



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

IMO

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

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

Comments by the Government of Australia

General Comments

1 Australia supports the need to complement the proposed Convention by a Protocol to suppress unlawful acts against the safety of fixed platforms located on the continental shelf. Such platforms are, by reason of their economic importance, particularly vulnerable to terrorist attack. For this reason, it is essential that the Protocol be clear as to its application and effect, and that it provide the most extensive coverage possible.

2 It is not clear from the use of the expression 'continental shelf' in the text of the draft Protocol whether it is intended to apply to fixed platforms attached to the seabed beneath the territorial sea of a coastal State. Australia is of the view that the draft Protocol should apply to unlawful acts occurring on board or against 'fixed platforms' located on the seabed of the territorial sea of a coastal State, but only where the alleged offender is found in the territory of a State other than that coastal State. This is consistent with the reasoning underlying Article 4(3) of the Montreal Convention and is analogous to draft Article 4 of the draft Convention and would allow a State Party to rely on the enforcement provisions of the

Protocol in relation to offenders who, while committing an unlawful act at a place that would ordinarily be within the reach of the criminal jurisdiction of that State, may not be amenable to that jurisdiction. Such an approach may require the addition of a provision having the same effect as paragraphs 1 and 3 of draft Article 5 of the draft Convention to allow a State to exclude the Protocol in such a situation at the time of signature or ratification, acceptance or approval of, or accession to, the Protocol, if it so wished. Consequential changes to the Preamble and to draft Articles 3(1) and 4 would also be necessary to remove the references to 'located on the continental shelf'.

Preamble

3 Given the obvious differences between maritime navigation and off-shore mining and the somewhat more recent genesis of the draft Protocol, some of the reasons outlined in the Preamble to the draft Convention do not appear to be applicable to the Protocol. While preambular paragraphs 1, 2 and 3 of the draft Convention are clearly relevant, it may be more appropriate to replicate preambular paragraphs 4, 5, 6, 10, 11 (and the proposed paragraph referred to in paragraph 48 of the Report of the First Extraordinary Session of the Legal Committee, in relation to crew discipline) with appropriate changes, and to add a new preambular paragraph referring to the recognition of the particular vulnerability of off-shore installations to attack and the concern about the threat to the safety of persons working on, and damage to, those installations that may result from an unlawful attack.

4 Australia suggests that the Preamble could read as follows:

"HAVING IN MIND the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of friendly relations and co-operation among States,

RECOGNISING in particular that everyone has the right to life, liberty and security of person, as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

DEEPLY CONCERNED about the world-wide escalation of acts of terrorism in all its forms, which endanger or take innocent human lives, jeopardize fundamental freedoms and seriously impair the dignity of human beings,

CONSIDERING that unlawful acts against the safety of fixed platforms located on the continental shelf, jeopardize the safety of persons and property and seriously affect the operation of those platforms,

RECOGNIZING that fixed platforms located on the continental shelf are, because of their location and economic importance particularly vulnerable to unlawful acts against their safety,

CONSIDERING that the occurrence of such acts is a matter of grave concern to the international community as a whole,

BEING CONVINCED of the urgent need to develop international co-operation between States in devising and adopting effective and practical measures for the prevention of unlawful acts against the safety of fixed platforms located on the continental shelf and the prosecution and punishment of their perpetrators,

AFFIRMING that matters not regulated by this Protocol, including acts of the crew which are [subject] [amenable] to normal shipboard discipline, will continue to be governed by the [relevant] rules and principles of [general] international law ...

AFFIRMING FURTHER that matters not regulated by this Protocol continue to be governed by the rules and principles of general international law,

RECOGNIZING the need for all States, in combating unlawful acts against the safety of fixed platforms located on the continental shelf, strictly comply with rules and principles of general international law,

HAVE AGREED as follows:"

Article 1

5 Consistent with the draft Convention, we suggest that Article 1 contain only defined terms. Separate articles spelling out the application of the Protocol are warranted covering both the matters referred to in paragraph 9 above and applying the relevant provisions of the draft Convention.

6 We therefore suggest the addition of the following articles:

"ARTICLE 1A

1 This Protocol shall apply if the fixed platform is located on the continental shelf of a State.

2 Notwithstanding paragraph 1 of this article, the Protocol shall also apply [with the exception of the equivalent provisions of articles 13, 14 and 15 of the convention], if the fixed platform is located on the sea-bed of the territorial sea of a State and [the offender or] the alleged offender is found in a State Party other than the State.

ARTICLE 1B

1 A State may at the time of signature or ratification, acceptance or approval of this Protocol or accession thereto, declare that it shall not apply the Protocol where the fixed platform is located on the sea-bed of the territorial sea of that State.

2 Any State which has made a declaration in accordance with paragraph 1 of this article may at any time withdraw that declaration by notification to the Secretary-General of the International Maritime Organization."

7 As to the application of the relevant provisions of the draft Convention, it may be appropriate to include draft Article 6 of the draft Convention as a separate article in the draft Protocol as it is central to the regime of the Protocol. It is not necessary to apply draft Article 9 of the draft Convention as it already has an equivalent provision in draft Article 4 of the draft Protocol.

8 The equivalent article to draft Article 6 of the Convention could read as follows:

"ARTICLE 2A

Each State Party shall make the offences set forth in article 2 punishable by appropriate penalties which take into account the grave nature of those offences."

9 The definition of 'fixed platform' is arguably too narrow in two respects:

- (a) the phrase 'permanently attached' introduces needless uncertainty - the use of the word 'permanent' could have the effect of preventing the application of the Protocol to some exploration platforms that are performing the same functions and are otherwise indistinguishable from a 'permanently' attached platform. If the artificial island, installation or structure is 'attached' to the seabed for the relevant purposes, then the Protocol should apply. On the other hand, while a unit is travelling to a drilling site (whether under its own power or being towed), it is arguably more akin to a 'ship' (and indeed such a journey may well involve 'navigation' beyond the outer limits of the territorial sea) and would more appropriately be covered by the draft Convention. We suggest the removal of the word 'permanently' from the definition.

- (b) the definition appears partly to reflect Articles 56, 60 and 80 of the LOS Convention which confer exclusive jurisdiction on the coastal State in relation to certain installations on its continental shelf. Australia would support the extension of the definition to reflect the full width of the language of the LOS Convention by including a reference to installations used for marine and scientific research or conservation purposes.

10 We suggest the following definition:

"ARTICLE 1

For the purposes of this Protocol, 'fixed platform' means an artificial island, installation or structure attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes, or for marine scientific research or conservation purposes."
