

No. S 61

CONSTITUTION OF BRUNEI DARUSSALAM
(Order under Article 83(3))

MARITIME OFFENCES (SHIPS AND FIXED PLATFORMS) ORDER, 2007

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CONSTITUTION OF BRUNEI DARUSSALAM
(Order under Article 83(3))

MARITIME OFFENCES (SHIPS AND FIXED PLATFORMS) ORDER, 2007

In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

PART I

PRELIMINARY

Citation and long title.

1. (1) This Order may be cited as the Maritime Offences (Ships and Fixed Platforms) Order, 2007.

(2) The long title of this Order is "An Order to give effect to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, all signed at Rome on 10 March 1988".

Interpretation.

2. In this Order, unless the context otherwise requires —

"act of violence" means —

- (a) any act done in Brunei Darussalam which constitutes the offence of murder, attempted murder, culpable homicide, voluntarily causing grievous hurt, voluntarily causing hurt, wrongful restraint, criminal intimidation, wrongful confinement or kidnapping;
- (b) carrying, possessing or having under control any arms, explosives or offensive weapons with the intention of committing an offence mentioned in paragraph (a); or
- (c) any act done outside Brunei Darussalam which, if done in Brunei Darussalam, would constitute an offence mentioned in paragraphs (a) or (b);

"Convention" means the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation done at Rome on 10th March 1988, as amended from time to time, as set out in the First Schedule;

"Convention State" means a State Party to the Convention;

"fixed platform" means an artificial island, installation or structure permanently attached to the seabed for the purpose of exploration for, or exploitation of, resources or for other economic purposes;

"foreign state" means a state other than Brunei Darussalam;

"grievous hurt" has the same meaning as in section 322 of the Penal Code (Chapter 22);

"hurt" has the same meaning as in section 321 of the Penal Code (Chapter 22);

"Minister" means the Minister of Communications;

"naval auxiliary" includes military and air force;

"Protocol" means the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf done at Rome on 10th March 1988, as amended from time to time, as set out in the Second Schedule;

"Protocol State" means a State Party to the Protocol;

"ship" means a vessel of any type whatsoever not permanently attached to the seabed or which has been withdrawn from navigation or laid up, including a dynamically supported craft, a submersible and any other floating craft;

"state" includes a territory;

"territorial sea" —

- (a) in relation to Brunei Darussalam, has the meaning declared in section 2(1) of the Territorial Waters of Brunei Act (Chapter 138);
- (b) in relation to any other state, is defined in accordance with international law;

"unlawfully" —

- (a) in relation to the commission of an act in Brunei Darussalam, means so as (apart from this Order) to constitute an offence under any written law in force in Brunei Darussalam; and
- (b) in relation to the commission of an act outside Brunei Darussalam, means so that the commission of the act would (apart from this Order) have been an offence under any written law in force in Brunei Darussalam if it had been committed in Brunei Darussalam.

"warship" means a ship belonging to the armed forces of a state and bearing distinguishing external marks, under the command of an officer duly commissioned by the Government of that state, and manned by a crew which is under regular armed services discipline.

Application to other written laws.

3. Offences created by this Order shall be —

- (a) offences to which the Criminal Conduct (Recovery of Proceeds) Order, 2000 (S 52/00) or any other similar written law apply;
- (b) offences in respect of which extradition may be granted under the Extradition Order, 2006 (S 10/06) or any written law relating to extradition;
- (c) offences in respect of which mutual legal assistance may be granted under the Mutual Assistance in Criminal Matters Order, 2005 (S 7/05).

Conviction under foreign laws.

4. If a person has been convicted in a foreign state of an offence against the law of that state in respect of any conduct, he is not liable to be convicted of any offence against this Order in respect of that conduct.

PART II

OFFENCES

Hijacking of ships.

