

Dossier del BHI No. SPWG-2

CIRCULAR No. 19/2003  
27 de Febrero del 2003

INFORME DE LA SEGUNDA REUNION DEL GRUPO DE TRABAJO SOBRE  
PLANIFICACION ESTRATEGICA (SPWG)  
Goa, India, 20-22 de Enero del 2003

Estimado Director,

Se adjunta a la presente el informe de la 2ª Reunión del SPWG, celebrada en Goa (India), del 20 al 22 de Enero.

Este informe ya ha sido distribuido a los representantes de las Comisiones Hidrográficas Regionales de la OHI (CHRs) para su posterior distribución a los países miembros de las CHRs y, conforme a los procedimientos convenidos, se envía ahora, como Anexo de una Circular del BHI, a todos los Estados Miembros de la OHI.

Como puede verse en el informe, la 2ª Reunión trató principalmente sobre un nuevo proyecto de modelo de estructura para la Organización. Los comentarios sobre el informe y el modelo propuesto deberán enviarse a través de los representantes de las CHRs, o, en el caso de Estados Miembros que no sean Miembros de una CHR, al SPWG a través del Bureau.

Es también posible para los Estados Miembros utilizar el foro del SPWG <http://www.iho.shom.fr/cgi-bin/togate>.

Todos los comentarios recibidos serán coordinados por la Presidencia del SPWG, para una posterior consideración por el SPWG en la próxima reunión, que se celebrará del 12 al 14 de Mayo del 2003 en Lima, Perú.

En nombre del Comité Directivo  
Atentamente,

*(original firmada)*

Vice-Almirante Alexandros MARATOS  
Presidente

Anexo: (1) - Informe de la 2ª Reunión del SPWG.

**SEGUNDA REUNION DEL NUEVO GRUPO DE TRABAJO DE LA OHI  
SOBRE PLANIFICACION ESTRATEGICA,  
20-22 de Enero del 2003, Goa, India.**

**INFORME**

**1) Lugar y fecha.**

La segunda reunión del SPWG fue celebrada en el Hotel “Cidade de Goa”, Goa, India, del 20 al 22 de Enero de 2003, bajo la Presidencia de Mr. F. KLEPSVIK (Noruega). Fue patrocinada y organizada por el Servicio Hidrográfico Nacional de India. Todas las Comisiones Hidrográficas regionales de la OHI estuvieron representadas en la reunión, junto con seis países individuales (Bangladesh, Japón, Marruecos, República de Corea, Túnez y el Reino Unido). Se adjunta una lista de participantes en el Apéndice 5.

**2) Puntos 1 y 2 del Orden del Día: Bienvenida, Presentaciones, Avisos. Actas de la Reunión anterior.**

El Presidente dio la bienvenida a los participantes y observó que todas las Comisiones Hidrográficas Regionales estaban presentes. Resumió el trabajo llevado a cabo por el SPWG desde la 1ª Reunión y también presentó los aspectos más importantes de los temas tratados por el Grupo de Presidencia del SPWG en sus dos últimas reuniones.

El Informe de la 1ª Reunión fue adoptado oficialmente.

**3) Punto 3 del Orden del Día - Acciones de la Reunión anterior.**

El Presidente revisó la lista de acciones programadas, que debían ser llevadas a cabo después de la primera Reunión. Todas las acciones que debían ser llevadas a cabo antes de la Reunión habían sido completadas.

Países que porporcionarán Asesores legales - Tal y como se consideró en anteriores reuniones, se decidió que los miembros del SPWG informarían al Presidente (con copia al Secretario) antes del 15 de Febrero, sobre los expertos legales que estarán disponibles para ayudar al SPWG a revisar/corregir el Convenio.

Se espera que estos expertos participarán en el trabajo que será llevado a cabo después de la reunión del SPWG en Lima.

**4) Punto 4 del Orden del Día - Breve Revisión de Visión & Misión.**

La Visión & la Misión de la OHI fueron revisadas brevemente y confirmadas por la reunión.

**5) Punto 5 del Orden del Día - Finalización de los Objetivos.**

Se expuso el proyecto de Objetivos, ya sometido a los miembros del SPWG para sus comentarios, se discutió y fue aprobado con algunas correcciones como se indica en el Apéndice 1. Se estuvo de acuerdo sobre la importancia de reflejar SOLAS V en los Objetivos, teniendo en cuenta el rol ampliado de la OHI en el futuro y los aspectos globales y regionales de los objetivos de la Organización:

Se estuvo de acuerdo en que el Objetivo propuesto “*Administrar servicios centrales o conjuntos para los Servicios Hidrográficos Nacionales de los Estados Miembros*” no era apropiado para su inclusión

en el Convenio, pero, sin embargo, se decidió posteriormente considerarlo para su posible inclusión en otro documento relevante de la OHI.

**6) Orden del Día - Puntos Fuertes & Puntos Débiles – Resumen de la información de las CHRs & EMs. Análisis de la visión de conjunto.**

El Grupo de Presidencia presentó un Cuadro resumiendo las respuestas recibidas de las CHRs. Los Miembros del SPWG discutieron sobre este Cuadro.

El SPWG decidió que las conclusiones y los puntos débiles y fuertes identificados resultantes de las respuestas al Cuestionario deberán incluirse en el amplio informe necesario que propondrá nuevos principios generales y estructuras para el funcionamiento de la OHI, que será producido por el Grupo de Presidencia. Se anticipa que dicho informe será redactado en la próxima reunión del Grupo de Presidencia, que se celebrará en Marzo del 2003 y se distribuirá a los miembros del SPWG antes de la semana no. 12.

**7) Punto 7 del Orden del Día – Presentación del BHI del estudio sobre el Convenio**

El BHI presentó un estudio que identifica aquellos artículos del Convenio que pueden verse afectados por cambios en la estructura de la OHI. El objetivo de este ejercicio fue establecer un acuerdo común sobre este asunto.

