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

### *SECTION 1. Violence at Sea*

IN its Report on *Oceans and the Law of the Sea* presented to the United Nations General Assembly in October 1997,<sup>1</sup> the Secretary General of the United Nations remarked:

The issue of piracy and armed robbery against ships continued to be a major source of concern. The IMO Maritime Safety Committee at its sixty-seventh session noted that the number of incidents of piracy and armed robbery against ships had risen to 152 during the first 11 months of 1996, as compared to 138 during 1995, representing an increase of 25 per cent. The Committee noted that the areas most affected by pirates and armed robbers continued to be the same, *ie*, the South China Sea, South America and the Indian Ocean, which meant that, apart from a temporary decline in the strait of Malacca in 1993 and in the South China Sea in 1995, *the phenomenon appeared to have an endemic character.*<sup>2</sup>

Continuing his remarks, the Secretary-General notes that in recent years another cause of unsafe practices causing incidents at sea is connected with the smuggling of aliens.<sup>3</sup>

The widely held view that the international rules on piracy are a relic of the past proves wrong. Piracy unfortunately still exists. What is new today is that piracy is not the only form of violence at sea that raises the concerns of States, seafarers and the public at large. The specific problems caused by the smuggling of aliens, connected in general to the consequences of armed conflicts on civil populations, have been recently submitted for consideration and action to the

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<sup>1</sup> Doc A/52/487, para 374.

<sup>2</sup> Emphasis supplied.

<sup>3</sup> A/52/487 para 379.

United Nations Committee for Crime Prevention and Control and to the IMO. Even leaving aside the smuggling of aliens, it is clear that the rules of international law concerning piracy, codified in the Geneva High Seas Convention of 1958<sup>4</sup> and repeated in the 1982 United Nations Convention on the Law of the Sea,<sup>5</sup> are inadequate to cope with many of the acts of violence currently perpetrated at sea. This depends on two reasons. The first is that the definition of piracy is very narrow. It requires the presence of two ships (or of a ship and an aircraft) and concerns only acts committed on the high seas.<sup>6</sup> The second is that to the narrow definition correspond very far-reaching consequences, namely, that States accept intervention at sea, including with the use of force, on the pirate ships flying their flag by foreign ships of whatever nationality and accept also that the courts of the State which carried out the intervention at sea exercise jurisdiction over the pirate ships and the pirates.<sup>7</sup>

These far-reaching consequences explain why States, even when convinced that violence at sea must be fought in the most thorough way, have neither considered it feasible to widen the definition of piracy nor – which would amount to the same thing – accepted that the consequences set out for piracy by international law apply also for other acts of violence at sea. As it emerges also in other fields of international law, such as illicit traffic of narcotic drugs or psychotropic substances at sea or fisheries, the general principle according to which only the flag State is entitled to exercise jurisdiction on the high seas is one from which States accept to deviate only with great hesitation and in very narrow cases, normally set out in treaties with a limited number of parties.<sup>8</sup>

These reasons explain why, in order to fight against those acts of violence at sea that cannot be considered as included in the notion

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<sup>4</sup> Art 15.

<sup>5</sup> Art 101.

<sup>6</sup> UN Convention on the Law of the Sea, art 101. It is sometimes argued that the definition of piracy in the Conventions on the law of the sea is not comprehensive and that there exists in customary international law a wider notion of piracy *jure gentium*. See, for instance, SP Menafee, "Piracy, Terrorism, and the Insurgent Passenger, A Historical and Legal Perspective", in Ronzitti (ed), *Maritime Terrorism and International Law*, Dordrecht, Boston, London, 1990, pp 43-68. The arguments brought forward to support this view are not very persuasive, especially as regards the legal consequences in terms of jurisdiction that would ensue from classifying an act as piracy *jure gentium*.

<sup>7</sup> UN Convention on the Law of the Sea, art 105.