5. (1) Subject to subsection (2), a person who unlawfully, by the use of force or by threats of any kind, seizes a ship or exercises control of it, shall be guilty of an offence, whatever his nationality and whether the ship is in Brunei Darussalam or elsewhere.

(2) Subsection (1) does not apply in relation to a warship or any other ship used as a naval auxiliary or in customs or law enforcement service unless —

- (a) the person seizing or exercising control of the ship is a citizen of Brunei Darussalam;
- (b) the act is committed in Brunei Darussalam; or
- (c) the ship is used in the naval, customs or law enforcement service of Brunei Darussalam.

Seizing or exercising control of fixed platforms.

6. A person who unlawfully, by the use of force or by threats of any kind, seizes a fixed platform or exercises control of it, shall be guilty of an offence, whatever his nationality and whether the fixed platform is in Brunei Darussalam or elsewhere.

Destroying ships or fixed platforms or endangering their safety.

7. (1) Subject to subsection (5), a person who unlawfully and intentionally —
- (a) destroys a ship or a fixed platform;
 - (b) damages a ship, its cargo or a fixed platform so as to endanger, or to be likely to endanger, the safe navigation of the ship, or as the case may be, the safety of the platform; or
 - (c) commits on board a ship or on a fixed platform an act of violence which is likely to endanger the safe navigation of the ship, or as the case may be, the safety of the platform,

shall be guilty of an offence.

(2) Subject to subsection (5), a person who unlawfully and intentionally places, or causes to be placed, on a ship or fixed platform any device or substance which —

- (a) in the case of a ship, is likely to destroy the ship or is likely so to damage it or its cargo as to endanger its safe navigation; or
- (b) in the case of a fixed platform, is likely to destroy the fixed platform or so to damage it as to endanger its safety,

shall be guilty of an offence.

(3) Nothing in subsection (2) is to be construed as limiting the circumstances in which the commission of any act —

- (a) may constitute an offence under subsection (1); or
- (b) may constitute attempting or conspiring to commit or abetting the commission of the offence.

(4) Except as provided by subsection (5), subsections (1) and (2) shall apply whether any act referred to in those subsections is committed in Brunei Darussalam or elsewhere, whatever the nationality of the person committing the act and in the case of a ship, whatever the state in which the ship is registered.

(5) Subsections (1) and (2) do not apply in relation to any act committed in relation to a warship or any other ship used as a naval auxiliary or in customs or law enforcement service unless —

- (a) the person committing the act is a citizen of Brunei Darussalam;
- (b) the act is committed in Brunei Darussalam; or
- (c) the ship is used in the naval, customs or law enforcement service of Brunei Darussalam.

Other acts endangering or likely to endanger safe navigation.

8. (1) Subject to subsection (6), any person who unlawfully and intentionally —

- (a) destroys or damages any property to which this section applies; or
- (b) seriously interferes with the operation of that property,

where the destruction, damage or interference is likely to endanger the safe navigation of a ship, shall be guilty of an offence.

(2) Subsection (1) applies to any property used for the provision of maritime navigation facilities, including any land, building or ship so used, and including any apparatus or equipment so used, whether it is on board a ship or elsewhere.

(3) Subject to subsection (6), any person who intentionally communicates any information which he knows to be false in a material particular, where the communication of the information endangers the safe navigation of any ship, shall be guilty of an offence.

(4) It shall be a defence for a person charged with an offence under subsection (3) to prove that, when he communicated the information, he was lawfully employed to perform duties which consisted of or included the communication of information and that he communicated the information in good faith in performance of those duties.

(5) Except as provided by subsection (6), subsections (1) and (3) shall apply whether any act referred to in those subsections is committed in Brunei Darussalam or elsewhere, whatever the nationality of the person committing the act and in the case of a ship, whatever the state in which the ship is registered.

(6) For the purposes of subsections (1) and (3), any danger or likelihood of danger, to the safe navigation of a warship or any other ship used as a naval auxiliary or in customs or law enforcement service is to be disregarded unless —

- (a) the person committing the act is a citizen of Brunei Darussalam;
- (b) the act is committed in Brunei Darussalam; or
- (c) the ship is used in the naval, customs or law enforcement service of Brunei Darussalam.

