would provide that any State Party shall be bound to exercise all possible efforts to avoid undue delay or detention of a ship, its passengers, crew or cargo when the passage of that ship has been delayed or interrupted due to the commission of an offense under Articles 3, 3*bis*, 3*ter* or 3*quater*.

Articles 13 and 14 of the 2005 SUA Protocol make conforming amendments to Article 14 and Article 15, paragraph 3, of the Convention to make those provisions consistent with the new articles and terminology added to the Convention by the 2005 SUA Protocol. These provisions govern information sharing under the Convention with respect to any offense or suspected offenses under the Convention.

Interpretation and application

Article 15 of the 2005 SUA Protocol provides that the Convention and the 2005 SUA Protocol shall be read and interpreted together as one single instrument. It further provides that Articles 1 to 16 of the Convention, as amended by the 2005 SUA Protocol, together with Articles 17 to 24 of the 2005 SUA Protocol and the Annex, "shall constitute and be called together the Convention for the Sup-

pression of Unlawful Acts against the Safety of Maritime Navigation, 2005, (2005 SUA Convention)."

Final clauses

Article 16 of the 2005 SUA Protocol adds a new provision to the Convention, Article 16*bis*, which states that the final clauses of the 2005 SUA Convention shall be Articles 17–24 of the 2005 SUA Protocol, and that references in the 2005 SUA Convention to States Parties shall mean States Parties to the 2005 SUA Protocol. Articles 17 and 18 of the 2005 SUA Protocol detail the requirements for signature, ratification, acceptance, approval, accession, and entry into force. Article 17 provides that the 2005 SUA Protocol shall be open for signature from February 14, 2006 to February 13, 2007 and shall thereafter remain open for accession. (The United States signed the Protocol on February 17, 2006.) Paragraph 2 of this article provides that States may express their consent to be bound by: signature without reservation as to ratification, acceptance or approval; signature subject to ratification, acceptance, or approval followed by ratification, acceptance or approval; or accession. Under paragraph 3, ratification, acceptance, approval or accession are to be effected by the deposit of an instrument to that effect with the IMO Secretary-General. Paragraph 4 provides that only States that are parties to the Convention may become parties to the Protocol. Article 18 provides that the 2005 SUA Protocol will enter into force 90 days after the date on which 12 States have expressed their consent to be bound. For each State that ratifies, accepts, approves, or accedes to the treaty after the deposit of the twelfth instrument, the 2005 SUA Protocol will enter into force on the ninetieth day after the date of deposit of that State's instrument.

Article 19 of the 2005 SUA Protocol allows any State Party to denounce the 2005 SUA Protocol at any time after the date on which it enters into force for that State. Denunciation shall be effected by the deposit of an instrument of denunciation with the IMO Secretary-General and shall take effect one year, or such longer period as the State Party may specify in the instrument of denunciation, after the deposit of the instrument with the IMO Secretary-General.

Amendments

Article 20 of the 2005 SUA Protocol establishes the procedures for revising and amending the Protocol. The IMO Secretary-General will convene a conference to revise or amend the Protocol at the request of one third of the States Parties or 10 States Parties, whichever figure is higher. Any instrument of ratification, acceptance, approval, or accession deposited after entry into force of an amendment to the 2005 SUA Protocol is to be deemed to apply to the Protocol as amended. Pursuant to Article 16, these procedures would also apply to amendments to the

2005 SUA Convention. (Amendments to the Annex are dealt with in Article 22, discussed below.)

Declarations

Article 21 of the 2005 SUA Protocol outlines several permissible declarations with respect to the Annex incorporating other counterterrorism treaties into the Convention under Article 3*ter*. Article 21 allows any State Party that is not a party to a treaty listed in the Annex to declare that, in the application of the 2005 SUA Protocol to the State Party, that treaty shall be deemed not to be included in Article 3*ter*. As discussed above, Article 3*ter* of the Convention criminalizes the transport of a terrorist fugitive suspected of committing an offense under the Convention or any of the treaties listed in the Annex. However, this declaration shall cease to have effect as soon as such treaty enters into force for that State Party, which shall notify the IMO Secretary-General of such entry into force. In addition, if a State Party ceases to be a party to any of the treaties listed in the Annex, it may make a declaration as provided for in Article 21 with respect to that treaty. Finally, Article 21(3) allows a State Party to declare that it will apply the provisions of Article 3*ter* "in accordance with the principles of its criminal law concerning family exemptions of liability." This provision makes allowance for some Sates that provide defenses under domestic law from prosecution for family members who otherwise could be charged with harboring fugitives. The Administration does not propose any declarations under Article 21 to accompany its instrument of ratification.

Annexed List of Treaties

Article 22 of the 2005 SUA Protocol relates to the category of offenses covered under Article 3*ter* to the Convention, criminalizing the transport of terrorist fugitives. It establishes a mechanism for expanding the scope of the Convention by adding new treaties to the Annex. Paragraph 1 of Article 22 states that the Annex may be amended by the addition of relevant treaties that: are open to the participation of all States; have entered into force; and have been ratified, accepted, approved or acceded to by at least 12 States Parties to the 2005 SUA Protocol. After the 2005 SUA Protocol enters into force, any State Party may propose such an amendment to the Annex by communicating it to the IMO Secretary-General in written form. The IMO Secretary-General will circulate any proposed amendment that meets the requirements of Article 22(1) to all members of the IMO and seek from States Parties to the 2005 SUA Protocol their consent to adoption of the proposed amendment. Article 22(3) declares that the proposed amendment shall be deemed adopted after more than 12 of the States Parties to the 2005 SUA Protocol consent to it by written notification to the IMO Secretary-General. However, under Article 22(4), a State Party will

not be bound with respect to such additional treaty unless it deposits an instrument of ratification, acceptance or approval for that amendment with the IMO Secretary-General. An adopted amendment shall enter into force, for those States Parties that have consented to be bound, 30 days after the deposit with the IMO Secretary-General of the twelfth instrument of ratification, acceptance or approval of the amendment. Thereafter, the amendment shall enter into force for any other State Party on the thirtieth day after the deposit of its own instrument of ratification, acceptance or approval. The amendment mechanism under Article 22 of the 2005 SUA Protocol ensures both that the scope of the Convention can evolve to encompass additional terrorist activity, as may be agreed by the international community, and that the scope of the Convention is not expanded with respect to a particular State Party without that State Party's explicit agreement.