<sup>8</sup> See T Treves, "Intervention en haute mer et navires étrangers", *Annuaire français de droit international*, XLI, 1995, pp 651-675.

of piracy as shaped in international law, States must take a different road. They must accept as a basis the exclusive right of the flag State to intervene on the high seas, and establish such obligations to cooperate in the use of their domestic criminal legal systems, that the perpetrators of the acts to be suppressed cannot go unpunished wherever they happen to be.

The Rome Convention for the Suppression of Unlawful Acts Against the Safety of Navigation of 10 March 1988, together with the connected Protocol of the same date for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf,<sup>9</sup> to which I have been requested to address my remarks, takes the above indicated road. What has still to be determined is whether this convention is adequate as a tool to suppress violence at sea, in particular that of the kind described as "armed robbery against ships". The main focus of my paper will be on this question.

*SECTION 2. The Rome Convention of 1988: An Instrument for  
the Suppression of Maritime Terrorism or  
of Violence at Sea in General?*

The Rome Convention was the result of a diplomatic initiative taken by the Governments of Austria, Egypt and Italy as a response to a major act of maritime terrorism which had involved Egypt and Italy as well as the United States. This was the well known *Achille Lauro* incident in which, in October 1985, a group of Palestinian terrorists took control of an Italian cruise ship in Egyptian waters and perpetrated acts of violence including the murder of an American passenger.<sup>10</sup> The Convention was negotiated as part of the international effort to fight

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<sup>9</sup> The text of the Convention and of the Protocol may be read in *International Legal Materials*, vol 27, 1988, p 668 and 685 as well in the *UN Law of the Sea Bulletin*, No 11, July 1988, p 14 and 24. The present writer has commented on the Convention at the time of its adoption in a study entitled "The Rome Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation" in N Ronzitti (ed), *Maritime Terrorism and International Law*, quote *supra*, at note 6, pp 68-90. Important studies on the subject are those by M Halberstam, "Terrorism on the High Seas: the Achille Lauro, Piracy and the IMO Convention on Maritime Safety", *American Journal of International Law*, vol 82, 1988, pp 269-310; and by F Francioni, "Maritime Terrorism and International Law: The Rome Convention of 1988", *The German Yearbook of International Law*, vol 31, 1988, pp 263-288.

<sup>10</sup> On this incident, which has given rise to an abundant literature, see, for thoughtful comments, the relevant documents and a bibliography, A Cassese, *Il caso "Achille Lauro"*, Rome 1987. Interesting comments and documents are also in Ronzitti (ed), *Maritime Terrorism etc* quoted at note 6.

terrorism. This emerges clearly from various paragraphs of the Preamble. The legal technique adopted in its text is similar to that resorted to in the drafting of conventions against the hijacking of aircraft and other forms of air terrorism.

Notwithstanding the reasons and history of its adoption, it would seem that the Rome Convention can apply to many cases of violence at sea that have nothing to do with terrorism and which belong to the wider category of common crimes. The very fact that the Convention was negotiated within the framework of the IMO indicates that safety of navigation was one of the main concerns of the parties. This emerges also from the fourth preambular paragraph:

*Considering* that unlawful acts against the safety of maritime navigation jeopardize the safety of persons and property, seriously affect the operation of maritime services, and undermine the confidence of the peoples of the world in the safety of maritime navigation.

The applicability of the Convention to acts of violence at sea that are not acts of terrorism emerges clearly from the description of the offences which are to be suppressed according to the Convention and from the fact that nowhere does the Convention provide that these acts considered as "offences" under its provisions must be committed with a "terrorist" purpose.

