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Forslag

til

Lov om ændring af lov om anvendelsen af visse af Det Europæiske Fællesskabs retsakter om økonomiske forbindelser til tredjelande m.v. og udleveringsloven

(Forbud mod transport af visse produkter og teknologi med dobbelt anvendelse m.v.)

§ 1

I lov om anvendelsen af visse af Det Europæiske Fællesskabs retsakter om økonomiske forbindelser til tredjelande m.v., jf. lovbekendtgørelse nr. 474 af 14. juni 2005, som ændret ved § 5 i lov nr. 490 af 17. juni 2008, foretages følgende ændringer:

1. I § 1 a, stk. 1, indsættes efter »biologiske«: », radiologiske«.

2. Efter § 1 a indsættes:

»§ 1 b. Det er forbudt at transportere produkter og teknologi, der er bestemt til anvendelse i forbindelse med udvikling, fremstilling, håndtering, anvendelse, vedligeholdelse, oplagring, sporing, identificering eller spredning af kemiske, biologiske, radiologiske eller nukleare våben eller andre nukleare sprænglegemer eller til udvikling, fremstilling, vedligeholdelse eller oplagring af missiler, der skal fremføre sådanne våben.

Stk. 2. Forbuddet i stk. 1 omfatter med de begrænsninger, der følger af straffelovens §§ 7, 10, 10 a og 10 b, også handlinger foretaget i udlandet.

Stk. 3. Forbuddet i stk. 1 omfatter ikke transporter, der gennemføres uden for Danmark, i det omfang transporten sker i overensstemmelse med internationale aftaler om ikke-spredning af masseødelæggelsesvåben.

Stk. 4. Forbuddet i stk. 1 gælder ikke for danske militære myndigheder.«

3. I § 2 indsættes efter stk. 7 som nyt stykke:

»Stk. 8. Med bøde eller fængsel indtil 2 år straffes den, der forsætligt overtræder forbuddet efter § 1 b, stk. 1, eller stk. 2.«

Stk. 8-10 bliver herefter stk. 9-11.

§ 2

I lov om udlevering af lovovertrædere, jf. lovbekendtgørelse nr. 833 af 25. august 2005, som ændret ved § 11 i lov nr. 538 af 8. juni 2006, § 6 i lov nr. 542 af 8. juni 2006, § 1 i lov nr. 394 af 30. april 2007, § 2 i lov nr. 347 af 14. maj 2008 og § 2 i lov nr. 99 af 10. februar 2009, foretages følgende ændring:

1. § 5, stk. 3, nr. 5 og 6, ophæves, og i stedet indsættes:

»5) artikel 2, jf. artikel 1, i FN-konventionen til bekæmpelse af nuklear terrorisme,

6) artikel 7 i Det Internationale Atomenergiagents konvention om fysisk beskyttelse af nukleare materialer, som ændret ved ændringskonvention af 8. juli 2005 til Det Internationale Atomenergiagents konvention om fysisk beskyttelse af nukleare materialer eller

7) artikel 3 eller artikel 3 b, 3 c eller 3 d i konventionen af 10. marts 1988 til bekæmpelse af ulovlige handlinger mod søfartssikkerheden, som henholdsvis ændret og indsat ved protokollen af 1. november 2005 til konventionen af 10. marts 1988 til bekæmpelse af ulovlige handlinger mod søfartssikkerheden, eller artikel 2 eller artikel 2 b eller 2 c i protokollen af 10. marts 1988 til bekæmpelse af ulovlige handlinger mod sikkerheden for fastgjorte platforme, der befinder sig på kontinentalsokkelen, som henholdsvis ændret og indsat ved protokollen af 1. november 2005 til protokollen af 10. marts 1988 til bekæmpelse af ulovlige handlinger mod sikkerheden for fastgjorte platforme, der befinder sig på kontinentalsokkelen.«

§ 3

Stk. 1. Loven træder i kraft den 1. juli 2010, jf. dog stk. 2.

Stk. 2. Udleveringslovens § 5, stk. 3, nr. 7, som affattet ved denne lovs § 2, finder anvendelse på anmodninger om udle-

vering efter konventionen af 10. marts 1988 til bekæmpelse af ulovlige handlinger mod søfartssikkerheden eller protokollen af 10. marts 1988 til bekæmpelse af ulovlige handlinger mod sikkerheden for fastgjorte platforme, der befinder sig på kontinentsokkelen, der fremsættes, efter at ændringsprotokollerne af 1. november 2005 er trådt i kraft mellem Danmark og vedkommende fremmede stat.

§ 4

- Stk. 1.* Loven gælder ikke for Færøerne og Grønland.
- Stk. 2.* Lovens § 2 kan ved kongelig anordning helt eller delvis sættes i kraft for Færøerne og Grønland med de afvigelser, som de færøske eller grønlandske forhold tilsiger.

Bemærkninger til lovforslaget

Almindelige bemærkninger

Indholdsfortegnelse

1. Indledning og formål med lovforslaget

2. Baggrund

2.1. Den gældende SUA-konvention og 1988-protokollen

2.2. Ændringsprotokoller til SUA-konventionen og 1988-protokollen

2.2.1. Strafbare handlinger i ændringsprotokollen til SUA-konventionen

2.2.2. Udlevering og retshjælp

2.2.3. Øvrige bestemmelser

2.2.4. Ratifikation af ændringsprotokoller

2.3. FN's Sikkerhedsråds resolution nr. 1540 (2004) om ikke-spredning af masseødelæggelsesvåben

3. Gældende lovgivning

3.1. Eksportkontrol med dual-use produkter

3.1.1. Det internationale samarbejde om eksportkontrol

3.1.2. Det fælles EU-retsgrundlag for eksportkontrol af dual-use produkter

3.1.2.1. Dual-use forordningen

3.1.2.2. Rådets fælles aktion om kontrol med teknisk bistand og sanktioner over for Iran og Nordkorea

3.1.3. Den danske bemyndigelseslov og administration af eksportkontrolreglerne

3.1.4. Dansk straffemyndighed

3.2. Udleveringsloven

4. Lovforslagets indhold

4.1. Forbud mod transport af dual-use produkter, der skal anvendes til masseødelæggelsesvåben

4.2. Forbuddets geografiske afgrænsning

4.3. Straf

4.4. Undtagelser fra transportforbuddet

4.5. Udleveringsloven

5. Økonomiske og administrative konsekvenser for det offentlige

6. Økonomiske og administrative konsekvenser for erhvervslivet

7. Administrative konsekvenser for borgerne

8. Miljømæssige konsekvenser

9. Forholdet til EU-retten

10. Hørte myndigheder og organisationer

11. Sammenfattende skema

1. Indledning og formål med lovforslaget

Lovforslaget har til formål at gennemføre to protokoller af 1. november 2005 om ændring af konvention af 10. marts 1988 til bekæmpelse af ulovlige handlinger mod søfartssikkerheden (Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation), i det følgende benævnt ”SUA-konventionen”, og den tilhørende protokol til bekæmpelse af ulovlige handlinger mod sikkerheden for fastgjorte platforme, der befinder sig på kontinentalsokkelen, i det følgende benævnt ”1988-protokollen”.

Med henblik på at kunne ratificere ændringsprotokollerne er der behov for at ændre bemyndigelsesloven, jf. lov om anvendelsen af visse af Det Europæiske Fællesskabs retsakter om økonomiske forbindelser til tredjelande (lovbekendtgørelse nr. 474 af 14. juni 2005 med senere ændringer), og udleveringsloven, jf. lov om udlevering af lovovertrædere (lovbekendtgørelse nr. 833 af 25. august 2005, som senest ændret ved § 2 i lov nr. 99 af 10. februar 2009).

Lovforslaget gennemfører for det første SUA-konventionens artikel 3 b (3 bis), stk. 1, litra b, iv), som ændret ved ændringsprotokollen til SUA-konventionen, idet der indføres et forbud mod transport med skib af produkter og teknologi med dobbelt anvendelse, herefter benævnt dual-use produkter, der er bestemt til anvendelse i forbindelse med masseødelæggelsesvåben. For at opfylde forpligtelserne i FN’s Sikkerhedsråds resolution nr. 1540 af 28. april 2004 om ikke-spredning af masseødelæggelsesvåben, omfatter forbuddet alle former for transport, herunder også transport med fly eller lastvogn m.v.