**8) Punto 8 del Orden del Día – Explicación de Aceptación Tácita y procedimientos de Aplicación Provisional**

El Presidente explicó los conceptos de Aceptación Tácita y Aplicación Provisional según lo analizado por el Abogado, Mr. David SAGAR, en un estudio llevado a cabo para la OHI y distribuido a los Estados Miembros de la OHI con las Actas de la 1ª Reunión del SPWG.

Algunos miembros del SPWG pidieron que el informe fuese distribuido de nuevo para permitir una consideración y comentarios adicionales. Por consiguiente, se adjunta a estas Actas como Apéndice 6.

**9) Puntos 9, 10 y 11 del Orden del Día – Grupos de Estudio del SPWG**

El SPWG aprobó la propuesta del Grupo de Presidencia de establecer dos Grupos de Estudio para considerar asuntos específicos. Durante la reunión, como consecuencia del progreso efectuado en temas estructurales, quedó claro que el GE puede trabajar por correspondencia y, así pues, todos los miembros podrán participar.

Se desarrollaron las Directrices para el Grupo de Estudio sobre Mejoras en la Estructura de la OHI y para el GE sobre el Convenio y fueron aprobadas por el SPWG. Se incluyen en el Apéndice 2.

El Grupo de Presidencia expuso varias propuestas de reestructuración. Las propuestas se basaban en los Puntos Fuertes y Débiles identificados en las respuestas al Cuestionario y presentaban diferentes opciones para una nueva estructura para la Organización y los principios generales de su funcionamiento. El SPWG prefirió el modelo basado en una Asamblea, un Consejo, una Secretaría y Comités Permanentes. Se reconoció el beneficio de un Consejo como elemento importante para llevar a cabo el aumento requerido en eficacia, eficiencia e interés de la Organización. El SPWG desarrolló más a fondo los principios generales para el funcionamiento de este modelo. (Ver Apéndice 3).

El GE trabajará por correspondencia en este punto y los miembros del SPWG enviarán todos los comentarios adicionales sobre el mismo. El Grupo de Presidencia producirá el informe mencionado en el Párrafo 6.

Como punto de acción, se atribuyó al BHI la tarea de presentar al Grupo de Presidencia un primer texto de un Convenio revisado, basado en el modelo de reestructura elegido. Este primer proyecto será considerado por el Grupo de Presidencia en la reunión mencionada en el punto 6 y distribuido a los miembros del SPWG antes de la semana n° 12 de 2003.

En lo que respecta al Grupo de Estudio sobre Mejoras al Convenio, se convino que los detalles sobre este Grupo de Estudio serían convenidas en la 3ª Reunión, en Lima (Perú).

#### **10) Puntos del Orden del Día 12 y 13 - Implicaciones para el Presupuesto y Programa del Trabajo futuro**

Según lo sugerido por el Grupo de Presidencia del SPWG y lo expuesto en los Documentos de la 2ª Reunión, se convino que las conclusiones y las recomendaciones del Grupo de Estudio sobre las Mejoras de la Estructura de la OHI, tras haber sido examinadas y decididas en la 3ª Reunión, requerirán un análisis detallado de las implicaciones financieras. Esto será llevado a cabo por un Grupo de Trabajo “*ad hoc*”, trabajando en paralelo con el Grupo de Estudio sobre las Mejoras del Convenio, cuyos Términos de Referencia se decidirían en la 3ª Reunión. El Presidente del Comité Directivo del BHI propuso que el BHI, con el apoyo de la Comisión de Finanzas, lleve a cabo un estudio sobre las implicaciones presupuestarias, que se transmitirá al SPWG para su consideración.

El enfoque general del programa para el trabajo del futuro SPWG fue aprobado también y se incluye en este informe como Apéndice 4.

#### **11) Punto 14 del Orden del Día - Detalles sobre las próximas Reuniones del SPWG**

Se consideró conveniente programar una reunión de 3 días de duración en Lima (Perú), para que haya el tiempo necesario para tratar todos los asuntos que van a programarse. Así pues, la 3ª Reunión del SPWG se celebrará en Lima, Perú, del 12 al 14 de Mayo del 2003. Este programa se ha acordado con las autoridades peruanas.

El SPWG sintió también la posible necesidad de programar una 5ª reunión del SPWG (que no está aún programada) probablemente en el 2004, para finalizar todos los asuntos del SPWG antes de la 3ª Conferencia H.I. Extraordinaria, en Abril del 2005.

Se indica en la página siguiente una lista de Acciones resultantes de la 2ª Reunión del SPWG.

**LISTA DE ACCIONES**

1. Todos los miembros del SPWG enviarán, antes del 15 de Febrero, al Presidente y al Secretario, información sobre los expertos legales que estarán disponibles para asistir al SPWG en la revisión/enmienda del Convenio.
2. El Grupo de Estudio sobre Mejoras de la Estructura de la OHI trabajarán por correspondencia y los miembros del SPWG le enviarán sus comentarios. El Grupo de Presidencia producirá un informe sobre las conclusiones y las propuestas del Grupo de Estudio antes de finales de Marzo del 2003 y lo distribuirá a los miembros del SPWG antes de la semana n° 12 del 2003.
3. El BHI desarrollará y presentará al Grupo de Presidencia un primer texto de correcciones al Convenio, basado en el modelo preferido de propuesta de reestructura.
4. El BHI comprobará con el Servicio Hidrográfico Peruano las fechas para la 3ª Reunión de Lima (NOTA: Esta acción ya ha sido completada y las fechas de la reunión han sido confirmadas para el 12 al 14 de Mayo del 2003).
5. Para ayudar a India y a Marruecos en la obtención de las aprobaciones necesarias, el BHI enviará una carta a los representantes de estos países, invitándoles oficialmente a la 3ª Reunión.