Under this provision, the United States expects to deposit an instrument of acceptance of such an amendment if the treaty that is the subject of the amendment has entered into force for the United States with the advice and consent of the Senate. Otherwise, any amendment to the Annex that the United States proposes to accept would be submitted to the Senate for its advice and consent.

Depositary

Article 23 of the 2005 SUA Protocol designates the IMO Secretary-General as the Depositary of the 2005 SUA Protocol and any amendments adopted under Articles 20 and 22 of the 2005 SUA Protocol, and sets forth the duties of the Depositary.

Official languages

Article 24 of the 2005 SUA Protocol provides the six languages for the official texts of the 2005 SUA Protocol.

THE 2005 FIXED PLATFORMS PROTOCOL

Article 1 of the 2005 Fixed Platforms Protocol defines the terms "1988 Protocol," "Organization," and "Secretary-General" as the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, the IMO, and the IMO Secretary-General, respectively.

Article 2 of the 2005 Fixed Platforms Protocol amends Article 1, paragraph 1 of the 1988 Protocol, to incorporate all of the substantive provisions of the 2005 SUA Convention, except those that address transport offenses and the shipboarding regime, which are not relevant in the context of fixed platforms. Specifically, Article 1, paragraphs 1(c), (d), (e), (f), (g), (h) and 2(a), Articles 2*bis*, 5, 5*bis*, and 7, and Articles 10 to 16, including Articles 11*bis*, 11*ter*, and 12*bis*, of the 2005 SUA Convention shall apply mutatis mutandis to the offenses set forth in Articles 2, 2*bis*, and 2*ter* of the 1988 Protocol, as amended by the 2005 Fixed

Platforms Protocol (hereinafter referred to as the "2005 SUA Fixed Platforms Protocol") where such offenses are committed on board or against fixed platforms located on the continental shelf. These provisions include, *inter alia*: the definition of new terms; the savings clauses regarding the effect of the Protocols on other rights, obligations and responsibilities of States Parties; the obligation to make offenses punishable under domestic law; the establishment of liability for legal entities; the guarantee of fair treatment; revisions to the extradition regime, including the provision circumscribing use of the political offense exception for offenses under the Convention; the framework for transfer of persons in custody; and the obligations to assist with criminal investigations, share information, and prevent preparation for the commission of offenses under the Convention.

Because Article 2 of the 2005 Fixed Platforms Protocol incorporates provisions of the 2005 SUA Convention that were amended and added by the 2005 SUA Protocol, I propose that similar understandings be included in the U.S. instrument of ratification for the 2005 Fixed Platforms Protocol as are recommended above for the corresponding provisions of the 2005 SUA Protocol. These understandings read as follows:

The United States of America understands that the term "armed conflict," as used in paragraph 2 of Article 2*bis* of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005, and incorporated by Article 2 of the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, does not include internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.

The United States further understands that the term "international humanitarian law," as used in paragraphs 1 and 2 of Article 2*bis* of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005, and incorporated by Article 2 of the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, has the same substantive meaning as the "law of war."

The United States of America further understands that, pursuant to paragraph 2 of Article 2*bis* of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005, as incorporated by Article 2 of the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 2005, does not apply to:

(a) the military forces of a State, which are the armed forces of a State organized, trained and equipped under its internal law for the primary purpose of national defense or security, in the exercise of their official duties;

(b) civilians who direct or organize the official activities of military forces of a State; or

(c) civilians acting in support of the official activities of the military forces of a State, if the civilians are under the formal command, control, and responsibility of those forces.

For a more detailed discussion of these proposed understandings, please refer to the corresponding discussion in the 2005 SUA Protocol section of this Overview.

Article 3 of the 2005 Fixed Platforms Protocol makes several conforming amendments to Article 2 of the 1988 Protocol. Article 3(1) restates subparagraph 1(d) of Article 2 of the 1988 Protocol as the final subparagraph of that article, while Article 3(2) deletes subparagraph 1(e) of the 1988 Protocol. Together with Article 3(2) of the 2005 Fixed Platforms Protocol, Article 3(3) removes the attempt and accomplice liability provisions from Article 2 (subparagraph 1(e) and subparagraphs 2(a) and (b)) of the 1988 Protocol, because Article 2*ter*, a new provision added by the 2005 Fixed Platforms Protocol (discussed below), includes attempt and accomplice liability within a more comprehensive framework for accessory offense liability. Article 3(3) of the 2005 Fixed Platforms Protocol retains subparagraph 2(c) of Article 2 of the 1988 Protocol as paragraph 2 of that article.

Article 4 of the 2005 Fixed Platforms Protocol adds two new provisions, Articles 2*bis* and 2*ter*, to the 1988 Protocol to provide the same regime of liability for offenses under the 1988 Protocol, including accessory offenses, as those contained in Article 3*bis* and 3*quater* of the 2005 SUA Convention. These provisions provide that it shall be an offense to conduct such acts against or on a fixed platform, rather than on or against a ship as in the 2005 SUA Convention.