Lovforslaget gennemfører for det andet bestemmelserne i artikel 11 b (11 bis), stk. 2, i SUA-konventionen og artikel 1, stk. 1, i 1988-protokollen, begge som ændret ved ændringsprotokollerne af 1. november 2005, hvorefter ingen af de forbrydelser, der er omfattet af SUA-konventionen eller 1988-protokollen, anses for en politisk forbrydelse.

Lovforslaget sikrer endvidere, at Danmark opfylder de forpligtelser i FN’s Sikkerhedsråds resolution nr. 1540, der vedrører kontrol med transport af dual-use produkter, der er bestemt til anvendelse i forbindelse med masseødelæggelsesvåben.

Vedtagelsen af lovforslaget indebærer samtidig meddelelse af det i henhold til grundlovens § 19 fornødne samtykke fra Folketinget til, at Danmark ratificerer de to ændringsprotokoller af 1. november 2005 til henholdsvis SUA-konventionen og 1988-protokollen.

2. Baggrund

2.1. Den gældende SUA-konvention og 1988-protokollen

SUA-konventionen og 1988-protokollen indeholder regler i forhold til ulovlige handlinger, som bredt truer sikkerheden på skibe og faste platforme. Baggrunden for konventionen og 1988-protokollen var bl.a. kapingen af den italienske luksusliner Achille Lauro i oktober 1985. Konventionen og 1988-protokollen opregner således en række kriminelle handlinger, herunder med terrorforsæt at anvende skibe eller platforme til at forårsage død eller omfattende ødelæggelse bl.a. på miljøet eller at anvende atomvåben m.v. fra eller mod skibe eller platforme.

Konventionen blev vedtaget på en diplomatkonference i Rom den 10. marts 1988 og trådte i kraft 4 år senere. Danmark ratificerede konventionen og 1988-protokollen ved kgl. resolution af 7. september 1995. Både konventionen og den tilhørende protokol er i dag ratificeret af mere end 140 lande.

2.2. Ændringsprotokoller til SUA-konventionen og 1988-protokollen

På baggrund af terrorangrebene i New York den 11. september 2001 blev der i 2002 igangsat forhandlinger i FN’s internationale søfartsorganisation IMO (International Maritime Organisation) om ændring af SUA-konventionen og 1988-protokollen.

Forhandlingerne blev blandt andet igangsat med henvisning til FN’s Sikkerhedsråds resolutioner 1368 (2001) og 1373 (2001) om bekæmpelse af terrorisme samt resolution 1540 (2004) om ikke-spredning af masseødelæggelsesvåben.

De to ændringsprotokoller til henholdsvis SUA-konventionen og 1988-protokollen blev vedtaget i oktober 2005 på en international diplomatkonference i IMO i London. Danmark undertegnede ændringsprotokollerne den 9. februar 2007 med ratifikationsforbehold. Det bemærkes, at ændringsprotokollen til 1988-protokollen i vid udstrækning afspejler ændringerne til SUA-konventionen, hvor dette er relevant.

Ændringsprotokollerne indeholder en række ændringer og tilføjelser til SUA-konventionen og 1988-protokollen, der vedrører handlinger foretaget med terrorforsæt på og mod skibe eller faste platforme samt transport af våben og produkter, der skal anvendes til masseødelæggelsesvåben.

2.2.1. Strafbare handlinger i ændringsprotokollen til SUA-konventionen

De væsentligste ændringer i ændringsprotokollen til SUA-konventionen består i en betydelig udvidelse af konventionens kriminaliseringsforpligtelser. Ændringerne medfører således en pligt til at kriminalisere en række handlinger, hvor f.eks. skibet eller dets last benyttes med terrorforsæt.

En central del af ændringerne består af særskilte transportbestemmelser, hvis hovedformål er at forhindre spredning af masseødelæggelsesvåben (artiklerne 1, 2 b, stk. 3, 3 b, stk. 1, litra b, og 3 b, stk. 2, i SUA-konventionen, som ændret ved ændringsprotokollen). Disse ændringer er tæt knyttet til FN's traktater og konventioner om ikke-spredning af masseødelæggelsesvåben (FN's konvention om forbud mod kemiske våben (CWC, 1997), FN's konvention om forbud mod biologiske våben (BTWC, 1975) og Traktaten om ikke-spredning af atomvåben (NPT-Traktaten, 1970) samt FN's resolution 1540 (2004) om ikke-spredning af masseødelæggelsesvåben).

Ændringerne indebærer, at de deltagende stater forpligter sig til at kriminalisere transport af masseødelæggelsesvåben, herunder nukleare, biologiske og kemiske våben, samt transport af dual-use produkter, der skal anvendes til masseødelæggelsesvåben. Ved dual-use produkter forstås produkter, der både kan anvendes til civile og militære formål samt anvendes til udvikling og produktion af masseødelæggelsesvåben.

Ændringsprotokollen fastsætter, at transporten af de omhandlede produkter dels skal være ulovlig og dels ske med forsæt. Det er således ikke nok, at selve transporten objektivt set er ulovlig, f.eks. fordi der ikke foreligger en tilladelse til udførsel. Der skal også foreligge viden eller formodning om, at de transporterede produkter skal anvendes ulovligt til udvikling eller produktion m.v. af masseødelæggelsesvåben.

Det fremgår imidlertid af den nyindsatte artikel 3 b, stk. 2, at transporter foretaget i overensstemmelse med Traktaten om ikke-spredning af atomvåben (NPT-traktaten) er at betragte som lovlige transporter, som er undtaget fra ovennævnte forbud mod transport af produkter, der skal anvendes til masseødelæggelsesvåben. Formålet hermed er at sikre, at de lande, der har tiltrådt NPT-traktaten, lovligt kan transportere f.eks. nukleart materiale og på vilkår, der ikke er i strid med staternes rettigheder og forpligtelser i medfør af denne traktat.

Herudover indeholder ændringsprotokollens artikel 5 en bestemmelse om, at de deltagende stater skal gøre overtrædelser af bl.a. artikel 3 b strafbare med straffe, der modsvarer overtrædelsernes alvor. Desuden inde-

holder artikel 6 en konsekvensrettelse til SUA-konventionens artikel 6. De deltagende stater forpligtes således til at etablere passende straffemyndighed i forhold til overtrædelser af bl.a. artikel 3 b. Efter regeringens opfattelse indeholder straffelovens bestemmelser om dansk straffemyndighed, jf. straffelovens §§ 6-9, de nødvendige bestemmelser for at opfylde SUA-konventionens og ændringsprotokollens krav om at etablere passende straffemyndighed. Der henvises til pkt. 3.1.4. om dansk straffemyndighed.

Det bemærkes, at forpligtelsen til at kriminalisere transport af masseødelæggelsesvåben, som indsat ved ændringsprotokollens artikel 3 b, stk. 1, litra b, i), ii) og iii), er opfyldt via et forbud mod transport af masseødelæggelsesvåben, der er gennemført ved en ændring af våbenloven i 2006, jf. § 5 i lov nr. 503 af 7. juni 2006.

2.2.2. Udlevering og retshjælp

Ændringsprotokollerne fastsætter endvidere bestemmelser om udlevering og retshjælp i forbindelse med handlinger, som SUA-konventionen og 1988-protokollen forpligter de deltagende stater til at kriminalisere. Protokollerne indeholder bl.a. bestemmelser om, at forbrydelser omfattet af SUA-konventionen og 1988-protokollen ikke kan anses som politiske forbrydelser i forbindelse med udlevering. En begæring om udlevering kan således ikke afslås med den begrundelse, at forbrydelsen er politisk.

2.2.3. Øvrige bestemmelser

Herudover indeholder ændringsprotokollen til SUA-konventionen detaljerede bestemmelser om adgang til at borde skibe, der befinder sig uden for eget eller andre landes søterritorium. Ligeledes er der bestemmelser, der skal sikre, at der tages fornødne hensyn til søfarende, og at disse sikres en behandling i overensstemmelse med gældende ret. Endelig er der indsat en bestemmelse om erstatning til rederen i tilfælde, hvorefter medlemsstaterne er ansvarlige for skader/tab som følge af uberettigede eller uproportionale indgreb.

2.2.4. Ratifikation af ændringsprotokoller

Ændringsprotokollerne er endnu ikke trådt i kraft. Det fremgår af artikel 18, at ændringsprotokollen til SUA-konventionen træder i kraft 90 dage efter, at 12 lande har tiltrådt protokollen. Ændringsprotokollen til 1988-protokollen træder i kraft ved 3 staters ratifikation, dog først når ændringsprotokollen til SUA-konventionen er trådt i kraft.