**LOS OBJETIVOS DE LA OHI**

1. Fomentar el uso de la hidrografía para la seguridad de la navegación y para todas las otras finalidades marinas y provocar un conocimiento global de la importancia de la hidrografía;
2. Mejorar la cobertura global, la disponibilidad, la calidad y el acceso a los datos, la información, los productos y los servicios hidrográficos;
3. Mejorar la aptitud, la capacidad, la ciencia y las técnicas hidrográficas globales;
4. Establecer y apoyar el desarrollo de normas internacionales para la calidad y los formatos de datos, información, productos, servicios y técnicas hidrográficas y lograr la mayor uniformidad posible en el uso de estas normas;
5. Dar una orientación autorizada y oportuna sobre todos los temas hidrográficos a los gobiernos y a las organizaciones internacionales;
6. Facilitar la coordinación de actividades hidrográficas entre Estados Miembros y
7. Mejorar la cooperación en actividades hidrográficas entre los Estados, sobre una base regional.

**DIRECTRICES PARA EL GRUPO DE ESTUDIO SOBRE  
LAS MEJORAS DE LA ESTRUCTURA DE LA OHI**

1. Desarrollar propuestas para el SPWG, relativas al futuro modelo de organización y procedimientos de alto nivel de la OHI, teniendo en cuenta, entre otras, las siguientes:

- Decisiones de la XVIª Conferencia;
- Resumen de las respuestas al Cuestionario sobre los Puntos Fuertes & Débiles;
- Los modelos previos sometidos por los EMs;
- La nueva Visión, Misión y los Objetivos de la OHI;
- Rol preeminente de los Estados Miembros en un foro intergubernamental.  
*Recordando que los EMs formulan las políticas y actúan a través de la Conferencia/Asamblea.*  
  
*El éxito de la OHI depende de la participación, la cooperación y el compromiso activos de los EMs: la estructura debe facilitarlos.*
- Frecuencia/objetivo de las Conferencias.  
*¿Cambiar el nombre a Asamblea?*  
*La 2ª Conferencia Extraordinaria decidió que las reuniones deberán ser más frecuentes.*  
*¿Qué frecuencia? ¿Lugar de reunión?*
- Necesidad de un Consejo, Comités, Grupos de Trabajo.  
*¿Un Consejo Permanente? De ser así, ¿con qué rol y poderes? ¿Elegido cómo?*  
*¿Comités Permanentes? ¿Qué TdRs?*
- Necesidad de procesos más rápidos de toma e implementación de decisiones.  
*¿Voto en la Conferencia? ¿Voto por correo?*  
*Aprobación tácita – p.e. ¿para decisiones técnicas?*  
*¿Aplicación provisional? ¿Papel del Consejo? ¿Frecuencia de la Asamblea?*
- Planificación estratégica.  
*¿Continuar como ahora? ¿Función del Consejo? ¿Comité Permanente?*  
*Revisión continua del Plan Estratégico. ¿Cómo deberá controlarse la marcha del trabajo? ¿Alineación del Presupuesto con el Programa de Trabajo?*
- Aspectos Técnicos.  
*¿Organizar todo el trabajo técnico bajo un Comité Permanente?*  
*¿Cómo participar en el establecimiento de Normas?*
- Aspiraciones/representación regionales.  
*¿Prácticas similares a las de las organizaciones internacionales similares?*
- Interacción con el Sector Privado & las ONGs.  
*¿Grupos Consultivos? ¿Parte de la Estructura del Comité? ¿Miembros Asociados?*
- CHRs.  
*¿Rol reforzado? ¿Operación eficaz?*
- Programas de Creación de Capacidades.  
*¿Foco regional? ¿Necesidad de una coordinación central?*  
*¿Mecanismos de financiación (p.e. Fondos de Fideicomisos)?*

- Crecimiento potencial en un número de Estados Miembros.  
*Si dobláramos el volumen, ¿lo resistiría la estructura?*
- Rol/estructura de la Secretaría/el Bureau.  
*¿Bureau o Secretaría? ¿Presidente o Secretario General? ¿Directores o Secretarios Generales Adjuntos? ¿Responsabilidades? ¿Relaciones con el Consejo y los Comités? ¿Cantidad y roles del Personal Técnico? ¿Elección de Funcionarios?*

2. Presentar las propuestas al SPWG antes del 11 de Abril del 2003.

#### **DIRECTRICES PARA EL GRUPO DE ESTUDIO SOBRE LAS MEJORAS AL CONVENIO DE LA OHI**

1. Desarrollar propuestas para el SPWG, relativas a mejoras al Convenio de la OHI, teniendo en cuenta (*inter alia*) las siguientes:

- Estudios emprendidos por el BHI;
- Propuestas específicas sobre los Artículos XX, XXI;
- Decisiones de la XVIª Conferencia;
- Propuestas del Grupo de Estudio sobre la Estructura, relativas a:
  - *El resumen de respuestas al Cuestionario de Puntos Fuertes y Débiles;*
  - *La Visión, Misión, y Objetivos nuevos de la OHI;*
  - *Modelos sometidos previamente por los EMs;*
  - *Rol preeminente de los Estados Miembros en un foro inter-gubernamental;*
  - *Frecuencia/foco de las Conferencias;*
  - *Necesidad de Consejo, Comités, Grupos de Trabajo;*
  - *Necesidad de procesos de toma e implementación de decisiones más rápidos;*
  - *Planificación Estratégica;*
  - *Aspectos Técnicos;*
  - *Interacción con el Sector Privado y la ONGs;*
  - *CHRs;*
  - *Programas de Creación de Capacidades;*
  - *Crecimiento potencial en el número de Estados Miembros;*
  - *Aspectos Técnicos;*
  - *Aspiraciones Regionales;*
  - *Rol/estructura de la Secretaría/el Bureau.*