Offences involving threats.

9. (1) A person shall be guilty of an offence if —

- (a) in order to compel any other person to do or abstain from doing any act, he threatens that he or some other person will do in relation to any ship or fixed platform an act which is an offence by virtue of section 7(1); and
- (b) the making of that threat is likely to endanger the safe navigation of the ship or, as the case may be, the safety of the fixed platform.

(2) Subject to subsection (4), a person commits an offence if —

- (a) in order to compel any other person to do or abstain from doing any act, he threatens that he or some other person will do an act which is an offence by virtue of section 8(1); and
- (b) the making of that threat is likely to endanger the safe navigation of any ship.

(3) Except as provided by subsection (4), subsections (1) and (2) shall apply whether any act referred to in those subsections is committed in Brunei Darussalam or elsewhere, whatever the nationality of the person committing the act and in the case of a ship, whatever the state in which the ship is registered.

(4) Section 8(6) shall apply for the purposes of subsection (2)(b) as it applies for the purposes of sections 8(1) and (3).

Ancillary offences.

10. (1) Any act of violence done by any person in connection with an offence under sections 5, 6, 7 or 8 committed or attempted to be committed by him shall be deemed to have been committed in Brunei Darussalam and shall constitute an offence punishable under the law in force in Brunei Darussalam applicable to it, wherever the act of violence was committed, whatever the state in which the ship concerned is registered (if any), and whatever the nationality or citizenship of the person committing or attempting to commit the act.

(2) Subsection (1) is without prejudice to section 177 of the Merchant Shipping Order, 2002 [S 27/02].

(3) Any person in Brunei Darussalam who abets the commission elsewhere of any act which would —

- (a) but for section 5(2), be an offence under that section;
- (b) but for section 7(5), be an offence under that section;
- (c) but for section 8(6), be an offence under that section; or
- (d) but for section 9(4), be an offence under that section,

shall be guilty of an offence.

Master's power of delivery.

11. (1) If the master of a ship, wherever that ship may be, and whatever the state (if any) in which it may be registered, has reasonable grounds to believe that any person on board the ship has —

- (a) committed any offence under sections 5, 7, 8, 9 or 10;
- (b) attempted to commit such offence; or
- (c) abetted the commission of such offence,

in relation to any ship other than a warship or other ship used as a naval auxiliary or in customs or law enforcement service, he may deliver that person to an appropriate officer in Brunei Darussalam or any other Convention State.

(2) The master of a ship who intends to deliver any person under subsection (1) shall notify an appropriate officer —

- (a) of his intention to so deliver that person; and
- (b) of his reasons for intending to do so.

(3) A notification under subsection (2) shall be given —

- (a) if it is reasonably practicable to do so, before the ship has entered the territorial sea of the state concerned; or
- (b) in any other case, as soon as is reasonably practicable.

(4) When the master of a ship delivers any person under subsection (1), he shall —

- (a) make to an appropriate officer of that state such oral or written statements relating to the alleged offence as that officer may reasonably require; and
- (b) deliver or make known to an appropriate officer of that state such other evidence relating to the alleged offence as is in his possession.

(5) A master of a ship who fails, without reasonable excuse, to comply with subsections (2) or (4) shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

(6) It is a defence for the master of a ship charged with an offence under subsection (5) for a contravention of subsection (2) to show that —

(a) he believed on reasonable grounds that the giving of a notification would endanger the safety of the ship; and

(b) except where the state concerned is Brunei Darussalam —

(i) he had notified some other competent authority in the state concerned within the time required by subsection (3); or

(ii) he had believed on reasonable grounds that the giving of a notification to any competent authority in that state would endanger the safety of the ship.