Ændringsprotokollerne var åbne for undertegnelse med ratifikationsforbehold i perioden 14. februar 2006

til 13. februar 2007. Følgende lande har i den forbindelse undertegnet protokollerne: Australien, Bulgarien, Danmark, Estland, Finland, Frankrig, Grækenland, Italien, Nederlandene, New Zealand, Norge, Portugal, Spanien, Sverige, Tyrkiet, Storbritannien, USA og Østrig.

8 lande har pr. 1. oktober 2009 ratificeret eller tiltrådt tillægsprotokollen til SUA-konventionen: Cook Island, Estland, Fiji, Marshall Island, Saint Kitts and Nevis, Schweiz, Spanien og Vanuatu, og 6 lande har ratificeret eller tiltrådt tillægsprotokollen om faste platforme: Estland, Fiji, Marshall Island, Schweiz og Vanuatu.

Folketingets Retsudvalg og Folketingets Erhvervsudvalg blev den 5. februar 2007 orienteret om de lovgivningsmæssige konsekvenser af de to ændringsprotokoller (Retsudvalget, Alm. del – Bilag 352, folketingsåret 2006-2007, og Erhvervsudvalget, Alm. del – Bilag 127, folketingsåret 2006-2007). Det fremgår heraf, at en ratifikation af ændringsprotokollerne vil nødvendiggøre en ændring af udleveringsloven. Herudover anføres det, at det vil blive overvejet, hvorledes dual-use transportforbuddet kan implementeres i dansk ret.

Danmark vil med de foreslåede lovændringer af bemyndigelsesloven og udleveringsloven opfylde kravene i ændringsprotokollerne.

De to ændringsprotokoller til henholdsvis SUA-konventionen og 1988-protokollen er optrykt som bilag 2 til lovforslaget.

2.3. FN's Sikkerhedsråds resolution nr. 1540 (2004) om ikke-spredning af masseødelæggelsesvåben

FN's Sikkerhedsråds resolution nr. 1540 om ikke-spredning af masseødelæggelsesvåben til ikke-statslige aktører indebærer bl.a. en folkeretlig forpligtelse for Danmark til at vedtage og håndhæve national lovgivning, der forbyder ikke statslige aktørers, herunder terroristers, adgang til masseødelæggelsesvåben.

Desuden pålægger resolutionen alle stater at gennemføre og håndhæve nationale kontrolforanstaltninger med henblik på at forhindre ulovlig spredning af masseødelæggelsesvåben, herunder relateret udstyr. Det bemærkes, at det nævnte "relaterede udstyr" omfatter dual-use produkter.

Efter resolutionens pkt. 3, litra d, er staterne bl.a. forpligtede til at etablere passende love og regler om kontrol med udførsel, transit, omladning ("trans-shipment") og genudførsel af dual-use produkter. Reglerne skal herunder omfatte kontrol med tilvejebringelse af kapital og tjenesteydelser, som relaterer sig til sådan eksport og omladning, samt transport, som kan medvirke til spredning.

Lovforslaget indebærer, at Danmark ligeledes opfylder kravet i sikkerhedsrådsresolutionen om kontrol med transport af dual-use produkter, der skal anvendes i forbindelse med masseødelæggelsesvåben.

FN's Sikkerhedsråds resolution nr. 1540 er optrykt som bilag 3 til lovforslaget.

3. Gældende lovgivning

3.1. Eksportkontrol med dual-use produkter

3.1.1. Det internationale samarbejde om eksportkontrol

Grundlaget for eksportkontrol er et uformelt internationalt samarbejde mellem ca. 40 hovedsagelig vestlige lande. På linie med de fleste EU-medlemsstater deltager Danmark i de fire internationale eksportkontrolregimer for samarbejde om eksportkontrol. Formålet med samarbejdet er at sikre, at eksport af produkter ikke medvirker til udvikling eller spredning af masseødelæggelsesvåben. Samarbejdet skal ligeledes forhindre, at der sker eksport af produkter, der helt eller delvis skal anvendes militært af lande, der udgør en risiko for den internationale sikkerhed og stabilitet. Samarbejdet er udelukkende politisk forpligtende, og de deltagende stater træffer politiske aftaler om eksportkontrol samt udveksler vurderinger og erfaringer om kritiske lande og kritiske slutbrugere.

De fire internationale eksportkontrolregimer er:

- Wassenaar Arrangementet (WA). Samarbejdet omfatter konventionelle våben samt produkter og teknologier med dobbelt anvendelse (dual-use).
- Australiengruppen (AG). Samarbejdet omfatter kemiske og biologiske produkter og produktionsudstyr, der kan anvendes til udvikling og fremstilling af kemiske og biologiske våben.
- Missil Technology Control Regime (MTCR). Samarbejdet omfatter produkter og teknologier, der kan anvendes til udvikling og fremstilling af missiler, der kan fremføre masseødelæggelsesvåben.
- Nuclear Suppliers Group (NSG). Samarbejdet omfatter produkter og teknologier, der anvendes i forbindelse med udvikling af kernekraft, men som også kan anvendes i forbindelse med udvikling af atomvåben.

3.1.2. *Det fælles EU-retsgrundlag for eksportkontrol af dual-use produkter*

3.1.2.1. *Dual-use forordningen*

Inden for EU er det internationale samarbejde om eksportkontrol af dual-use produkter via fælles retsakter formaliseret og gjort juridisk bindende. De fælles EU-regler findes i Rådets forordning nr. 428/2009/EF af 5. maj 2009 om en fællesskabsordning for kontrol med udførsel, overførsel, mæglervirksomhed og transit i forbindelse med produkter med dobbelt anvendelse, herefter benævnt dual-use forordningen.

Dual-use forordningen fastlægger, hvilke dual-use produkter der er underlagt eksportkontrol. Produkterne vedrører ikke alene fysiske produkter, men også software og teknologi, der kan anvendes til såvel civile som militære formål.

Forordningen regulerer eksportkontrol med dual-use produkter på to måder:

- 1) Den såkaldte kontrolliste, jf. forordningens bilag I, indeholder en liste over de produkter, der er underlagt eksportkontrol. Hvis et produkt er omfattet af kontrollisten, skal eksportøren søge om udførselstilladelse hos myndighederne, hvis produktet udføres af EU.
- 2) De såkaldte catch-all bestemmelser, jf. forordningens artikel 4, som fastsætter de nærmere betingelser for eksportkontrol med øvrige dual-use produkter, som ikke er opført på kontrollisten. Formålet med disse bestemmelser er at sikre, at der ikke sker eksport af produkter, der skal anvendes til masseødelæggelsesvåben, eller som skal anvendes militært af et land, der er underlagt en våbenembargo. Hvis et produkt er omfattet af catch-all bestemmelserne, skal eksportøren ligeledes søge om udførselstilladelse hos myndighederne.

Ved en ændring af dual-use forordningen i 2009 er der indført kontrol med mæglervirksomhed og transit.

Ifølge dual-use forordningens artikel 9, er det de nationale myndigheder i medlemsstaterne, i Danmark økonomi- og erhvervsministeren, der har kompetence til at træffe den konkrete afgørelse om, hvorvidt bestemte udførsler kan tillades eller ej, eller om en konkret transit skal forbydes. Administrationen af regelsættet er henlagt til Erhvervs- og Byggestyrelsen.

3.1.2.2. *Rådets fælles aktion om kontrol med teknisk bistand og sanktioner over for Iran og Nordkorea*

Udover dual-use forordningen vedtog Rådet i 2000 en fælles aktion (Rådets fælles aktion af 22. juni 2000 vedrørende kontrol med teknisk bistand i forbindelse med

visse former for militær endelig anvendelse (2000/401/FUSP)). Den fælles aktion pålægger medlemsstaterne at gennemføre national lovgivning i overensstemmelse med aktionens bestemmelser. Den fælles aktion komplementerer således reglerne i dual-use forordningen, idet der stilles krav om kontrol, herunder forbud eller krav om tilladelse til teknisk bistand, der ydes uden for EU, hvis den tekniske bistand er bestemt til anvendelse i forbindelse med masseødelæggelsesvåben.

Der er desuden i EU vedtaget særlige restriktive foranstaltninger over for Iran, jf. Rådets forordning 423/2007, Rådets forordning 1110/2008, Rådets forordning 1228/2009 samt Kommissionens forordning 116/2008. De særlige restriktioner har til formål at forhindre Irans opbygning af atomvåben og fremføringsmidler hertil. Tilsvarende er der vedtaget særlige restriktioner over for Nordkorea, jf. Rådets forordning 329/2007, Kommissionens forordning 689/2009 og Rådets Fælles holdning 2009/573/FUSP.

