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*Questionnaire*

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## CRIMINAL OFFENSES COMMITTED ON FOREIGN FLAGGED SHIPS

### QUESTIONNAIRE

#### *Introduction*

In document LEG 85/10, Japan referred to an incident involving the M/V Tajima, a Panamanian flagged ship with a mixed Japanese and Philippine crew. It was alleged that the Japanese second officer was killed by two Philippine seafarers while the vessel was on the high seas. The master placed the suspects in custody until the ship made a cargo call in Japan.

Questions have arisen as to the appropriate conduct of the coastal (or port) State where there are alleged criminal offences on foreign flagged ships and, in particular, whether there was an offence committed under article 3(1)(b) of SUA 1988.

The purpose of this questionnaire is to collate information about law and practice internationally, in order to see if it is necessary to enact international legislation or to produce guidelines as to the appropriate response of coastal (or port) States. For the international law background, reference may be made to document LEG 85/10 (attached)<sup>1</sup>.

Questions 1 to 4 concern the application of general criminal law. Questions 5 and 6 deal with the position under SUA.

#### *General Criminal Jurisdiction (not under SUA)*

*Question 1:* Under your national criminal law, is there jurisdiction to try an alleged offender in your State in respect of general criminal offences committed on a foreign flagged ship:

- A. on the high seas?
- B. in territorial (or other) waters?

*Question 2:* In particular, under your national criminal law is there jurisdiction to try an alleged offender who is a foreign national, where the victim is a national of your State, in respect of general criminal offences committed on a foreign flagged ship:

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<sup>1</sup> At page 149.

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- A. on the high seas?
- B. in territorial (or other) waters?

*Question 3:* Where there is an alleged criminal offence committed, on a foreign flagged ship, by a foreign national against one of your nationals, would your State, in practice,

- A. prosecute the alleged offender?
- B. receive or remove the alleged offender from the ship?
- C. detain the alleged offender?
- D. return the alleged offender to the flag State/State of the alleged offender's nationality /or other State?

*For Question 3, please indicate any conditions under which the above options A-D might be exercised.*

*Question 4:* Where there is an alleged criminal offence committed, on a foreign flagged ship, by one of your nationals against a foreign national, would your State, in practice,

- A. prosecute the alleged offender?
- B. receive or remove the alleged offender from the ship?
- C. detain the alleged offender?
- D. return the alleged offender to the flag State/State of the alleged offender's nationality /or other State?

*For question 4, please indicate any conditions under which the above options A-D might be exercised.*

*Coastal (or Port) State Procedure under SUA*

Article 3(1)(b) of SUA 1988 requires there to be an "act of violence" which "endangers the safety of the vessel".

*Question 5:* If your authorities received information from a master about an act of violence allegedly committed on a foreign flagged ship which might fall within article 3(1)(b) of SUA 1988, how would your State deal with a request from the master to accept delivery of the alleged offender under article 8? In particular,

- A. Which authority would assume responsibility (e.g. Police, Coastguard, Maritime or harbour authority)?
- B. How extensive an investigation would be made (e.g. would the authority make the decision to accept delivery under SUA after a full investigation, or rely on the initial assessment of the master that safety was endangered)?

*Question 6:* On the outline facts of the Tajima case, what action would your State have taken as a coastal (or port State)? In particular,

- A. Would you have accepted delivery of the alleged offender?
- B. Did the facts bring the case within article 3(1)(b) of SUA?

*For Question 6, please indicate any factor which influenced the answers to A and B.*

## IMO

LEGAL  
COMMITTEE

LEG 85/10  
29 August 2002  
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### DISCUSSION ON THE MEASURES TO PROTECT CREWS AND PASSENGERS AGAINST CRIMES ON VESSELS

#### Submitted by Japan

##### *Executive Summary*

This document proposes to start a discussion on the measures that a country should take in the case where a vessel on which a crime was committed when the vessel was on the high seas makes a call at its port.

##### *Action to be taken*

Paragraph 10

##### *Related Documents*

None

#### **Background**

1. On 7 April 2002, an incident occurred on board a Panamanian flag vessel, **M/V Tajima** crewed by six Japanese and eighteen Filipinos. It was suspected that a Japanese second officer was killed by two Philippine seafarers on board the vessel which was travelling on the high seas.
2. In the above situation, the Republic of Panama, as the flag State, was the only State that could exercise its criminal jurisdiction over the vessel. Neither Japan nor the Philippines could exercise their criminal jurisdictions in relation to such suspected murders on board the vessel flying the flag of another State, due to the absence of appropriate provisions in their respective domestic laws.
3. On 12 April 2002, the **Tajima**, with two suspects kept in custody by the captain in his capacity, called at the Himeji Port located near Osaka and unloaded its cargo. Although the vessel was scheduled to depart on 14 April 2002, the operating company, and others concerned, adjusted its schedule because of their concern about the safety of its navigation with two murder suspects on board. The vessel was compelled to prolong its anchoring at Himeji Port until the suspects would be disembarked.

4. About a month later, on 14 May 2002, following the official request from the Government of the Republic of Panama, the Government of Japan (the Japan Coast Guard) detained the two suspects temporarily, in accordance with the Japanese Law of Extradition. On 15 May 2002 at last the vessel departed for the next destination.

5. Thus, for more than one month, the vessel was compelled to stay at the port and the captain was obliged to keep in custody the two suspects in the vessel in his capacity. The stability and constancy of maritime transport were negatively affected. The incident further caused actual great economic loss to the shipping company due to the suspension of operation of the vessel.