Article 5 of the 2005 Fixed Platforms Protocol makes conforming amendments to Article 3 of the 1988 Protocol to incorporate the new offenses. Article 5(1) of the 2005 Fixed Platforms Protocol amends Article 3(1) of the 1988 Protocol to require each State Party to take such measures as necessary to establish jurisdiction over the offenses set forth in Articles 2, 2*bis*, and 2*ter* when the offense is committed either against or on board a fixed platform while it is located on the continental shelf of that State or by a national of that State. Article 5(2) of the 2005 Fixed Platforms Protocol makes conforming amendments to Article 3, paragraph 3 of the 1988 Protocol in accordance with new terminology under the 2005 Fixed Platforms Protocol. Finally, Article 5(3) of the 2005 Fixed Platforms Protocol makes conforming amendments to Article 3, paragraph 4

of the 1988 Protocol to require each State Party to take such measures as may be necessary to establish its jurisdiction over the offenses set forth in Articles 2, 2*bis*, and 2*ter*, when the alleged offender is in its territory and it does not extradite the alleged offender to any of the States Parties that have established jurisdiction in accordance with the 2005 Fixed Platforms Protocol. Each of these amendments to Article 3 simply updates the provisions to incorporate the new articles provided by the 2005 Fixed Platforms Protocol.

Interpretation and application

Article 6 of the 2005 Fixed Platforms Protocol states that the 1988 Protocol and the 2005 Fixed Platforms Protocol shall "be read and interpreted together as one single instrument." It further states that Articles 1 to 4 of the 1988 Protocol, as revised by the 2005 Fixed Platforms Protocol, together with Articles 8 to 13 of the 2005 Fixed Platforms Protocol, "shall constitute and be called together the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 2005, (2005 SUA Fixed Platforms Protocol)."

Final clauses

Article 7 of the 2005 Fixed Platforms Protocol adds a new provision, Article 4*bis*, which makes Articles 8 to 13 of the 2005 Fixed Platform Protocol the final clauses of the 2005 SUA Fixed Platforms Protocol. It further states that references in the 2005 SUA Fixed Platforms Protocol to States Parties shall mean States Parties to the 2005 Fixed Platforms Protocol. Articles 8 and 9 of the 2005 Fixed Platforms Protocol describe the requirements for signature, ratification, acceptance, approval, accession and entry into force. Article 8 provides that the 2005 Fixed Platforms Protocol is open for signature from February 14, 2006 to February 13, 2007 and will thereafter remain open for accession. Paragraph 2 of this article provides that States may express their consent to be bound by: signature without reservation as to ratification, acceptance or approval; signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or accession. Under paragraph 3, ratification, acceptance, approval or accession is to be effected by the deposit of an instrument to that effect with the IMO Secretary-General. Paragraph 4 provides that only States that are parties to the 1988 Protocol may become parties to the 2005 Fixed Platforms Protocol. Article 9 provides that the 2005 Fixed Platforms Protocol will enter into force 90 days following the date on which three States have expressed their consent to be bound. However, the 2005 Fixed Platforms Protocol may not enter into force before the 2005 SUA Protocol enters into force. For each State that ratifies, accepts, approves, or accedes after the deposit of the third instrument and after the 2005 SUA Protocol enters into force, the

2005 Fixed Platforms Protocol will enter into force on the ninetieth day after the date of deposit of that State's instrument. Article 10 allows any State Party to denounce the 2005 Fixed Platforms Protocol at any time after the date on which it enters into force for that State. Denunciation shall be effected by the deposit of an instrument of denunciation with the IMO Secretary-General and shall take effect one year, or such longer period as the State Party may specify in the instrument of denunciation, after the deposit of the instrument with the IMO Secretary-General.

Article 11 of the 2005 Fixed Platforms Protocol establishes the procedures for revising and amending the 2005 Fixed Platforms Protocol. The IMO Secretary General will convene a conference of States Parties to revise or amend the Protocol at the request of one third of the States Parties or five States Parties, whichever figure is higher. Any instrument of ratification, acceptance, approval or accession deposited after entry into force of an amendment to the 2005 Fixed Platforms Protocol is to be deemed to apply to the Protocol as amended. Pursuant to Article 7, these procedures would also apply to amendments to the 2005 SUA Fixed Platforms Protocol.

Article 12 of the 2005 Fixed Platforms Protocol designates the IMO Secretary-General as the Depositary of the 2005 Fixed Platforms Protocol and any amendments adopted under Article 11 of the 2005 Fixed Platforms Protocol, and sets forth the duties of the Depositary. Article 13 of the 2005 Fixed Platforms Protocol provides the six languages for the official texts of the 2005 Fixed Platforms Protocol.

Implementing legislation

Title 18, U.S. Code sections 2280 and 2281 implement the Convention and the 1988 Protocol. Legislation necessary to implement the 2005 Protocols is being prepared for separate submission to the Congress.

The Departments of Justice, Homeland Security and Defense join in recommending that the 2005 Protocols be transmitted to the Senate at an early date for its advice and consent to their ratification, subject to the understandings previously described.

INTERNATIONAL MARITIME ORGANIZATION

IMO

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INTERNATIONAL CONFERENCE ON THE REVISION OF THE SUA TREATIES
Agenda item 8

LEG/CONF.15/21
1 November 2005
Original: ENGLISH

ADOPTION OF THE FINAL ACT AND ANY INSTRUMENTS, RECOMMENDATIONS AND RESOLUTIONS RESULTING FROM THE WORK OF THE CONFERENCE

PROTOCOL OF 2005 TO THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION

Text adopted by the Conference

Preamble

THE STATES PARTIES to this Protocol,

BEING PARTIES to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation done at Rome on 10 March 1988,

ACKNOWLEDGING that terrorist acts threaten international peace and security,

MINDFUL of resolution A.924(22) of the Assembly of the International Maritime Organization requesting the revision of existing international legal and technical measures and the consideration of new measures in order to prevent and suppress terrorism against ships and to improve security aboard and ashore, and thereby to reduce the risk to passengers, crews and port personnel on board ships and in port areas and to vessels and their cargoes,

CONSCIOUS of the Declaration on Measures to Eliminate International Terrorism, annexed to United Nations General Assembly resolution 49/60 of 9 December 1994, in which, *inter alia,* the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States,

NOTING United Nations General Assembly resolution 51/210 of 17 December 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism annexed thereto,

RECALLING resolutions 1368 (2001) and 1373 (2001) of the United Nations Security Council, which reflect international will to combat terrorism in all its forms and manifestations, and which assigned tasks and responsibilities to States, and taking into account the continued threat from terrorist attacks,

