

Reprint
as at 27 May 2018



Maritime Crimes Amendment Act 2017

Public Act 2017 No 49
Date of assent 15 December 2017
Commencement see section 2

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Justice.

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Schedule 2
Consequential amendments to other Acts

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Maritime Crimes Amendment Act 2017.

2 Commencement

This Act comes into force on a date appointed by the Governor-General by Order in Council.

Section 2: this Act brought into force, on 27 May 2018, by clause 2 of the Maritime Crimes Amendment Act 2017 Commencement Order 2018 (LI 2018/56).

Part 1
Amendments to Maritime Crimes Act 1999

3 Principal Act

This Part amends the Maritime Crimes Act 1999 (the **principal Act**).

4 Long Title repealed

Repeal the Long Title.

5 New section 1A inserted (Purpose)

After section 1, insert:

1A Purpose

The purpose of this Act is to give effect to the provisions of—

- (a) the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988; and
- (b) the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at London on 14 October 2005; and
- (c) 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; and
- (d) the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at London on 14 October 2005.

6 Section 2 amended (Interpretation)

- (1) In section 2, insert in their appropriate alphabetical order:

act against a specified terrorism convention has the meaning given in section 4(1) of the Terrorism Suppression Act 2002

BCN weapon means a biological weapon, a chemical weapon, or a nuclear weapon

biological weapon means—

- (a) a non-peaceful biological agent; or
- (b) a weapon, piece of equipment, or means of delivery that is designed to use a non-peaceful biological agent or agents for hostile purposes or in armed conflict (whether or not it is armed with or accompanied by any non-peaceful biological agent)

chemical weapon means—

- (a) a toxic chemical or precursor other than one that is intended for use for 1 or more of the following purposes:
 - (i) industrial, agricultural, research, medical, pharmaceutical, or other peaceful purposes;
 - (ii) purposes directly related to protection against toxic chemicals or chemical weapons;
 - (iii) military purposes not dependent on the use of the toxic properties of chemicals as a method of warfare;
 - (iv) law enforcement purposes; or
- (b) munitions, or a device, designed to cause death or harm to people through the toxic properties of chemical weapons (within the meaning of paragraph (a)) that would be released by the use of the munitions or device; or
- (c) equipment designed for use directly in connection with the use of chemical weapons (within the meaning of paragraph (b))

enforcement officer means a person who is designated as an enforcement officer under section 10G

exclusive economic zone, in relation to New Zealand, has the meaning given in section 9 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

flag State, in relation to a ship, means—

- (a) the State in which the ship is registered; or
- (b) if the ship is unregistered, the State whose flag the ship is entitled to fly or whose marks of registry the ship is entitled to display

foreign ship means a ship that is not a New Zealand ship and that is registered in another State or that is entitled to fly the flag or to bear the marks of registry of another State

high seas means all parts of the sea not included in the internal waters, territorial sea, or exclusive economic zone of a State or in the archipelagic waters of an archipelagic State

infrastructure facility has the meaning given in section 4(1) of the Terrorism Suppression Act 2002

internal waters, in relation to New Zealand, has the meaning given in section 4 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

non-peaceful biological agent means a biological agent or toxin (whether or not microbial, and whatever its origin and method of harvest or production) of a type, and in a quantity, that has no justification in use for prophylactic, protective, or other peaceful purposes

nuclear weapon means any nuclear weapon or other explosive device capable of releasing nuclear energy, irrespective of the purpose for which it could be used, whether assembled, partly assembled, or unassembled

place of public use has the meaning given in section 4(1) of the Terrorism Suppression Act 2002

precursor,—

- (a) in relation to a toxic chemical, means a chemical that is used at any stage in the production of the toxic chemical; and
- (b) in relation to a toxic chemical that is a mixture of 2 or more chemical components, includes a chemical that—
 - (i) is a key component of the toxic chemical; or
 - (ii) is used at any stage in the production of a key component of the toxic chemical

public transportation system has the meaning given in section 4(1) of the Terrorism Suppression Act 2002

serious injury or serious damage means—

- (a) serious bodily injury to people; or
- (b) extensive destruction, resulting in major economic loss, of a place of public use, a State or government facility, an infrastructure facility, or a public transportation system; or
- (c) substantial damage to the environment (that is, the air, the soil, water, animals, or plants)

source material and **special fissionable material** have the meanings given in Article XX of the Statute of the International Atomic Energy Agency, done at New York on 26 October 1956