The acts which, when committed "unlawfully and intentionally", States parties bind themselves to consider as offences are those committed by a person who:

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

- (e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or
- (f) communicates information which he knows that is false, thereby endangering the safe navigation of the 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).<sup>11</sup>

Attempting or abetting the commission of these offences or being otherwise an accomplice of a person committing them is also an offence under the Convention, as is the act of a person who threatens to commit the offences set forth in paragraphs (b), (c) and (e) above “with or without a condition, as provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act”, provided the threat is likely to endanger the safe navigation of the ship in question.<sup>12</sup>

It seems difficult to deny that the offences envisaged by the Convention are not limited to those committed for the purposes of terrorism. They include most acts of violence at sea, provided there is an international interest in their suppression. Such international interest lies in that the offences are likely to endanger the safe navigation of a ship. While this requirement is not explicitly mentioned in the description of the first offence listed (article 3, paragraph 1 (a)), all the other offences must be “likely to endanger the safe navigation of the ship”. The reason for this difference seems to be that the offence of seizing or exercising control over a ship by force or threat thereof constitutes by its very essence a danger to the safe navigation of the ship. While such act was not already considered as an offence in most domestic legal systems, the remaining offences envisaged are normally considered as such in domestic criminal law. Adding to their description the likelihood of endangering safe navigation makes the international interest in the suppression of these offences legally relevant and justifies the further consequences provided by the Convention in terms of spatial scope of application and of jurisdiction and international co-operation for their suppression.

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<sup>11</sup> Rome Convention, art 3, para 1.

<sup>12</sup> Rome Convention, art 3, para 2.

### SECTION 3. *The Spatial Scope of the Convention*

In indicating in the Convention where the ship target of the unlawful act must be navigating in order for the Convention to apply, it was necessary to take into account two different needs. The first, and foremost, was that of making the scope of the Convention as wide as possible. The second was that of requiring "that the offence involves an international element *vis-à-vis* the flag State of the ship having been the target of the unlawful act".<sup>13</sup> The reconciliation of these two needs has been obtained in article 4, which is as follows:

1. This Convention applies if the ship is navigating or is scheduled to navigate into, through or from the waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States.
2. In cases where the Convention does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State party other than the State referred to in paragraph 1.

The first paragraph defines in very wide terms the geographical scope of the Convention. The target ship may find itself, when the unlawful act is perpetrated against it, in all possible areas of the sea: the high seas, the exclusive economic zone, the territorial sea, and even internal waters. The international element retained as necessary consists in that, when becoming the target of the unlawful act, the ship be engaged in an international voyage. The concept of international voyage resorted to by the convention is that of a voyage that crosses the limit (be it external or lateral) of the territorial sea, independently of whether the ship comes from, or is proceeding to, a point beyond that limit. Such crossing, may, however, not have happened yet at the moment the ship becomes the target of the unlawful act. This explains the reference to the ship's navigational schedule. It cannot be denied that to determine the navigational schedule of a ship may be difficult in some cases. Instructions concerning the next port of call are received by certain tankers at the last minute, and often changed.

Leaving aside the above mentioned difficulty (which in practical terms should not be too important as the ships considered are normally

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<sup>13</sup> This need was underlined in the Explanatory Note presented to the IMO by Austria, Egypt and Italy in introducing the first draft of the Convention (IMO document C/57/25, p 4).

engaged in long voyages crossing the borders of the territorial sea of various States), article 4, paragraph 1, entails that the Convention does not apply only to the case of offences committed against a ship navigating from one point on the coast of one State to another point of the coast of the same State without ever crossing the external limit of the territorial sea of that State. Nevertheless, the Convention considers that there may be an international element which justifies that the Convention apply to the offence even in this case. This aspect is that mentioned in paragraph 2 of article 4, namely that the offender or the alleged offender is found in the territory of a State party different from that in whose waters the ship was navigating when it became the target of the offence.