RECALLING ALSO resolution 1540 (2004) of the United Nations Security Council, which recognizes the urgent need for all States to take additional effective measures to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery,

RECALLING FURTHER the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on 14 September 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971; the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973; the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979; the Convention on the Physical Protection of Nuclear Material, done at Vienna on 26 October 1979 and amendments thereto adopted on 8 July 2005; the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988; the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988; the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991; the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997; the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999, and the International Convention for the Suppression of Acts of Nuclear Terrorism adopted by the General Assembly of the United Nations on 13 April 2005,

BEARING IN MIND the importance of the United Nations Convention on the Law of the Sea done at Montego Bay, on 10 December 1982, and of the customary international law of the sea,

CONSIDERING resolution 59/46 of the United Nations General Assembly, which reaffirmed that international co-operation as well as actions by States to combat terrorism should be conducted in conformity with the principles of the Charter of the United Nations, international law and relevant international conventions, and resolution 59/24 of the United Nations General Assembly, which urged States to become parties to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its Protocol, invited States to participate in the review of those instruments by the Legal Committee of the International Maritime Organization to strengthen the means of combating such unlawful acts, including terrorist acts, and also urged States to take appropriate measures to ensure the effective implementation of those instruments, in particular through the adoption of legislation, where appropriate, aimed at ensuring that there is a proper framework for responses to incidents of armed robbery and terrorist acts at sea,

CONSIDERING ALSO the importance of the amendments to the International Convention for the Safety of Life at Sea, 1974, and of the International Ship and Port Facility Security (ISPS) Code, both adopted by the 2002 Conference of Contracting Governments to that Convention, in establishing an appropriate international technical framework involving co-operation between Governments, Government agencies, national and local administrations and the shipping and port industries to detect security threats and take preventative measures against security incidents affecting ships or port facilities used in international trade,

CONSIDERING FURTHER resolution 58/187 of the United Nations General Assembly, which reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law,

BELIEVING that it is necessary to adopt provisions supplementary to those of the Convention, to suppress additional terrorist acts of violence against the safety and security of international maritime navigation and to improve its effectiveness,

HAVE AGREED as follows:

ARTICLE 1

For the purposes of this Protocol:

1 "Convention" means the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.

2 "Organization" means the International Maritime Organization (IMO).

3 "Secretary-General" means the Secretary-General of the Organization.

ARTICLE 2

Article 1 of the Convention is amended to read as follows:

Article 1

1 For the purposes of this Convention:

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

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

(c) "serious injury or damage" means:

(i) serious bodily injury; or

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

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

(d) "BCN weapon" means:

(i) "biological weapons", which are:

(1) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or

(2) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

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

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

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

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

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

(D) law enforcement including domestic riot control purposes,

as long as the types and quantities are consistent with such purposes;

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

(3) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (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) "Organization" means the International Maritime Organization (IMO).

(h) "Secretary-General" means the Secretary-General of the Organization.

2 For the purposes of this Convention:

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

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

ARTICLE 3

The following text is added as article 2*bis* of the Convention:

Article 2*bis*

1 Nothing in this Convention shall affect other rights, obligations and responsibilities of States 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.

2 This Convention does not apply to the activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law.

3 Nothing in this Convention shall affect the rights, obligations and responsibilities under the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London and Moscow on 1 July 1968, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, done at Washington, London and Moscow on 10 April 1972, or the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, done at Paris on 13 January 1993, of States Parties to such treaties.

ARTICLE 4

1 **The *chapeau* of article 3, paragraph 1 of the Convention is replaced by the following text:**

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

2 **Article 3, paragraph 1(f) of the Convention is replaced by the following text:**

(f) communicates information which that person knows to be false, thereby endangering the safe navigation of a ship.

3 **Article 3, paragraph 1(g) of the Convention is deleted.**

4 **Article 3, paragraph 2 of the Convention is replaced by the following text:**

2 Any person also commits an offence if that person threatens, with or without a condition, as is provided for under national law, 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 paragraphs 1 (b), (c), and (e), if that threat is likely to endanger the safe navigation of the ship in question.

5 **The following text is added as article 3*bis* of the Convention:**

Article 3*bis*

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

(a) when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act:

(i) uses against or on a ship or discharges from a ship any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage; or

(ii) discharges, from a ship, oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by subparagraph (a)(i), in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or

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

(iv) threatens, with or without a condition, as is provided for under national law, to commit an offence set forth in subparagraph (a)(i), (ii) or (iii); or

(b) transports on board a ship:

(i) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, 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 1; 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 It shall not be an offence within the meaning of this Convention to transport an item or material covered by paragraph 1(b)(iii) or, insofar as it relates to a 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 on the Non-Proliferation of Nuclear Weapons where:

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

6 The following text is added as article *3ter* of the Convention:

Article *3ter*

Any person commits an offence within the meaning of this Convention if that person 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 article 3, *3bis* or *3quater* or an offence set forth in any treaty listed in the Annex, and intending to assist that person to evade criminal prosecution.

7 The following text is added as article *3quater* of the Convention:

Article *3quater*

Any person also commits an offence within the meaning of this Convention 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 3, paragraph 1, article *3bis*, or article *3ter*; or

(b) attempts to commit an offence set forth in article 3, paragraph 1, article *3bis*, paragraph 1(a)(i), (ii) or (iii), or subparagraph (a) of this article; or

(c) participates as an accomplice in an offence set forth in article 3, article *3bis*, article *3ter*, or subparagraph (a) or (b) of this article; or

(d) organizes or directs others to commit an offence set forth in article 3, article *3bis*, article *3ter*, or subparagraph (a) or (b) of this article; or

(e) contributes to the commission of one or more offences set forth in article 3, article *3bis*, article *3ter* or subparagraph (a) or (b) of this article, by a group of persons acting with a common purpose, intentionally and either:

(i) with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence set forth in article 3, *3bis* or *3ter*; or

(ii) in the knowledge of the intention of the group to commit an offence set forth in article 3, *3bis* or *3ter*.