State or government facility has the meaning given in section 4(1) of the Terrorism Suppression Act 2002

territorial sea, in relation to New Zealand, has the meaning given in section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

toxic chemical means a chemical that, through its chemical action on life processes, can cause death, temporary incapacitation, or permanent harm to people or animals—

- (a) whatever its origin or method of production; and
- (b) whether it is produced in a facility, in munitions, or elsewhere

transport, in relation to a person or thing that moves or is moved, means to initiate, arrange, exercise effective control over, or exercise authority to make decisions in respect of, the movement concerned.

(2) In section 2,—

- (a) definition of **act of violence**, paragraph (b), replace “crimes” with “offences”;
- (b) repeal the definition of **New Zealand**;
- (c) definition of **Rome Convention**, after “10 March 1988”, insert “, as amended by the Protocol of 2005 to that Convention, done at London on 14 October 2005 (a copy of the consolidated English text of the Convention and Protocol is set out in Schedule 1)”;
- (d) definition of **Rome Protocol**, after “10 March 1988”, insert “, as amended by the Protocol of 2005 to that Protocol, done at London on 14 October 2005 (a copy of the consolidated English text of the Protocols is set out in Schedule 2)”;
- (e) repeal the definition of **scheduled to navigate**.

7 New sections 3A to 3C inserted

After section 3, insert:

3A Act does not apply to certain situations

This Act does not apply to any act that occurs in a situation of armed conflict and is, at the time and in the place that it occurs, in accordance with rules of international law applicable to the conflict.

Compare: Rome Convention, Art 2*bis*; Rome Protocol, Art 1

3B Protest and other activity

To avoid doubt, the fact that a person engages in any protest, advocacy, or dissent, or engages in any strike, lockout, or other industrial action, is not, by itself, a sufficient basis for inferring that the person—

- (a) is carrying out an act for a purpose, or with an intention, specified in any offence in this Act; or
- (b) intends to cause an outcome specified in any offence in this Act.

Compare: 2002 No 34 s 5(5)

3C Act binds the Crown

This Act binds the Crown.

8 Cross-heading above section 4 amended

In the cross-heading above section 4, replace “*Crimes*” with “*Offences*”.

9 Section 4 amended (Crimes relating to ships)

- (1) In the heading to section 4, replace “**Crimes**” with “**Offences**”.
- (2) In section 4(1) and (3), replace “a crime” with “an offence” in each place.
- (3) Repeal section 4(2).
- (4) After section 4(3), insert:

Compare: Rome Convention, Art 3

10 New sections 4A to 4C inserted

After section 4, insert:

4A Further offences relating to ships

- (1) A person commits an offence if the person, with the purpose of intimidating a population or compelling a government or an international organisation to do or to abstain from doing any act, intentionally—
 - (a) 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 the death of any person or serious injury or serious damage; or
 - (b) discharges from a ship any of the following substances in a quantity or concentration that causes or is likely to cause the death of any person or serious injury or serious damage:
 - (i) oil;
 - (ii) liquefied natural gas;
 - (iii) any other hazardous or noxious substance that is not covered by paragraph (a); or
 - (c) causes death or serious injury or serious damage through the use of a ship.
- (2) A person commits an offence if the person, with the purpose of intimidating a population or compelling a government or an international organisation to do

or to abstain from doing any act, threatens to do any act described in subsection (1)(a), (b), or (c).

