

A Draft Legislation
incorporating the IMO Rome
**Convention for the Suppression of Unlawful Acts against the
Safety of Maritime Navigation, 1988**
into the
Maritime Navigation (Security) Act, 1996

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Drafting Instructions

During the past couple of decades, the development of the tourist industry in Malta has been very important for the expansion of the Maltese economy and the advance of Malta as a newly independent State. This tourist industry, which constitutes around 60 per cent of our gross yearly income, caters for both airborne tourists as well as seaborne tourists. Airborne tourism is the principal field of tourism, however, seaborne tourism has been a growing field and, as a matter of fact, during the past five years, the number of tourists visiting Malta as part of a cruise has increased three-fold. Developments in the Sea Passengers Terminal as well as the Pinto Wharf have been carried out recently as a result of indications that this kind of tourism is bound to increase in the future. This, however, is subject to one important element - safety on the seas.

Malta, since being an island situated in the middle of the Mediterranean, proves to be in a very strategic position for shipping, however, this obviously

puts the island in a rather precarious situation too. This is so for the Territorial Waters of Malta, which extend for twelve Nautical Miles from the baseline, are bound to be crossed by many vessels sailing through the Mediterranean Sea in the area between the island of the Sicily and the tip of Tunisia, whether these vessels are passenger ships or merchant vessels. Consequently, any incident that would take place within such waters will fall under the jurisdiction of the Maltese Courts.

The Mediterranean basin, unfortunately, is not a very peaceful area. The conflicts that exist in various countries within it, including Northern Africa and Eastern Europe, as well as the escalation of terroristic attacks in the certain parts of the area in recent months, have deeply concerned the international community at large as well as the Government of Malta. Such acts, in fact, could endanger or even take innocent human lives. Furthermore, they could have effect on the safety of navigation of vessels within the Mediterranean Sea - which safety is needed if Malta is to see an increase in seaborne tourism.

As a result of Malta's strategic position in the middle of the Mediterranean Sea, it is possible that attacks affecting the safety of navigation for political or terrorist motives may occur within Malta's jurisdiction and that vessels

coming to Malta be subjected to terrorist attacks and terrorists attempt to seek refuge within the Maltese ports. Recent incidents occurring in Malta indicate that there is a potential of such a threat and measures have to be taken to avoid them. Such incidents, in fact, would certainly affect Malta negatively if the country's legislation is not geared up for such eventualities.

In view of the all this, the Maltese government considers it a priority to ensure that the existing legislation be in conformity with the recent international legislative developments in order to adhere to the drive for international co-operation and effective and practical measures. In this way, attempts will be made to prevent, as far as possible, the carrying out of terrorist attacks, as well as to provide for their prosecution and punishment.

Realising the negative effect of potentially criminal acts on Malta-bound tourists, the Maltese Government has already become party to the Convention on Offences and Certain Other Acts Committed on Board Aircraft, Tokyo 1963, The Convention for the Suppression of Unlawful seizure of Aircraft, The Hague 1970, The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Montreal 1971 and its Protocol dated 1988. These Conventions have all been incorporated in the Civil Aviation (Security) Act enacted on 9th August 1991 by Act XX of 1991.

Since early 1993, the Maltese Government has also become party to the United Nations Law of the Sea Convention. This has been done by **Law of the Sea (Ratification) Act**, Act XII of 1993. This Convention, which is now applicable in Malta, amongst other various important international matters, deals with the problem of piracy in international law. However, it is understood that the provisions dealing with piracy on the sea included in Sections 100 to 107 of the Law of the Sea do not cover all the possible unlawful acts that could endanger the safety of maritime navigation, and consequently a lacuna could ensue if adequate legislative measures are not taken. The international community realised this problem and attempted to solve it by creating another Convention - The Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.

In fact, **Resolution 40/61** of the General Assembly of the United Nations of 9 December 1985, while urging all States to co-operate to eliminate such threats as well as condemning as criminal all the acts which are carried out in order to jeopardize the safety of navigation, invited the International Maritime Organization to make recommendations of the appropriate measures that have to be taken in order to curb the problem of terrorism on board as well as against the ships.

This Resolution led the International Maritime Organization to adopt a Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation agreed upon on 10th March 1988 during its General Assembly in Rome.

Since this Convention was drafted in order to provide monitoring rules and standards relating to the prevention and control of unlawful acts against ships and persons on board ships, the Government of Malta feels that this Convention should be incorporated into our legislation in order to provide for the lacuna currently existing in this field.

You are therefore instructed to incorporate all the terms and provisions provided for in the above-mentioned Convention, in such a way as to faithfully reproduce all the requirements of the International Maritime Organization, in order to ensure effective measures for the prevention of such offences.

The Rome Convention has developed on the lines taken in the airline Conventions of Tokyo (1963), The Hague (1970) and Montreal (1971, 1988). Therefore, since no reservations were expressed by the Government of Malta

when ratifying those conventions and incorporating them into the Maltese law, similar attitude has to be taken in the case of the Rome Convention.

In view of the fact that the offences contemplated in the Convention are of a very serious nature, their commission, as well as an attempted one, should be punished in such a way as to give an example to all as well as act as a deterrent. The punishment should be life imprisonment.

Maritime Navigation (Security) Act

*To give effect to the Convention for the
Suppression of Unlawful Acts against the Safety of Maritime Navigation
signed in Rome in 1988*

Short Title 1. This Act may be cited as the Maritime Navigation (Security) Act, 1996.

Interpretation 2. In this Act, unless the context otherwise requires or is otherwise expressly provided for -

“act of violence” means any act which would constitute the offences contemplated under Sections 211, 212, 214, 216, 217, 218, 220 and 222 of the Criminal Code or any act, whereby an explosion of a nature likely to endanger life or cause serious injury to property, is maliciously caused by means of any explosive substance, whether or not any injury to persons or property is actually caused;

“Convention State” means a country in which the Rome Convention is for the time being in force;

“crew” means any person employed or engaged in any capacity on board a ship on the business of the ship;

“explosive substance” has the same meaning as that assigned to it in Section 314 of the Criminal Code;

“Gazette” means that Malta Government Gazette;

“maritime navigational facilities” means any aid to navigation existing within the territorial waters of Malta as well as any navigational aid that exist, whether on board the ship or elsewhere;

“master” includes every person having command or charge of the ship;

“Minister” means the Minister responsible for Justice;

“passenger” means any person who is not a crew;

“receiving Convention State” means that State which will be taking the offender or alleged offender into its custody;

“representative of the State” means any diplomatic or consular representative recognised by the Government of Malta as a representative of the State concerned or any person, recognised by the Government of Malta, and serving in a diplomatic, consular or other foreign service of any other State which, by arrangement, has undertaken to represent the State concerned.

“Secretary-General” means the Secretary General of the International Maritime Organisation;

“ship” means any vessel of any type whatsoever, not permanently attached to the sea-bed, including dynamically supported craft, submersibles or any other floating craft but not being -

(a) a warship;

(b) a ship owned or operated by the Government of Malta 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;

but the Minister may, by order, which may be varied or revoked by a subsequent order, provide that any of the provisions of this Act shall apply, with or without modifications, to ships such as are mentioned in paragraph (b) of this definition;

“territorial waters of Malta” shall have the same meaning as is assigned to the term in the Territorial Waters and Contiguous Zone Act (226);

“The Rome Convention” means the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done in Rome on the 10th day of March 1988.

The offences
under this
Act

3. Whoever 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 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 explosive substance which it likely to destroy the ship or cause damage to that ship or its cargo and 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 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 paragraphs (a) to (f); or

(h) attempts to commit any of the offences set forth in paragraphs (a) to (g); or

(i) abets the commission of any of the offences set forth in paragraphs (a) to (g) perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or

(j) threatens, with the intention of compelling a physical or juridical person to do or to refrain from doing any act, to commit any of the offences set forth in paragraphs (b), (c) and (e), if that threat is likely to endanger the safe navigation of the ship in question;

shall be liable to life imprisonment.