ARTICLE 5

1 Article 5 of the Convention is replaced by the following text:

Each State Party shall make the offences set forth in articles 3, *3bis*, *3ter* and *3quater* punishable by appropriate penalties which take into account the grave nature of those offences.

2 The following text is added as article *5bis* of the Convention:

Article *5bis*

1 Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory 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 Convention. 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.

3 Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

ARTICLE 6

1 **The *chapeau of* article 6, paragraph 1 of the Convention is replaced by the following text:**

1 Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 3, 3*bis*, 3*ter* and 3*quater* when the offence is committed:

2 **Article 6, paragraph 3 of the Convention is replaced by the following text:**

3 Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General. If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

3 **Article 6, paragraph 4 of the Convention is replaced by the following text:**

4 Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 3, 3*bis*, 3*ter* and 3*quater* in cases 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 in accordance with paragraphs 1 and 2 of this article.

ARTICLE 7

The following text is added as the Annex to the Convention:

ANNEX

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

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

3 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.

4 International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.

5 Convention on the Physical Protection of Nuclear Material, done at Vienna on 26 October 1979.

6 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.

7 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.

8 International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

9 International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.

ARTICLE 8

1 Article 8, paragraph 1 of the Convention is replaced by the following text:

1 The master of a ship of a State Party (the "flag State") may deliver to the authorities of any other State Party (the "receiving State") any person who the master has reasonable grounds to believe has committed an offence set forth in article 3, 3*bis*, 3*ter*, or 3*quater*.

2 The following text is added as article 8*bis* of the Convention:

Article 8*bis*

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

2 Each request pursuant to this article should, if possible, contain the name of the suspect ship, the IMO ship identification number, the port of registry, the ports of origin and destination, and any other relevant information. If a request is conveyed orally, the requesting Party shall confirm the request in writing as soon as possible. The requested Party shall acknowledge its receipt of any written or oral request immediately.

3 States Parties shall take into account the dangers and difficulties involved in boarding a ship at sea and searching its cargo, and give consideration to whether other appropriate measures agreed between the States concerned could be more safely taken in the next port of call or elsewhere.

4 A State Party that has reasonable grounds to suspect that an offence set forth in article 3, 3*bis*, 3*ter* or 3*quater* has been, is being or is about to be committed involving a ship flying its flag, may request the assistance of other States Parties in preventing or suppressing that offence. The States Parties so requested shall use their best endeavours to render such assistance within the means available to them.

5 Whenever law enforcement or other authorized officials of a State Party ("the requesting Party") encounter a ship flying the flag or displaying marks of registry of another State Party ("the first Party") located seaward of any State's territorial sea, and the requesting Party has reasonable grounds to suspect that the ship or a person on board the ship has been, is or is about to be involved in the commission of an offence set forth in article 3, 3*bis*, 3*ter* or 3*quater*, and the requesting Party desires to board,

(a) it shall request, in accordance with paragraphs 1 and 2 that the first Party confirm the claim of nationality, and

(b) if nationality is confirmed, the requesting Party shall ask the first Party (hereinafter referred to as "the flag State") for authorization to board and to take appropriate measures with regard to that ship which may include stopping, boarding and searching the ship, its cargo and persons on board, and questioning the persons on board in order to determine if an offence set forth in article 3, 3*bis*, 3*ter* or 3*quater* has been, is being or is about to be committed, and

(c) the flag State shall either:

(i) authorize the requesting Party to board and to take appropriate measures set out in subparagraph (b), subject to any conditions it may impose in accordance with paragraph 7; or

(ii) conduct the boarding and search with its own law enforcement or other officials; or

(iii) conduct the boarding and search together with the requesting Party, subject to any conditions it may impose in accordance with paragraph 7; or

(iv) decline to authorize a boarding and search.

The requesting Party shall not board the ship or take measures set out in subparagraph (b) without the express authorization of the flag State.

(d) Upon or after depositing its instrument of ratification, acceptance, approval or accession, a State Party may notify the Secretary-General that, with respect to ships flying its flag or displaying its mark of registry, the requesting Party is granted authorization to board and search the ship, its cargo and persons on board, and to question the persons on board in order to locate and examine documentation of its nationality and determine if an offence set forth in article 3, 3*bis*, 3*ter* or 3*quater* has been, is being or is about to be committed, if there is no response from the first Party within four hours of acknowledgement of receipt of a request to confirm nationality.

(e) Upon or after depositing its instrument of ratification, acceptance, approval or accession, a State Party may notify the Secretary-General that, with respect to ships flying its flag or displaying its mark of registry, the requesting Party is authorized to board and search a ship, its cargo and persons on board, and to question the persons on board in order to determine if an offence set forth in article 3, 3*bis*, 3*ter* or 3*quater* has been, is being or is about to be committed.

The notifications made pursuant to this paragraph can be withdrawn at any time.

6 When evidence of conduct described in article 3, 3*bis*, 3*ter* or 3*quater* is found as the result of any boarding conducted pursuant to this article, the flag State may authorize the requesting Party to detain the ship, cargo and persons on board pending receipt of disposition instructions from the flag State. The requesting Party shall promptly inform the flag State of the results of a boarding, search, and detention conducted pursuant to this article. The requesting Party shall also promptly inform the flag State of the discovery of evidence of illegal conduct that is not subject to this Convention.

7 The flag State, consistent with the other provisions of this Convention, may subject its authorization under paragraph 5 or 6 to conditions, including obtaining additional information from the requesting Party, and conditions relating to responsibility for and the extent of measures to be taken. No additional measures may be taken without the express authorization of the flag State, except when necessary to relieve imminent danger to the lives of persons or where those measures derive from relevant bilateral or multilateral agreements.

8 For all boardings pursuant to this article, the flag State has the right to exercise jurisdiction over a detained ship, cargo or other items and persons on board, including seizure, forfeiture, arrest and prosecution. However, the flag State may, subject to its constitution and laws, consent to the exercise of jurisdiction by another State having jurisdiction under article 6.