(7) In this section —

"appropriate officer" means —

(a) in relation to Brunei Darussalam, a police officer and any other person or class of person appointed by the Minister to be an appropriate officer for the purposes of this Order;

(b) in relation to any other Convention State, an officer designated by that Convention State to carry out the relevant duty of an appropriate officer under this section;

"master" includes every person, except a pilot, having command or charge of a ship.

PART III

GENERAL

General penalty.

12. (1) Any person guilty of an offence under this Order for which no penalty is expressly provided shall be liable on conviction to imprisonment which may extend to life.

(2) For the avoidance of doubt, subsection (1) shall not apply to any act which constitutes an offence punishable under the law in force in Brunei Darussalam applicable to it by virtue of section 10(1).

Jurisdiction.

13. The High Court shall have jurisdiction to try any offence under this Order whether the act or omission which constitutes the offence is committed within or outside Brunei Darussalam.

Offences deemed to be seizable and non-bailable.

14. Every offence under this Order shall be seizable and non-bailable for the purposes of the Criminal Procedure Code [Chapter 7].

Written consent of Public Prosecutor required.

15. (1) No prosecution for an offence under this Order shall be instituted except by consent of the Public Prosecutor.

(2) Notwithstanding that consent has not been given in relation to the offence in accordance with subsection (1) —

- (a) a person may be arrested for an offence under this Order;
- (b) a warrant for the arrest of any person in respect of any offence under this Order may be issued and executed;
- (c) a person may be charged with an offence under this Order; and
- (d) a person charged with any offence under this Order may be remanded in custody or granted bail,

but no further steps in the proceedings in relation to the offence shall be taken until the consent of the Public Prosecutor has been obtained.

Attempts, abetment and conspiracy.

16. (1) Whoever attempts to commit any offence punishable under this Order or abets the commission of such offence shall be punished with the punishment provided for such offence.

(2) A person who conspires with another person to commit an offence under this Order shall be guilty of the offence of conspiracy to commit that offence and shall be punished as if the offence to which the conspiracy is related had been committed.

Evidence on certain matters.

17. (1) For the purpose of any proceedings under this Order, a certificate may be issued by the Attorney General containing any of the following statements —

- (a) that a specified State was, at any specified time, a Convention State or a Protocol State;
- (b) the extent to which a specified Convention State or a Protocol State has, at any specified time, extended its jurisdiction under Article 6(2) of the Convention or Article 3(2) of the Protocol (as the case may be);
- (c) that any specified waters were, at any specified time —
 - (i) within the territorial sea or internal waters or above the continental shelf of Brunei Darussalam or of a specified foreign state; or
 - (ii) beyond the territorial sea of Brunei Darussalam or of a specified foreign state.

(2) A court shall take judicial notice of the facts stated in such certificate.

Regulations.

18. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations —

- (a) to give effect to the provisions of any amendment to or substitution of any international convention or agreement concerning or relating to the suppression of unlawful acts against the safety of maritime navigation and of fixed platforms located on the continental shelf that are binding on Brunei Darussalam; or
- (b) which are necessary or expedient for giving effect to and carrying out the provisions of this Order and for the due administration thereof.

(2) Such regulations may include such incidental, consequential and supplementary provisions as the Minister considers necessary or expedient.

FIRST SCHEDULE

[section 2]

THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS
AGAINST THE SAFETY OF MARITIME NAVIGATION
SIGNED AT ROME 10 MARCH 1988

The States Parties to this Convention,

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,

RECOGNIZING 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 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,

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 all unlawful acts against the safety of maritime navigation, and the prosecution and punishment of their perpetrators,

RECALLING resolution 40/61 of the General Assembly of the United Nations of 9 December 1985 which, *inter alia*, "urges all States unilaterally and in co-operation with other States, as well as relevant United Nations organs, to contribute to the progressive elimination of causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien occupation, that may give rise to international terrorism and may endanger international peace and security",