Compare: Rome Convention, Art 3*bis*(1)(a)

4B Offences relating to transportation of weapons and nuclear material and equipment

- (1) A person commits an offence if the person intentionally transports on board a ship—
- (a) any explosive or radioactive material, knowing that it is intended to be used to cause, or used in a threat to cause, the death of any person or serious injury or serious damage for the purpose of intimidating a population or compelling a government or an international organisation to do or to abstain from doing any act; or
 - (b) any BCN weapon, knowing it to be a BCN weapon; or
 - (c) 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 that purpose; or
 - (d) 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 International Atomic Energy Agency comprehensive safeguards agreement.
- (2) A person does not commit an offence against subsection (1)(c), as it relates to a nuclear weapon, or against subsection (1)(d) if—
- (a) the thing that is transported is under the control of a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons and the resulting transfer or receipt of the thing is not contrary to the State Party's obligations under that Treaty; or
 - (b) the thing is intended for the delivery system of a nuclear weapon of a State Party to that Treaty, and the holding of the weapon is not contrary to the State Party's obligations under the Treaty.

Compare: Rome Convention, Art 3*bis*(1)(b), (2)

4C Offences relating to transportation of fugitives by ship

A person commits an offence if the person, with the intention to assist another person to evade criminal prosecution, intentionally transports the other person on board a ship, knowing the other person—

- (a) has committed an offence against section 4, 4A, or 4B (or section 6 as it relates to section 4, 4A, or 4B); or
- (b) has committed an act against a specified terrorism convention.

Compare: Rome Convention, Art 3*ter*

11 Section 5 amended (Crimes relating to fixed platforms)

- (1) In the heading to section 5, replace “Crimes” with “Offences”.
- (2) In section 5(1) and (3), replace “a crime” with “an offence” in each place.
- (3) Repeal section 5(2).
- (4) After subsection (3), insert:

Compare: Rome Protocol, Art 2

12 New section 5A inserted (Further offences relating to fixed platforms)

After section 5, insert:

5A Further offences relating to fixed platforms

- (1) A person commits an offence if the person, with the purpose of intimidating a population or compelling a government or an international organisation to do or to abstain from doing any act, intentionally—
 - (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 the death of any person or serious injury or serious damage; or
 - (b) discharges from a fixed platform any of the following substances in a quantity or concentration that causes or is likely to cause the death of any person or serious injury or serious damage:
 - (i) oil:
 - (ii) liquefied natural gas:
 - (iii) any other hazardous or noxious substance that is not covered by paragraph (a).
- (2) A person commits an offence if the person, with the purpose of intimidating a population or compelling a government or an international organisation to do or to abstain from doing any act, threatens to do any act described in subsection (1)(a) or (b).

Compare: Rome Protocol, Art 2*bis*

13 Sections 6 to 9 and cross-heading above section 8 replaced

Replace sections 6 to 9 and the cross-heading above section 8 with:

6 Offences relating to death and injury

- (1) A person commits an offence if the person intentionally—
 - (a) causes the death of any person in connection with the commission or attempted commission of an offence against section 4(1), 4A(1), 4B(1), 4C, 5(1), or 5A(1) and the conduct concerned would, if it occurred in New Zealand, amount to—
 - (i) murder under section 167 or 168 of the Crimes Act 1961; or

- (ii) manslaughter under section 171 of the Crimes Act 1961; or
 - (b) injures any person in connection with the commission or attempted commission of an offence against section 4(1), 4A(1), 4B(1), 4C, 5(1), or 5A(1).
- (2) For the purposes of subsection (1), an act or omission by any person occurs **in connection with the commission or attempted commission of an offence** if it was done or omitted with the intent—
- (a) to commit or facilitate the commission or attempted commission of the offence; or
 - (b) to avoid the detection of the person or any other person in the commission or attempted commission of the offence; or
 - (c) to avoid the arrest of, or to facilitate flight from arrest of, the person or any other person on the commission or attempted commission of the offence.
- (3) Subsection (2) does not limit the generality of the expression “in connection with the commission or attempted commission of an offence”.

Compare: Rome Convention, Art 3*quater*, Rome Protocol, Art 2*ter*

7 Penalties for offences against sections 4 to 6

- (1) A person convicted of an offence—
- (a) against section 6(1)(a)(i) must be sentenced as if the person had been convicted of murder under the Crimes Act 1961:
 - (b) against section 6(1)(a)(ii) must be sentenced as if the person had been convicted of manslaughter under the Crimes Act 1961.
- (2) A person who commits an offence against section 4, 4A, 4B, 5, 5A, or 6(1)(b) is liable on conviction to a term of imprisonment not exceeding 14 years.
- (3) A person who commits an offence against section 4C is liable on conviction to a term of imprisonment not exceeding 7 years.