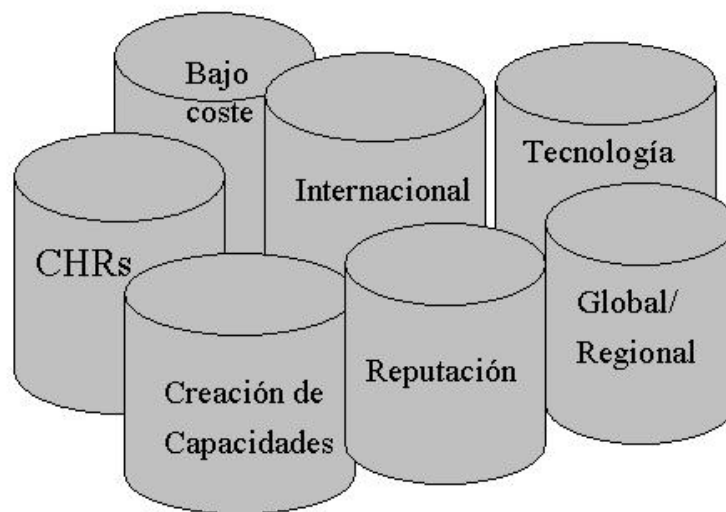
2. Identificar los ajustes consiguientes del Acuerdo de Sede y de otros Documentos Básicos.

3. Presentar las propuestas al SPWG antes del 1 de Septiembre del 2003.



**UNA PROPUESTA DEL GRUPO DE PRESIDENCIA PARA ESTIMULAR EL DEBATE  
Y TOMAR EN CUENTA LOS PUNTOS FUERTES & DEBILES**

El “Almacén” de Puntos Fuertes.....

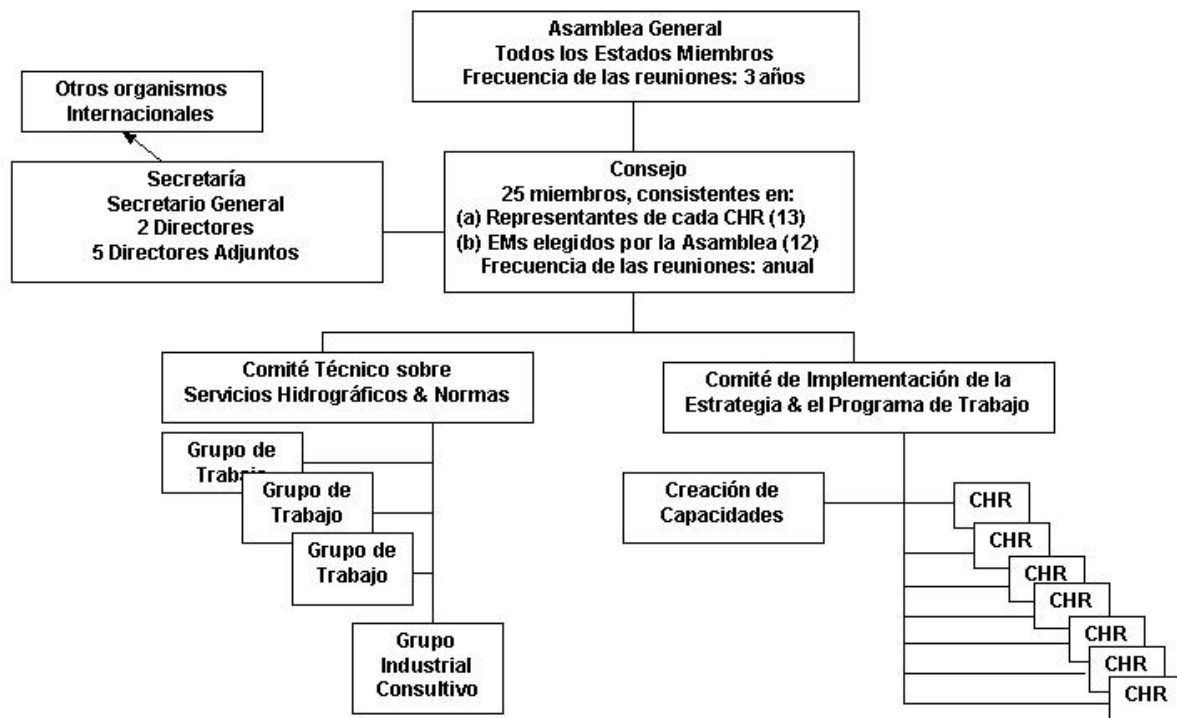


## La “Red” de Puntos Débiles.....



### Principios Generales:

- Mantener los Puntos Fuertes, eliminarlos Puntos Débiles;
- La Estructurae & y el Convenio deben ayudar (no estorbar) a la Organización a llevar a cabo su Misión, Visión y Objetivos;
- La *esencia* de nuestra Misión, Visión, Objectivos:
  - una organización global, que actúa regionalmente;
  - establecer normas y proporcionar orientación;
  - mejorar el acceso mundial a nuestros datos/productos/servicios;
  - mejorar la capacidad & aptitud global;
- De modo que necesitamos instrumentos para tratar de:
  - la toma de decisiones;
  - la tecnología, las normas, el asesoramiento;
  - la cooperación global & regional;
- La mejor estructura es más sencilla.



### Principios:

La totalidad de la Organización comprende: la Asamblea, el Consejo, la Secretaría, los Comités Permanentes

- Asamblea :

Todos los EMs. Se reúne cada 3 años.

- Elige al Presidente & al VP de la Asamblea;
- elige al Secretario General (& Directores?);
- establece las políticas estratégicas generales;
- establece los TdRs/poderes del Consejo;
- elige los miembros del Consejo;
- aprueba el Plan para 3 años.

- Council:

1/4 de los EMs (es decir 18-20 al principio). Los representantes de las CHRs más los miembros elegidos. Se reúne una vez al año (como mínimo).

- Coordina las actividades de la Organización;
- Aprueba el proyecto de programa de trabajo y las estimaciones de presupuesto;
- considera los informes y las propuestas de los Comités;
- (¿ nombra a los Directores ?);
- autoriza a la Secretaría a llegar a acuerdos relativos a la relación de la Organización con otras organizaciones.

