



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 CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST
THE SAFETY OF MARITIME NAVIGATION

Comments by the Government of Australia

General Comments

Australia firmly supports the initiative which will fill an important gap in the present international regime to suppress various forms of terrorism. Our principal objectives are to ensure that the draft Convention and draft Protocol are broadly consistent with Australia's international and domestic policies and that they are likely to secure broad international support.

Article 1

2 Australia is of the view that to avoid the possibility of some types of maritime structures being covered by neither the draft Convention nor the draft Protocol, it is essential to ensure that the definitions used in the instruments are complementary. There is therefore a need to clarify the meaning of the expression 'permanently attached' which is inherently uncertain. The words 'other than a fixed platform within the meaning of the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf' could be used to achieve this result. As mentioned in paragraph 16 below, Australia would prefer the

definition of 'fixed platform' to contain no reference to 'permanently' so that it would cover all structures 'attached' to the seabed for the relevant purpose. To ensure that a 'fixed platform' is covered by the definition while being towed to its site, the definition could refer to 'any other floating craft or structure whether capable of navigation under its own power or not'.

3 Our preferred form of Draft Article 1 would read as follows:

"For the purposes of this Convention, 'ship' means a vessel of any type whatsoever (other than a fixed platform within the meaning of the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf), not permanently attached to the seabed, including a dynamically supported craft, submersible, or any other floating craft or structure, whether capable of navigating under its own power or not."

Article 4

4 While noting that it was understood at the Second Session of the Preparatory Committee that draft Article 4 will be reconsidered at the Diplomatic Conference, Australia is concerned at the lack of clarity of this provision and its inconsistency. In our view, the draft Convention should not apply in relation to incidents on board an Australian vessel that is engaged in a purely 'domestic' voyage. However we do support an application provision based on Article 4(3) of the Montreal Convention being included in draft Article 4 to cover the case where the offender is found in the territory of a State other than the flag State of the ship in relation to which the offence occurred. As currently drafted, it is not clear that this is the effect of draft Article 4. Further, unless paragraph 1 of draft Article 4 applies only in relation to the offences referred to in subparagraphs 3(1)(a),(b),(c),(d) and (f) (and the offences in Article 3(2) that relate to those offences), its references to 'the ship' and 'flag State' are not explicable. Article 4(2) of the Montreal Convention distinguishes between the equivalent

offences that occur in relation to a particular aircraft and the offence which involves navigational facilities which of its nature, occurs in relation to aircraft in general. (The offence in subparagraph (f) of paragraph (1) should refer to 'thereby endangering the safe navigation of a ship' rather than 'of ships' - compare Article 1(1) of the Montreal Convention. The kind of acts to which that paragraph is presumably directed, such as bomb hoaxes, occur in relation to particular ships or aircraft rather than ships or aircraft in general.)

5 Following on from the distinction referred to in paragraph 4, it is worth noting that in relation to the offence of destroying or damaging navigational facilities (subparagraph 3 (1)(e) and the offences in draft Article 3(2) that relate to that offence), the Montreal Convention applies only if those facilities are used in international navigation (Article 4(5)). If such a limitation were incorporated into the draft Convention in relation to maritime navigation facilities as a separate paragraph in draft Article 4, it would have the effect of giving the offence the necessary 'international' character now that the term 'ship' is no longer defined in a manner that limits its application to vessels involved in 'international' voyages. The other offences have such a character by reason that they are limited to acts occurring on ships engaged in a voyage that extends or is intended to extend beyond the territorial seas of the flag State.

6 Draft Article 4(2) is also very unclear - particularly the meaning of the phrase 'the cases to which the Convention does not apply pursuant to paragraph 1'. The relationship between draft Article 4 and paragraph 1 of draft Article 5 could be better expressed.

7 Australia would prefer Draft Article 4 to be along the following lines:

"1 In cases referred to in subparagraphs (a), (b), (c), (d) and (f) of paragraph 1 of article 3, and the cases referred to in paragraph 2 of that article as they relate to those subparagraphs, this Convention shall apply if the ship is navigating in waters beyond the outer [or lateral] limits of the territorial sea of the flag State or its schedule includes navigation in those waters.

2 Notwithstanding paragraph 1 of this article, in cases referred to in paragraph 1 the Convention shall also 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.

3 In the case referred to in subparagraph (e) of paragraph 1 of article 3, and the cases referred to in paragraph 2 of that article as they relate to that subparagraph, this Convention shall apply only if the maritime navigational facilities are used in international maritime navigation."