RECALLING FURTHER that resolution 40/61 "unequivocally condemns, as criminal, all acts, methods and practices of terrorism wherever and by whomever

committed, including those which jeopardize friendly relations among States and their security",

RECALLING ALSO that by resolution 40/61, the International Maritime Organization was invited to "study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures",

HAVING IN MIND resolution A.584(14) of 20 November 1985, of the Assembly of the International Maritime Organization, which called for development of measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crews,

NOTING that acts of the crew which are subject to normal shipboard discipline are outside the purview of this Convention,

AFFIRMING the desirability of monitoring rules and standards relating to the prevention and control of unlawful acts against ships and persons on board ships, with a view to updating them as necessary, and, to this effect, taking note with satisfaction of the Measures to Prevent Unlawful Acts against Passengers and Crews on Board Ships, recommended by the Maritime Safety Committee of the International Maritime Organization,

AFFIRMING FURTHER that matters not regulated by this Convention 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 or maritime navigation, strictly to comply with rules and principles of general international law,

HAVE AGREED as follows:

ARTICLE 1

For the purposes of this Convention, "ship" means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft.

ARTICLE 2

1. This Convention does not apply to:

- (a) a warship; or
- (b) a ship owned or operated by a State when being used as a naval auxiliary or for customs or police purposes; or

(c) a ship which has been withdrawn from navigation or laid up.

2. Nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes.

ARTICLE 3

1. Any person commits an offence if that person unlawfully and intentionally:

- (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 any 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 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 to be false, thereby endangering the safe navigation of a 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).

2. Any person also commits an offence if that person:

- (a) attempts to commit any of the offences set forth in paragraph 1; or
- (b) abets the commission of any of the offences set forth in paragraph 1 perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or
- (c) threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in

paragraph 1, subparagraphs (b), (c) and (e), if that threat is likely to endanger the safe navigation of the ship in question.

ARTICLE 4

1. This Convention applies if the ship is navigating or is scheduled to navigate into, through or from 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.

ARTICLE 5

Each State Party shall make the offences set forth in article 3 punishable by appropriate penalties which take into account the grave nature of those offences.

ARTICLE 6

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 when 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.

2. A State Party may also establish its jurisdiction over any such 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 abstain from doing any act.

3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the International Maritime Organization

(hereinafter referred to as "the Secretary-General"). If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

4. 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 States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.

5. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

ARTICLE 7

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present shall, in accordance with its law, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts, in accordance with its own legislation.

3. Any person regarding whom the measures referred to in paragraph 1 are being taken shall be entitled to:

(a) communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;

(b) be visited by a representative of that State.

4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or the alleged offender is present, subject to the proviso that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify the States which have established jurisdiction in accordance with article 6, paragraph 1 and, if it considers it advisable, any other interested States, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly

report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

ARTICLE 8

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

2. The flag State shall ensure that the master of its ship is obliged, whenever practicable, and if possible before entering the territorial sea of the receiving State carrying on board any person whom the master intends to deliver in accordance with paragraph 1, to give notification to the authorities of the receiving State of his intention to deliver such person and the reasons therefor.

3. The receiving State shall accept the delivery, except where it has grounds to consider that the Convention is not applicable to the acts giving rise to the delivery, and shall proceed in accordance with the provisions of article 7. Any refusal to accept a delivery shall be accompanied by a statement of the reasons for refusal.

4. The flag State shall ensure that the master of its ship is obliged to furnish the authorities of the receiving State with the evidence in the master's possession which pertains to the alleged offence.

5. A receiving State which has accepted the delivery of a person in accordance with paragraph 3 may, in turn, request the flag State to accept delivery of that person. The flag State shall consider any such request, and if it accedes to the request it shall proceed in accordance with article 7. If the flag State declines a request, it shall furnish the receiving State with a statement of the reasons therefor.

ARTICLE 9

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.