Jurisdiction
of the Courts

4. (1) Subject to the provisions of sub-section (2), where an offence under section 3 is committed outside Malta, the person committing such offence may be dealt with in respect thereof as if such offences had been committed in Malta.

(2) The court shall take cognizance of an offence punishable under section 3 which is committed on board a ship navigating or scheduled to navigate into, through or from the waters beyond the outer or lateral limit of the territorial waters of Malta including when -

(a) such offence is committed against or on board a ship flying the flag of Malta; or

(b) such an offence is committed in the territorial sea of Malta; or

(c) the alleged offender is a citizen of Malta or is a stateless person who has a habitual residence in Malta; or

(d) during such an offence, a citizen of Malta is seized, threatened, injured or killed; or

(e) such an offence is committed in an attempt to compel any Maltese Authority to do or abstain from doing any act; or

(f) the alleged offender is present within the jurisdiction of Malta.

(3) If an offence is cognizable under the grounds provided for in paragraphs (c), (d) and (e) of subsection 2, the Minister shall notify the Secretary-General and if, at a later stage, the Government of Malta rescinds its jurisdiction, the Minister shall notify the Secretary-General.

Powers of the Master of the ship in case of offences or attempted offences contemplated in this Act

5. (1) If the master of the ship has reasonable grounds to believe, in respect of any person, that the person in question has committed, or is about to commit, on board the ship any of the offences set forth in section 3, the master may take, with respect to that person, such reasonable measures, including restraint of his person and deliver the person to the competent authorities of any Convention State.

(2) Where a person is under restraint on a ship pursuant to sub-section (1), the Master of the ship shall, as soon as possible and, if possible, before entering the territorial waters of the receiving Convention State, give notification to the authorities of that Convention State of the fact that a person on board is under restraint and of the reasons of such restraint. The Master shall also furnish the authorities of the receiving Convention State with the evidence in his possession which pertains to the alleged offence.

When the offender is handed over to the competent Authority

6. (1) Subject to sub-section (2), when an offender is handed over to the competent Authorities in Malta, upon being satisfied that the offender committed or attempted to commit an offence as contemplated in section 3, such offender shall be taken into custody to ensure his presence for such a time as is necessary to enable any criminal or extradition proceedings to be proceeded.

(2) Any offender who is in the custody of the competent Authorities in accordance with subsection (1) shall be entitled to:

(a) communicate without delay with the nearest appropriate representative of the State of which he is a national 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 the State.

Ordering of a Preliminary Inquiry

7. When the offender is in the hands of the competent Authorities in Malta, the Minister shall immediately order the Court of Magistrates to carry out a preliminary investigation and decide whether or not to proceed against the offender. The Court of Magistrates shall proceed 'in camera' and shall hand over the report of the preliminary investigation to the Minister as soon as possible.

Minister to
notify all
parties
concerned of
arrest of
offender and
reasons why

8. When the offender is handed over to the competent Authorities in Malta, the Minister shall immediately notify the Secretary General and the Convention States which have established their jurisdiction in accordance with grounds similar to those provided for in subsection (2) of section 4 as well as other interested States of the fact that the offender is in the custody of the competent Authorities concerned and of the circumstances which warrant his detention.

Minister to
report to all
parties
concerned

9. When the Court of Magistrates hands the report of the preliminary investigation to the Minister, he shall promptly inform the parties referred to in section 8 of the findings of the Court and shall indicate whether he intends to exercise jurisdiction.

Extradition
procedures

10. (1) When the preliminary inquiry reports that no jurisdiction is to be exercised by the competent Authorities, the Minister shall institute proceedings to extradite the offender to a Convention State which requests the extradition of the offender, if such request exist, in default of which he will have to refer the matter to the competent Authorities for the purpose of prosecution.

