



LEGAL COMMITTEE  
87th session  
Agenda item 5

LEG 87/5/2  
11 September 2003  
Original: ENGLISH

**REVIEW OF THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS  
AGAINST THE SAFETY OF MARITIME NAVIGATION, 1988, AND ITS PROTOCOL  
OF 1988 RELATING TO FIXED PLATFORMS LOCATED ON THE CONTINENTAL  
SHELF (SUA CONVENTION AND PROTOCOL)**

**Submitted by the International Confederation of Free Trade Unions (ICFTU)**

**SUMMARY**

**Executive summary:** This submission comments on document LEG 87/5/1.  
**Action to be taken:** Paragraph 17  
**Related documents:** LEG 87/5/1, C 89/D (paragraph 12.1(v)), C 89/12/3, LEG 86/15

1 This document is submitted as a comment on document LEG 87/5/1.

**General comments**

2 The IMO website summary notes that the 1988 SUA Convention aimed:

*“to ensure that appropriate action is taken against persons committing unlawful acts against ships. These include the seizure of ships by force; acts of violence against persons on board ships; and the placing of devices on board a ship which are likely to destroy or damage it.*

*The convention obliges Contracting Governments either to extradite or prosecute alleged offenders.”*

3 The ICFTU is aware that the current text is a marked departure from the aims of the 1988 SUA Convention. This is evident from the inclusion of text derived from other Conventions, such as Article 19(2) of the International Convention for the Suppression of Terrorist Bombings concerning military forces and boarding provisions. While this may be necessary in the current climate, we believe that this fundamental change also requires the inclusion of other additional measures, which provide an overall balanced approach, in particular the inclusion of provisions which would provide commensurate protection.

4 Central to the ICFTU concern is the absence of express provisions to protect the human rights and fundamental freedoms of seafarers. The new chapter XI-2 (Special measures to enhance maritime security) of the SOLAS Convention and the related International Ship and Port Facility Security (ISPS) Code carefully incorporated express provisions on the human rights of seafarers and was mindful to protect them as it developed measures to improve maritime

For reasons of economy, this document is printed in a limited number. Delegates are kindly asked to bring their copies to meetings and not to request additional copies.

security. The current text for the revision of the SUA Convention does not provide a similar delicately crafted package. The ICFTU believes that this aspect must be addressed, especially as the IMO has established the human element as a high priority work programme item and IMO Council, at its eighty-ninth session, agreed to:

- .1 instruct the Committees of the Organization and through them their subsidiary bodies, when developing new instruments or amendments to existing ones, to ensure that these are compatible and not in conflict with other instruments of international law and that they cannot be interpreted or used in a way that conflicts with such instruments and in particular the ones addressing human rights;*
- .2 instruct the Secretariat to remind the Committees of the Organization and their subsidiary bodies of this decision of the Council as and when necessary;*
- .3 instruct the Maritime Safety Committee and to invite the convened Conference of Contracting Governments to SOLAS 74, as amended, on Maritime Security to take all necessary measures to ensure that nothing is included in either the proposed amendments to chapter XI of SOLAS 74, as amended, or the proposed ISPS Code which could in any way be interpreted as being, or used, in conflict with other international law instruments, especially the ones relating to human rights; and*
- .4 instruct the Ad hoc Council's working group on the Organization's Strategic Plan to consider these issues and in particular the issue of the human rights of seafarers and to include appropriate provisions in the plan.*

5 The ICFTU is also mindful that the 2002 Diplomatic Conference on Maritime Security adopted Conference Resolution 11 (Human element related aspects and shore leave for seafarers). The ICFTU considers that in this context the most relevant sections are:

*RECALLING FURTHER the generally accepted principles of international human rights applicable to all workers, including seafarers,*

*CONSIDERING that, given the global nature of the shipping industry, seafarers need special protection,*

- 1. URGES Contracting Governments to take the human element, the need to afford special protection to seafarers and the critical importance of shore leave into account when implementing the provisions of chapter XI-2 of the Convention and the International Ship and Port Facility (ISPS) Code (hereinafter referred to as .the Code.);*
- 2. ENCOURAGES Contracting Governments, Member States of the Organization and non-governmental organizations with consultative status at the Organization to report to the Organization any instances where the human element has been adversely impacted by the implementation of the provisions of chapter XI-2 of the Convention or the Code; and*
- 3. REQUESTS the Secretary-General to bring to the attention of the Maritime Safety Committee and the Facilitation Committee of the Organization, any human element related problems, which have been communicated to the Organization as a result of the implementation of chapter XI-2 of the Convention or the Code.*

6 The new maritime security regime, as provided for in multilateral instruments, and the unilateral measures that have been adopted by certain countries, have had a profound, and often adverse, impact on seafarers. There is a critical skills shortage within the shipping industry and a projected growing deficit in suitably trained and qualified seafarers therefore care should be taken to ensure that other measures do not make the profession of being a seafarer even more unattractive. The imposition of provisions which are not seen to be proportionate and which fail to provide the necessary safeguards could prejudice the measures which are being taken to improve the recruitment and retention of suitably qualified seafarers.

