



LEGAL COMMITTEE
88th session
Agenda item 3

LEG 88/3/4
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**REVIEW OF THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS
AGAINST THE SAFETY OF NAVIGATION, 1988, AND ITS PROTOCOL OF 1988
RELATING TO FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF
(SUA CONVENTION AND PROTOCOL)**

Comments on draft article 8bis: suggested clean text

**Submitted by the International Chamber of Shipping (ICS) the International Shipping
Federation (ISF) and the International Confederation of Free Trade Unions (ICFTU)**

SUMMARY

Executive summary: Further to the comments made in document LEG 88/3/3, this submission attaches a suggested clean text of draft article 8bis.

Action to be taken: Paragraph 3

Related documents: LEG 88/3; LEG 88/3/3

Introduction

1 Further to the comments made by the sponsoring organizations in LEG 88/3/3 on draft article 8bis, we submit at annex 1 a clean copy of the text of draft article 8bis incorporating the suggestions that we have made.

2 The sponsoring organizations hope that the clean text will facilitate the Committee's deliberations on this matter.

Action requested of the Legal Committee

3 The Legal Committee is invited to consider the attached clean text of draft article 8bis when discussing the revision of the SUA Convention.

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ANNEX

Article 8bis

- 1 The States Parties shall cooperate to the fullest extent possible to prevent and suppress unlawful acts against the safety of maritime navigation, in conformity with international law.
- 2 A State Party that has clear grounds to believe that a ship flying its flag, the ship's cargo or a person on board the ship is, has been or is about to be involved in, the commission of an offence under Article 3, Article 3 *bis* or Article 3 *ter* may request the assistance of other States Parties in preventing or suppressing that offence. The States Parties so requested shall respond expeditiously to the request and render such assistance within the means available to them.
- 3 Except where paragraph 4 applies, whenever law enforcement or other authorized officials of another State Party ("the requesting Party") encounter a ship claiming the nationality of the first Party, located seaward of any State's territorial sea, and the requesting Party has clear grounds to believe that the ship, the ship's cargo or a person on board the ship is, has been or is about to be involved in, the commission of an offence under Article 3, Article 3 *bis* or Article 3 *ter*, and the requesting Party desires to board,
 - (a) it shall request that the first Party confirm the claim of nationality, and,
 - (b) if nationality is confirmed, the requesting Party shall ask the first Party (hereinafter, the flag State) to authorize the requesting Party to take appropriate measures with regard to that ship.

Appropriate measures that may be authorized by the flag State include stopping, boarding and searching the ship, its cargo and persons on board, and questioning the persons on board in order to determine if an offence under Article 3, Article 3 *bis* or Article 3 *ter* has been, or is about to be, committed.

A State Party shall respond expeditiously to a request from another State Party to determine whether a ship claiming its nationality is entitled to do so and to a request for authorization to take appropriate measures with regard to that ship.

- [4] On or after it deposits its instrument of ratification, acceptance, approval or accession, a State Party ("the first Party") may notify the Secretary-General that whenever law enforcement or other authorized officials of another State Party ("the requesting Party") encounter a ship claiming the nationality of the first Party, located seaward of any State's territorial sea, and the requesting Party has clear grounds to believe that the ship, the ship's cargo or a person on board the ship is, has been or is about to be involved in, the commission of an offence under Article 3, Article 3 *bis* or Article 3 *ter*, and the requesting Party desires to board, the requesting Party is authorized to board and search such ship, its cargo and persons on board, and to question the persons on board in order to determine whether the ship or a person or persons on board that ship is, has been or is about

to be involved in the commission of an offence under Article 3, Article 3 *bis* or Article 3 *ter*. The notification can be withdrawn at any time.]

- 5 When evidence of conduct described in Article 3, Article 3 *bis* or Article 3 *ter* is found as the result of any boarding conducted pursuant to this Article, the flag State may authorize the requesting Party to detain the ship, cargo and persons on board pending receipt of disposition instructions from the flag State. The requesting Party shall promptly inform the flag State of the results of a boarding, search, and detention conducted pursuant to this Article. The requesting Party shall also promptly inform the flag State of the discovery of evidence of illegal conduct that is not subject to this Convention.

The flag state shall respond expeditiously to a request from the requesting party for disposition instructions.