3.1.3. *Den danske bemyndigelseslov og administration af eksportkontrolreglerne*

Bemyndigelsesloven indeholder de danske administrative bestemmelser og straffebestemmelser, som er nødvendige for at anvende og håndhæve de fælles EU-regler om eksportkontrol. Bemyndigelsesloven supplerer således dual-use forordningen på de områder, hvor dette er nødvendigt af hensyn til den praktiske gennemførelse, og hvor forordningen i øvrigt overlader valgmuligheder til medlemsstaternes afgørelse. Bemyndigelsesloven indeholder endvidere gennemførelsesforanstaltninger i forhold til Rådets fælles aktion vedrørende kontrol med teknisk bistand som nævnt i punkt 3.1.2.2.

3.1.4. *Dansk straffemyndighed*

Dansk straffemyndighed omfatter alle handlinger, der foretages i den danske stat, jf. straffelovens § 6, nr. 1. Dansk straffemyndighed omfatter endvidere handlinger foretaget på danske fartøjer (dvs. skibe, der sejler under dansk flag, og luftfartøjer, som er dansk indregistrerede), jf. straffelovens § 6, nr. 2 og 3. Bestemmelserne er udtryk for et udvidet territorialprincip (flagstatsprincippet) og bygger på en antagelse om en nær sammenhæng mellem et fartøj og den stat, fartøjet er registreret i (flagstaten). Flagstaten antages således at være nærmest til at have straffemyndighed i forhold til handlinger, der foretages på et fartøj, som er registreret i den pågældende stat.

Bestemmelserne i straffelovens § 6, nr. 2 og 3, indebærer med andre ord, at handlinger foretaget på et dansk fartøj ligestilles med handlinger foretaget i den danske stat (nr. 1), selv om fartøjet befinder sig inden for en anden stats sø- eller luftterritorium (nr. 2) eller i inter-

nationalt farvand eller luftrum (nr. 3). Det betyder, at ulovlige transportere, der foretages med dansk indregistreret skib eller fly, kan strafforfølges i Danmark, uanset hvor det befinder sig.

Dansk straffemyndighed omfatter endvidere handlinger foretaget i udlandet af personer, der har dansk statsborgerskab eller bopæl i Danmark, jf. straffelovens § 7, stk. 1, (personalprincippet). Hvis handlingen foretages inden for et folkeretligt anerkendt statsområde, er det dog som altovervejende hovedregel en betingelse, at handlingen er strafbar både efter gerningsstedets lov og dansk lov (princippet om dobbelt strafbarhed), og at den pågældende danske straffebestemmelse ikke efter sit gerningsindhold er territorialt begrænset til forhold begået i Danmark.

Hvis handlingen er foretaget uden for et folkeretligt anerkendt område (f.eks. om bord på et fremmed skib, der befinder sig på åbent hav), hører handlingen kun under dansk straffemyndighed efter straffelovens § 7, hvis handlingen kan medføre højere straf end fængsel i 4 måneder, jf. straffelovens § 7, stk. 2, og der er tale om en handling begået af en person, der på tidspunktet for sigtelsen har dansk indfødsret, er bosat i den danske stat eller har lignende fast ophold her i landet.

Straffelovens §§ 6 og 7 suppleres af § 8, hvorefter der efter omstændighederne er dansk straffemyndighed i forhold til udlandshandlinger uden hensyn til, hvor gerningsmanden hører hjemme. Dette gælder bl.a. i tilfælde, hvor handlingen er omfattet af en international bestemmelse, ifølge hvilken Danmark er forpligtet til at have straffemyndighed, jf. § 8, nr. 5.

Spørgsmålet om dansk straffemyndighed i forhold til juridiske personer afgøres efter de samme regler, som gælder i forhold til fysiske personer. Ifølge straffelovens § 9, stk. 1, 2. pkt., gælder for juridiske personer, at handlinger anses for foretaget, hvor den eller de handlinger, som medfører ansvar for den juridiske person, er foretaget. Det vil således være muligt at straffe f.eks. danske selskaber, der er ansvarlige for transportere foretaget i udlandet med udenlandsk fartøj, der er registreret i en anden stat end Danmark.

3.2. Udleveringsloven

Reglerne om udlevering af lovovertrædere findes i udleveringsloven.

Efter udleveringslovens § 5, stk. 1, må udlevering for en politisk lovovertrædelse ikke finde sted. Omfatter handlingen tillige en lovovertrædelse, som ikke er af politisk karakter, kan udlevering ske for denne lovovertrædelse, såfremt handlingen overvejende er af ikke-politisk karakter, jf. § 5, stk. 2. Om en lovovertrædelse

er politisk, afhænger af en konkret helhedsvurdering, hvor der navnlig lægges vægt på arten af den eller de interesser, der er krænket af lovovertrædelsen, og på gerningsmandens motiv.

Udleveringslovens § 5, stk. 3, indeholder en række undtagelser til forbuddet mod udlevering for en politisk lovovertrædelse, der er blevet indført som led i et styrket internationalt samarbejde om bekæmpelse af international terrorisme. Det følger af bestemmelsen, at forbuddet mod at nægte udlevering for politiske lovovertrædelser ikke finder anvendelse, når handlingen er omfattet af følgende internationale konventioner: Den europæiske konvention om bekæmpelse af terrorisme, Europarådets konvention om forebyggelse af terrorisme, FN-konventionen til bekæmpelse af terrorbombninger, FN-konventionen til bekæmpelse af finansiering af terrorisme, FN-konventionen til bekæmpelse af nuklear terrorisme eller Det Internationale Atomenergiagenturs konvention om fysisk beskyttelse af nukleare materialer.

Udleveringslovens § 5, stk. 3, blev senest ændret ved lov nr. 99 af 10. februar 2009.

Udleveringslovens § 5 finder ikke anvendelse på anmodninger om udlevering til medlemsstater i Den Europæiske Union. Sådanne anmodninger reguleres af reglerne i kapitel 2 a i udleveringsloven, der gennemfører EU-rammeafgårelsen om den europæiske arrestordre i dansk ret. Det er efter kapitel 2 a i udleveringsloven ikke muligt at afslå udlevering med henvisning til, at handlingen betragtes som en politisk forbrydelse.

Tilsvarende gælder der som udgangspunkt særlige regler for udlevering til de øvrige nordiske lande. På nuværende tidspunkt gælder der en fællesnordisk udleveringslovgivning. Med henblik på at gennemføre Konventionen om overgivelse for strafbare forhold mellem de nordiske lande (Nordisk arrestordre) blev der ved lov nr. 394 af 30. april 2007 bl.a. indsat et nyt kapitel 3 b i udleveringsloven om behandling af sager om udlevering til de nordiske lande. Kapitel 3 b i udleveringsloven er endnu ikke trådt i kraft.

4. Lovforslagets indhold

4.1. Forbud mod transport af dual-use produkter, der skal anvendes til masseødelæggelsesvåben

Den foreslåede § 1, nr. 2, gennemfører bestemmelsen i artikel 3 b, stk. 1, litra b, iv), som indsat ved ændringsprotokollen til SUA-konventionen, der kriminaliserer transport med skib af dual-use produkter, der er bestemt til anvendelse i forbindelse med masseødelæggelsesvåben.

For at opfylde forpligtelserne i FN's Sikkerhedsråds resolution 1540 (2004), der vedrører kontrol med transport af dual-use produkter, der er bestemt til masseødelæggelsesvåben, omfatter forbuddet alle former for transport, herunder også transport med fly eller lastvogn m.v.

Det forudsættes, at transport omfatter såvel indgåelse af og instruktion om indgåelse af aftale om transport, som faktisk udførelse af og instruktion om faktisk udførelse af transport. Dette muliggør, at både det firma, der står bag en transport, og f.eks. den skibsfører, pilot eller chauffør, der udfører transporten, selvstændigt kan straffes, forudsat at den pågældende efter de almindelige strafferetlige principper kan anses for ansvarlig for den ulovlige transport.

Det bemærkes, at hovedparten af den internationale regulering om spredning af masseødelæggelsesvåben, herunder FN's Sikkerhedsråds resolution 1540 (2004) opregner kemiske, biologiske og nukleare våben og fremføringsmidler hertil, som masseødelæggelsesvåben. Det samme gælder ændringsprotokollen til SUA-konventionen og det fælles EU-retsgrundlag for eksportkontrol af dual-use produkter. Radiologiske våben er dog reguleret i FN's konvention om nuklear terrorisme (2005). Det er Økonomi- og Erhvervsministeriets opfattelse, at radiologiske våben også må henregnes til masseødelæggelsesvåben, idet radiologiske våben i lighed med kemiske, biologiske og nukleare våben må anses for særdeles farlige og egnede til at skabe omfattende ødelæggelser. Det bemærkes, at radiologiske våben indgår i opregningen af masseødelæggelsesvåben i det forbud mod transport af masseødelæggelsesvåben, der er gennemført med en ændring af våbenloven i 2006, jf. lov nr. 503 af 7. juni 2006.

4.2. *Forbuddets geografiske afgrænsning*

Ud over dansk straffemyndighed forudsætter idømmelse af straf ved danske domstole for handlinger foretaget i udlandet, at den pågældende handling er omfattet af en dansk straffebestemmelse, hvis anvendelsesområdet omfatter handlinger foretaget i udlandet.

Som de fleste særlove finder bemyndigelseslovens bestemmelser alene anvendelse på handlinger, der foretages på dansk område. Dog finder bemyndigelseslovens bestemmelser om forbud mod teknisk bistand også anvendelse på handlinger, der foretages uden for EU, jf. lovens § 1 a, stk. 1, og § 2, stk. 9.

Under hensyn til at ændringsprotokollen til SUA-konventionen indeholder en forpligtelse til at kriminalisere ulovlige søtransporter, samt at FN's Sikkerhedsråds resolution 1540 (2004) indeholder en generel forpligtelse

til at føre kontrol med transport af dual-use produkter, foreslås det i § 1, nr. 2, at forbuddet udstrækkes til også at omfatte handlinger, der begås i udlandet, dog med de begrænsninger, der følger af straffelovens §§ 7, 10, 10 a og 10 b.

Dette indebærer navnlig, at danske statsborgere og personer med fast bopæl i Danmark, der f.eks. befinder sig ombord på et fremmed skib, efter omstændighederne vil kunne straffes for at overtræde forbuddet, når skibet befinder sig inden for en anden stats søterritorium, hvis handlingen også er strafbar efter den dér gældende lovgivning, eller i internationalt farvand, hvis handlingen kan medføre mere end 4 måneders fængsel.

Det bemærkes, at forbuddet hermed vil have samme geografiske rækkevidde som det tilsvarende forbud mod transport af masseødelæggelsesvåben, der er gennemført ved en ændring af våbenloven i 2006, jf. lov nr. 503 af 5. juni 2006.

Undtaget er dog transporter, der gennemføres uden for Danmark i overensstemmelse med internationale aftaler om ikke-spredning af masseødelæggelsesvåben, jf. den i § 1, nr. 2, foreslåede § 1 b, stk. 3. Der henvises til bemærkningerne under punkt 4.4.

4.3. *Straf*

Det foreslås i § 1, nr. 3, at overtrædelse af forbuddet i den foreslåede § 1 b, stk. 1, eller stk. 2, mod transport af dual-use produkter, der skal anvendes i forbindelse med masseødelæggelsesvåben, straffes med bøde eller fængsel indtil 2 år.

Efter straffelovens § 19 omfatter særlovgivningens straffebestemmelser både forsætlige og uagtsomme forhold (grov og simpel uagtsomhed), medmindre andet er særligt fastsat.

I følge ændringsprotokollen til SUA-konventionen er der imidlertid udelukkende krav om at kriminalisere forsætlige overtrædelser (dvs. ved en konkret viden eller formodning om, at de pågældende produkter, der transporteres, skal anvendes til masseødelæggelsesvåben). Endvidere fastsætter FN's Sikkerhedsråds resolution nr. 1540 (2004) alene, at der skal etableres passende sanktioner i forhold til overtrædelse af eksportkontrolreglerne på dual-use området.

I praksis vil det næppe være muligt for en transportør ud fra transportdokumenterne alene at vurdere, om der er tale om dual-use produkter, og om disse produkter eventuelt vil skulle anvendes til masseødelæggelsesvåben. Samtidig foregår de fleste transporter, og i særdeleshed containertransport, ud fra standardiserede og mere eller mindre fuldautomatiserede processer, der vanskeliggør, at transporterhvervet vil kunne afdække

kritiske situationer i forhold til transport af dual-use produkter, uden at dette samtidig indebærer indførelse af forskellige nye kontrolforanstaltninger for ikke at ifalde strafansvar. Sådanne kontrolforanstaltninger vil kunne have konkurrenceforvridende effekter i forhold til udenlandske transportører, der ikke er undergivet et sådant krav.

På denne baggrund foreslås, at alene forsætlige overtrædelser af transportforbuddet straffes. For at sikre at sanktionerne bliver så effektive som muligt, vil økonomi- og erhvervsministeren følge udviklingen på området, herunder også hvordan andre lande implementerer transportforbuddet i SUA-konventionen. Hvis der på et tidspunkt viser sig behov for stramning af reglerne, vil økonomi- og erhvervsministeren herefter overveje at fremsætte forslag om ændring af bemyndigelsesloven, så også groft uagtsomme overtrædelser af forbuddet straffes.

4.4. Undtagelser fra transportforbuddet

Det fremgår af SUA-konventionens artikel 3 b, stk. 2, som ændret ved ændringsprotokollen til SUA-konventionen, at transporter foretaget i overensstemmelse med Traktaten om ikke-spredning af atomvåben (NPT-traktaten) er at betragte som lovlige transporter, som er undtaget fra forbuddet mod transport af produkter, der skal anvendes til masseødelæggelsesvåben. Traktaten forpligter de 5 anerkendte atomvåbenmagter (USA, Rusland, Kina, Storbritannien og Frankrig) til ikke at overføre atomvåben til ikke-atomvåbenmagter og til ikke at bistå disse med at fremstille eller erhverve atomvåben. Ikke-atomvåbenmagterne, herunder Danmark, forpligter sig bl.a. til ikke at modtage eller fremstille atomvåben. Traktaten tillader overførsel af nukleart materiale, der skal anvendes fredeligt til udnyttelse af atomenergi, såfremt der er indgået sikkerhedsaftaler med Det Internationale Atomenergiagentur (IAEA).

Ud over NPT-traktaten har Danmark tiltrådt en række andre konventioner, der har til formål at modvirke spredning af masseødelæggelsesvåben m.v., herunder bl.a. FN's konvention om forbud mod kemiske våben (CWC) og FN's konvention om forbud mod biologiske våben (BTWC).

Efter disse konventioner er der i visse situationer mulighed for lovligt at transportere produkter, hvis transporten sker med henblik på destruktion eller med henblik på f.eks. en offentlig forskningsindsats. FN's konvention om forbud mod kemiske våben giver f.eks. adgang til at overføre visse giftige kemikalier med dobbelt anvendelse, hvis de skal anvendes til forsknings-, medicinske, farmaceutiske eller beskyttelsesformål.

På denne baggrund foreslås det at indsætte en undtagelsesbestemmelse i bemyndigelseslovens § 1 b, stk. 3, jf. den foreslåede § 1, nr. 2, således at forbuddet mod transport af visse dual-use produkter ikke finder anvendelse, såfremt transporten sker i overensstemmelse med de forpligtelser, som Danmark har påtaget sig i forhold til internationale konventioner og aftaler om ikke-spredning af masseødelæggelsesvåben.

Da det ikke kan udelukkes, at det danske forsvar i forbindelse med træning og oplæring af soldater vil kunne have behov for at transportere dual-use produkter, der er bestemt til masseødelæggelsesvåben, foreslås det endvidere at indsætte en undtagelsesbestemmelse i § 1 b, stk. 4, for danske militære myndigheder, jf. den foreslåede § 1, nr. 2. En tilsvarende undtagelse findes i våbenlovens § 8, stk. 1, for så vidt angår forbud mod transport af masseødelæggelsesvåben.