There was considerable discussion in the *travaux* as to whether it should be specified in the Convention that its provisions apply to offences committed in international straits. Such mention was not included in the Convention. In the Final Act of the Rome Conference which adopted the Convention one finds nevertheless the following remarks:

Some delegations were in favour of the inclusion in Article 4, paragraph 1, of straits used for international navigation. Other delegations pointed out that it was unnecessary to include them since navigation in such straits was one of the situations envisaged in Article 4, paragraph 1. Therefore, the Convention will apply in straits used for international navigation, without prejudice to the legal status of the waters forming such straits in accordance with the relevant conventions and other rules of international law.<sup>14</sup>

It would seem that this statement does not purport to include in the scope of the Convention navigation in waters belonging to straits in the cases in which, according to Article 4, paragraph 1, it does not apply to such navigation. These are, unless article 4, paragraph 2, applies, the cases in which the ship has not crossed and is not scheduled to cross the limits of the territorial sea.<sup>15</sup>

The definition of the offences set out in article 3 includes as offences, in the material scope Convention, many acts of violence at sea which are not encompassed in the notion of piracy as defined in the United Nations Convention on the Law of the Sea. Article 4 has the effect of including as offences in the geographical scope of the Convention

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<sup>14</sup> Paragraph 23 of the Final Act, published in IMO document SUA/CONF/WP.2.

<sup>15</sup> See below at note 26 the reservation of Chile concerning the Strait of Magellan.



acts of violence at sea which would correspond to the definition of piracy but for the fact that they are not committed on the high seas. In other terms, acts of "piracy" committed in the territorial sea and even in internal waters are offences envisaged by the Convention.

#### *SECTION 4. The "Ships" to which the Convention Applies*

The wide definition of the offences and of the areas in which they may be committed is completed by a wide definition of the ships to which the Convention applies. In order to set its net for covering offences in the widest possible way, the Rome Convention, in its article 1, defines "ship" as a "vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft".

The expression "not permanently attached to the sea-bed" raised some doubts during the negotiations, as it could be read as including jack-up rigs which, when attached to the sea-bed, are usually considered as platforms. These doubts were compounded by the observation that in articles 3 and 4 there are references to navigation. These references could permit the argument that mobile offshore drilling units when attached to the sea-bed would not be subject to the Convention.

This question was considered in the Rome Conference in conjunction with the definition of "fixed platforms" in the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf. Informal consultations led delegations to agree "that the two definitions should be complementary with no gaps, and that the definition of 'ship' should be as wide as possible". As States parties to the Protocol are necessarily parties to the Convention, while States parties to the Convention need not necessarily become parties to the Protocol,<sup>16</sup> this decision entails that the wider the definition of ship in the Convention, the wider the number of offences covered for the highest number of States. In order to apply this decision, it was agreed that both definitions would contain the words "permanently attached" and that "the term "navigation" encompassed the operation of mobile offshore drilling units or similar vessels when attached to the sea-bed, and that those vessels would be under the Convention". This interpretation was agreed by an informal consultation group of twelve States. As such is not binding as an authentic interpretation. Its weight in the *travaux* seems, however, quite important. It was

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<sup>16</sup> Rome Protocol, art 5, para 4, in light of art 17 of the Rome Convention.

published in an official document of the Conference<sup>17</sup> and the Conference seems to have agreed on the definition of “ship” in the light of that document.

Warships are excluded from the application of the Convention, as well as “ships owned or operated by States when being used as a naval auxiliary or for customs or police purposes” and ships which have “been withdrawn from navigation or laid up” (article 2, paragraph 1). Consequently, government ships operated for commercial purposes, and also government ships not operated for commercial purposes such as ice-breakers or research ships, are included in the scope of the Convention. However, not only warships, but also “other government ships operated for non-commercial purposes” remain covered, according to article 2, paragraph 2, by the immunities applicable under international law. This savings clause might be unnecessary, however, in light of the more general savings clause set out in article 9, according to which

Nothing in this Convention shall affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag.

#### *SECTION 5. The Obligations of States Parties as Regards the Suppression of the Offences under the Convention*

The obligations of the parties to the Convention, as regards the suppression of offences, can be summarized with the old formula *aut dedere aut judicare*. States parties, provided there is a linkage between them and the offence considered relevant by the Convention, are bound either to exercise their criminal jurisdiction or to surrender the alleged offender to another State which will exercise its criminal jurisdiction. This mechanism, in its general description, is not different from that set out in other international criminal law conventions (such as those concerning unlawful acts against the safety of air navigation). It is based upon three intertwined obligations of each State party, namely, that of establishing its jurisdiction over the offences set out in the Convention, that of submitting the case falling within its jurisdiction to its competent authorities for the purpose of prosecution, and that – alternative to the second mentioned one – of extraditing the alleged offender to another competent State.

