



IHB File No. S1/0015

CIRCULAR LETTER 18/2009
12 March 2009

PROTOCOL OF AMENDMENTS TO THE IHO CONVENTION

Reference: IHB CL 02/2009 dated 12 January

Dear Hydrographer,

1 The Directing Committee would like to thank the following forty-seven (47) Member States who responded to the Circular Letter referenced above: Algeria; Argentina; Australia; Bangladesh, Belgium; Brazil; Chile; Colombia; Croatia; Cuba; Cyprus; Denmark; Ecuador; Estonia; Finland; France; Germany; Greece; Guatemala; Iceland; India; Italy; Japan; Latvia; Malaysia; Mexico; Morocco; Netherlands; New Zealand; Norway; Pakistan; Papua New Guinea; Poland; Portugal; Qatar; Russia; Singapore; Slovenia; South Africa; Spain; Sri Lanka; Suriname; Sweden; Thailand; Tunisia; United Kingdom and USA.

2 The breakdown of the Member States' replies is as follows:

- .1 Forty four (44) Member States agree with the proposed Administrative Resolution T6, contained in Annex B of the reference and based on the unanimous recommendations of the IHO Legal Advisory Committee;
- .2 One (1) Member State does not agree with recommendation T6.1 only;
- .3 One (1) Member State has abstained from voting;
- .4 One (1) Member State does not agree with T6.3 and has abstained from voting on T6.1.

3 The replies and comments from Member States are given in Annexes A and B respectively.

4 T 6 has been approved having received the required simple majority in accordance with paragraph 6 of Article VI of the IHO Convention and it will be inserted in the repertory of the IHO Resolutions. The final text with minor editorial amendments proposed by France and UK is provided in Annex C.

On behalf of the Directing Committee
Yours sincerely,

Vice Admiral Alexandros MARATOS
President

Annex A: Table of replies
Annex B: Member States comments
Annex C: Final text

Member States	YES	NO	Abstain	Comments
1. Algeria	X			
2. Argentina	X			
3. Australia	X			YES
4. Bangladesh	X			
5. Belgium	X			
6. Brazil	X			
7. Chile	X			
8. Colombia	X			
9. Croatia	X			
10. Cuba	X			
11. Cyprus	X			
12. Denmark	X			
13. Ecuador	X			YES
14. Estonia	X			
15. Finland	X			
16. France			X	YES
17. Germany	T6.2 & T6.3	T6.1		YES
18. Greece	X			
19. Guatemala	X			
20. Iceland	X			
21. India	X			YES
22. Italy	X			
23. Japan	T6.2	T6.3	T6.1	YES
24. Latvia	X			
25. Malaysia	X			
26. Mexico	X			
27. Morocco	X			
28. Netherlands	X			
29. New Zealand	X			
30. Norway	X			
31. Pakistan	X			
32. Papua New Guinea	X			
33. Poland	X			
34. Portugal	X			
35. Qatar	X			
36. Russia	X			
37. Singapore	X			
38. Slovenia	X			
39. South Africa	X			
40. Spain	X			
41. Sri Lanka	X			
42. Suriname	X			
43. Sweden	X			
44. Thailand	X			
45. Tunisia	X			YES
46. United Kingdom	X			
47. USA	X			

MEMBER STATES' COMMENTS:

AUSTRALIA

Australia supports this resolution understanding that if it is adopted all amendments that have not yet entered into force will be dealt with under the terms of this Technical Resolution.

If this Technical Resolution is adopted Australia will withdraw proposal 14 from the 4th EIHC.

Bureau's Comments:

The Amendments adopted during the XIIIth and XVth Conferences have been deleted in accordance with Article 21, contained in the Protocol of Amendments to the IHO Convention approved during the 3rd EIHC in 2005 which states "The amendments adopted during the XIIIth and XVth Conferences, which have not entered into force according to Article XXI (c) of the Convention, shall not hereafter enter into force".

ECUADOR

These criteria are valid for the voting but I consider that it is wise to accept recommendations and remarks from the new Member States, concerning ongoing approvals or submissions, especially when these have a technical implication. In the case of having them, they should be submitted to the countries qualified for the voting.

GERMANY

The German vote "No" only relates to T6.1 whereas the proposed revisions of T6.2 and T6.3 would be fully acceptable.

For T6.1 Germany keeps its position that the right to vote should apply to all Contracting parties entitled to vote at ANY DATE after the conference.

Considering the resulting practical circumstances of this position, we are proposing that Governments wishing to accede to the IHO in the time before the amended Convention enters into force are recommended also to simultaneously accede to the Protocol of amendments. In the best case, IHO could then welcome a new member state which adds one more positive vote to the number of the Amendment supporters.

Bureau's Comments:

Germany may wish to bring a new proposal forward on the issue of T6.1 to be considered by the EIHC in accordance with the procedure of Article 9(b) of the IHO General Regulations.

FRANCE

CL02/2009 seeks Member States' approval of a proposed Administrative Resolution on determining the two-thirds majority required for a certain number of decisions specified by the IHO Convention.

Although France, in principle, has no objection to the DC's proposal, it will not take part in the vote for the following reasons:

- 1) It is unacceptable that the text of the proposed Resolution has not been submitted to the Member States in the two official languages of the Organisation.
- 2) Taking into consideration the importance of this Proposal and also the imminence of the EIHC, where a related proposal is being presented by a MS [cf. ref b) Proposal 14, IHB comments] a vote by correspondence does not seem appropriate.

Moreover, France notes that the LAC Chairman recognises in the letter annexed to the CL02 that alternatives might be proposed and usefully discussed at the 4th EIHC.