ARTICLE 10

1. 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 laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 3 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided for such proceedings by the law of the State in the territory of which he is present.

ARTICLE 11

1. The offences set forth in article 3 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 3. Extradition shall be subject to the other conditions provided by the law of the requested State Party.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 3 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 3 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in a place within the jurisdiction of the State Party requesting extradition.

5. A State Party which receives more than one request for extradition from States which have established jurisdiction in accordance with article 7 and which decides not to prosecute shall, in selecting the State to which the offender or alleged offender is to be extradited, pay due regard to the interests and responsibilities of the State Party whose flag the ship was flying at the time of the commission of the offence.

6. In considering a request for the extradition of an alleged offender pursuant to this Convention, the requested State shall pay due regard to whether his rights as set forth in article 7, paragraph 3, can be effected in the requesting State.

7. With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

ARTICLE 12

1. State Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 3, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties on mutual assistance that may exist between them. In the absence of such treaties, States Parties shall afford each other assistance in accordance with their national law.

ARTICLE 13

1. States Parties shall co-operate in the prevention of the offences set forth in article 3, particularly by:

- (a) taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories;
- (b) exchanging information in accordance with their national law, and co-ordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in article 3.

2. When, due to the commission of an offence set forth in article 3, the passage of a ship has been delayed or interrupted, any State Party in whose territory the ship or passengers or crew are present shall be bound to exercise all possible efforts to avoid a ship, its passengers, crew or cargo being unduly detained or delayed.

ARTICLE 14

Any State Party having reason to believe that an offence set forth in article 3 will be committed shall, in accordance with its national law, furnish as promptly as possible any relevant information in its possession to those States which it believes would be the States having established jurisdiction in accordance with article 6.

ARTICLE 15

1. Each State Party shall, in accordance with its national law, provide to the Secretary-General, as promptly as possible, any relevant information in its possession concerning:

- (a) the circumstances of the offence;
- (b) the action taken pursuant to article 13, paragraph 2;
- (c) the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.

2. The State Party where the alleged offender is prosecuted shall, in accordance with its national law, communicate the final outcome of the proceedings to the Secretary-General.

3. The information transmitted in accordance with paragraphs 1 and 2 shall be communicated by the Secretary-General to all States Parties, to Members of the International Maritime Organization (hereinafter referred to as "the Organization"), to the other States concerned, and to the appropriate international intergovernmental organizations.

ARTICLE 16

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. 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 one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. 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 or all of the provisions of paragraph 1. The other States Parties shall not be bound by those provisions with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 may, at any time, withdraw that reservation by notification to the Secretary-General.

ARTICLE 17

1. This Convention shall be open for signature at Rome on 10 March 1988 by States participating in the International Conference on the Suppression of Unlawful Acts against the Safety of Maritime Navigation and at the Headquarters of the Organization by all States from 14 March 1988 to 9 March 1989. It shall thereafter remain open for accession.

2. States may express their consent to be bound by this Convention by:

- (a) signature without reservation as to ratification, acceptance or approval;
or
- (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
- (c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

ARTICLE 18

1. This Convention shall enter into force ninety days following the date on which fifteen States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession in respect thereof.

2. For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Convention after the conditions for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 19

1. This Convention may be denounced by any State Party at any time after the expiry of one year from the date on which this Convention enters into force for that State.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.

ARTICLE 20

1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.
2. The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of one third of the States Parties, or ten States Parties, whichever is the higher figure.
3. Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

ARTICLE 21

1. This Convention shall be deposited with the Secretary-General.
2. The Secretary-General shall:
 - (a) inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;
 - (ii) the date of the entry into force of this Convention;
 - (iii) the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect;
 - (iv) the receipt of any declaration or notification made under this Convention;
 - (b) transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.
3. As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 22

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.

DONE AT ROME this tenth day of March one thousand nine hundred and eighty-eight.