9 When carrying out the authorized actions under this article, the use of force shall 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 the authorized actions. Any use of force pursuant to this article shall not exceed the minimum degree of force which is necessary and reasonable in the circumstances.

10 Safeguards:

(a) Where a State Party takes measures against a ship in accordance with this article, it shall:

(i) take due account of the need not to endanger the safety of life at sea;

(ii) ensure that all persons on board are treated in a manner which preserves their basic human dignity, and in compliance with the applicable provisions of international law, including international human rights law;

(iii) ensure that a boarding and search pursuant to this article shall be conducted in accordance with applicable international law;

(iv) take due account of the safety and security of the ship and its cargo;

(v) take due account of the need not to prejudice the commercial or legal interests of the flag State;

(vi) ensure, within available means, that any measure taken with regard to the ship or its cargo is environmentally sound under the circumstances;

(vii) ensure that persons on board against whom proceedings may be commenced in connection with any of the offences set forth in article 3, 3*bis*, 3*ter* or 3*quater* are afforded the protections of paragraph 2 of article 10, regardless of location;

(viii) ensure that the master of a ship is advised of its intention to board, and is, or has been, afforded the opportunity to contact the ship's owner and the flag State at the earliest opportunity; and

(ix) take reasonable efforts to avoid a ship being unduly detained or delayed.

(b) Provided that authorization to board by a flag State shall not *per se* give rise to its liability, States Parties shall be liable for any damage, harm or loss attributable to them arising from measures taken pursuant to this article when:

(i) the grounds for such measures prove to be unfounded, provided that the ship has not committed any act justifying the measures taken; or

(ii) such measures are unlawful or exceed those reasonably required in light of available information to implement the provisions of this article.

States Parties shall provide effective recourse in respect of such damage, harm or loss.

(c) Where a State Party takes measures against a ship in accordance with this Convention, it shall take due account of the need not to interfere with or to affect:

(i) the rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or

(ii) the authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the ship.

(d) Any measure taken pursuant to this article shall be carried out by law enforcement or other authorized officials from warships or military aircraft, or from other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect and, notwithstanding articles 2 and 2*bis*, the provisions of this article shall apply.

(e) For the purposes of this article "law enforcement or other authorized officials" means uniformed or otherwise clearly identifiable members of law enforcement or other government authorities duly authorized by their government. For the specific purpose of law enforcement under this Convention, law enforcement or other authorized officials shall provide appropriate government-issued identification documents for examination by the master of the ship upon boarding.

11 This article does not apply to or limit boarding of ships conducted by any State Party in accordance with international law, seaward of any State's territorial sea, including boardings based upon the right of visit, the rendering of assistance to persons, ships and property in distress or peril, or an authorization from the flag State to take law enforcement or other action.

12 States Parties are encouraged to develop standard operating procedures for joint operations pursuant to this article and consult, as appropriate, with other States Parties with a view to harmonizing such standard operating procedures for the conduct of operations.

13 States Parties may conclude agreements or arrangements between them to facilitate law enforcement operations carried out in accordance with this article.

14 Each State Party shall take appropriate measures to ensure that its law enforcement or other authorized officials, and law enforcement or other authorized officials of other States Parties acting on its behalf, are empowered to act pursuant to this article.

15 Upon or after depositing its instrument of ratification, acceptance, approval or accession, each State Party shall designate the authority, or, where necessary, authorities to receive and respond to requests for assistance, for confirmation of nationality, and for authorization to take appropriate measures. Such designation, including contact information, shall be notified to the Secretary-General within one month of becoming a Party, who shall inform all other States Parties within one month of the designation. Each State Party is responsible for providing prompt notice through the Secretary-General of any changes in the designation or contact information.

ARTICLE 9

Article 10, paragraph 2 is replaced by the following text:

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 Convention, shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

ARTICLE 10

1 Article 11, paragraphs 1, 2, 3 and 4 are replaced by the following text:

1 The offences set forth in articles 3, 3*bis*, 3*ter* and 3*quater* shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2 If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in articles 3, 3*bis*, 3*ter* and 3*quater*. Extradition shall be subject to the other conditions provided by the law of the requested State Party.

3 States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in articles 3, 3*bis*, 3*ter* and 3*quater* as extraditable offences between themselves, subject to the conditions provided by the law of the requested State Party.

4 If necessary, the offences set forth in articles 3, 3*bis*, 3*ter* and 3*quater* shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in a place within the jurisdiction of the State Party requesting extradition.

2 The following text is added as article 11*bis*, of the Convention:

Article 11*bis*

None of the offences set forth in article 3, 3*bis*, 3*ter* or 3*quater* 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.

3 The following text is added as article 11*ter* of the Convention:

Article 11*ter*

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 3, 3*bis*, 3*ter* or 3*quater* 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.

ARTICLE 11

1 Article 12, paragraph 1 of the Convention is replaced by the following text:

1 States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in articles 3, 3*bis*, 3*ter* and 3*quater*, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2 The following text is added as article 12*bis* of the Convention:

Article 12*bis*

1 A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in article 3, 3*bis*, 3*ter* or 3*quater* may be transferred if the following conditions are met:

(a) the person freely gives informed consent; and

(b) the competent authorities of both States agree, subject to such conditions as those States may deem appropriate.

2 For the purposes of this article:

(a) the State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) the State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) the State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) the person transferred shall receive credit for service of the sentence being served in the State from which the person was transferred for time spent in the custody of the State to which the person was transferred.

3 Unless the State Party from which a person is to be transferred in accordance with this article so agrees, that person, whatever that person's nationality, shall not be prosecuted or detained or subjected to any other restriction of personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to that person's departure from the territory of the State from which such person was transferred.

ARTICLE 12

Article 13 of the Convention is replaced by the following text:

1 States Parties shall co-operate in the prevention of the offences set forth in articles 3, 3*bis*, 3*ter* and 3*quater*, particularly by:

(a) taking all practicable measures to prevent preparation in their respective territories for the commission of those offences within or outside their territories;

(b) exchanging information in accordance with their national law, and co-ordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in articles 3, 3*bis*, 3*ter* and 3*quater*.