- 6 A boarding and search pursuant to this Article shall be conducted in accordance with the safeguards provisions of this Article and applicable international law. A flag State, consistent with the other provisions of this Convention, may subject its authorization to conditions to be agreed by it and the requesting State, including conditions relating to responsibility for and the extent of measures to be taken. No additional measures may be taken without the express authorization of the flag State, except when necessary to relieve imminent danger to the lives of persons or those that derive from relevant bilateral or multilateral agreements.

- 7 States Parties shall avoid the use of force except when necessary to ensure the safety of its officials and persons on board, and where the officials are obstructed in the execution of their duties. All uses of force by a State Party pursuant to this Article shall in all cases be the minimum necessary under the circumstances.

- 8 Safeguards:

- (a) Notwithstanding the provisions contained in Article 8bis(10), (11) and (12), the ship shall be advised prior to any boarding and the Master shall be afforded sufficient time to verify that the boarding is duly authorized by the flag State;
- (b) Where a State Party takes measures against a ship in accordance with this Article, it shall:
- (i) take due account of the need not to endanger the safety of life at sea;
- (ii) ensure that all persons, including passengers and stowaways on board are treated in a manner which preserves their basic human dignity, and in compliance with the applicable provisions of international law, including international law of human rights;
- (iii) take due account of the physical characteristics of the ship and its cargo and the safety and security of the crew and ensure that any measures taken do not exceed what is reasonably required to implement the provisions of this Article;

- (iv) take due account of the need not to prejudice the commercial or legal interests of the flag State;
 - (v) ensure, within available means, that any measure taken with regard to the ship or its cargo is environmentally sound under the circumstances;
 - (vi) ensure that persons on board against whom proceedings may be carried out in connection with any of the offences set forth in Article 3, Article 3 *bis*, or Article 3 *ter* are afforded the protections of Article 10(2), regardless of location; and
 - (vii) ensure that the master of a ship is at all times afforded the opportunity to contact the ship's owner or flag State.
- (c) All efforts shall be taken to avoid a ship being unduly detained, delayed or damaged and to avoid the loss of crew earnings and/or the loss of or damage to crew effects. States Parties shall be liable for damage or loss attributable to them arising from measures taken pursuant to this Article when:
- (i) the grounds for such measures prove to be unfounded; or
 - (ii) such measures are unlawful or exceed that reasonably required to implement the provisions of this Article.
- (d) Where a State Party takes measures against a ship in accordance with this Convention, it shall take due account of the need not to interfere with or to affect:
- (i) the rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or
 - (ii) the authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the ship.
- (e) Any measure taken pursuant to this Article shall be carried out by law enforcement or other authorized officials from warships or military aircraft, or from other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect and, notwithstanding Articles 2 and 2 *bis*, the provisions of this Article shall apply.
- (f) For the purposes of this Article "law enforcement or other authorized officials" means uniformed or otherwise clearly identifiable members of law enforcement or other government authorities that are notified to the Secretary-General by the State Party responsible for those authorities as being authorized to act pursuant to this Article.

- [9 This Article does not apply to or limit boarding of ships, conducted by any State Party in accordance with international law, seaward of any State's territorial sea, including boardings based upon the right of visit, the rendering of assistance to persons, ships and property in distress or peril, or an authorization from the flag State to take law enforcement or other action.]
- 10 The States Parties are encouraged to develop standard operating procedures for joint operations pursuant to this Article and consult, as appropriate, with other States Parties with a view to harmonizing such standard operating procedures for the conduct of operations.
- 11 States Parties may conclude agreements or arrangements between them to facilitate law enforcement operations carried out in accordance with this Article.
- 12 Each State Party shall take appropriate measures to ensure that its law enforcement or other authorized officials, and law enforcement or other authorized officials of other States Parties acting on its behalf, are empowered to act pursuant to this Article.
- [13 For the purposes of this Convention, a claim of nationality may be made, *inter alia*, by the flying of a flag or displaying marks of registration. In the absence of a flag or marks of registration, a responsible official on the ship shall be requested to state the nationality of the ship.]
- 14 On or after it deposits its instrument of ratification, acceptance, approval or accession, each State Party shall designate the authority, or, where necessary, authorities to receive and respond to requests for assistance, for confirmation of nationality, and for authorization to take appropriate measures. Such designation, including contact information, shall be notified to the Secretary-General within one month of becoming a Party, who shall inform all other States Parties within one month of the designation. Each State Party is responsible for providing prompt notice through the Secretary-General of any changes in the designation or contact information.
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