SECOND SCHEDULE

(section 2)

PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF SIGNED ON 10 MARCH 1988

The States Parties to this Protocol,

BEING PARTIES to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation,

RECOGNIZING that the reasons for which the Convention was elaborated also apply to fixed platforms located on the continental shelf,

TAKING ACCOUNT of the provisions of that Convention,

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

HAVE AGREED as follows:

ARTICLE 1

1. The provisions of articles 5 and 7 and of articles 10 to 16 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (hereinafter referred to as "the Convention") shall also apply *mutatis mutandis* to the offences set forth in article 2 of this Protocol where such offences are committed on board or against fixed platforms located on the continental shelf.

2. In cases where this Protocol 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 in whose internal waters or territorial sea the fixed platform is located.

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

ARTICLE 2

1. Any person commits an offence if that person unlawfully and intentionally:
 - (a) seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation; or
 - (b) performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety; or
 - (c) destroys a fixed platform or causes damage to it which is likely to endanger its safety; or
 - (d) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety; or
 - (e) 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 (d).
2. Any person also commits an offence if that person:
 - (a) attempts to commit any of the offences set forth in paragraph 1; or
 - (b) abets the commission of any such offences perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or
 - (c) threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b) and (c), if that threat is likely to endanger the safety of the fixed platforms.

ARTICLE 3

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when the offence is committed:
 - (a) against or on board a fixed platform while it is located on the continental shelf of that State; or

(b) by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) it is committed by a stateless person whose habitual residence is in that State;

(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 abstain from doing any act.

3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the International Maritime Organization (hereinafter referred to as "the Secretary-General"). If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

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

5. This Protocol does not exclude any criminal jurisdiction exercised in accordance with national law.

ARTICLE 4

Nothing in this Protocol shall affect in any way the rules of international law pertaining to fixed platforms located on the continental shelf.

ARTICLE 5

1. This Protocol shall be open for signature at Rome on 10 March 1988 and at the Headquarters of the International Maritime Organization (hereinafter referred to as "the Organization") from 14 March 1988 to 9 March 1989 by any State which has signed the Convention. It shall thereafter remain open for accession.

2. States may express their consent to be bound by this Protocol by:

(a) signature without reservation as to ratification, acceptance or approval; or

(b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4. Only a State which has signed the Convention without reservation as to ratification, acceptance or approval, or has ratified, accepted, approved or acceded to the Convention may become a Party to this Protocol.

ARTICLE 6

1. This Protocol shall enter into force ninety days following the date on which three States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession in respect thereof. However, this Protocol shall not enter into force before the Convention has entered into force.

2. For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Protocol after the conditions for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 7

1. This Protocol may be denounced by any State Party at any time after the expiry of one year from the date on which this Protocol enters into force for that State.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.

4. A denunciation of the Convention by a State Party shall be deemed to be a denunciation of this Protocol by that Party.

ARTICLE 8

1. A conference for the purpose of revising or amending this Protocol may be convened by the Organization.

2. The Secretary-General shall convene a conference of the States Parties to this Protocol for revising or amending the Protocol, at the request of one third of the States Parties, or five States Parties, whichever is the higher figure.

3. Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Protocol shall be deemed to apply to the Protocol as amended.

ARTICLE 9

1. This Protocol shall be deposited with the Secretary-General.

2. The Secretary-General shall:

(a) inform all States which have signed this Protocol or acceded thereto, and all Members of the Organization, of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) the date of entry into force of this Protocol;

(iii) the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the date on which the denunciation takes effect;

(iv) the receipt of any declaration or notification made under this Protocol or under the Convention, concerning this Protocol;

(b) transmit certified true copies of this Protocol to all States which have signed this Protocol or acceded thereto.

3. As soon as this Protocol enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 10

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

DONE AT ROME this tenth day of March one thousand nine hundred and eighty-eight.

Made this 7th. day of Zulhijjah, 1428 Hijriah corresponding to the 17th. day of December, 2007 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM