



IHB File No. S3/0128

CIRCULAR LETTER 53/2008
27 June 2008

**PROPOSED AMENDMENT TO ARTICLE 8 OF THE
REVISED IHO GENERAL REGULATIONS**

Reference: IHB CL 11/2008 dated 25 January

Dear Hydrographer,

1. The IHB thanks the following 55 Member States for having replied to the above-referenced Circular Letter: Algeria, Argentina, Australia, Bahrain, Belgium, Brazil, Canada, Chile, Colombia, Croatia, Cuba, Denmark, Ecuador, Estonia, Finland, France, Germany, Greece, Guatemala, Iceland, India, Italy, Japan, Republic of Korea, Kuwait, Latvia, Mexico, Monaco, Morocco, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Papua New Guinea, Peru, Poland, Portugal, Qatar, Romania, Russia, Singapore, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Tunisia, Ukraine, UK, USA, Uruguay and Venezuela. All, except two countries, support the proposal to modify Article 8 (e) of the revised IHO General Regulations that will enter into force once the amended IHO Convention is ratified by the required number of Member States.

2. The comments received are provided in the Annex.

3. The comments provided by France have been carefully considered and the Directing Committee believes that there has probably been some misunderstanding and would like to provide the following clarifications:

- a) France states that the proposal submitted to the Member States for vote *"has been presented without any mention of the objections raised by certain members of the HCA at its 7th meeting"*. The IHB did not mention any objections as when this matter was discussed at the HCA7, none of the HCA members raised any. To further clarify the situation, an extract from the Final Minutes of the meeting, the text of which was announced in CL 7/2008 dated 18 January 2008, is reproduced here:

"Australia (NAIRN) then drew attention to the fact that while the HCA has similar characteristics to an RHC, it cannot operate under Article 8 of the revised IHO General Regulations because no coastal States exist within the region. Similarly it cannot operate as a Sub-Committee under Article 6 as membership is not open to all IHO Member States. Membership of HCA requires certain and particular qualifications to be met. These are that while members must be IHO Member States, they must also have acceded to the Antarctic Treaty and are contributing resources and/or data to IHO INT Chart coverage of Region M.

After lengthy discussion on the pros and cons of how best to use / adjust Articles 6 and/or 8 of the revised IHO General Regulations to accommodate the particular case of HCA, UK (MONCRIEFF) proposed the following revised wording for Article 8(e):

"Full membership is reserved for Member States within the region. In the unique case of the Antarctic region, membership of the Hydrographic Commission on Antarctica (HCA) is reserved to Member States whose governments have acceded to the Antarctic Treaty and contribute resources and/or data to IHO INT Chart coverage of Region M."

*The Chair put this proposal to a vote and all HCA Members present, except France and Norway **who abstained**, voted in favour of the proposal, which was therefore agreed. It was decided that the HCA Chair would submit the above proposed amendments to Article 8(e) to the IHB Directing Committee for further action."*

France and Norway abstained but did not raise any objection.

- b) France states in their reply that they cannot endorse the proposal "*which classes the Hydrographic Commission on Antarctica as a Regional Hydrographic Commission (RHC)...*" . The IHB views on this matter differ somewhat as this particular subject was specifically discussed, clarified and further explained in paragraph 4 of CL 11/2008 dated 25 January 2008 :

"4. After lengthy discussions, the Committee firstly decided to adopt the name of "Hydrographic Commission on Antarctica" but not the name of "Regional Hydrographic Commission on Antarctica" to avoid any conflict with Article 8 and Annex of the revised General Regulations."

That is to say that it has never been the intention to class the HCA as a RHC.

In the light of these comments, the Directing Committee considers that the concerns raised by France are covered in the clarifications provided above.