- Secretaría :

- 1 Secretario General;
- 1 Director por Comité Permanente;
- Directores Adjuntos según lo requerido por la estructura del Comité;
- 1 Director Adjunto para Finanzas/Personal;
- 1 Director Adjunto para el Secretario General.

**Estructura del Comité Permanente:**

- Comité Técnico para Servicios y Normas Hidrográficas;
- Subcomités para Cartografía, Hidrografía;
- Estrategia e Implementación del Programa de Trabajo;
- Subcomité para Creación de Capacidades;
- Supervisión de las CHRs.

**Secretaría:**

- 1 Secretario General:
- elegido por la Asamblea;
- permanencia máxima de 3 periodos en funciones (9 años);
- reconfirmado en cada reunión de la Asamblea.
- 2 Directores:
- 1 para cada Comité Permanente;
- seleccionados/renovados sus nombramientos por el Consejo;
- permanencia máxima de sus funciones de 9 años.
- Directores Adjuntos:
- seleccionados por el Secretario General;
- nominaciones de los EMs;
- mandato de 4-7 años;
- 1 para cada Comité Permanente y cada subcomité principal;
- 1 para Finanzas/Personal;
- 1 para el Secretario General.
- Personal de Asistencia:
- estructurado & designado por el Secretario General.

**SCHEDULE OF THE FUTURE SPWG WORK**

**SPWG AND MILESTONES**

	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR
<b>Chair Group Meetings</b>	After the meeting in Goa			16-17 ToRs for Basic Docs WG		No date yet fixed		No date fixed				No date fixed				
<b>RHC Meetings</b>	NIO 17-19		SAI USC 24-27	SWP 15-16 RSA 21-22	NHC 6-7 EA ?	MBS 2-6			BS 12-14	SEP?						
<b>SPWG Meetings</b>	20-22 GOA				15-16 LIMA					6-8 SINGAPORE						
<b>Goals and Structure</b>		<b>WG on Structure + All SPGW Report by 1<sup>st</sup> April</b>														
<b>Financial implications</b>						<b>WG on Finance. Report by 1st September</b>										
<b>Convention and Basic Documents</b>						<b>WG on Convention and Basic Documents SPWG+ Legal advisers</b>										
<b>Draft Report</b>											<b>Chair Group</b>					
<b>Final Report</b>															<b>Comments from M.S.</b>	

The Final Report should be distributed to IHO M.S. by 1<sup>st</sup> August 2004 to allow the necessary time to prepare proposals to the 3<sup>rd</sup> Extraordinary Conference (11 to 15 April 2005)

2ª REUNION DEL SPWG  
20-22 de Enero del 2003  
Goa, India

LISTA DE PARTICIPANTES

Comisiones Hidrográficas Regionales	Nombre	E-mail
<b><u>BSHC</u></b> Dinamarca, Estonia, Finlandia, Alemania, Polonia, Rusia, Suecia	Mr. Göran NORDSTRÖM (Suecia)	<a href="mailto:Goran.Nordstrom@sjofartsverket.se">Goran.Nordstrom@sjofartsverket.se</a>
<b><u>EAHC</u></b> China, Indonesia, Japón, Malasia, Filipinas, Rep. of Corea, Singapur, Tailandia	Mr. NG KWOK-CHU (China)	<a href="mailto:hydro@mardep.gov.hk">hydro@mardep.gov.hk</a>
<b><u>CHAtO</u></b> Francia, Marruecos, Nigeria, Portugal, España	VA. Silva CARDOSO (Portugal) C.N. Augusto MOURAO EZEQUIEL (Portugal)	<a href="mailto:dirgeral@hidrografico.pt">dirgeral@hidrografico.pt</a> <a href="mailto:dirtecnica@hidrografico.pt">dirtecnica@hidrografico.pt</a>
<b><u>MACHC</u></b> Colombia, Cuba, Francia, Guatemala, Jamaica, México, Holanda, Trinidad & Tobago, RU, EE.UU., Venezuela	Mr. Kenneth COOPER (EE.UU.)	<a href="mailto:cooperk@cnmoc.navy.mil">cooperk@cnmoc.navy.mil</a>
<b><u>MBSHC</u></b> Argelia, Croacia, Chipre, Egipto, Francia, Grecia, Italia, Mónaco, Rusia, Eslovenia, España, Siria, Túnez, Turquía, Ucrania, Yugoslavia	C.F. Paolo LUSIANI (Italia)	<a href="mailto:iim.sre@marina.difesa.it">iim.sre@marina.difesa.it</a> <a href="mailto:lusianip@marina.difesa.it">lusianip@marina.difesa.it</a>
<b><u>CHN</u></b> Dinamarca, Finlandia, Islandia, Noruega, Suecia	Mr. Göran NORDSTRÖM (Suecia)	<a href="mailto:Goran.Nordstrom@sjofartsverket.se">Goran.Nordstrom@sjofartsverket.se</a>
<b><u>NIOHC</u></b> Bangladesh, India, Omán, Sri Lanka, Tailandia, RU	C.A. K.R. SRINIVASAN (India)	<a href="mailto:jillu@del2.vsnl.net.in">jillu@del2.vsnl.net.in</a> <a href="mailto:nho@sancharnet.in">nho@sancharnet.in</a>
<b><u>NSHC</u></b> Bélgica, Dinamarca, Francia, Alemania, Islandia, Holanda, Noruega, Suecia, RU	IGA Yves DESNOES (Francia)	<a href="mailto:ydenoes@shom.fr">ydenoes@shom.fr</a>
<b><u>RSAHC</u></b> Bahrain, Irán, Omán, Emiratos Arabes Unidos	Mr. Mohammad REZA GHADERI (Irán)	<a href="mailto:ghaderi@ir-pso.com">ghaderi@ir-pso.com</a>
<b><u>SAIHC</u></b> Francia, Mozambique, Noruega, Sudáfrica, RU	Mr. Albano GOVE (Mozambique)	<a href="mailto:albanogove@teledata.mz">albanogove@teledata.mz</a>

