

CHAPTER TEN

PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF 1988 (‘Rome Protocol’)

1. The reason for the Protocol was the obvious danger to the increasing number of fixed offshore platforms, used mainly by the oil industry.
2. The Protocol was adopted on 10 March 1988 at a conference in Rome convened by the International Maritime Organisation (IMO), which also adopted that day the Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (‘the Convention’). The Protocol entered into force on the same date as the Convention, 1 March 1992. As of September 2002 there were 55 Parties to the Protocol, including 14 Commonwealth States. The text of the Protocol is at page 214 below; and the complete list of ratifications and accessions is at page 218 below.

Scope of the Convention

2. The Protocol piggybacks on the Convention. *Article 1(1)* provides that *Articles 5, 7 and 10 to 16* of the Convention (including exercise of jurisdiction, the *aut dedere aut judicare* rule and extradition) shall apply *mutatis mutandis* to the offences defined in the Protocol where such offences are committed on board or against fixed platforms located on the continental shelf (see paragraph 5 below).
3. Even where the Protocol does not apply pursuant to *Article 1(1)*, it nevertheless applies if the alleged offender has fled and is found in the territory of a Party other than the one in whose internal waters or territorial sea (but, for some inexplicable reason, not the Exclusive Economic Zone) the fixed platform is located: *Article 1(2)* (c.f. *Article 4(2)* of the Convention).

Definition of fixed platform

4. A ‘fixed platform’ is defined in *Article 1(3)* as ‘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’. This dovetails with the definition of ‘ship’ in *Article 1* of the Convention (‘...vessel of any type whatsoever *not permanently attached* to the sea-bed ...’). The Protocol definition therefore excludes mobile off-shore drilling platforms which are attached temporarily to the sea-bed and towed to and from their destinations, and are therefore covered by the Convention.
5. Although the definition of fixed platform refers only to the sea-bed, the preamble, *Articles 1(1), 3, and 4*, and indeed the title of the Protocol, all speak of the ‘continental shelf’. The reason is, once again, poor drafting. There are two sea-beds, the sea-bed of the continental shelf and the deep ocean floor. It is the first with which we are here concerned. *Article 76* of the United Nations Convention on the Law of the Sea 1982¹⁴⁵ defines the continental shelf of a coastal State as comprising

¹⁴⁵ 1833 UNTS 3 (Reg. No. 31363); ILM (1982), p. 1261; UKTS (1999) 82.

‘the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.’

The ‘continental margin’ is defined in the same article as

‘the submerged prolongation of the land mass of the coastal State, and consists of the sea-bed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor...’

Fortunately these well-drafted, but almost incomprehensible terms, are lucidly explained in R. Churchill and A. Lowe, *The Law of the Sea* (3rd ed., Manchester, 1999), at pp. 141 to 159, and in the illuminating illustration at page 30 of that book.

Offences

6. As in *Article 3(1)* of the Convention, *Article 2* lists acts which constitute offences when committed unlawfully and intentionally. It is necessary in this context to include ‘unlawfully’ since there can be circumstances in which force, or the threat of force, may have to be used to carry out a lawful act, such an attack by special forces to regain control of a fixed platform taken over by terrorists.

7. Paragraph 2 lists the offences as:

- (a) seizing or exercising control over a fixed platform by force or threat of force or any other form of intimidation,
- (b) performing an act of violence against a person on board a fixed platform if that act is likely to endanger its safety,
- (c) destroying a fixed platform or causing damage to it which is likely to endanger its safety,
- (d) placing or causing 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) injuring or killing any person in connection with the commission or the attempted commission of any of the offences set forth in (a) to (d).

8. Under paragraph 2(a) and (b), to attempt to commit an offence, or to abet an offence, or to be an accomplice, is itself an offence. But, as in the Convention, it does not include an offence of being an accomplice to an *attempt*, as do the earlier and later conventions. This omission may be rectified in implementing legislation.

9. Paragraph 2(c), follows *Article 3(2)(c)* of the Convention in providing that it is also an offence for a person, in order to compel a physical or juridical person to do or refrain from doing any act, to threaten, with or without a condition, that he or she will commit an offence under subparagraphs *Article 2(1)(b) or (c)*, provided the threat is likely to endanger the safety of the fixed platform. The obligation to make this an offence is qualified by the words ‘as is provided for under national law’. This leaves it to each Party to decide whether or not to provide that the threat must be accompanied by a condition.

Establishment of jurisdiction

10. *Article 3* follows the pattern of *Article 6* of the Convention, adapted to deal with the differences between a fixed platform and a ship. Paragraph 1 requires each Party to establish its jurisdiction over Protocol offences when they are committed (a) against or on board a fixed platform located on the continental shelf of that Party (the nationality of the alleged offender being immaterial); or (b) by one of its nationals (anywhere).

11. Paragraph 2 is identical to *Article 6(2)* of the Convention. It authorises, but does not require, each Party to establish its jurisdiction over a Protocol offence in three other circumstances, (a) when it is committed by a stateless person whose habitual residence is in that State; (b) when one of its nationals is seized, threatened, injured or killed; or (c) when it was committed in an attempt to compel the Party to do or abstain from doing any act. For a fuller explanation, see page 189, para. 19, above.

12. Paragraph 4 is identical in substance to *Article 6(4)* of the Convention in requiring each Party to establish its jurisdiction where the alleged offender is present in its territory and it does not extradite to any of the States mentioned in paragraphs 1 or 2. This provision is necessary in order to implement the *aut dedere aut judicare* rule in *Article 10(1)* of the Convention, as incorporated by *Article 1(1)* of the Protocol.

13. Paragraph 5 is the same as *Article 6(5)* of the Convention.

Saving provision

14. *Article 4* provides that nothing in the Protocol affects the rules of international law pertaining to fixed platforms located on the continental shelf. This was inserted out of caution. The main rules are in the United Nations Convention on the Law of the Sea 1982.¹⁴⁶

Final clauses

15. Although the Protocol borrows most of the articles of the Convention, it must have its very own set of final clauses since, despite its close links with the Convention, the Protocol is nevertheless a treaty in its own right.

Reservations

16. In addition to a declaration regarding dispute settlement under *Article 16(2)* of the Convention, as incorporated, a Party can make a reservation regarding any other provision of the Protocol, provided that it is not contrary to its object and purpose.¹⁴⁷

Accession, denunciation and review

17. If a State did not sign the Protocol by 9 March 1989, it cannot do so now and then ratify the Protocol, but it can become a Party by depositing an instrument of accession with the IMO Secretary-General. *But, a State cannot accede to the Protocol unless it first accedes to the Convention (Article 5)*. A State that has become independent may be able to succeed formally to the Protocol.¹⁴⁸ The Protocol can be denounced (*Article 7*).

18. *Article 8* provides for the possibility of a conference to revise or amend the Protocol. This is normal for IMO treaties.

¹⁴⁶ See, Churchill and Lowe, pp. 153-156.

¹⁴⁷ See p 11, para. 34 above.

¹⁴⁸ See p. 11 para. 35 above.

Implementing legislation

19. Model Legislative Provisions are at page ** below. However, careful consideration will have to be given by each State which is considering becoming a Party to the Convention as to its precise needs for the content of the legislation.

**PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE
SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF**
Signed at Rome, 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 platform.

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.

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.

**STATUS OF RATIFICATION, ACCESSION OF THE PROTOCOL FOR
THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF
FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF,
DONE AT ROME ON 10 MARCH 1988**

Entry into force: 1 March 1992

Status: 66 Parties

- 1 Albania
- 2 Australia
- 3 Austria
- 4 Barbados
- 5 Bolivia
- 6 Botswana
- 7 Bulgaria
- 8 Canada
- 9 Chile
- 10 China
- 11 Cuba
- 12 Cyprus
- 13 Denmark
- 14 Egypt
- 15 El Salvador
- 16 Finland
- 17 France
- 18 Germany
- 19 Greece
- 20 Grenada
- 21 Hungary
- 22 Iceland
- 23 India
- 24 Italy
- 25 Japan
- 26 Kenya
- 27 Lebanon
- 28 Liberia
- 29 Libyan Arab Jamahiriya
- 30 Mali
- 31 Malta
- 32 Marshall Islands
- 33 Mexico
- 34 Monaco
- 35 Morocco
- 36 Netherlands
- 37 New Zealand
- 38 Norway
- 39 Oman
- 40 Pakistan
- 41 Palau

42	Panama
43	Peru
44	Poland
45	Portugal
46	Romania
47	Russian Federation
48	St Vincent & the Grenadines
49	Seychelles
50	Slovakia
51	Spain
52	Sudan
53	Sweden
54	Switzerland
55	Trinidad & Tobago
56	Tunisia
57	Turkey
58	Turkmenistan
59	Ukraine
60	United Kingdom
61	United States
62	Uruguay
63	Uzbekistan
64	Vanuatu
65	Vietnam
66	Yemen

PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF

NOTE

No specific penalties for the offences have been included because of the variation in sentencing practice between states. However the Convention requires penalties that reflect the seriousness of the offence and therefore maximum penalties should be set including, if appropriate, a life sentence.

Whereas a Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf was signed in Rome on March 10, 1988:

And Whereas (name of country) intends acceding to the said Protocol by depositing an instrument of accession with the Secretary – General of the International Maritime Organisation:

And Whereas it is necessary to make legal provision to give effect to (name of country) obligations under the said Protocol :

Now therefore be it enacted by the Parliament of (name of country) as follows:

Short title and date of operation

1. This Act maybe cited as the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf Act, and shall come into operation on such date as the Minister (responsible for Foreign Affairs) certifies by Order published in the Gazette, as the date on which the Protocol enters into force in respect of (name of country).