4.5. Udleveringsloven

Efter artikel 11 b, stk. 2, i SUA-konventionen og artikel 1, stk. 1, i 1988-protokollen, begge som ændret ved protokollerne af 1. november 2005, må ingen af de forbrydelser, der er omfattet af SUA-konventionens artikel 3, 3 b, 3 c og 3 d (artikel 3, 3 bis, 3 ter og 3 quater) eller 1988-protokollens artikel 2, 2 b og 2 c (artikel 2, 2 bis og 2 ter), anses for en politisk forbrydelse eller for en forbrydelse, der har forbindelse med en politisk forbrydelse, eller for en forbrydelse, der udspringer af politiske motiver. En anmodning om udlevering eller retshjælp på grundlag af en sådan forbrydelse må derfor ikke afvises alene med den begrundelse, at den angår en politisk forbrydelse m.v. De nævnte bestemmelser i SUA-konventionen og 1988-protokollen opregner en lang række kriminelle handlinger, herunder med terrorforsæt at anvende skibe eller platforme til at forårsage død eller omfattende ødelæggelse bl.a. på miljøet, eller at anvende atomvåben m.v. fra eller mod skibe eller platforme.

Det må antages, at ikke alle de handlinger, der med ændringsprotokollerne vil være omfattet af de nævnte bestemmelser i SUA-konventionen og 1988-protokollen, f.eks. transport af dual-use produkter, jf. ovenfor i afsnit 2.2.1, tillige vil være omfattet af én eller flere af de konventioner, som i dag er omfattet af undtagelserne i udleveringslovens § 5, stk. 3, om undtagelser til forbuddet mod udlevering for en politisk lovovertrædelse. På denne baggrund foreslås det, at bestemmelsen i udleveringslovens § 5, stk. 3, udvides til at omfatte alle handlinger, der er omfattet af SUA-konventionen og 1988-protokollen.

Med hensyn til ændringsprotokollernes krav om kriminalisering af forskellige nærmere angivne handlinger bemærkes, at handlingerne, herunder trusler om med

terrorforsæt at begå de handlinger, der med ændringsprotokollerne vil være omfattet af SUA-konventionen og 1988-protokollen, efter regeringens opfattelse i praksis må anses for at ville være omfattet af bestemmelserne i havmiljøloven, våbenloven eller straffeloven.

Ændringsprotokollen til SUA-konventionen indeholder i artikel 4, stk. 6, et krav om kriminalisering af personer, som retsstridigt og forsætligt på et skib transporterer en person, som har begået en handling omfattet af konventionen m.v., for at unddrage denne person strafforfølgning. Efter regeringens opfattelse må denne bestemmelse anses for opfyldt i dansk ret ved straffelovens § 125, stk. 1, nr. 1, hvorefter den, som for at unddrage nogen fra forfølgning for en forbrydelse eller straf holder ham skjult, hjælper ham til flugt eller udgiver ham for en anden, straffes med bøde eller fængsel indtil 2 år.

Efter straffelovens § 125, stk. 2, straffes den, der foretager de nævnte handlinger for at unddrage sig selv eller nogen af sine nærmeste fra forfølgning eller straf, dog ikke. Efter artikel 21, stk. 3, i ændringsprotokollen kan staterne tage forbehold i forhold til artikel 4, stk. 6, således at hjælp til familiemedlemmers flugt fra strafforfølgning kan undtages fra straf i overensstemmelse med den enkelte stats strafferetlige principper. Hvis lovforslaget vedtages, agter regeringen i overensstemmelse hermed at tage et forbehold i medfør af artikel 21, stk. 3, ved ratifikation af ændringsprotokollen.

5. Økonomiske og administrative konsekvenser for det offentlige

Lovforslaget har ingen økonomiske og administrative konsekvenser for det offentlige af betydning.

6. Økonomiske og administrative konsekvenser for erhvervslivet

Lovforslaget har ingen økonomiske og administrative konsekvenser for erhvervslivet.

11. Sammenfattende skema

	Positive konsekvenser/mindre udgifter	Negative konsekvenser/merudgifter
Økonomiske og administrative konsekvenser for stat, kommuner og regioner	Ingen	Ingen af betydning
Økonomiske og administrative konsekvenser for erhvervslivet	Ingen	Ingen
Administrative konsekvenser for borgerne	Ingen	Ingen
Miljømæssige konsekvenser	Ingen	Ingen
Forholdet til EU-retten	Lovforslaget indeholder ingen EU-retlige aspekter	

7. Administrative konsekvenser for borgerne

Lovforslaget har ingen administrative konsekvenser for borgerne.

8. Miljømæssige konsekvenser

Lovforslaget har ingen miljømæssige konsekvenser.

9. Forholdet til EU-retten

Lovforslaget indeholder ingen EU-retlige aspekter.

10. Hørte myndigheder og organisationer

Advokatsamfundet, alle byretter, Arbejderbevægelsens Erhvervsråd, Beredskabsstyrelsen – Center for Biosikring og –Beredskab, CO-industri, Danmarks Eksportråd, Danmarks Rederiforening, Danmarks Vækstråd, Dansk Eksportforening, Dansk Erhverv, Danske Advokater, Danske Speditører, Den Danske Dommerforening, Dommerfuldmægtigforeningen, Domstolsstyrelsen, Foreningen af offentlige anklagere i Danmark, Institut for Menneskerettigheder, DI – Organisation for erhvervslivet, Danske Maritime, Dansk Navigatørforening, Dansk Transport og Logistik, Erhvervsflyvningens Sammenslutning, Erhvervs- og Selskabsstyrelsen, Fagligt Fælles Forbund, Finansministeriet, Forsvarsministeriet, Justitsministeriet, Landsforeningen af Forsvarsadvokater, Maskinmestrenes Forening, Politiforbundet i Danmark, Retspolitisk Forening, Rigsadvokaten, Rigspolitiet, Rigspolitichefen Afd. G, Rigsombudsmanden i Grønland, Rigsombudsmanden på Færøerne, Rigsrevisionen, Scandinavian Airlines, SKAT, Statens Institut for Strålebeskyttelse, Statens Luftfartsvæsen, Statsministeriet, Søfartsstyrelsen, Vestre Landsret, Udenrigsministeriet og Østre Landsret.

Bemærkninger til lovforslagets enkelte bestemmelser

Til § 1

Til nr. 1

Der er tale om en ændring af bemyndigelseslovens § 1 a, stk. 1, der vedrører forbud mod teknisk bistand, der er bestemt til anvendelse i forbindelse med udvikling, fremstilling m.v. af kemiske, biologiske eller nukleare våben, idet § 1 a, stk. 1, bør omfatte den samme afgrænsning af masseødelæggelsesvåben, som den foreslåede § 1 b, stk. 1, der henregner radiologiske våben til masseødelæggelsesvåben.

Der henvises til lovforslagets almindelige bemærkninger pkt. 4.1.

Til nr. 2

Den foreslåede § 1 b har til formål at gennemføre bestemmelsen, som indsat ved artikel 3 b, stk. 1, litra b, iv), i ændringsprotokollen til SUA-konventionen, der forbyder transport med skib af dual-use produkter og teknologi, der er bestemt til anvendelse i forbindelse med masseødelæggelsesvåben.

Forslaget indebærer endvidere, at Danmark vil opfylde et generelt krav om kontrol med transport af dual-use produkter, der er indeholdt i FN's Sikkerhedsråds resolution nr. 1540 (2004). For at opfylde forpligtelserne i resolutionen omfatter forbuddet alle former for transport, herunder også transport med fly eller lastvogn m.v.

Det forudsættes, at transport omfatter såvel indgåelse af og instruktion om indgåelse af aftale om transport, som faktisk udførelse af og instruktion om faktisk udførelse af transport. Dette muliggør, at både det firma, der står bag en transport, og f.eks. den skibsfører, pilot eller chauffør, der udfører transporten, selvstændigt kan straffes, forudsat at den pågældende efter de almindelige strafferetlige principper kan anses for ansvarlig for den ulovlige transport.

Forbuddet omfatter dual-use produkter og teknologi, der skal anvendes i forbindelse med masseødelæggelsesvåben. Ved masseødelæggelsesvåben forstås i den forbindelse kemiske, biologiske, radiologiske og nukleare våben samt missiler, der skal fremføre sådanne våben.

Der henvises til lovforslagets almindelige bemærkninger pkt. 4.1.

Det foreslås i § 1 b, stk. 2, at forbuddet mod transport af dual-use produkter i § 1 b, stk. 1, også omfatter hand-

linger foretaget i udlandet, dog med de begrænsninger, der følger af straffelovens §§ 7, 10, 10 a og 10 b. Dette indebærer navnlig, at danske statsborgere og personer med fast bopæl i Danmark, der f.eks. befinder sig ombord på et fremmed skib, efter omstændighederne vil kunne straffes for at overtræde forbuddet, når skibet befinder sig inden for en anden stats søterritorium, hvis handlingen også er strafbar efter den dér gældende lovgivning, eller i internationalt farvand, hvis handlingen kan medføre mere end 4 måneders fængsel.