<b>Comisiones Hidrográficas Regionales</b>	<b>Nombre</b>	<b>E-mail</b>
<b>SEPHC</b> Chile, Colombia, Ecuador, Perú	C.N. Fernando MINGRAM (Chile)	<a href="mailto:fmingram@shoa.cl">fmingram@shoa.cl</a> <a href="mailto:director@shoa.cl">director@shoa.cl</a>
<b>SWPHC</b> Australia, Fiji, Francia, Nueva Zelanda, Papua Nueva Guinea, Tonga, RU, EE.UU.	C.F. Robert WARD (Australia)	<a href="mailto:Robert.ward@hydro.gov.au">Robert.ward@hydro.gov.au</a>
<b>USCHC</b> USA, Canada	Mrs. Kathryn RIES (NOAA de EE.UU.) Mrs. Meg DANLEY (NOAA de EE.UU.)	<a href="mailto:Kathryn.Ries@noaa.gov">Kathryn.Ries@noaa.gov</a> <a href="mailto:Meg.Danley@noaa.gov">Meg.Danley@noaa.gov</a>
<b>País</b>	<b>Nombre</b>	<b>E-mail</b>
<b>Bangladesh</b>	C.N. MN HUDA	<a href="mailto:Huda747@yahoo.co.uk">Huda747@yahoo.co.uk</a>
<b>Japón</b>	Mr. Atsushi MIURA	<a href="mailto:ico@jodc.go.jp">ico@jodc.go.jp</a>
<b>Corea</b>	Mr. CHOI Young-Sub Mr. PARK Hay Yun Mr. CHOI Shin-Ho	<a href="mailto:choi@nori.go.kr">choi@nori.go.kr</a> <a href="mailto:choish@nori.go.kr">choish@nori.go.kr</a>
<b>Marruecos</b>	C.F. Youssef TBER	<a href="mailto:tber_youssef@hotmail.com">tber_youssef@hotmail.com</a>
<b>Túnez</b>	C.F. Rachid ESSOUSSI	<a href="mailto:SHO@email.ati.tn">SHO@email.ati.tn</a>
<b>R.U.</b>	Mrs. Rosemary TUHEY	<a href="mailto:Rosemary.Tuhey@ukho.gov.uk">Rosemary.Tuhey@ukho.gov.uk</a>
<b>EE.UU.</b>	Mr. Thomas J. CUFF	<a href="mailto:cuff@nrccsq.na.vy.mil">cuff@nrccsq.na.vy.mil</a>
<b>OHI/BHI</b>	V.A. Alexandros MARATOS	<a href="mailto:pres@ihb.mc">pres@ihb.mc</a>
<b>Presidente</b>	Mr. Frode KLEPSVIK (Noruega)	<a href="mailto:frode.klepsvik@statkart.no">frode.klepsvik@statkart.no</a>
<b>Vice-Presidente</b>	Dr. Wynford WILLIAMS (UK)	<a href="mailto:Wyn.Williams@ukho.gov.uk">Wyn.Williams@ukho.gov.uk</a>
<b>2º Vice-Presidente</b>	Dr. Hideo NISHIDA	<a href="mailto:Hideo-Nishida@kaiho.mlit.go.jp">Hideo-Nishida@kaiho.mlit.go.jp</a>
<b>Secretario</b>	C.N. Federico BERMEJO	<a href="mailto:patp@ihb.mc">patp@ihb.mc</a>

## IMPLEMENTATION OF AMENDMENTS TO THE IHO CONVENTION

Opinion by David Sagar

### 1 Introduction

The International Hydrographic Organization (IHO) is considering how to expedite the entry into force of certain amendments to the IHO Convention. This Opinion addresses legal options available to the IHO to achieve this purpose.

The three amendments currently under consideration by IHO are:

- (i) an amendment to Article X.2 relative to the Directing Committee, which was approved by the I.H. Conference at its XIIIth session;
- (ii) a proposed revised Article XX relative to the procedures for becoming a Member State of the IHO;
- (iii) a proposed amendment to Article XXI relative to the procedure for amending the Convention.

The purpose of the amendments is to bring the IHO Convention up to date in order to enable the Organization to function effectively in contemporary conditions. However, no amendments have entered into force since the adoption of the Convention in 1967. The reasons for this are apparently not substantive policy objections by Member Governments to the amendments as such, but rather to administrative or procedural delays by Governments in completing the requirements of Article XXI.3 for entry into force of the amendments.

### 2 Rules Relating to Amendment of the IHO Convention

The amendment of the IHO Convention is governed by Article XXI and, subject thereto, by international treaty law, as codified in the 1967 Vienna Convention on the Law of Treaties (“the Vienna Convention”).

Article XXI of the IHO Convention provides that an amendment shall be approved by the IHO Conference, by a majority of two-thirds of the Member Governments represented at the Conference. The amendment shall enter into force for all Contracting Parties three months after two-thirds of the Contracting Parties have notified the Depositary of their approval of the amendment.

The approval or acceptance of amendments to a convention by a qualified majority of Member States, after they have been adopted by the supreme organ of an intergovernmental organization (IGO), is a common feature of the constituent instruments of many IGOs. However, achieving the required number of approvals is often a very long process, especially in IGOs with large memberships, and this delay can frustrate the purposes of the IGO.

However, legal procedures exist in international law to enable such obstacles to be overcome. An increasing number of IGOs have resorted to these procedures to implement amendments to their constituent instruments without waiting for completion of the normal entry into force procedures, in order to fulfil the Organization’s purposes.

Two such procedures are those of *provisional application* and *tacit acceptance* of amendments. They may be resorted to by IGOs notwithstanding that their conventions do not explicitly provide for such procedures. Sections 3 and 4 below describe the basis for these procedures and the use made of them by IGOs in recent times.

### 3 Provisional Application

#### (i) Applicable Rules of International Treaty Law

Provisional application in relation to bilateral or multilateral treaties is a well established procedure in international law, and was codified in the Vienna Convention.

Although the IHO Convention entered into force on 22 September 1970, and the Vienna Convention entered into force on 27 January 1980, the Vienna Convention was widely regarded for the most part as declaratory of customary international law, and can, accordingly, apply to IHO.

Article 5 of the Vienna Convention provides that it applies to the constituent instrument of an IGO, without prejudice to the rules of the IGO. Article 39 provides that the rules in Part II of the Vienna Convention (which includes Article 25 on provisional application) also apply to agreements to amend a treaty, unless the treaty otherwise provides.

Article 25 of the Vienna Convention reads as follows:



## Article 25

- 1 A treaty or a part of a treaty is applied provisionally pending its entry into force if:
  - (a) the treaty itself so provides; or
  - (b) the negotiating States have in some other manner so agreed.
- 2 Unless the treaty otherwise provides or the negotiating States have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

The *travaux préparatoires* for Article 25 recognized that the State practice of provisional application of treaties by various methods was widespread. The purpose and scope of the Article were summed up thus: “The practice of provisional application was now well established among a large number of States and took account of a number of different requirements. One was where, because of a certain urgency in the matter at issue, particularly in connection with economic treaties, it was highly desirable that certain steps should be taken by agreement in the very near future”

Provisional application has been widely used in connection with the initial establishment of IGOs, i.e by individual Member States applying the constituent instrument provisionally before its formal entry into force

Provisional application has also been used to implement amendments to the constituent instrument of an IGO without delay, by decision of the supreme organ of the IGO. These precedents demonstrate that the supreme organs of the IGOs concerned had *inherent* legal power to decide on provisional application of amendments. The precedents described below refer to the ITU, the UN, and the international satellite organizations (ISOs), i.e Inmarsat, Intelsat and Eutelsat.

### (ii) Precedents of Provisional Application of Amendments to Constituent Instruments of IGOs

#### (a) *Practice of the International Telecommunication Union (ITU)*

For many years, ITU Plenipotentiary Conferences have provisionally applied new or revised constituent instruments of the ITU. A recent example was the adoption of a new ITU Constitution and Convention by the ITU Additional Plenipotentiary Conference (Geneva, 1992 (APP-92)), which made substantial changes to the structure of the Union as it existed under the ITU Telecommunication Convention (Nairobi, 1982).

The 1992 Conference also adopted Resolution 1 providing that the provisions of the Constitution and the Convention relating to the new structure and working methods of the Union should be applied provisionally as from 1 March 1993.

The ITU Legal Adviser advised the Conference that it had authority to adopt the Resolution, stated that “the ITU, as any other international organization, was a living organism or body being in a constantly evolving process, thus adapting itself to the new telecommunications environment and the changing requirements of its Member States”. At the ITU there was a “well-established practice with regard to the concept of provisional application”. Under Article 25.1 of the Vienna Convention, a treaty was applied pending its entry into force if either the treaty itself so provided, or the negotiating States have in some other manner so agreed. One “such other manner” would be the Resolution on provisional application under discussion.

The ITU Resolution was adopted by consensus. The legal effect of the provisional application was that, pending its formal entry into force, the relevant provisions of the new Constitution and Convention governed the functions of the various policy making organs of the ITU and the Secretariat, and enabled the ITU to enter into commitments on the basis of the new provisions.

#### (b) *United Nations Convention on the Law of the Sea, 1982 (UNCLOS)*

The 1994 Agreement Relating to the Implementation of Part XI of the UN Convention on the Law of the Sea of 1982 (concerning the International Seabed Authority) was adopted by the UN General Assembly. Article 7 of the Agreement provided for States which had consented in the General Assembly to the adoption of the Agreement, or which had signed it, to apply the Agreement provisionally unless they notified the Depository that they would not do so.

Furthermore, States applying the Agreement provisionally would do so “in accordance with their national or internal laws and regulations”. The purpose of the language was to overcome the difficulties of those States that had constitutional requirements for parliamentary authorization. This provision is relevant to the conclusions referred to in section 5 (i) below.

#### (c) *The International Mobile Satellite Organization (Inmarsat)*

Inmarsat’s experience with amending its Convention affords an important example of State practice in relation to provisional application.

The 1979 Inmarsat Convention provided for amendments to be adopted by its Assembly of Parties, by a two-thirds majority of Member States present and voting. Thereafter, the amendments entered into force when acceptances had been received by a qualified majority of all the Parties. There was no explicit provision authorising the provisional application of amendments to the Convention.

In 1985 and 1989, important amendments to the Convention were adopted by the Assembly, but were thereafter subjected to delays of many years before they entered into force. The reasons for this were partly due to the requirement for legislative action in some States, or to low priority or administrative delays in some States.

In 1994, the Assembly adopted amendments to the Convention to change the name of the Organization and to make a change to an Article relating to the composition of the Inmarsat Council, one of its governing bodies. Because of the experience of delays with the previous amendments, the Assembly also decided, by consensus, that the amendments would be implemented *with immediate effect* pending the formal entry into force of the amendments.

The words “*provisional application*” were not used in the decision because several Parties were unable to agree formally to the use of the doctrine without prior legislative approval. However, they had no active objection to the substance of the amendments and did not oppose the consensus decision using the alternative wording.

In 1998 –1999, Inmarsat adopted much more fundamental amendments to its Convention for the restructuring and privatization of the Organization. For commercial and political reasons, the Organization could not wait for the amendments to enter into force by the normal procedure.

Extensive consultations were held among the Inmarsat membership on the means whereby the amendments could legally be implemented without delay. Meetings of legal experts from Parties were held to review the issue, and opinions sought from international treaty lawyers. Account was taken of legal advice that treaties of a ‘constitutional character’ should be subject to somewhat different rules of interpretation, so as to allow for the intrinsically evolutionary nature of a constitution. This advice was supported by the doctrine and practice relating to dynamic interpretation of treaties that are the constituent instruments of IGOs. The Organization was also advised that, in addition to the Assembly’s *explicit* power to adopt amendments, it had *inherent* power to apply the amendments provisionally, if it found this to be necessary in the circumstances.