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<sup>17</sup> IMO document SUA/CONF/CW/WP.18, para 3.

As regards the establishment of jurisdiction over the offences envisaged by the Convention, article 6 distinguishes three cases. The first (paragraph 1) concerns an obligation to do so ("Each State party shall take such measures as may be necessary to establish its jurisdiction ...") if the offence is committed:

- (a) against or on board a ship flying the flag of the State at the time the offence is committed; or
- (b) in the territory of that State, including its territorial sea; or
- (c) by a national of that State.

The second case, set out in paragraph 2, introduces a possibility, not an obligation. Each State party *may* also establish its jurisdiction over an offence when:

- (a) it is committed by a stateless person whose habitual residence is in that State; or
- (b) during its commission a national of that State is seized, threatened, injured or killed; or
- (c) it is committed in an attempt to compel that State to do or to abstain from doing any act.

The establishment of jurisdiction in this second case must be notified to the Secretary-General of IMO. Nothing is said about the consequences of the failure to abide by this rule. It is interesting to note that of the 33 contracting parties to the Convention, only one, Canada, has made such notification. Probably this indicates more than lack of diligence in making the appropriate notification, the fact that most contracting parties have not taken advantage of the possibility given to them by paragraph 2. This seems somehow strange, if one considers that paragraphs (b) and (c) concern the very situation arising in the *Achille Lauro* case which was at the origin of the Rome Convention. In many cases, however, jurisdiction will be established also in these situations on the basis of paragraph 4, which sets out the third of the above-mentioned cases:

Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 in cases where the alleged offender is present in its territory and it does not extradite him to any of the State parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.

The presence of the alleged offender in the territory of a contracting State is considered as a connecting factor sufficient as a basis for setting forth the obligation to establish jurisdiction. Jurisdiction based on the mere presence of the offender in the territory need not be established, however, in case the contracting State extradites the alleged offender to one of the States which have established jurisdiction under paragraphs 1 and 2.<sup>18</sup> Consequently, whenever a State has not established jurisdiction under paragraph 2, the State in whose territory the alleged offender is present is more likely to be obliged to establish its jurisdiction.

When jurisdiction is established according to article 6, the obligation *aut dedere aut judicare* applies. Article 10, paragraph 1, provides as follows:

The State Party in the territory of which the offender or the alleged offender is found shall, in cases to which article 6 applies, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the law of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of grave nature under the law of that State.

Extradition is made easier by a series of provisions. The most important provide as follows. The offences set out in the Convention shall be deemed to be extraditable offences under any extradition treaty in force between any of the State Parties.<sup>19</sup> State parties shall include these offences among the extraditable offences in any future extradition treaty.<sup>20</sup> States Parties that do not make extradition conditional upon the presence of a treaty shall consider the offences set out in the Convention as extraditable between themselves,<sup>21</sup> while those which make extradition conditional upon the existence of a treaty may *at their option* consider the Convention as a basis for extradition for the

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<sup>18</sup> In the light of this provision the importance of the obligation to notify the establishment of jurisdiction under art 6, para 2, becomes clear. How could otherwise a State in whose territory the alleged offender is found know whether there is a possibility of extraditing him to a State which has established jurisdiction under art 6, para 2?

<sup>19</sup> Art 11, para 1.

<sup>20</sup> Art 11, para 1.