4. As the proposal has received the support of over two-thirds of the Member States entitled to vote, the Directing Committee considers this proposal approved. Therefore, Article 8 (e) of the amended IHO General Regulations, approved by the XVII IHC by Conference Decision N°3, will be modified to read:

- (e) *Full membership is reserved for Member States within the region. In the unique case of the Antarctic region, membership of the Hydrographic Commission on Antarctica (HCA) is reserved for Member States whose governments have acceded to the Antarctic Treaty and contribute resources and/or data to IHO INT Chart coverage of Region M."*

On behalf of the Directing Committee
Yours sincerely,



Captain Hugo GORZIGLIA
Director

Annex: Member States' Comments.

**MEMBER STATES' COMMENTS
IN REPLY TO CL 11/2008**

ALGERIA

The SHFN supports this initiative and considers that the rewording of Article 8(e) of the IHO General Regulations is correct.

AUSTRALIA

Recommends a typographical correction: replace "to" by "for" in the second sentence "..... is reserved ~~to~~ **for** Member States whose governments have acceded to"

IHB Comment

This correction has been applied.

CHILE

This office has no comments concerning the decisions of the 2007 International Hydrographic Conference and the Meeting of the Hydrographic Commission on Antarctica; Chile attended both of these meetings.

FRANCE

France notes, first of all, that this proposal has been presented without any mention of the objections raised by certain members of the HCA at its 7th meeting.

France cannot endorse this proposal which classes the Hydrographic Commission on Antarctica as a Regional Hydrographic Commission (RHC), bearing in mind the particular status of the Antarctic. France considers, in line with its constant position approved by the International Hydrographic Conference in 1997 (Decision N° 4 - creation of the Hydrographic Committee on Antarctica) and then in 2007 (examination of Proposal 3 - approval of the amended IHO General Regulations), that the HCA comes under the subsidiary organs in Article 6, which may be established by the Assembly, and not the Regional Hydrographic Commissions in Article 8 which are established by the Member States in the region concerned.

The objection whereby the HCA cannot operate as a sub-committee under Article 6 (b) had been raised during the discussion of Proposal 3 at the IHC in 2007. This objection had not been accepted on the basis of two points mentioned in the Conference Report of Proceedings (see pp.130-132 of Volume 1, English version):

- firstly, any IHO Member State may participate as an observer in the HCA sessions;
- and secondly, the Assembly may, under Article 6 (c), determine special rules concerning the composition of the bodies created under Article 6.

It should also be recalled that the condition of having to accede to the Antarctic Treaty is not restrictive in itself since under Article XIII of the Treaty, accession to the Treaty is open to any UN Member State.

In the light of the above, France cannot accept a proposal aimed at classing the HCA as a Regional Hydrographic Commission. If a modification to the General Regulations - in order to clarify the special case of the HCA - is nevertheless considered essential by a majority of the Member States, France requests that this clarification be made to Article 6 (b) and not to Article 8 (e). A proposal along these lines is given in the voting paper (see hereafter under Further Comments by France).

This implies maintaining the current name "Comité hydrographique sur l'Antarctique" ("Hydrographic Committee on Antarctica" in English and not "Hydrographic Commission") in all documents pertaining to this body, and in particular in its statutes. This body will become the "Hydrographic Sub-Committee on Antarctica" in the future structure which must be in place by 1 January 2009 at the latest, in accordance with Decisions 8 and 9 of the 17th IHC.

Further Comments by France (provided on Voting Paper)

The HCA cannot be classed as a Regional Hydrographic Commission under Article 8 because of the special status of the Antarctic (see detailed explanation above).

If need be, the following footnote could be inserted in Article 6 (b) of the revised IHO General Regulations, after “shall be open to all Member States”:

⁽¹⁾ Full membership may be subject to special conditions approved by the Assembly; any IHO Member State may participate as an observer.

MEXICO

We consider that this amendment will contribute significantly to the new IHO structure and General Regulations, including the members of the Hydrographic Commission on Antarctica as Member States, whenever these latter meet the requirements contained in the amendment.

OMAN

We agree that membership of the HCA should be reserved for those states who contribute to the IHO work in the region.

PAPUA NEW GUINEA

Whatever wording that serves the purpose of the quorum is recommended.
