



INTERNATIONAL CONFERENCE ON
THE SUPPRESSION OF UNLAWFUL
ACTS AGAINST THE SAFETY OF
MARITIME NAVIGATION
Agenda item 6

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

"OFFENCES" UNDER THE DRAFT CONVENTION AND DRAFT PROTOCOL

Comments by the Government of Australia

1 Australia has reservations about the expression 'likely to endanger the safe navigation of the ship' and 'likely to endanger the safety of a fixed platform' used in draft Article 3 of the draft Convention and draft Article 2 of the draft Protocol, respectively. Even though it was adopted as a compromise at the last meeting of the Ad Hoc Preparatory Committee to meet Australia's concern at the narrowness of the expression 'likely to endanger the safety of navigation' that was used in the previous draft, it does not meet those concerns. The proposal of the Australian delegation at that meeting was to use the expression 'could affect the safe navigation of the ship'. If that is not acceptable, the phrase 'could endanger' is preferred to 'likely to endanger'. It is worth reiterating that a terrorist incident may involve unlawful acts of violence against persons on board a ship which are not at all likely to affect the safety of navigation though it is conceivable that they could. These provisions are based on conventions for the safety of aircraft. Any act of violence on board an aircraft is inherently likely to endanger the safety of the aircraft and therefore passengers. This is not so with ships.

2 The 'secondary' offences established in paragraph (2) of proposed Article 3 of the draft Convention and Article 2 of the draft Protocol are narrower than the equivalent offences in the Montreal Convention for no obvious reason in that they require that the attempt or threat itself has to be 'likely to endanger'. It should be sufficient if the act which is attempted or threatened is itself 'likely to endanger' the safe navigation of a ship or the safety of the fixed platform.

Subparagraph (b) of paragraph (2) of draft Article 3 and Article 2 respectively, should also cover persons who abet or are accomplices of a person who attempts to commit an offence referred to in paragraph (1). Further, there appears to be no reason why subparagraph (c) of paragraph (2) of each article should not refer to all the offences covered in paragraph (1) (other than (1)(a) and (f)).

We suggest that the revised offences could read as follows:

[CONVENTION]

"Article 3

1 Any person commits an offence if that person unlawfully and intentionally:

- (a) by force or threat thereof or any other form of intimidation seizes or exercises control over a ship; or
- (b) performs an act of violence against a person on board a ship if that act could [affect] [endanger] the safe navigation of the ship; or
- (c) destroys a ship or causes damage to a ship or to its cargo which could [affect] [endanger] the safe navigation of the ship; or
- (d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which could destroy that ship, or cause damage to that ship or its cargo which [affects] [endangers] or could [affect] [endanger] the safe navigation of the ship; or

- (e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act could [affect] [endanger] the safe navigation of ships; or
- (f) communicates information which he knows to be false, thereby [affecting] [endangering] the safe navigation of a ship; or
- (g) injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).

2 Any person also commits an offence if that person:

- (a) attempts to commit any of the offences set forth in paragraph 1; or
- (b) abets the commission of any such offence perpetrated by any person or is otherwise an accomplice of a person who commits or attempts to commit such an offence; or
- (c) threatens to commit any of the offences set forth in paragraph 1, subparagraphs (b), (c), (d) and (e)."

[PROTOCOL]

"ARTICLE 2

1 Any person commits an offence if that person unlawfully and intentionally:

- (a) by force or threat thereof or any other form of intimidation seizes or exercises control over a fixed platform; or
- (b) performs an act of violence against a person on board a fixed platform if that act could [affect] [endanger] its safety; or
- (c) destroys a fixed platform or causes damage to it which could [affect] [endanger] its safety; or
- (d) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which could destroy that fixed platform or could [affect] [endanger] its safety; or
- (e) injures or kills any person in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (d).

- 2 Any person also commits an offence if that person:
- (a) attempts to commit any of the offences set forth in paragraph 1; or
 - (b) abets the commission of any such offence perpetrated by any person or is otherwise an accomplice of a person who commits or attempts to commit such an offence; or
 - (c) threatens to commit any of the offences set forth in paragraph 1(b) (c), (d) and (e)."
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