### Specific comments

7 Article 2 bis - This provision taken from Article 19(1) the International Convention for the Suppression of Terrorist Bombing does not reflect the differences between the two instruments and therefore requires some refinement, most notably the inclusion of an express reference to human rights. This concern is heightened by the fact that the clauses are inserted in Article 2 and, as such, at the beginning of the revised Convention. We would therefore suggest the insertion of "*especially human rights law*," between the "United Nations" and "and international", in Article 2 bis (1). As the lead delegation has indicated that it considers the reference to the term "international humanitarian law" as meaning the "law of war", consideration should also be given to the inclusion of text which would provide additional protection to refugees and asylum seekers who may be on board the vessel.

8 Article 3 - The offences are drafted very widely, with a view to including everyone from the shipowner to all crew members. Given the lack of transparency in the ownership and control of vessels, there is a distinct possibility that the shipowners could remain anonymous, with the likelihood that it would be the Master and other crew members who would be the ones subject to proceedings. The ICFTU would suggest the inclusion of some suitable text to ensure that the shipowner, who beneficially owns and controls the vessel, can in practice be made responsible for their actions or, in certain circumstances, their inaction.

9 Article 3 bis (1)(c) - includes three offences that introduce imputed knowledge – "or having reason to know". The ICFTU would suggest that the text and the square brackets should be deleted. This is because in reality, on board many ships with multinational crews, commercial pressure will constrain the ability of the Master and the crew, and it would be inappropriate to impute such knowledge to them.

10 There appear to be two broad types of offences covered by the draft revised Article 3. The first requires active participation in the crime – discharging substances, using explosives, using the ship as a weapon – and is reasonably straightforward in terms of the mental element. The second relates to the transportation of goods and people that pose a danger to security. Since transportation is the function of ships, the mental test should be high – as is the case with regard to the offences set out in paragraphs (a) and (b), where the chapeau sets out the "unlawfully and intentionally" requirement. The ICFTU is concerned that this requirement may not be evident in the case of paragraph (c) which seems to introduce a lower test for the mental element in relation to the offences set out in paragraphs (i) – (iii) and suggests that Article 3 bis (1)(c) should be amended to make clear that the chapeau also applies, without dilution, to the sub-paragraphs (i) to (iii).

11 Article 8 bis - Paragraph 7 – provides that the boarding and search "*shall be conducted in accordance with the obligations assumed by the requesting Party*" under international law. The ICFTU considers that this is too narrow as the flag State may be bound by human rights instruments which the requesting Party has not ratified. As the SUA Convention is a multilateral

instrument it should not permit a situation where the provisions of international law can be avoided. The ICFTU believes that it is necessary to ensure that the boarding and search provisions, **if they are retained**, *"shall be conducted in accordance with all the applicable provisions provided for in international law."*

12 Article 8 bis, paragraph 7(a) – The ICFTU has a general concern that the law governing the use of force while boarding a ship is the national law and is even more concerned by the reference to both laws and *policies* of the boarding State. If this provision is to be retained, the ICFTU would suggest the reference to "and policies" be deleted. However, the ICFTU would on balance prefer the inclusion of the suggestions made by the UN in the correspondence group:

*"Paragraph 7(a): We [the UN] note the inclusion of the first sentence of article 22(1)(f) of the UN Fish Stocks Agreement in paragraph 7(a) of the draft Protocol. We consider that the current text of the second sentence of paragraph 7(a) would perhaps be clearer if it were redrafted along the lines of the second sentence in article 22(1)(f) of the UN Fish Stocks Agreement, i.e., "The degree of force used shall not exceed that reasonably required in the circumstances". We are also of the view that if the current text were to be retained then the reference to "applicable laws and policies of that Party" should probably be replaced with a reference to "international law" in the light of the judgment of the International Tribunal for the Law of the Sea in the M/V Saiga (No.2) Case."*

13 Article 8 bis, paragraph 9 - The ICFTU is concerned that safeguards address the flag and coastal States, compensation for the unfounded delay or detention of the ship, environmental soundness, the security of the ship and its cargo and the safety of life at sea, however, they do not address the treatment of the seafarers on board. The ICFTU therefore considers it would be appropriate to complement the amendments suggested in paragraph 11 above with appropriate safeguards for the persons on board.

14 Article 8 bis, paragraph 9(a)(v) – The original Article 10(2) of the SUA Convention provides for 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 the person is present. This right is now qualified by *"if applicable"*. As this is covered by Article 10 of the Universal Declaration of Human Rights and Article 14 of the Covenant on Civil and Political Rights the ICFTU considers that such a qualification would be incompatible with existing instruments which establish fundamental rights and freedoms and, as such, should be deleted. The deletion of *"if applicable"* would also be consistent with the new Article 2 bis. The ICFTU is also concerned about the reference to Article 10(2) as there is a potential, in the context of Article 8, for confusing the laws of the flag State (whose territory the seafarers are on) and, in view of Article 8 bis paragraph 7, the laws and the obligations under international law assumed by the requesting Party.

15 The ICFTU would therefore suggest alternative text for paragraph 9(a)(v) of Article 8 bis:

*"ensure that persons on board are afforded the protections provided for in international law, especially human rights law, that they are not subject to unreasonable force and that their basic human dignity is preserved. They shall also be entitled to compensation for any infringement of this provision and for any damage to their property."*

16 The ICFTU would also suggest that Article 10(2) should be replaced by the more up to date language found in Article 14 of the International Convention for the Suppression of Terrorist Bombings:

*"Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights."*

**Action requested of the Legal Committee**

17 The Legal Committee is invited to consider the comments made by the ICFTU and its suggestions for amendments to the text, especially those provided in paragraphs 6 to 15 above, during its consideration of the revision of the SUA Convention.

---