



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

Observations by the French Government

Article 3

First observation: the definition of offences given in this article is not entirely satisfactory. It embraces certain offences which are not exceptionally serious and which, for that reason, do not justify bringing into effect the judicial and penal procedures provided by the Convention.

Thus, subparagraphs (e) and (f) of paragraph 1 concern acts which may be of a really serious nature for aerial navigation but which, in the field of maritime navigation, have only minor harmful consequences.

As for paragraph 2(c), it refers merely to the threat to commit an offence, which does not constitute a direct act of terrorism and should be dealt with under ordinary penal procedures.

Proposal: deletion of paragraph 1(e) and (f), and of paragraph 2(c).

Second observation: paragraph 2(b) replaces the notion of complicity by that of "abetting" the commission of an offence. This is a new concept which is not always defined by national penal legislations and to which courts might give widely varying interpretations. It thus seems preferable, as in the air transport conventions, to refer only to complicity, which is a traditional concept in penal law.

Proposal: reword as follows: (b) is the accomplice of a person who commits or attempts to commit any of these offences.

Articles 4 and 5

Observation: the definition of the scope of application is governed by the following principles:

- application of the Convention to all maritime navigation except coasting under the national flag;
- possibility of departing from this principle:
 - either by a restrictive reservation: non-application of the Convention to coasting which, by reference to article 4, paragraph 1, relates only to coasting under a third-party flag;
 - or by an extensive declaration: application of the Convention to coasting in straits which, by reference to article 4, paragraph 1, relates only to coasting under the national flag.

(1) As far as coasting is concerned:

The exclusion of coasting is desired by the great majority of States and is justified in law.

However, the distinction between coasting under the national flag and coasting under a third-party flag does not seem entirely satisfactory.

Even if coasting is in general reserved for the national flag, many States whose fleet cannot cover national requirements grant exceptions with regard to coasting.

Should foreign coasters be treated differently from those flying the flag of the coastal State? Both navigate exclusively in the territorial waters of that State and are engaged in the same activities. Furthermore, coasters under a third-party flag can scarcely be said to have a material link with their flag State.

Article 27 of the Law of the Sea Convention permits the coastal State to exercise its penal jurisdiction on board a ship flying a third-party flag both under paragraph 1(b) and under paragraph 2 (see annex).

Equality of treatment between ships engaged in coasting may thus easily be ensured and acts of terrorism committed on board them can be made subject to the jurisdiction of the local State.

In the opinion of the French Government the principle to be adopted in the Convention should be the exclusion of all coastal shipping. This principle would nevertheless be accompanied by a means of extending it to coasters flying a third-party flag.

This formula has the advantage of enabling States to extend the scope of application of the Convention by a declaration instead of authorizing them to restrict it by a declaration.

(2) As far as straits are concerned:

For ships coasting in the territorial waters of straits it seems desirable to allow States the possibility of applying the Convention either to those flying a third-party flag or to those flying the national flag, or to both.

Proposal: article 4:

1 The Convention shall not apply where the offence is committed on board a ship which, in accordance with its schedule, is navigating exclusively in the territorial waters of a single State.

2 A State may, at the time of signing, ratifying, accepting or approving this Convention, or acceding to it, declare that it will not apply the Convention:

- to ships referred to in paragraph 1 flying the flag of a State other than the coastal State; or
- to ships referred to in paragraph 1 navigating in straits used for international navigation and flying the flag of the coastal State.

3 In cases where the Convention does not apply pursuant to paragraph 1, it shall nevertheless apply, with the exception of articles 13, 14 and 15, if the offender or the alleged offender is found in a State Party other than the flag State.

4 Any State making a declaration in accordance with paragraph 1 may at any time withdraw that declaration by notification to the Secretary-General of the International Maritime Organization (hereinafter referred as the Secretary-General).

Article 7

Observation: paragraph 2(d) permits a State to establish its jurisdiction where the demise-charterer in possession of the ship is a national of that State.

In the opinion of the French Government this provision would be contrary to the rules of international law and, in particular, to articles 91 and 92 of the Law of the Sea Convention which, on the high seas, recognize only the exclusive jurisdiction of the flag State.

It would be excessive to establish the jurisdiction of a State other than the flag State on the basis of the existence of a private law contract. Furthermore, the bareboat charterer may, as frequently occurs, have no link in law with such State.

Proposal: deletion of paragraph 2(d).

Article 8

Observation: the French Government is in favour of adding the draft article making it an obligation of a State Party to accept an alleged offender who has been detained by the master of a ship (LEG/ES.1/WP.2).

It would, however, be desirable to add provisions to the draft article making it obligatory for the master to notify the port State of his intention to deliver the offender.

Proposal:

"1 The master of the ship of the State Party may deliver to the authorities of any other State Party any person who he has reasonable grounds to believe has committed one of the offences set forth in article 3.

2 The master of the ship shall, promptly and if possible before entering the territorial waters of a Contracting State with a person on board whom he intends to deliver in accordance with the provisions of the previous paragraph, make his intention known to the authorities of that State together with the reasons for it.

3 Any State Party shall accept the delivery, except where it considers that the Convention is not applicable to the acts giving rise thereto, and shall proceed according to the provisions of article 8. Any refusal to accept such delivery shall be accompanied by a statement of reasons.

4 The master of the ship shall furnish the authorities to whom any alleged offender is delivered in accordance with the provisions of this article with evidence and information which, under the law of the State of the ship's flag, are lawfully in his possession."

Article 10

Proposal: in the French text, put: "l'Etat partie sur le territoire duquel l'auteur ou l'auteur présumé de l'infraction est découvert soumet" and not "doit soumettre".

Article 11

Observation: under paragraph 5 a request for extradition made by the flag State should, in the case of multiple requests for extradition, be given a certain priority. In the opinion of the French Government this is a matter of expediency which should be left entirely to the unrestricted judgement of the courts. Moreover, an indication of this nature will inevitably give rise to disputes or even to litigation concerning the decision taken by the courts.

Proposal: deletion of article 11, paragraph 5.

Article 16

Observation: the French Government thinks that paragraph 2 of this article is intended to permit States which so desire not to accept the mandatory jurisdiction of the International Court of Justice in cases where agreement is not reached on the organization of the arbitration.

If this is indeed the case, the drafting of this paragraph should be slightly amended.

Proposal: "Each State may at the time of signature or ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by any of the provisions of paragraph 1". The remainder without change.

Article 18

Observation and proposal: as in the Conventions of the Hague and Montreal, or in the London Convention of 1976 on the Limitation of Liability for Maritime Claims, the number of ratifications necessary for the entry into force of the Convention should be restricted to ten States.

Article 20

Observation: paragraph 3 provides that States acceding to the Convention after the entry into force of an amendment may declare that they are bound only by the unamended Convention.

As a general rule, amendments to an international convention are intended to correct a defect in the existing text or to reflect the progress of law. It is desirable that improvements thus made should be given the widest application and that States newly becoming Parties to a convention should be bound by the amendments in their relations with the States which have themselves approved or ratified them.

Proposal: delete from paragraph 3 the words: "unless a contrary intention is expressed in the instrument".

ANNEX

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

"Article 27

Criminal jurisdiction on board a foreign ship

1 The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the following cases:

- (a) if the consequences of the crime extend to the coastal State;
- (b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea;
- (c) if the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag State; or
- (d) if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances.

2 The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters."