Der henvises til lovforslagets almindelige bemærkninger pkt. 4.2.

Det foreslås i § 1 b, stk. 3, at transporter, der gennemføres uden for Danmark, undtages fra forbuddet i stk. 1, i det omfang transporten sker i overensstemmelse med internationale aftaler om ikke-spredning af masseødelæggelsesvåben. Da det endvidere ikke kan udelukkes, at det danske forsvar i forbindelse med træning og oplæring af soldater vil kunne have behov for at transportere dual-use produkter, der er bestemt til masseødelæggelsesvåben, foreslås det endvidere i § 1 b, stk. 4, at indsætte en undtagelsesbestemmelse fra transportforbuddet for danske militære myndigheder

Der henvises til lovforslagets almindelige bemærkninger pkt. 4.4.

Til nr. 3

Det foreslås at indsætte et nyt § 2, stk. 8, hvorefter forsætlige overtrædelser af transportforbuddet i den foreslåede § 1 b, stk. 1, eller stk. 2, straffes med bøde eller fængsel indtil 2 år. Det foreslås alene at straffe forsætlige overtrædelser af transportforbuddet. Ændringsprotokollen til SUA-konventionen indeholder således alene en forpligtelse til at kriminalisere forsætlige overtrædelser (dvs. ved en konkret viden eller formodning om, at de pågældende produkter, der transporteres, skal anvendes i forbindelse med masseødelæggelsesvåben). Endvidere foregår langt de fleste transporter ud fra standardiserede og mere eller mindre fuldautomatiske processer. Dette vanskeliggør, at transporterhvervet vil kunne afdække kritiske situationer i forhold til transport af dual-use produkter, uden at dette samtidig medfører indførelse af nye kontrolforanstaltninger for ikke at ifalde strafansvar. Sådanne kontrolforanstaltninger vil kunne have konkurrenceforvridende effekter i forhold til udenlandske transportører, der ikke er undergivet sådanne krav. Økonomi- og erhvervsministeren vil dog følge udviklingen på området, herunder også hvordan andre lande implementerer SUA-konventionens trans-

portforbud. Hvis der på et tidspunkt viser sig behov for en stramning af reglerne, vil økonomi- og erhvervsministeren overveje at fremsætte forslag om ændring af bemyndigelsesloven, så også groft uagtsomme overtrædelser af forbuddet straffes.

Der henvises til lovforslagets almindelige bemærkninger pkt. 4.3.

Til § 2

Efter udleveringslovens § 5, stk. 3, finder forbuddet mod at nægte udlevering for politiske lovovertrædelser ikke anvendelse, når handlingen er omfattet af de internationale konventioner, som er opregnet i bestemmelsen. Det foreslås derfor at indsætte et nyt nr. 7, der udvider denne undtagelsesbestemmelse til også at omfatte handlinger omfattet af artikel 3 eller artikel 3 b, 3 c eller 3 d i SUA-konventionen, som henholdsvis ændret og indsat ved protokollen af 1. november 2005 til SUA-konventionen, eller artikel 2 eller artikel 2 b eller 2 c i 1988-protokollen, som henholdsvis ændret og indsat ved protokollen af 1. november 2005 til 1988-protokollen. De nævnte bestemmelser i SUA-konventionen og 1988-protokollen opregner en lang række kriminelle handlinger, herunder med terrorforsæt at anvende skibe eller platforme til at forårsage død eller omfattende ødelæggelse bl.a. på miljøet eller at anvende atomvåben m.v. fra eller mod skibe eller platforme.

Der tilsigtes ikke i øvrigt ændringer i anvendelsesområdet for § 5, stk. 3. Der henvises til lovforslagets almindelige bemærkninger pkt. 4.5.

For så vidt angår de foreslåede ændringer af den gældende § 5, stk. 3, nr. 5 og 6, er der alene tale om redaktionelle ændringer.

Til § 3

Det foreslås, at loven træder i kraft den 1. juli 2010, men at udleveringslovens § 5, stk. 3, nr. 7, som affattet ved denne lovs § 2, finder anvendelse på anmodninger om udlevering efter SUA-konventionen og 1988-protokollen, der fremsættes efter at ændringsprotokollerne af 1. november 2005 er trådt i kraft mellem Danmark og vedkommende fremmede stat. Ændringsprotokollen til SUA-konventionen træder i kraft 90 dage efter, at 12 lande har tiltrådt protokollen. Ændringsprotokollen til 1988-protokollen træder i kraft ved 3 staters ratifikation, dog først når ændringsprotokollen til SUA-konventionen er trådt i kraft.

Til § 4

Bestemmelsen fastsætter lovens territoriale gyldighedsområde. Bestemmelsen indebærer, at lovens § 2 (ændring af udleveringsloven) kan sættes i kraft for Færøerne og Grønland ved kongelig anordning.

Loven sammenholdt med gældende ret

*Gældende formulering**Lovforslaget***§ 1**

I lov om anvendelsen af visse af Det Europæiske Fællesskabs retsakter om økonomiske forbindelser til tredjelande m.v., jf. lovbekendtgørelse nr. 474 af 14. juni 2005, som ændret ved § 5 i lov nr. 490 af 17. juni 2008, foretages følgende ændringer:

§ 1 a. Det er forbudt uden for Det Europæiske Fællesskab at yde teknisk bistand, jf. stk. 2 og 3, der er bestemt til anvendelse i forbindelse med udvikling, fremstilling, håndtering, anvendelse, vedligeholdelse, oplagring, sporing, identificering eller spredning af kemiske, biologiske eller nukleare våben eller andre nukleare sprænglegemer, eller til udvikling, fremstilling, vedligeholdelse eller oplagring af missiler, der kan fremføre sådanne våben, jf. dog stk. 4 og 5

1. I § 1 a, stk. 1, indsættes efter »biologiske«: », radiologiske«.

2. Efter § 1 a indsættes:

»**§ 1 b.** Det er forbudt at transportere produkter og teknologi, der er bestemt til anvendelse i forbindelse med udvikling, fremstilling, håndtering, anvendelse, vedligeholdelse, oplagring, sporing, identificering eller spredning af kemiske, biologiske, radiologiske eller nukleare våben eller andre nukleare sprænglegemer eller til udvikling, fremstilling, vedligeholdelse eller oplagring af missiler, der skal fremføre sådanne våben.

Stk. 2. Forbuddet i stk. 1 omfatter med de begrænsninger, der følger af straffelovens §§ 7, 10, 10 a og 10 b, også handlinger foretaget i udlandet.

Stk. 3. Forbuddet i stk. 1 omfatter ikke transporter, der gennemføres uden for Danmark, i det omfang transporten sker i overensstemmelse med internationale aftaler om ikke-spredning af masseødelæggelsesvåben.

Stk. 4. Forbuddet i stk. 1 gælder ikke for danske militære myndigheder.«

3. I § 2 indsættes efter stk. 7 som nyt stykke:

»Stk. 8. Med bøde eller fængsel indtil 2 år straffes den, der forsætligt overtræder forbuddet efter § 1 b, stk. 1, eller stk. 2.«

Stk. 8-10 bliver herefter stk. 9-11.

§ 2

I lov om udlevering af lovovertrædere, jf. lovbe-
kendtgørelse nr. 833 af 25. august 2005, som ændret
ved § 11 i lov nr. 538 af 8. juni 2006, § 6 i lov nr.
542 af 8. juni 2006, § 1 i lov nr. 394 af 30. april 2007,
§ 2 i lov nr. 347 af 14. maj 2008 og § 2 i lov nr. 99
af 10. februar 2009, foretages følgende ændring:

§ 5. Udlevering for en politisk lovovertrædelse
kan ikke finde sted.

Stk. 2. Omfatter handlingen tillige en lovovertræ-
delse, som ikke er af politisk karakter, kan udleve-
ring ske for denne lovovertrædelse, såfremt hand-
lingen overvejende er af ikke-politisk karakter.

