The terrorist attack on the “USS Cole” in Aden was a tremendous blow, not only in terms of casualties and material damage, but also because public opinion was perhaps not fully aware that this type of attack was possible at sea, despite the hijacking of the cruise ship “Aquille Lauro” in the Mediterranean or a previous, little publicised attack outside Spain on the Spanish destroyer “Marqués de la Ensenada” in the port of Santander. These examples show that there is also a risk of terrorist attacks at sea and that they can be just as devastating as those on land or in air space. Obviously prevention and response must adapt to the special conditions at sea, where there are particular rules governing the exercise of State ius puniendi and the international community response. In Spain these rules derive from the combined application of article 23 of the Law of the Judiciary (LOPJ) and the legal regime in different sea spaces (1982 Jamaica Convention and specific rules of domestic law). The aim of this presentation is to offer a summary of the applicable international instruments on the subject rather than a detailed study.

First mention must go to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation signed in Rome on March the 10th 1988. Although “unlawful acts” is a general phrase and could include piracy, which we’ll refer to later, the whole terms of the convention are directed at suppressing terrorism, as can be deduced from the preamble: “Deeply concerned about the world-wide escalation of acts of terrorism in all its forms...”, “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 organizations, to contribute to the

Pablo Antonio Fernández-Sánchez (ed.), International Legal Dimension of Terrorism.
progressive elimination of causes underlying international terrorism and to pay special attention to all situations...”, “recalling further” that resolution 40/61 “unequivocally condemns, as criminal, all acts, methods and practices of terrorism wherever and by whomever committed...” and “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...”.

The Convention, consisting in 22 articles, defines the conduct it is intended to regulate in article 3:

“1. Any person commits an offence if that person unlawfully and intentionally:
   – seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
   – performs any act of violence against a person a board a ship if that act is likely to endanger the safe navigation of that ship; or
   – 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
   – 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 a ship; or
   – 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
   – communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or
   – 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:
   – attempts to commit any of the offences set forth in paragraph 1; or
   – 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
   – 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”. 