

Senate of the United States
IN EXECUTIVE SESSION

September 25, 2008

Resolved, *(two-thirds of the Senators present concurring therein)*,

SECTION 1. Senate Advice and Consent Subject to a Reservation, Understandings, and a Declaration.

The Senate advises and consents to the ratification of the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, adopted on October 14, 2005, and signed on behalf of the United States of America on February 17, 2006 (the "2005 SUA Protocol") (Treaty Doc. 110-8), subject to the reservation of section 2, the understandings of section 3, and the declaration of section 4.

SECTION 2. Reservation

The advice and consent of the Senate under section 1 is subject to the following reservation, which shall be included in the instrument of ratification:

Consistent with Article 16(2) of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005, the United States of America declares that it does not consider itself bound by Article 16(1) of the Convention with respect to disputes concerning the interpretation or application of the 2005 SUA Protocol.

SECTION 3. Understandings

The advice and consent of the Senate under section 1 is subject to the following understandings, which shall be included in the instrument of ratification:

(1) The United States of America understands that the term "armed conflict" in Article 3 of the 2005 SUA Protocol (which adds, inter alia, paragraph 2 of Article 2bis to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation) does not include internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature.

(2) The United States of America understands that the term "international humanitarian law," in Article 3 of the 2005 SUA Protocol (which adds, inter alia, paragraph 1 and 2 of Article 2bis to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation) has the same substantive meaning as the "law of war."

(3) The United States of America understands that, pursuant to Article 3 of the 2005 SUA Protocol (which adds, inter alia, paragraph 2 of Article 2bis to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation), the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 2005, does not apply to: (a) the military forces of a State, which are the armed forces of a State organized, trained, and equipped under its internal law for the primary purpose of national defense or security, in the exercise of their official duties; (b) civilians who direct or organize the official activities of military forces of a State; or (c) civilians acting in support of the official activities of the military forces of a State, if the civilians are under the formal command, control, and responsibility of those forces.

(4) The United States of America understands that:

A. Article 3 and Article 4(5) of the 2005 SUA Protocol (which add, inter alia, Article 2bis(3) and Article 3bis(2), respectively, to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (together referred to as "the NPT savings clauses")) protect from criminal sanction under the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005, the transport of source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use, or production of special fissionable material:

i. from the territory of, or otherwise under the control of, a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons ("NPT") to the territory of, or otherwise under the control of, another NPT State Party or a state that is not an NPT party; and

ii. from the territory of, or otherwise under the control of, a state that is not an NPT party to the territory of, or otherwise under the control of, an NPT State Party, where the resulting transfer or receipt of such items or materials is not contrary to the NPT obligations of the NPT State Party.

B. The following are illustrative examples of transport of source material, special fissionable material, and equipment or material especially designed or prepared for the processing, use, or production

of special fissionable material that would not constitute offenses under the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005, by virtue of the savings clauses:

i. Transport of source material or special fissionable material (from either an NPT State Party or a State that is not an NPT party) to an NPT nuclear-weapon State Party, as that term is defined in the NPT, regardless of whether the source material or special fissionable material will be under safeguards in the NPT nuclear-weapon State Party, because the resulting receipt of the material is not contrary to the NPT obligations of the nuclear-weapon State Party;

ii. Transport of source material or special fissionable material to a non-nuclear-weapon State Party, as such term is used in the NPT, for non-nuclear use without safeguards, in accordance with the provisions of the recipient country's IAEA comprehensive safeguards agreement allowing for exemption of the source material or special fissionable material from safeguards or the non-application or termination of safeguards (e.g., for specified de minimis amounts, or for use in a non-proscribed military activity which does not require the application of IAEA safeguards or in a non-nuclear use such as the production of alloys or ceramics);

iii. Transport of source material or special fissionable material or especially designed or prepared equipment, as described in Article 4(5) of the 2005 SUA Protocol (which adds Article 3bis(1)(b)(iii) to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation), from an NPT State Party to a State that is not an NPT party, so long as the relevant material is for peaceful purposes and placed under IAEA safeguards, consistent with the NPT State Party's obligations under Article III.2 of the NPT. If the source or special fissionable material transferred for peaceful purposes is subject to an IAEA safeguards agreement but is not required by that agreement actually to be under safeguards (e.g., under an exemption for de minimis amounts or a provision permitting safeguards termination for non-nuclear use), the transport would not constitute an offense under Article 3bis(1)(b)(iii) of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005.

(5) The United States of America understands that current United States law with respect to the rights of persons in custody and persons charged with crimes fulfills the requirement in Article 9 of the 2005 SUA Protocol and, accordingly, the United States does not intend to enact new legislation to fulfill its obligations under this Article.

SECTION 4. Declaration

The advice and consent of the Senate under section 1 is subject to the following declaration:

With the exception of the provisions that obligate the United States to criminalize certain offenses, make those offenses punishable by appropriate penalties, and authorize the assertion of jurisdiction over such offenses, the 2005 SUA Protocol is self-executing. Included among the self-executing provisions are those provisions obligating the United States to treat certain offenses as extraditable offenses for purposes of bilateral extradition treaties. None of the provisions of the 2005 SUA Protocol, including Article 9, confer private rights enforceable in United States courts.



Attest

Secretary.