Jurisdiction and application provisions

8 Extra-territorial jurisdiction

- (1) This Act applies in relation to an offence that occurs beyond the outer limits of New Zealand’s territorial sea if—
- (a) the offence is committed—
 - (i) against or on board a New Zealand ship; or
 - (ii) against or on board a fixed platform located on New Zealand’s continental shelf; or
 - (iii) against or on board a foreign ship and the flag State of the foreign ship has consented to New Zealand exercising jurisdiction in relation to the ship in accordance with the Rome Convention; or

- (b) the alleged offender is—
 - (i) a New Zealand citizen; or
 - (ii) a person ordinarily resident in New Zealand but not the citizen of any State; or
 - (iii) present in New Zealand.
- (2) For the purposes of subsection (1)(a), an offence is deemed to be committed against or on board a ship or a fixed platform if any act or omission forming part of the offence, or any event necessary to the completion of the offence, occurs against or on board the ship or the fixed platform.
- (3) Subsection (2) does not limit or affect section 7 of the Crimes Act 1961.
Compare: Rome Convention, Art 6; Rome Protocol, Art 3

14 Section 10 amended (Application of Crimes Act 1961)

In section 10, replace “crimes described in section 4 or section 5” with “offences described in sections 4 to 6”.

15 New sections 10A to 10G and cross-heading inserted

After section 10, insert:

Enforcement officers’ powers

10A Exercise of enforcement officers’ powers in relation to ships

- (1) An enforcement officer may exercise the powers specified in section 10B in relation to a ship if the officer has reasonable grounds to suspect that—
 - (a) a person on board the ship has committed, is committing, or is about to commit an offence against this Act; or
 - (b) the ship has been, is, or is about to be used in the commission of an offence against this Act.

Exercise of powers in relation to New Zealand ships

- (2) Subsection (1) applies to a New Zealand ship whether the ship is in New Zealand’s internal waters, territorial sea, or exclusive economic zone, or on the high seas or in the exclusive economic zone of another State.

Exercise of powers in relation to foreign ships

- (3) Subsection (1) applies to a foreign ship only if—
 - (a) the foreign ship is in New Zealand’s internal waters or territorial sea and the officer has reasonable grounds to suspect the offence has been, is, or is about to be committed in New Zealand’s internal waters or territorial sea; or
 - (b) in every other case, the flag State of the foreign ship has consented to the exercise of the powers in relation to the foreign ship.

- (4) If an enforcement officer exercises his or her power to board a foreign ship described in subsection (3)(a) and the officer is the first person to board the ship on that occasion, the officer must, at the time he or she boards the ship, arrange for notice of the boarding to be given to the authorities of the flag State of the foreign ship.
- (5) An enforcement officer must exercise his or her powers in relation to a foreign ship described in subsection (3)(b) in accordance with any conditions that the flag State attaches to its consent.

Compare: Rome Convention, Art 8*bis*

10B Powers to board and search ship

- (1) An enforcement officer has the power to—
 - (a) stop and board a ship:
 - (b) search a ship.
- (2) The provisions of Part 4 of the Search and Surveillance Act 2012 (except subpart 3) apply in respect of the powers conferred by subsection (1) in the circumstances described in section 10A.
- (3) In relation to a ship that fails to stop when signalled or required to do so, an enforcement officer may—
 - (a) chase the ship:
 - (b) if the ship continues to fail to stop, fire a warning shot:
 - (c) as a last resort, after having fired a warning shot, fire at or onto the ship to compel it to stop.
- (4) An enforcement officer must not interfere with any attempt by the master of a foreign ship to communicate with the authorities of the flag State of the ship during the boarding and search.