Before endorsing the fixed majority used up until now for the acceptance of new Member States, it would appear useful to discuss the foreseeable effects of maintaining this provision or the adoption of

a sliding majority, taking into consideration new MSs, on the process of ratifying the protocol of amendments of the IHO Convention.

Therefore, France abstains from voting and requests that the question be examined at the forthcoming 4th EIHC as part of Proposal 14.

Bureau's comments:

- 1) *The issue of the translation was a misunderstanding which has now been corrected.*
- 2) *The Directing Committee had informed LAC in July 2008 that it would seek Member States' approval through the Circular Letter procedure. Having received, six months prior to the Conference, unanimous recommendations from LAC unrelated to amendments to the Convention or Regulations but referring only to the interpretation of the calculation of the two-thirds majority of the application of Articles XX and XX1 (3) of the IHO Convention, the DC furthered the process through CL02/2009.*

France can present a new proposal on this issue to be considered during the EIHC under the procedure of Article 9 (b) of the General Regulations.

INDIA

The Administrative Resolution T6 appears to be fair, consistent and in consonance with good democratic tenets.

JAPAN

With respect to Resolution T 6.1, Japan recognizes the importance of the early entry into force of the Protocol of Amendments to the Convention on the International Hydrographic Organization. For this reason, Japan would support, from a practical point of view, the interpretation of the "two-thirds majority" as meaning "two-thirds of the Contracting Parties entitled to vote at the time of the approval" of the Protocol. Japan also agrees to the draft Administrative Resolution T6.2, which clarifies the current practice in IHO.

However, Japan has an objection to the Legal Advisory Committee's (hereinafter "LAC") interpretation of paragraph 3 (a) of Article 31 of the Vienna Convention on the Law of Treaties (hereinafter "VCLT"), which is the basis for the voting procedure required by the Circular Letter 02/2009. Japan shares the view of the LAC that a "subsequent agreement between the parties" in the sense of paragraph 3 (a) of Article 31 of VCLT is required to interpret the expression "two-thirds majority" under Article XXI (3) of the IHO Convention as meaning two-thirds of the "Contracting Parties at the time of the approval by the Conference" and not as meaning two-thirds of all the Contracting Parties at any date after the Conference that has adopted the amendments. Then, the recommendation ("Recommendation 1") of the LAC says that the "subsequent agreement" can be made by the decision of the Conference adopted by a simple majority vote of the Member Governments. However, Japan cannot agree to this recommendation since it believes that, under paragraph 3(a) of Article 31 of VCLT, a "subsequent agreement between the parties" must be interpreted to mean a "subsequent agreement between all the parties", which has been an established international practice.

Japan therefore finds it impossible to agree to the voting procedure proposed in "Recommendation 1" of LAC and has decided not to participate in the vote for the issues involving the interpretation of paragraph (3a) of Article 31 of VCLT.

In addition to the above-mentioned problem with the voting procedure Japan disagrees to the draft Administrative Resolution T6.3 since, in its view, Symmetric Arithmetic Rounding does not conform to the common international practice concerning multilateral treaties.

UNITED KINGDOM

1. UK believes that creation of new Administrative Resolution T6 to describe the practical implementation of voting processes is worthwhile.

2. You will recall that I publicly supported your position at the NIOHC in the discussion on this issue and I continue to believe that it is in the interests of all to expedite adoption of the amendments to the Convention and that clarity over what is required to deliver that is important.
3. On an editorial point, UK notes that the introductory paragraph refers to “the Report provided by the IHO Legal Advisory Committee (LAC)” and considers that the Resolution would benefit from specifying it more closely by including the date of the report or a cross reference to IHO CL2/2009.

Bureau's comments:

The DC agrees to UK's third point and has amended the final text accordingly.

**CHAPTER T
ADMINISTRATION**

- Section 1 - Member States**
- Section 2 - Bureau**
- Section 3 - Directors**
- Section 4 - Staff**
- Section 5 - Strategic Plan and Work Programme**
- Section 6 - Practical Implementation of Voting Processes**

=====

Section 6 - Practical Implementation of Voting Processes

In considering the Report provided by the IHO Legal Advisory Committee (LAC)¹, Member States decided that the following meanings should be used to determine the two-thirds majority required for the voting procedures under Articles XX and paragraph 3 of Article XXI of the IHO Convention.

T 6.1 Determining the majority required to approve amendments to the Convention.

In order to determine the majority required to approve the entry into force of an amendment to the Convention in accordance with paragraph 3 of Article XXI of the Convention, the expression “approval by two-thirds of the Contracting Parties” shall be interpreted as meaning two-thirds of the Contracting Parties entitled to vote at the time of the approval by the Conference.

T 6.2 Determining the majority required to approve admission to the IHO.

In order to determine the majority required to approve admission to the IHO under Article XX of the Convention, the expression “approved by two-thirds of the Member Governments” shall be interpreted as meaning two-thirds of the Contracting Parties entitled to vote at the time of the application by a Government to the Principality of Monaco.

T 6.3 Calculating the majority in IHO voting processes.

The IHO follows the standard practice known as Symmetric Arithmetic Rounding or Round-Half-Up (Symmetric Implementation) in determining the integer value that will constitute a majority in a vote. When the result of the calculation is not precisely a whole number – for example – 37, the result shall be determined by increasing it to the next integer value if the first decimal place is 5 or more (rounding up) – thus 37.50 becomes 38, or by retaining the integer value if the first decimal place is less than 5 (rounding down) – thus 37.49 becomes 37.

¹ Annex A to CL02/2009 dated 12 January 2009