<sup>21</sup> Art 11, para 3.

offences set out in article 3.<sup>22</sup> Assistance in connection with criminal proceedings brought in respect to the offences set forth in the Convention shall be afforded by States parties to one another.<sup>23</sup>

#### SECTION 6. The "Deficiencies" of the Convention

It has been said that the Rome Convention presents certain deficiencies.<sup>24</sup> According to this opinion, its provisions are not free of loopholes which might permit to perpetrators of offences to escape punishment. Even though the arguments put forward deserve attention, it would seem that these "deficiencies" and "loopholes" are not major ones, especially as regards offences different from those linked to politically motivated terrorism.

Perhaps the most relevant deficiency is that there is no real obligation to submit offenders to criminal jurisdiction and consequently to punish them. A State party, as we have seen, has the obligation, if it does not extradite, to "submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the law of that State" (article 11, paragraph 1). Even though the same provision adds that "those authorities shall take their decision in the same manner as in the case of any other offence of a gravenature under the law of that State", this does not entail automatically that the alleged offender will be prosecuted and brought before an independent court of criminal justice. As it has been remarked by Professor Francioni:

...by focusing on prosecution, the Convention allows national authorities – especially in those countries in which the prosecutor depends on the executive branch – to delay or even elude an effective criminal judgment.<sup>25</sup>

While this certainly is a well founded observation, it must be underlined that the formulation just quoted of article 11 corresponds to those set out in similar conventions, and takes into account the fact that in many countries the judiciary is independent from the executive power, and that sometimes prosecutors do not depend from the government.

A second possible loophole has been seen in the provision, mentioned above, according to which, when a State which makes extradition

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<sup>22</sup> Art 11, para 2

<sup>23</sup> Art 12.

<sup>24</sup> Francioni, "Maritime Terrorism *etc*" quoted at note 9, pp 282-285.

<sup>25</sup> "Maritime Terrorism *etc*", quoted at note 9, p 284.

conditional upon the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, *it may, at its option*, consider the Convention as a basis for extradition (article 11, paragraph 2). In this case the obligation to extradite could be frustrated by the will of the State in whose territory the alleged offender is found. This would not extend, however, to the obligation to submit the case for prosecution. The importance of this obligation in alternative to that of extradition appears in full light when one considers that in well known cases the State in which alleged offenders or offenders found themselves preferred to hand them over to the national State of the offenders even in presence of requests for extradition from the State in whose territory the offence had been committed. Such behaviour, as between States parties to the Convention, would be a violation of treaty obligations. It must be underlined that these cases are particularly likely when the offence presents terrorist connotations.

A third deficiency has been seen in that there is no provision in the Convention indicating that the exception for political offences to the obligation of extradition does not apply. It must be recognised that it could be argued that the Convention would be no obstacle to the application of the doctrine of non-extradition of persons accused of political offences as, according to article 11, paragraphs 2 and 3, quoted above, "extradition shall be subject to the other conditions provided by the law of the requested State Party". This certainly is a potential loophole of importance, even though limited to those States that have in their domestic criminal law the principle of non-extradition for criminal offences, and applicable, in practice, mostly to acts of terrorism. It must also be added that the State which refuses extradition to a State having established its jurisdiction under the Convention because of the political character of the offence under its legislation, would be violating the Convention if it did not go seriously through the steps towards prosecution.

#### *SECTION 7. Settlement of Disputes*

As it emerges from the brief survey of the aspects of the Convention in which deficiencies and loopholes are claimed to exist, it seems evident that there may be situations in which disputes arise at to whether a State party has complied with the Convention. It becomes important that States parties be in a position to resort to third party dispute-settlement mechanisms. These mechanisms can function as a check on too loose interpretations and bad faith implementation of the obligations under the Convention. In particular, the possibility to submit disputes concerning the interpretation of the Convention

to judicial or arbitral means of settlement can permit to clarify whether certain reservations not explicitly authorized by the Convention are allowed under international law.<sup>26</sup>

Article 16, paragraph 1, of the Convention, provides that all disputes which cannot be settled within a reasonable time by negotiation, shall be submitted at the request of one of the parties to arbitration, and that, if, within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any party "may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court". This is a rather tight clause which permits arbitral or judicial settlement of disputes concerning the interpretation or application of the Convention at the initiative of one of the parties to the dispute.