10C Enforcement officers' powers in relation to fixed platforms

- (1) An enforcement officer may enter and search a fixed platform if the enforcement officer has reasonable grounds to suspect that—
 - (a) a person on board the fixed platform has committed, is committing, or is about to commit an offence against this Act; or
 - (b) the fixed platform has been, is, or is about to be used in the commission of an offence against this Act.
- (2) The provisions of Part 4 of the Search and Surveillance Act 2012 (except subpart 3) apply in respect of the powers conferred by subsection (1).

10D Power of arrest

- (1) If an enforcement officer has reasonable grounds to suspect that any person has committed an offence against this Act, the officer may arrest the person without warrant—

- (a) on board a ship to which section 10A applies:
 - (b) on board a fixed platform to which section 10C applies:
 - (c) if the person has left a ship or platform referred to in paragraph (a) or (b) and the enforcement officer is freshly pursuing the person.
- (2) However, an enforcement officer must not arrest a person on board a foreign ship described in section 10A(3)(b) (or a person who has left such a ship and whom the enforcement officer is freshly pursuing) unless the flag State of the foreign ship has consented to the person's arrest.
- (3) If an enforcement officer (not being a constable) arrests a person under subsection (1), the officer must arrange for the person to be delivered into the custody of a constable as soon as practicable.
- (4) Nothing in this section limits the application of section 315 of the Crimes Act 1961.

10E Use of force

- (1) An enforcement officer may use reasonable force for the purpose of exercising his or her powers under this Act.
- (2) In exercising his or her powers in relation to a foreign ship, an enforcement officer must not use any force that exceeds the minimum degree of force that is necessary in the circumstances.
- (3) Every reference to the use of force in Part 4 of the Search and Surveillance Act 2012 (as applied by section 10B(2)) is, in relation to the use of force for the purpose of exercising powers under this Act in relation to a foreign ship, subject to subsection (2).

Compare: Rome Convention, Art 8*bis*, 9

10F Offence to obstruct or to fail to comply

- (1) A person commits an offence if—
- (a) he or she intentionally hinders or obstructs an enforcement officer exercising a power under this Act; and
 - (b) he or she knows or ought reasonably to know that the person exercising the power is an enforcement officer.
- (2) A person who commits an offence against subsection (1) is liable on conviction to a term of imprisonment not exceeding 12 months.
- (3) A person commits an offence if—
- (a) he or she, without reasonable excuse, fails to comply with a lawful direction of an enforcement officer exercising a power under this Act; and
 - (b) he or she knows or ought reasonably to know that the person exercising the power is an enforcement officer.

- (4) A person who commits an offence against subsection (3) is liable on conviction to a term of imprisonment not exceeding 3 months.

10G Enforcement officers designated

- (1) The following are designated as enforcement officers for the purposes of this Act:
- (a) every constable;
 - (b) every officer in command of a ship or an aircraft of the Defence Force.
- (2) An officer in command of a ship or an aircraft of the Defence Force may direct a person under his or her command to exercise the powers of an enforcement officer to any extent and for any period that the officer thinks necessary.
- (3) The person may exercise the powers as if he or she were an enforcement officer.

16 Section 11 amended (Master may deliver alleged offender to appropriate authorities)

- (1) In section 11(1), replace “a crime against section 4” with “an offence against any of sections 4 to 4C (or section 6 as it relates to any of sections 4 to 4C)”.
- (2) In section 11(4), replace “crime” with “offence”.
- (3) After section 11(6), insert:

Compare: Rome Convention, Art 8

17 Section 12 amended (Power to search persons and baggage on ships)

In section 12(2), (3), and (4)(c), replace “a crime” with “an offence” in each place.

18 Section 13 amended (Definitions relating to extradition provisions)

In section 13, definition of **crime**, replace “crime” with “offence” in each place.

19 Section 14 amended (Crimes deemed to be included in extradition treaties)

- (1) In the heading to section 14, replace “**Crimes**” with “**Offences**”.
- (2) In section 14(1), replace “crime described in section 4 or section 5” with “offence described in any of sections 4 to 6”.
- (3) After section 14(2), insert:

Compare: Rome Convention, Art 8

20 Section 15 amended (Restriction on surrender)

- (1) In section 15(1) and (2), replace “a crime described in section 4 or section 5” with “an offence described in any of sections 4 to 6”.