Stk. 3. Stk. 1 og 2 finder ikke anvendelse, når
handlingen er omfattet af

- 1) artikel 1 eller 2 i den europæiske konvention om
bekæmpelse af terrorisme som ændret ved æn-
dringsprotokol af 15. maj 2003 til den europæiske
konvention om bekæmpelse af terrorisme,
- 2) artikel 6 og 7 og artikel 9, jf. artikel 6 og 7 i
Europarådets konvention om forebyggelse af ter-
rorisme,
- 3) artikel 2, jf. artikel 1, i FN-konventionen til be-
kæmpelse af terrorbombninger
- 4) artikel 2, jf. artikel 1, i FN-konventionen til be-
kæmpelse af finansiering af terrorisme,
- 5) artikel 2, jf. artikel 1, i FN-konventionen til be-
kæmpelse af nuklear terrorisme eller
- 6) artikel 7 i Det Internationale Atomenergiagen-
turs konvention om fysisk beskyttelse af nukleare
materialer som ændret ved ændringskonvention af
8. juli 2005 til Det Internationale Atomenergiagen-
turs konvention om fysisk beskyttelse af nukleare
materialer.

1. § 5, stk. 3, nr. 5 og 6, ophæves, og i stedet ind-
sættes:

- »5) artikel 2, jf. artikel 1, i FN-konventionen til be-
kæmpelse af nuklear terrorisme,
- 6) artikel 7 i Det Internationale Atomenergiagenturs
konvention om fysisk beskyttelse af nukleare mate-
rialer, som ændret ved ændringskonvention af 8. juli
2005 til Det Internationale Atomenergiagenturs
konvention om fysisk beskyttelse af nukleare mate-
rialer eller
- 7) artikel 3 eller artikel 3 b, 3 c eller 3 d i konventi-
onen af 10. marts 1988 til bekæmpelse af ulovlige
handling mod søfartssikkerheden, som henholds-
vis ændret og indsat ved protokollen af 1. november
2005 til konventionen af 10. marts 1988 til bekæm-
pelse af ulovlige handlinger mod søfartssikkerhe-
den, eller artikel 2 eller artikel 2 b eller 2 c i
protokollen af 10. marts 1988 til bekæmpelse af

ulovlige handlinger mod sikkerheden for fastgjorte platforme, der befinder sig på kontinentalsokkelen, som henholdsvis ændret og indsat ved protokollen af 1. november 2005 til protokollen af 10. marts 1988 til bekæmpelse af ulovlige handlinger mod sikkerheden for fastgjorte platforme, der befinder sig på kontinentalsokkelen.«

§ 3

Stk. 1. Loven træder i kraft den 1. juli 2010, jf. dog stk. 2.

Stk. 2. Udleveringslovens § 5, stk. 3, nr. 7, som affattet ved denne lovs § 2, finder anvendelse på anmodninger om udlevering efter konventionen af 10. marts 1988 til bekæmpelse af ulovlige handlinger mod søfartssikkerheden eller protokollen af 10. marts 1988 til bekæmpelse af ulovlige handlinger mod sikkerheden for fastgjorte platforme, der befinder sig på kontinentalsokkelen, der fremsættes, efter at ændringsprotokollerne af 1. november 2005 er trådt i kraft mellem Danmark og vedkommende fremmede stat.

§ 4

Stk. 1. Loven gælder ikke for Færøerne og Grønland.

Stk. 2. Lovens § 2 kan ved kongelig anordning helt eller delvis sættes i kraft for Færøerne og Grønland med de afvigelser, som de færøske eller grønlandske forhold tilsiger.

Ændringsprotokoller til SUA-konventionen og 1988-protokollen

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 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 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 3bis of the Convention:

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.

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

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, *3bis*, *3ter*, or *3quater*.

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

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 *2bis*, 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, *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.

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

Article 11bis

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.

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

Article 11ter

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 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, *3bis*, *3ter* and *3quater*, 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, *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 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, *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 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 16bis 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 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.

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 2ter:

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 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, 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 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, *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.

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 *4bis* 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.

Resolution 1540 (2004)

**Adopted by the Security Council at its 4956th meeting,
on 28 April 2004**

The Security Council,

Affirming that proliferation of nuclear, chemical and biological weapons, as well as their means of delivery,* constitutes a threat to international peace and security,

Reaffirming, in this context, the Statement of its President adopted at the Council's meeting at the level of Heads of State and Government on 31 January 1992 (S/23500), including the need for all Member States to fulfil their obligations in relation to arms control and disarmament and to prevent proliferation in all its aspects of all weapons of mass destruction,

Recalling also that the Statement underlined the need for all Member States to resolve peacefully in accordance with the Charter any problems in that context threatening or disrupting the maintenance of regional and global stability,

Affirming its resolve to take appropriate and effective actions against any threat to international peace and security caused by the proliferation of nuclear, chemical and biological weapons and their means of delivery, in conformity with its primary responsibilities, as provided for in the United Nations Charter,

Affirming its support for the multilateral treaties whose aim is to eliminate or prevent the proliferation of nuclear, chemical or biological weapons and the importance for all States parties to these treaties to implement them fully in order to promote international stability,

* Definitions for the purpose of this resolution only:

Means of delivery: missiles, rockets and other unmanned systems capable of delivering nuclear, chemical, or biological weapons, that are specially designed for such use.

Non-State actor: individual or entity, not acting under the lawful authority of any State in conducting activities which come within the scope of this resolution.

Related materials: materials, equipment and technology covered by relevant multilateral treaties and arrangements, or included on national control lists, which could be used for the design, development, production or use of nuclear, chemical and biological weapons and their means of delivery.

Welcoming efforts in this context by multilateral arrangements which contribute to non-proliferation,

Affirming that prevention of proliferation of nuclear, chemical and biological weapons should not hamper international cooperation in materials, equipment and technology for peaceful purposes while goals of peaceful utilization should not be used as a cover for proliferation,

Gravely concerned by the threat of terrorism and the risk that non-State

actors* such as those identified in the United Nations list established and maintained by the Committee established under Security Council resolution 1267 and those to whom resolution 1373 applies, may acquire, develop, traffic in or use nuclear, chemical and biological weapons and their means of delivery,

Gravely concerned by the threat of illicit trafficking in nuclear, chemical, or biological weapons and their means of delivery, and related materials,* which adds a new dimension to the issue of proliferation of such weapons and also poses a threat to international peace and security,

Recognizing the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security,

Recognizing that most States have undertaken binding legal obligations under treaties to which they are parties, or have made other commitments aimed at preventing the proliferation of nuclear, chemical or biological weapons, and have taken effective measures to account for, secure and physically protect sensitive materials, such as those required by the Convention on the Physical Protection of Nuclear Materials and those recommended by the IAEA Code of Conduct on the Safety and Security of Radioactive Sources,

Recognizing further 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,

Encouraging all Member States to implement fully the disarmament treaties and agreements to which they are party,

Reaffirming the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

Determined to facilitate henceforth an effective response to global threats in the area of non-proliferation,

Acting under Chapter VII of the Charter of the United Nations,

1. *Decides that* all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery;
2. *Decides also* that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;
3. *Decides also* that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or

biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall:

- (a) Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport;
- (b) Develop and maintain appropriate effective physical protection measures;
- (c) Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law;
- (d) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations;

4. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, for a period of no longer than two years, a Committee of the Security Council, consisting of all members of the Council, which will, calling as appropriate on other expertise, report to the Security Council for its examination, on the implementation of this resolution, and to this end calls upon States to present a first report no later than six months from the adoption of this resolution to the Committee on steps they have taken or intend to take to implement this resolution;

5. *Decides* that none of the obligations set forth in this resolution shall be interpreted so as to conflict with or alter the rights and obligations of State Parties to the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention or alter the responsibilities of the International Atomic Energy Agency or the Organization for the Prohibition of Chemical Weapons;

6. *Recognizes* the utility in implementing this resolution of effective national control lists and calls upon all Member States, when necessary, to pursue at the earliest opportunity the development of such lists;

7. *Recognizes* that some States may require assistance in implementing the provisions of this resolution within their territories and invites States in a position to do so to offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions;

8. *Calls upon* all States:

- (a) To promote the universal adoption and full implementation, and, where

necessary, strengthening of multilateral treaties to which they are parties, whose aim is to prevent the proliferation of nuclear, biological or chemical weapons;

(b) To adopt national rules and regulations, where it has not yet been done, to ensure compliance with their commitments under the key multilateral nonproliferation treaties;

(c) To renew and fulfil their commitment to multilateral cooperation, in particular within the framework of the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention, as important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes;

(d) To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws;

9. *Calls upon* all States to promote dialogue and cooperation on nonproliferation so as to address the threat posed by proliferation of nuclear, chemical, or biological weapons, and their means of delivery;

10. Further to counter that threat, *calls upon* all States, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials;

11. *Expresses* its intention to monitor closely the implementation of this resolution and, at the appropriate level, to take further decisions which may be required to this end;

12. *Decides* to remain seized of the matter.