



IMO

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

Committee of the Whole -
Agenda item 3

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

Proposal by the delegation of Spain on the basis of the
provisions of Rule 26 of the Rules of Procedure
of the diplomatic Conference

At the session of the Ad Hoc Preparatory Committee held in Rome last May a new text of the article governing the field of application of the Convention was introduced whereby the possibility was accepted of its application in a strait used for international navigation by means of a unilateral declaration by a State Party whether or not such State Party bordered on the strait.

The new text is now contained in article 5, paragraph 2, and its inclusion was questioned from the outset by Spain as shown in documents PCUA 2/5, paragraphs 39, 40 and 60 (Rome, March 1987); document PCUA 1/WP.14, paragraph 49 (London, March 1987); and document LEG/ES.1/WP.2, paragraph 58 (London, October 1987).

As the disputed text remains in article 5, paragraph 2, and as the substantive discussion thereof has been held ever until the present diplomatic Conference (paragraph 59 of document LEG/ES.1/WP.2), the delegation of Spain considers itself obliged to formulate the present proposal which is based on major substantive legal reasons which demonstrate that the inclusion of the text is at variance with recognized principles and texts of international law. These reasons, of a technical and legal but not political type, are as follows:

- 1 Because article 5, paragraph 2, ignores the provisions of article 34 of the United Nations Convention on the Law of the Sea which specifically recognizes that the waters of a strait used for international navigation

constitute, throughout their breadth, part of the territorial sea of the coastal State and, being the territorial sea, are subject to the State's sovereignty and jurisdiction. Consequently, any declaration by a third State to the effect that it will apply the Convention in that territorial sea and, consequently, establish its jurisdiction to hear incidents occurring therein, assumes that a distinction is made for that purpose between two separate classes of waters of the territorial sea, those in straits and those not in straits, denying in the former the exclusive sovereignty and jurisdiction of the coastal State which is specifically proclaimed in article 34 of the United Nations Convention on the Law of the Sea.

A fortiori, article 7 of the draft Convention provides that "each State Party shall take such measures as may be necessary to establish its jurisdiction when the offence is committed in the territory of that State, or inside its territorial sea" (article 7, paragraph 1(b)). This means that no State may declare that it will establish jurisdiction when the offence is committed in the territorial sea of another State simply by virtue of transiting such territorial sea, in other words, in the absence of the conditions envisaged in article 7, paragraphs 2 and 3.

- 2 Because, if article 5, paragraph 2, as it appears in the draft Convention were accepted, the Convention would apply to the coasting navigation of a ship of the State bordering on the strait even if such ship were navigating without leaving its own territorial sea which makes it an internal matter exclusive to the coastal State and involving no international aspect justifying its inclusion in an instrument of this nature.

- 3 Because the reference to straits can only lead to complications of a legal nature in the application of the Convention, particularly between States which border on straits and those which do not do so, in that it constitutes a declaration of intention of one State in relation to the territorial sea of a third State, jurisdiction over which is restricted to the coastal State in accordance with articles 27, paragraph (b) and and 25, paragraph 1, in relation to article 19, paragraph 2(a) of the United Nations Convention.
- 4 Because it is a superfluous reference which contributes nothing positive to the Convention but, on the contrary, gives rise to doubt with regard to its field of application by departing from the criterion in article 4, paragraph 1, which is concerned exclusively with various maritime spaces and not with geographical criteria; and
- 5 Because the space which it is intended to cover by means of this insertion is already envisaged in article 4, paragraph 1, which states that the Convention "shall apply if the ship is navigating in waters beyond the outer ... limits of the territorial sea of the flag State".

For the reasons stated, Spain proposes the following amendment to the draft Convention:

Deletion of article 5, paragraph 2, renumbering of paragraph 3 as paragraph 2, and the elimination of any reference in this paragraph to the former paragraph 2.