Interpretation

2. In this Act unless the context otherwise requires –

“fixed platform” means an artificial island, installation or structure permanently attached to the sea bed for the purposes of exploration or exploitation of resources or for other economic purposes;

“Protocol” means the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf signed in Rome on March 10, 1988

Offences

3 (1) Every person who intentionally -
(a) seizes or exercises control over a fixed platform by force or threat of force or any other form of intimidation;

- (b) commits an act of violence against a person on board a fixed platform, being an act which is likely to endanger the safety of that fixed platform;
- (c) destroys or causes damage to a fixed platform, being in either case an act which is likely to endanger the safety of that fixed platform;
- (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 endanger its safety;
- (e) injures or kills any other person in connection with the commission or attempted commission of any of the offences described in paragraphs (a), (b), (c), or (d),

commits an offence under this Act and upon conviction shall be liable to imprisonment for a term of () years.

- (2) Every person who -
 - (a) attempts to commit,
 - (b) abets the commission of,
 - (c) is the accomplice of a person committing or attempting to commit,

an offence under subsection (1) commits an offence and shall be liable to imprisonment for a term of () years.

- (3) Every person who, with the intention of compelling a person to do, or abstain from doing any act, threatens to commit any of the offences described in paragraphs (b) or (c) of subsection (1), which threat is likely to endanger the safety of that fixed platform commits an offence and shall be liable to imprisonment for a term of () years.

Jurisdiction

NOTE

The Protocol contains mandatory and discretionary provisions regarding jurisdiction. In section 4 below, all the basis of jurisdiction mentioned in the Protocol are included with those that are discretionary in italics.

The Protocol contains a “prosecute or extradite” obligation with respect to the offences. In order to meet this requirement, a State must have the jurisdiction to prosecute an offence where the person is present on that State’s territory, regardless of the fact that no basis of jurisdiction set out in 4 (2) (a) – (e) exists. In order to meet this obligation, the State needs to have jurisdiction arising from the person’s presence in that state. One way to incorporate that jurisdiction is through a universal jurisdiction clause based on the presence of the person. This has been reflected in sub section 4(2) (f). If that is considered overly broad, the bracketed and italicized language at the end of 4(2) (f) can be added limiting the application of the section to cases where extradition is not possible. While this second approach is more limited in scope, there may be problems of proof arising from the need to establish that extradition is not possible.

4. (1) All offences under this Act shall be tried by the High Court (highest court exercising original criminal jurisdiction)
- (2) The High Court shall have jurisdiction to try an offence under this Act in every case where the act constituting the offence –
 - (a) is committed against, or on board, a fixed platform located on the continental shelf of (name of country);
 - (b) is committed by a national of (name of country), wherever the act constituting the offence is committed;
 - (c) *is committed by a stateless person whose habitual residence is in (name of country), wherever the act constituting the offence is committed;*
 - (d) *results in –*
 - (i) *the seizure of,*
 - (ii) *a threat to,*
 - (iii) *an injury to, or*
 - (iv) *the killing of,**a national of (name of country) wherever the act constituting the offence is committed;*
 - (e) *is committed in an attempt to compel the Government of (name of country) to do or abstain from doing any act, wherever the act constituting the offence is committed;*
 - (f) is committed by a person who is, after the commission of the act, present in (name of country), wherever the act constituting the offence is committed [*and he or she cannot be extradited to a foreign state having jurisdiction over the offence*].

Extradition

5. (1) The offences described in section 3 shall be deemed to be extraditable offences under the Extradition Act, and accordingly, the provisions of that Act shall apply to, and in relation to, extradition in respect of those offences.
- (2) Where there is, on the date on which this Act comes into operation, an extradition arrangement in force between the Government of (name of country) and a State which is a party to the Protocol, such arrangement shall, for the purposes of the Extradition Act, be deemed to include provision for extradition respect of the offences described in Section 3.
- (3) Where there is no extradition arrangement between the Government of (name of country) and a State which is a party to the Protocol, the Minister (of Foreign Affairs) may, by Order published in the Gazette, treat the Protocol, for the purposes of the Extradition Act, as an extradition arrangement between the Government of (name of country) and such State providing for extradition in respect of the offences described in section 3.

- (4) Where the Government of (name of country) accedes to request by a State which is a party to the Protocol for the extradition of a person accused of an offence described in section 3, the act constituting such offence shall, for the purposes of the Extradition Act, be deemed to have been committed not only in the place where it was committed but also within the jurisdiction of the requesting State.