- (2) In section 15(3)(a), replace “a crime described in section 4” with “an offence described in any of sections 4 to 4C (or section 6 as it relates to any of sections 4 to 4C)”.
- (3) In section 15(3)(c), replace “crime” with “offence”.

21 Section 17 amended (Attorney-General’s consent required for prosecutions)

In section 17(1) and (2), replace “a crime against section 4 or section 5” with “an offence against any of sections 4 to 6”.

22 New section 20 inserted (Application to Tokelau)

After section 19, insert:

20 Application to Tokelau

- (1) Subject to subsections (2) and (3), this Act is in force in Tokelau.
- (2) A prosecution for an offence alleged to have been committed in Tokelau is to be heard and determined by the High Court of New Zealand in accordance with section 3 of the Tokelau Amendment Act 1986.
- (3) In the application of this Act to Tokelau, unless the context otherwise requires,—
 - (a) a reference in this Act to New Zealand (when used as a territorial description) is a reference to Tokelau;
 - (b) a reference to New Zealand’s internal waters, territorial sea, or exclusive economic zone is a reference to Tokelau’s internal waters, territorial sea, or exclusive economic zone within the meaning of the Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977.

23 New Schedules 1 and 2 inserted

After section 20 (as inserted by section 22 of this Act), insert the Schedules 1 and 2 set out in Schedule 1 of this Act.

Part 2

Consequential amendments

24 Consequential amendments to other Acts

Amend the Acts specified in Schedule 2 as set out in that schedule.

Schedule 1
New Schedules 1 and 2 inserted

s 23

Schedule 1
Consolidated text of the Convention for the Suppression of Unlawful
Acts against the Safety of Maritime Navigation and of the Protocol
of 2005 to the Convention

s 2

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 2

- 1 This Convention does not apply to:
- (a) a warship; or
 - (b) a ship owned or operated by a State when being used as a naval auxiliary or for customs or police purposes; or
 - (c) a ship which has been withdrawn from navigation or laid up.
- 2 Nothing in this Convention affects the immunities of warships and other Government ships operated for non-commercial purposes.

Article 2bis

- 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 3

- 1 Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:
- (a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
 - (b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or
 - (c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or
 - (d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to

that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or

- (e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or
- (f) communicates information which that person knows to be false, thereby endangering the safe navigation of a ship.

2 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.

Article 3bis

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.

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.

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

Article 4

- 1 This Convention applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States.
- 2 In cases where the Convention does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State referred to in paragraph 1.

Article 5

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

Article 5*bis*

- 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 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:

- (a) against or on board a ship flying the flag of the State at the time the offence is committed; or
- (b) in the territory of that State, including its territorial sea; or
- (c) by a national of that State.
- 2 A State Party may also establish its jurisdiction over any such offence when:
- (a) it is committed by a stateless person whose habitual residence is in that State; or
- (b) during its commission a national of that State is seized, threatened, injured or killed; or
- (c) it is committed in an attempt to compel that State to do or abstain from doing any act.
- 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.
- 4 Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Articles 3, *3bis*, *3ter* and *3quater* 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.
- 5 This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 7

- 1 Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present shall, in accordance with its law, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
- 2 Such State shall immediately make a preliminary inquiry into the facts, in accordance with its own legislation.
- 3 Any person regarding whom the measures referred to in paragraph 1 are being taken shall be entitled to:
- (a) communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;
- (b) be visited by a representative of that State.
- 4 The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or the alleged offender is present, subject to the proviso that the said laws and regula-

tions must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

- 5 When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify the States which have established jurisdiction in accordance with Article 6, paragraph 1 and, if it considers it advisable, any other interested States, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 8