### **Points of issue**

6. Generally, the captain of a vessel is empowered to conduct any investigation in connection with any crime committed on board the vessel during passage. However, if the captain detains a suspect, he/she would be compelled to continue the navigation with any suspects detained on board, which would endanger the safety of navigation caused by the nature of the suspects, the structure of the vessel or the contents of the cargo. The captain will have difficulties, either physical or legal, in delivering such suspects for their detention by the States concerned, as follows.

#### **(a) Detention by the flag State**

(i) According to the United Nations Convention on the Law of the Sea (UNCLOS), every State has the right to sail ships flying its flag on the high seas (Article 90), and those ships shall sail under the flag of one State only and shall be subject to its exclusive jurisdiction on the high seas (Article 92, paragraph 1). However, if an incident on board a ship occurred geographically far from the territory of its flag State, it would be physically difficult for the flag State to take any steps according to the right to exercise its criminal jurisdiction over the incident irrespective of the position of the ship, either on the high seas or in the third State's territorial sea.

#### **(b) Detention by the State of nationality of the victim or suspect**

(i) If the State of the suspect's nationality has a penal code that does not extend its jurisdiction over its nationals who committed crimes outside its territory and if the State of the victim's nationality has a penal code that does not extend its jurisdiction over the crimes whose victim is its national, neither of these States are entitled to exercise criminal jurisdiction over such crimes.

(ii) Even when the former's penal code covers crimes committed by its national outside the country or when the latter's penal code covers the crimes whose victim is its national, these States would not be able to extend their criminal jurisdiction if they were physically far from the vessel in question, as is the case for the flag State mentioned in paragraph (a).

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**(c) Measures taken by a port State**

- (i) According to the UNCLOS (Article 27, paragraph 5), except for the cases of the enforcement jurisdiction of a port State with regard to the protection of the marine environment and of the enforcement jurisdiction with regard to fishing in the EEZ vested in the coastal State, the coastal State (port State) may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.
- (ii) This provision leads us to presume that, when a foreign ship with suspects on board is in the internal water including, *inter alia*, when it is anchoring at the port, the coastal State (port State) could exercise the criminal jurisdiction in connection with crimes committed in the high seas on board such ship, if the coastal State (port State) has national legislation that extends its jurisdiction over the criminal acts concerned committed outside its territory. In addition, the UNCLOS allows the coastal State (port State) to exercise the criminal jurisdiction (arrest the suspects, for example) on board a foreign ship passing through its territorial sea when the master of the ship (captain) or the diplomatic agent or consular officer of the flag State requests the assistance of the local authorities (Article 27, paragraph 1, see paragraph 3, below).
- (iii) However, a coastal State (port State) is not obliged to take temporary custody of a suspect even if the captain of the ship so requested.

**Recommendation**

7. In the area of air transportation, there already exists a multilateral treaty, which provides for the swift delivery of the suspects of the crimes committed on board an aircraft at the discretion of the aircraft commander. The Convention on Offences and Certain Other Acts Committed on Board Aircraft stipulates that the contracting State in the territory of which such aircraft lands shall take delivery of any person who the aircraft commander has reasonable grounds to believe has committed on board the aircraft an act which, in his opinion, is a serious offence according to the penal law of the State and shall take custody or other measures to ensure the presence of such person. According to the UNCLOS (Article 27, paragraph 1), if the assistance of the local authorities has been requested by the master of the ship (captain) or by the diplomatic agent or consular officer of the flag state, the criminal jurisdiction of the coastal State (port State) may be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage. The Government of Japan would like to propose

to discuss in the Committee whether a scheme similar to the one for aircraft is necessary in the maritime regime in addition to the scheme stipulated in the UNCLOS. If the Committee considers that the establishment of such a scheme would be necessary or desirable, it should also examine what instruments, or the combination thereof, would be the most appropriate and expeditious way to establish such scheme (adoption of a new treaty, decisions, resolutions, adoption of standards, guideline or model national law etc.).

8. The relevant provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft are attached at Annex.

9. Although the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1998 (SUA 1998) establishes a similar scheme to the one established by the Convention on Offences and Certain Other Acts Committed on Board Aircraft”, SUA does not cover crimes like the one committed in the case described above.

### **Action to be taken by the Legal Committee**

10. The Legal Committee is requested to take note of this proposal and decide to include this proposal in the Work Programme of the Committee.

## **ANNEX**

### **CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT (EXTRACT)**

#### Chapter III (Powers of the aircraft commander)

##### *Article 5*

1. The provisions of this Chapter shall not apply to offences and acts committed or about to be committed by a person on board an aircraft in flight in the airspace of the State of registration or over the high seas or any other area outside the territory of any State unless the last point of take-off or the next point of intended landing is situated in a State other than that of registration, or the aircraft subsequently flies in the airspace of a State other than that of registration with such person still on board.

##### *Article 9*

1. The aircraft commander may deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person who he has reasonable grounds to believe has committed on board the aircraft an act which, in his opinion, is a serious offence according to the penal law of the State of registration of the aircraft.

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## Chapter V (Powers and Duties of States)

*Article 13*

1. Any Contracting State shall take delivery of any person whom the aircraft commander delivers pursuant to Article 9, paragraph 1. 2. Upon being satisfied that the circumstances so warrant, any Contracting State shall take custody or other measures to ensure the presence of any person suspected of an act contemplated in Article 11, paragraph 1 and of any person of whom it has taken delivery. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is reasonably necessary to enable any criminal or extradition proceedings to be instituted.

*Article 14*

1. When any person has been disembarked in accordance with Article 8, paragraph 1, or delivered in accordance with Article 9, paragraph 1, or has disembarked after committing an act contemplated in Article 11, paragraph 1, and when such person cannot or does not desire to continue his journey and the State of landing refuses to admit him, that State may, if the person in question is not a national or permanent resident of that State, return him to the territory of the State of which he is a national or permanent resident or to the territory of the State in which he began his journey by air.