2 When, due to the commission of an offence set forth in article 3, 3bis, 3*ter* or 3*quater*, the passage of a ship has been delayed or interrupted, any State Party in whose territory the ship or passengers or crew are present shall be bound to exercise all possible efforts to avoid a ship, its passengers, crew or cargo being unduly detained or delayed.

ARTICLE 13

Article 14 of the Convention is replaced by the following text:

Any State Party having reason to believe that an offence set forth in article 3, 3*bis*, 3*ter* or 3*quater* will be committed shall, in accordance with its national law, 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

Article 15, paragraph 3 of the Convention is replaced by the following text:

3 The information transmitted in accordance with paragraphs 1 and 2 shall be communicated by the Secretary-General to all States Parties, to Members of the Organization, to other States concerned, and to the appropriate international intergovernmental organizations.

ARTICLE 15

Interpretation and application

1 The Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.

2 Articles 1 to 16 of the Convention, as revised by this Protocol, together with articles 17 to 24 of this Protocol and the Annex thereto, shall constitute and be called the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005 (2005 SUA Convention).

ARTICLE 16

The following text is added as article 16*bis* of the Convention:

Final clauses of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005

The final clauses of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005 shall be articles 17 to 24 of the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. References in this Convention to States Parties shall be taken to mean references to States Parties to that Protocol.

FINAL CLAUSES

ARTICLE 17

Signature, ratification, acceptance, approval and accession

1 This Protocol shall be open for signature at the Headquarters of the Organization from 14 February 2006 to 13 February 2007 and shall thereafter remain open for accession.

2 States may express their consent to be bound by this Protocol by:

(a) signature without reservation as to ratification, acceptance or approval; or

(b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(c) accession.

3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4 Only a State which has signed the Convention without reservation as to ratification, acceptance or approval, or has ratified, accepted, approved or acceded to the Convention may become a Party to this Protocol.

ARTICLE 18

Entry into force

1 This Protocol shall enter into force ninety days following the date on which twelve States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession with the Secretary-General.

2 For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Protocol after the conditions in paragraph 1 for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 19

Denunciation

1 This Protocol may be denounced by any State Party at any time after the date on which this Protocol enters into force for that State.

2 Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3 A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the deposit of the instrument with the Secretary-General.

ARTICLE 20

Revision and amendment

1 A conference for the purpose of revising or amending this Protocol may be convened by the Organization.

2 The Secretary-General shall convene a conference of States Parties to this Protocol for revising or amending the Protocol, at the request of one third of the States Parties, or ten States Parties, whichever is the higher figure.

3 Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Protocol shall be deemed to apply to the Protocol as amended.

ARTICLE 21

Declarations

1 Upon depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the Annex may declare that, in the application of this Protocol to the State Party, the treaty shall be deemed not to be included in article *3ter*. The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the Secretary-General of this fact.

2 When a State Party ceases to be a party to a treaty listed in the Annex, it may make a declaration as provided for in this article, with respect to that treaty.

3 Upon depositing its instrument of ratification, acceptance, approval or accession, a State Party may declare that it will apply the provisions of article *3ter* in accordance with the principles of its criminal law concerning family exemptions of liability.

ARTICLE 22

Amendments to the Annex

1 The Annex may be amended by the addition of relevant treaties that:

(a) are open to the participation of all States;

(b) have entered into force; and

(c) have been ratified, accepted, approved or acceded to by at least twelve States Parties to this Protocol.

2 After the entry into force of this Protocol, any State Party thereto may propose such an amendment to the Annex. Any proposal for an amendment shall be communicated to the Secretary-General in written form. The Secretary-General shall circulate any proposed amendment that meets the requirements of paragraph 1 to all members of the Organization and seek from States Parties to this Protocol their consent to the adoption of the proposed amendment.

3 The proposed amendment to the Annex shall be deemed adopted after more than twelve of the States Parties to this Protocol consent to it by written notification to the Secretary-General.

4 The adopted amendment to the Annex shall enter into force thirty days after the deposit with the Secretary-General of the twelfth instrument of ratification, acceptance or approval of such amendment for those States Parties to this Protocol that have deposited such an instrument. For each State Party to this Protocol ratifying, accepting or approving the amendment after the deposit of the twelfth instrument with the Secretary-General, the amendment shall enter into force on the thirtieth day after deposit by such State Party of its instrument of ratification, acceptance or approval.

ARTICLE 23

Depositary

1 This Protocol and any amendments adopted under articles 20 and 22 shall be deposited with the Secretary-General.

2 The Secretary-General shall:

(a) inform all States which have signed this Protocol or acceded to this Protocol of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;

(ii) the date of the entry into force of this Protocol;

(iii) the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the date on which the denunciation takes effect;

(iv) any communication called for by any article of this Protocol;

(v) any proposal to amend the Annex which has been made in accordance with article 22, paragraph 2;

(vi) any amendment deemed to have been adopted in accordance with article 22, paragraph 3;

(vii) any amendment ratified, accepted or approved in accordance with article 22, paragraph 4, together with the date on which that amendment shall enter into force; and

(b) transmit certified true copies of this Protocol to all States which have signed or acceded to this Protocol.

3 As soon as this Protocol enters into force, a certified true copy of the text shall be transmitted by the Secretary-General to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 24

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this fourteenth day of October two thousand and five.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

INTERNATIONAL MARITIME ORGANIZATION

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INTERNATIONAL CONFERENCE ON THE REVISION OF THE SUA TREATIES

LEG/CONF.15/22
1 November 2005
Original: ENGLISH

Agenda item 8

ADOPTION OF THE FINAL ACT AND ANY INSTRUMENTS, RECOMMENDATIONS AND RESOLUTIONS RESULTING FROM THE WORK OF THE CONFERENCE

PROTOCOL OF 2005 TO THE PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF

Text adopted by the Conference

THE STATES PARTIES to this Protocol,

BEING PARTIES to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf done at Rome on 10 March 1988,

RECOGNIZING that the reasons for which the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation was elaborated also apply to fixed platforms located on the continental shelf,

TAKING account of the provisions of those Protocols,

HAVE AGREED as follows:

ARTICLE 1

For the purposes of this Protocol:

1 "1988 Protocol" means the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.

