



LEGAL COMMITTEE
89th session
Agenda item 4

LEG 89/4/9
24 September 2004
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**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)**

Comments on draft article 8bis

**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: This submission comments on document LEG 89/4/1 and the proposed boarding provisions (draft article 8bis) in particular, except for article 8bis(8)(b), on the issue of compensation, which is covered in a separate submission

Action to be taken: Paragraph 12

Related documents: LEG 89/4/1; LEG 89/4/10

1 This document is submitted as a comment on document LEG 89/4/1 and on draft article 8bis in particular except for article 8bis (8)(b) on the issue of compensation, which is covered in a separate submission contained in document LEG 89/4/10.

Proposed boarding provisions

General comments

2 The shipping industry, comprising both shipowners' and seafarers' representatives, maintains the view that it is crucial that the authority of the flag State be preserved and that any boarding is expressly authorized by the flag State, either on an individual ship by ship basis, or through the conclusion of a bilateral agreement. We also believe that there should be clear grounds for any boarding, that it should be in accordance with applicable international law, and that adequate safeguards should be built into the Convention.

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3 The prior notification of the ship's master and the ability of the master to verify with the flag State that any boarding is duly authorized are fundamental to ensuring that the rights of shipowners, cargo owners and seafarers are protected.

4 As the shipping industry and some other delegations have pointed out, the boarding of a merchant ship at sea is an extreme measure, which will inevitably put the master and crew under considerable pressure. The master will be faced with the potentially conflicting interests of the boarding party, his/her responsibility to his/her owner, and the safety of his/her ship and crew. The rise in incidences of piracy and armed robbery at sea also mean that ships and their crews are increasingly vulnerable to criminals seeking to board. This may result in the master taking evasive action against legitimate boarding parties that are perceived to be a threat. Accordingly, the master will need clear advice from the flag State and the ship operator as to what should be done in the circumstances and sufficient time must be allowed to obtain that advice.

Article 8bis (1)(b)

5 The shipping industry finds the proposed text in article 8bis (1)(b) helpful as it reflects reality, and supports its inclusion and the deletion of the square brackets.

Article 8bis (7)

6 With regard to the use of force in this provision, we would prefer the second option because it will afford better protection for persons on board:

“[the minimum degree of force which is necessary and reasonable] in the circumstances.”

Article 8bis (8)(a)

7 We reiterate the need to notify the ship's master prior to a boarding and the need for the master to be able to verify with the flag State that any boarding is duly authorized in the light of safety, piracy and commercial concerns outlined in our general comments, and in previous submissions. It would also put the flag State on notice that it may need to provide diplomatic protection to the crew and the ship owner. We therefore suggest the insertion of an additional safeguard in article 8bis(8) (a), as a new paragraph (i):

“(i) 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;”

8 With regard to paragraph (iii), we support the view of delegations that have called for the deletion of references to national law.

9 As a consequential amendment to the one suggested in paragraph 7 above, we suggest that paragraph (viii) be reworded as follows:

“(viii) ensure that the master of a ship is ~~or has been~~, at all times afforded the opportunity to contact the ship's owner or flag State at the earliest opportunity. [However, a State Party may prevent or delay any communication with the owners of the ship if it has reasonable grounds for believing that such communications would obstruct the investigations into a relevant offence.]”

Article 8bis (8)(b)

10 This provision is covered in a separate submission.

11 The shipping industry has further comments on other sections of the text and will raise these at the appropriate time during the course of the discussions.

Action requested of the Legal Committee

12 The Committee is invited to take into account the views of the shipping industry when discussing the revision of the SUA Convention.