- 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, *3bis*, *3ter*, or *3quater*.
- 2 The flag State shall ensure that the master of its ship is obliged, whenever practicable, and if possible before entering the territorial sea of the receiving State carrying on board any person whom the master intends to deliver in accordance with paragraph 1, to give notification to the authorities of the receiving State of his intention to deliver such person and the reasons therefor.
- 3 The receiving State shall accept the delivery, except where it has grounds to consider that the Convention is not applicable to the acts giving rise to the delivery, and shall proceed in accordance with the provisions of Article 7. Any refusal to accept a delivery shall be accompanied by a statement of the reasons for refusal.
- 4 The flag State shall ensure that the master of its ship is obliged to furnish the authorities of the receiving State with the evidence in the master’s possession which pertains to the alleged offence.
- 5 A receiving State which has accepted the delivery of a person in accordance with paragraph 3 may, in turn, request the flag State to accept delivery of that person. The flag State shall consider any such request, and if it accedes to the request it shall proceed in accordance with Article 7. If the flag State declines a request, it shall furnish the receiving State with a statement of the reasons therefor.

Article *8bis*

- 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, *3bis*, *3ter* or *3quater* 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, *3bis*, *3ter* or *3quater*, 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, *3bis*, *3ter* or *3quater* 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, *3bis*, *3ter* or *3quater* 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, *3bis*, *3ter* or *3quater* 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, *3bis*, *3ter* or *3quater* 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, *3bis*, *3ter* or *3quater* 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

Nothing in this Convention shall affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag.

Article 10

- 1 The State Party in the territory of which the offender or the alleged offender is found shall, in cases to which Article 6 applies, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.
- 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 11

- 1 The offences set forth in Articles 3, *3bis*, *3ter* and *3quater* 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, *3bis*, *3ter* and *3quater*. 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, *3bis*, *3ter* and *3quater*

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, *3bis*, *3ter* and *3quater* 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.

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

6 In considering a request for the extradition of an alleged offender pursuant to this Convention, the requested State shall pay due regard to whether his rights as set forth in Article 7, paragraph 3, can be effected in the requesting State.

7 With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

Article 11*bis*

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

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, *3bis*, *3ter* or *3quater* 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 12

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, *3bis*, *3ter* and *3quater*, including assistance in obtaining evidence at their disposal necessary for the proceedings.

- 2 States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties on mutual assistance that may exist between them. In the absence of such treaties, States Parties shall afford each other assistance in accordance with their national law.

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, *3bis*, *3ter* or *3quater* 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 13

- 1 States Parties shall co-operate in the prevention of the offences set forth in Articles 3, *3bis*, *3ter* and *3quater*, 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, *3bis*, *3ter* and *3quater*.
- 2 When, due to the commission of an offence set forth in Article 3, *3bis*, *3ter* or *3quater*, 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 14

Any State Party having reason to believe that an offence set forth in Article 3, *3bis*, *3ter* or *3quater* 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 15

- 1 Each State Party shall, in accordance with its national law, provide to the Secretary-General, as promptly as possible, any relevant information in its possession concerning:
 - (a) the circumstances of the offence;
 - (b) the action taken pursuant to Article 13, paragraph 2;
 - (c) the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.
- 2 The State Party where the alleged offender is prosecuted shall, in accordance with its national law, communicate the final outcome of the proceedings to the Secretary-General.
- 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 16

- 1 Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the

parties are unable to agree on the organization of the arbitration any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

- 2 Each State may at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by any or all of the provisions of paragraph 1. The other States Parties shall not be bound by those provisions with respect to any State Party which has made such a reservation.
- 3 Any State which has made a reservation in accordance with paragraph 2 may, at any time, withdraw that reservation by notification to the Secretary-General.

Article 16bis

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

The final clauses of this 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

[Articles 17 to 24 of the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.]

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 3*ter*. 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 3*ter* 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.

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.

Schedule 2

Consolidated text of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf and of the Protocol of 2005 to the Protocol

s 2

Article 1

- 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.
- 2 In cases where this Protocol does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State in whose internal waters or territorial sea the fixed platform is located.
- 3 For the purposes of this Protocol, “fixed platform” means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes.

Article 2

- 1 Any person commits an offence if that person unlawfully and intentionally:
- (a) seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation; or
 - (b) performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety; or
 - (c) destroys a fixed platform or causes damage to it which is likely to endanger its safety; or
 - (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 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 2bis

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).