A State may, however, according to paragraph 2 of article 16, at signature, ratification acceptance or approval of the Convention, declare that "it does not consider itself bound by any or all of the provisions of paragraph 1". The possibility of making this reservation weakens considerably the compulsory settlement clause of paragraph 1. In fact, the impact of paragraph 2 of article 16, has been relatively modest among the States for which the Convention is now in force. Out of 33 of them only four, Argentina, China, Egypt and France, have made the reservation. It must be added that, under article 16, paragraph 3, while States which have made the reservation may withdraw it at any time, States parties can make the reservation only at the time of signature, ratification, acceptance or approval.

#### *SECTION 8. The Potential Usefulness of the Rome Convention*

Notwithstanding the above examined deficiencies, the Rome Convention of 1988, as well as its Protocol on fixed platforms, may be a useful instrument in order to fight efficaciously acts of violence at sea. Without affecting rules of international law "pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag" as explicitly stated in article 9, the mechanism

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<sup>26</sup> Such clarifications might concern reservations such as those made by Chile (according to which the Convention shall not apply "to incidents that occur in its internal waters and in the waters of the Magellan Strait") and by Egypt ("with regard to the application of the Convention to seagoing ships in internal waters which are scheduled to navigate beyond territorial waters" and to art 6, para 2, because it permits "the optional jurisdiction of blackmailed States (which are asked by the perpetrators of acts of terrorism to do or abstain from doing any act)").

set out by the Convention is such as to make it difficult to offenders to escape justice. Their behaviour is seen as a behaviour of international concern. The existence of the obligations of extraditing or submitting to authorities for prosecution together with the various obligation of co-operation, should prove a reasonably powerful deterrent and in any case a reasonably efficient tool for suppression.

The efficacy of the Convention depends, however, on its being widely ratified, or at least of its being widely ratified in the region where the offence has been committed. Ten years after its conclusion and six years after its entry into force, this seems to be the weak point of the Convention. The contacting parties, as at 31 December 1997, were 33. Admittedly, since the 1st March 1992 when it entered into force because of the ratification by 15 States,<sup>27</sup> instruments of ratification and accession have been slowly, but steadily, coming in. Thirty-three is however still a rather low figure for a Convention whose purpose is to eliminate "safe havens" for perpetrators of acts of violence at sea. From a regional point of view, the States bound by the Convention are scattered all over the world, with a certain prevalence for the European region (17 States parties) There is no region, and especially no sea, whose States are all or mostly parties to the Convention. The African and Asian regions' representation is particularly low. In Asia, for instance, the parties are only three, China, Lebanon and the Seychelles.

It would seem important that, when studying means for combating violence at sea, States should not only envisage new instruments, but look closely at the advantages that this particular existing instrument entails. They would, in particular, be well advised if they looked at the matter considering that the efficacy of the Convention, and consequently its usefulness for combating violence at sea, grows with the growth of the number of parties bound by it. Regional efforts could be made to promote and co-ordinate ratifications and accession by States of one particular region or sea.

Article 20 of the Convention provides that, at the request of one third of the States Parties, the IMO shall convene a conference of the States Parties for the purpose of revising or amending the Convention. Admittedly, such conference would be an imperfect means to promote new ratifications and accessions, as only States Parties would participate in it. It could, this notwithstanding, eliminate some of the above mentioned deficiencies, and especially take into account obstacles that make it difficult for non-parties to ratify the Convention or to accede

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<sup>27</sup> Art 18 of the Convention.



to it. Its main effect should be to raise once again the attention of the international community for this Convention.

In conclusion, it would seem that new efforts, at a regional level and within IMO to promote wider ratification of the Convention, including, possibly but not necessarily, the convening of a review Conference, would be useful in order to take full advantage of this instrument which can be of service to the international community in order to combat violence at sea.

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