(2) Where the Minister receives more than one request from parties referred to in Section 8, in selecting the State to which the offender or alleged offender is to be extradited, the Minister shall pay due regard -

(a) to the interest and responsibilities of the Flag State of the ship at the time of the commission of the offence;

(b) to the rights granted to the offender or alleged offender under Section 6 subsection (2).

Jurisdiction
of
Convention
State

11. For the purposes of the application of the Extradition Act to the offences referred to in section 3, any ship registered in a Convention State may, at any time, be deemed to be within the jurisdiction of that country whether or not it is, for the time being, also within the jurisdiction of Malta.

Offences to
be
considered as
extraditable
offences

12. The offences under this Act shall be deemed to be included as extraditable offences in any extradition treaty existing between Malta and a Convention State and which extend to, and are binding on, Malta on the date of commencement of this Act.

Where
Convention
State does
not have an
Extradition
Treaty

13. (1) Where the Extradition Act does not apply in the case of an Convention State, the Minister shall make an order providing for the Extradition Act to apply in the case of that State with the like effect and subject to the like terms and conditions, as if authorized by sections 4 and 7 of the Extradition Act and, for the purpose of such order, that Convention shall be equivalent to the designation of a Commonwealth country under the said section 4 and shall be treated as an arrangement such as is mentioned in the said section 7.

(2) Where the Extradition Act applies to a Convention State by virtue only of an order made under subsection (2), no application for extradition by that State shall relate to any extradition crimes within the meaning of the

Extradition Act except offences deemed to be included in the list of the extradition crimes pursuant to this Act.

Convention
States

14. The Minister may, by Order in the Gazette, certify as to which are the Convention States and to what extent they have availed themselves of the provisions of the Rome Convention and any such Order shall be conclusive evidence of the matters certified therein.

Minister to
inform
Secretary
General of
IMO

15. The Minister shall, as soon as possible, provide the Secretary-General with:

(1) any relevant information concerning:-

(a) the circumstances of the offence;

(b) any measures taken in respect of the offender or the alleged offender and, in particular, the results of any extradition or other legal proceedings taken;

(c) any action taken in pursuance of Section 16.

(2) the final outcome of the proceedings before the local Authorities, if the alleged offender is prosecuted before the Maltese Courts.

Efforts to
be taken to
avoid
undue delay

16. When, following the commission of any of the offences contemplated in section 3, the passage of a ship has been delayed or interrupted, if the ship or crew or passengers are present within the territory of Malta, the Minister and the competent authorities shall exercise all possible efforts to avoid the ship, its passengers, crew or cargo from being unduly detained or delayed.

Minister to
inform any
Convention
State of
possible
offence

17. The Minister, having reason to believe that an offence as set forth in section 3 will be committed shall promptly furnish any relevant information in his possession to those States which he believes would be the States having established jurisdiction on grounds similar to those provided for in Section 4.

Regulations

18. The Minister may make regulations for the purpose of giving effect to this Act and, without prejudice to the generality of the foregoing, may provide for -

(a) the procedure to afford any other Convention State the greatest measure of assistance in connection with criminal proceedings brought in respect of offences contemplated in Section 3, including assistance in obtaining evidence at the disposal of the local authorities;

(b) taking all the practicable measures to prevent preparations within the territory of Malta for the commission of the offences contemplated in this Act within or outside such territory;

(c) the procedure to exchange information and co-ordinate administrative and other measures taken as appropriate to prevent the commission of the offences set forth in Section 3;

Protection of
action taken
in good faith

19.(1) No suit, prosecution or other legal proceeding shall be made against any person for anything which, in good faith, is done or intended to be done in pursuance of the provisions of this Act.

(2) No suit or other legal proceeding shall lie against the Government of Malta for any damage caused or likely to be caused for anything which, in good faith, is done or intended to be done in pursuance of the provisions of this Act.

Authorisation
for the
Ratification of
the
Convention

20. In virtue of this Act, the Government of Malta is authorised to ratify the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.