Article 2ter

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 2bis; or
- (b) attempts to commit an offence set forth in Article 2, paragraph 1, Article 2bis, 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 2bis or subparagraph (a) or (b) of this article; or
- (d) organizes or directs others to commit an offence set forth in Article 2, Article 2bis 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 2bis 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 2bis; or
 - (ii) in the knowledge of the intention of the group to commit an offence set forth in Article 2 or 2bis.

Article 3

- 1 Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Articles 2, 2bis and 2ter 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 A State Party may also establish jurisdiction over any such offence when:
- (a) it is committed by a stateless person whose habitual residence is in that State;
- (b) during its commission a national of that State is seized, threatened, injured or killed; or
- (c) it is committed in an attempt to compel that State to do or abstain from doing any act.
- 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.
- 4 Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Articles 2, *2bis* and *2ter* 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.
- 5 This Protocol does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 4

Nothing in this Protocol shall affect in any way the rules of international law pertaining to fixed platforms located on the continental shelf.

Article 4*bis*

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

[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.]

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.

Schedule 2

Consequential amendments to other Acts

s 24

Criminal Procedure Act 2011 (2011 No 81)

In Schedule 1, Part 2, replace the item relating to the Maritime Crimes Act 1999 with:

Maritime Crimes Act 1999

| Section | Offence |
|----------------|---|
| Section 4 | Offences relating to ships |
| Section 4A | Further offences relating to ships |
| Section 4B | Offences relating to transportation of weapons and nuclear material and equipment |
| Section 4C | Offences relating to transportation of fugitives by ship |
| Section 5 | Offences relating to fixed platforms |
| Section 5A | Further offences relating to fixed platforms |
| Section 6 | Offences relating to death and injury |

Maritime Security Act 2004 (2004 No 16)

Replace section 56(1)(d) with:

- (d) any of sections 4, 4A, 4B, and 4C of the Maritime Crimes Act 1999 (which relate to offences relating to ships):
- (e) section 6 of the Maritime Crimes Act 1999 (in relation to causing death or injury in connection with an offence against any of sections 4, 4A, 4B, and 4C of that Act).

Mutual Assistance in Criminal Matters Act 1992 (1992 No 86)

In Schedule 1, replace items 12 and 13 with:

| | | | |
|-----|--|--|--|
| 12 | The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988 <i>or</i> | An offence against any of the following sections of the Maritime Crimes Act 1999: <i>section</i> 4 4A | <i>subject matter</i> offences relating to ships further offences relating to ships |
| 12A | The Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at London on 14 October 2005 | 4B 4C 6 | transportation of weapons and nuclear material and equipment by ship transportation of fugitives by ship causing death or injury in connection with offence against section 4, 4A, 4B, or 4C of that Act |

Mutual Assistance in Criminal Matters Act 1992 (1992 No 86)—continued

| | | | |
|-----|---|--|---|
| 13 | 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 <i>or</i> | An offence against any of the following sections of the Maritime Crimes Act 1999: <i>section</i> 5 5A | <i>subject matter</i> offences relating to fixed platforms further offences relating to fixed platforms |
| 13A | The Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at London on 14 October 2005 | 6 | causing death or injury in connection with offence against section 5 or 5A of that Act |

Search and Surveillance Act 2012 (2012 No 24)

In the Schedule, insert in its appropriate alphabetical order:

| | | | |
|--------------------------|-----|--|------------------------|
| Maritime Crimes Act 1999 | 10B | Enforcement officer may search ship if officer has reasonable grounds to suspect an offence against the Maritime Crimes Act 1999 has been, is, or is about to be committed | All (except subpart 3) |
| | 10C | Enforcement officer may search fixed platform if officer has reasonable grounds to suspect an offence against the Maritime Crimes Act 1999 has been, is, or is about to be committed | All (except subpart 3) |

Terrorism Suppression Act 2002 (2002 No 34)

In Schedule 3, after item 10, insert:

| | |
|----|--|
| 11 | Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at London on 14 October 2005. |
| 12 | Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at London on 14 October 2005. |

Reprints notes

1 *General*

This is a reprint of the Maritime Crimes Amendment Act 2017 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Maritime Crimes Amendment Act 2017 Commencement Order 2018 (LI 2018/56)