2 "Organization" means the International Maritime Organization.

3 "Secretary-General" means the Secretary-General of the Organization.

ARTICLE 2

Article 1, paragraph 1, of the 1988 Protocol is replaced by the following text:

1 The provisions of article 1, paragraphs 1(c), (d), (e), (f), (g), (h) and 2(a), of articles 2*bis*, 5, 5*bis* and 7, and of articles 10 to 16, including articles 11*bis*, 11*ter* and 12*bis*, of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, as amended by the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, shall also apply *mutatis mutandis* to the offences set forth in articles 2, 2*bis* and 2*ter* of this Protocol where such offences are committed on board or against fixed platforms located on the continental shelf.

ARTICLE 3

1 Article 2, paragraph 1(d) of the 1988 Protocol is replaced by the following text:

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

2 Article 2, paragraph 1(e) of the 1988 Protocol is deleted.

3 Article 2, paragraph 2 of the 1988 Protocol is replaced by the following text:

2 Any person also commits an offence if that person threatens, with or without a condition, as is provided for under national law, 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 paragraphs 1(b) and (c), if that threat is likely to endanger the safety of the fixed platform.

ARTICLE 4

1 The following text is inserted as article 2*bis*:

Article 2*bis*

Any person commits an offence within the meaning of this Protocol if that person unlawfully and intentionally, when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act:

(a) uses against or on a fixed platform or discharges from a fixed platform any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage; or

(b) discharges, from a fixed platform, oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by subparagraph (a), in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or

(c) threatens, with or without a condition, as is provided for under national law, to commit an offence set forth in subparagraph (a) or (b).

2 **The following text is inserted as Article 2*ter*:**

Article 2*ter*

Any person also commits an offence within the meaning of this Protocol 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 2, paragraph 1, or article 2*bis*; or

(b) attempts to commit an offence set forth in article 2, paragraph 1, article 2*bis*, subparagraph (a) or (b), or subparagraph (a) of this article; or

(c) participates as an accomplice in an offence set forth in article 2, article 2*bis* or subparagraph (a) or (b) of this article; or

(d) organizes or directs others to commit an offence set forth in article 2, article 2*bis* or subparagraph (a) or (b) of this article; or

(e) contributes to the commission of one or more offences set forth in article 2, article 2*bis* or subparagraph (a) or (b) of this article, by a group of persons acting with a common purpose, intentionally and either:

(i) with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence set forth in article 2 or 2*bis*; or

(ii) in the knowledge of the intention of the group to commit an offence set forth in article 2 or 2*bis*.

ARTICLE 5

1 **Article 3, paragraph 1 of the 1988 Protocol is replaced by the following text:**

1 Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 2, 2*bis* and 2*ter* when the offence is committed:

(a) against or on board a fixed platform while it is located on the continental shelf of that State; or

(b) by a national of that State.

2 **Article 3, paragraph 3 of the 1988 Protocol is replaced by the following text:**

3 Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General. If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

3 **Article 3, paragraph 4 of the 1988 Protocol is replaced by the following text:**

4 Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 2, 2*bis* and 2*ter* in cases 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 in accordance with paragraphs 1 and 2.

ARTICLE 6

Interpretation and application

1 The 1988 Protocol and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.

2 Articles 1 to 4 of the 1988 Protocol, as revised by this Protocol, together with articles 8 to 13 of this Protocol shall constitute and be called the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 2005 (2005 SUA Fixed Platforms Protocol).

ARTICLE 7

The following text is added as article 4*bis* of the Protocol:

Final clauses of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 2005

The final clauses of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 2005, shall be articles 8 to 13 of the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf. References in this Protocol to States Parties shall be taken to mean references to States Parties to the 2005 Protocol.

FINAL CLAUSES

ARTICLE 8

Signature, ratification, acceptance, approval and accession

1 This Protocol shall be open for signature at the Headquarters of the Organization from 14 February 2006 to 13 February 2007 and shall thereafter remain open for accession.

2 States may express their consent to be bound by this Protocol by:

(a) signature without reservation as to ratification, acceptance or approval; or

(b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(c) accession.

3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4 Only a State which has signed the 1988 Protocol without reservation as to ratification, acceptance or approval, or has ratified, accepted, approved or acceded to the 1988 Protocol may become a Party to this Protocol.

ARTICLE 9

Entry into force

1 This Protocol shall enter into force ninety days following the date on which three States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession with the Secretary-General. However, this Protocol shall not enter into force before the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation has entered into force.

2 For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Protocol after the conditions in paragraph 1 for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 10

Denunciation

1 This Protocol may be denounced by any State Party at any time after the date on which this Protocol enters into force for that State.

2 Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3 A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the deposit of the instrument with the Secretary-General.

ARTICLE 11

Revision and amendment

1 A conference for the purpose of revising or amending this Protocol may be convened by the Organization.

2 The Secretary-General shall convene a conference of States Parties to this Protocol for revising or amending the Protocol, at the request of one third of the States Parties, or five States Parties, whichever is the higher figure.

3 Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Protocol shall be deemed to apply to the Protocol as amended.

ARTICLE 12

Depositary

1 This Protocol and any amendments adopted under article 11 shall be deposited with the Secretary-General.

2 The Secretary-General shall:

(a) inform all States which have signed this Protocol or acceded to this Protocol of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;

(ii) the date of the entry into force of this Protocol;

(iii) the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the date on which the denunciation takes effect;

(iv) any communication called for by any article of this Protocol; and

(b) transmit certified true copies of this Protocol to all States which have signed or acceded to this Protocol.

3 As soon as this Protocol enters into force, a certified true copy of the text shall be transmitted by the Secretary-General to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 13

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this fourteenth day of October two thousand and five.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.