The Assembly considered that it was necessary to implement the restructuring amendments rapidly in order to enable Inmarsat to fulfil its basic purposes. It therefore decided to implement the amendments with effect from a specified date, pending and subject to their entry into force in accordance with the existing procedure.

Although the words “provisional application” were not used in the decision, for reasons similar to those mentioned in respect of the 1994 amendments, the practical effect of the decision was the same.

The decision was taken by consensus. The Inmarsat Convention and Rules of Procedure provided for substantive decisions of the Assembly to be taken by a two-thirds majority of Parties present and voting. In practice, most Assembly decisions were always taken by consensus, i.e. after discussion of the issue, the Chairman summed up by announcing that there was no objection to the decision and that there appeared to agreement by the Assembly to it. In this respect, the practice was consistent with that used in many other IGOs.

It was apparent that if the decision had been put to a vote, many Representatives may have been formally required to oppose it. However, as most Members supported the need for the restructuring to proceed without delay, none was prepared to obstruct the process by formally objecting to a consensus decision.

(d) *The European Telecommunications Satellite Organization (Eutelsat)*

In 1999, Eutelsat, another ISO with a structure comparable to that of Inmarsat, also adopted amendments to its constituent instruments for the restructuring and privatization of the Organization.

The Eutelsat Assembly of Parties further adopted, by consensus, a Resolution authorising explicitly the provisional application of the amendments by 2 July 2001 if the amendments had not formally entered into force by then.

The Assembly also noted that “...the Parties would conduct themselves, in their relationships with each other, the Organization and the Company, within the limits allowed by their national constitutions, laws and regulations, as if the amendments had entered into force as at the specified date.”

(e) *The International Telecommunications Satellite Organization (Intelsat)*

Intelsat also completed its restructuring along similar lines to Inmarsat and Eutelsat in July 2001, and its Assembly adopted, by consensus, a decision to apply the restructuring amendments provisionally.

(iii) Use of Provisional Application for the Amendments to the IHO Convention

*Use Of Provisional Application Generally*

Taking into account the abovementioned rules of international treaty law and the State practice described in this Section, provisional application would be a legally sound and effective procedure to implement the amendments to the IHO Convention referred to in Section 1 without delay, pending their formal entry into force.

The I.H. Conference, as the Organization’s supreme organ, would have inherent authority to take the necessary measures to put into effect amendments designed to carry out the Organization’s purposes, when faced with long delays. This authority would be strengthened in the event that there is little or no objection by Parties to the substance of the amendments, and that administrative or procedural factors are the cause of these delays.

One of the objections to the use of provisional application by some States is that their constitutional systems require the involvement of the legislature or other branches of the government before the State assumes international obligations or modifies obligations previously assumed.

It is therefore relevant to the proposed use of provisional application by the IHO that the amendments do not impose any financial or other obligations on Member States. Indeed, in the case of the amendment to Article XX, the admission of new Members would presumably benefit other Members through the additional financial contributions received from the new Members.

It is a feature of provisional application, that it is reversible if the amendment does not eventually enter into force. That may be a problem in cases where the practical effect of the amendments cannot be fully reversed, but that is not the case with respect to the amendments referred to in Section 1 above. If the amendments did not eventually enter into force, the Convention may revert to its former unamended state. That would not invalidate decision taken whilst amendments were being properly implemented under the provisional application decision, e.g. the admission of new members.

It is important to recall that most of the IHO Member Governments were also members of the ITU, Inmarsat and Intelsat, and they have, accordingly accepted, at least by acquiescence in consensus decisions, the provisional application of major amendments to the constituent instruments of those Organizations.

### **Use of Provisional Application for the Specific IHO Amendments**

It is worthwhile considering the justification for using provisional application for each of the amendments referred to in Section 1.

*Article X.2* The amendment already adopted by the I.H. Conference to this Article is intended to streamline the management structure, and its early application will facilitate the functioning of the Bureau.

*Article XX.* The proposed amendment to Article XX is intended to overcome the obstacles to the prompt admission of new Member States to the Organization, caused by the requirement for approval of new Members by two-thirds of the Member Governments. The Indemer Study obtained by the I.H. Bureau has shown that the considerations which justify this requirement in some types of IGOs, do not apply to the IHO.

The objectives of the IHO, as set forth in its Convention, including its Preamble, envisage a membership of all maritime States, for safety of navigation on a global basis. As the Indemer Study points out, it is a technical and consultative Organization, and is universal in scope. The long delays to new membership obstruct the fulfilment of the IHO's purposes, and deprives the Organization of their financial contributions. Such delays do not appear to come from substantive policy objections to new members by Member Governments, but rather from the outmoded and cumbersome procedural requirement of Article XXI.3. These considerations would justify the use of provisional application for accelerating the amendment process.

*Article XXI.* The use of provisional application for the proposed amendments to Article XXI raise different considerations.. The proposed amendments to paragraphs 1 and 2 of Article XXI are of a procedural nature, designed to benefit Member Governments partly by allowing adequate time for consideration of proposed amendments. Use of provisional application should pose no practical problems.

Article XXI.3 is of a different character. Its purpose is partly to give all Parties time for reflection and to meet constitutional requirements for approval, so that the amendment can be implemented in their national law. Such a provision is common in the constituent instruments of IGOs. Legally, provisional application could be applied to the amendment to Article XXI.3, as evidenced, for example, by the precedent in the ISOs' restructurings. Parties may, however, prefer to retain the existing provision as a general procedure, and to decide whether or not to apply a particular future amendment provisionally, on a case by case basis.

## **4 Tacit Acceptance**

Another simplified procedure used in IGOs to implement amendments is that of "tacit acceptance" of the amendments by Member States, i.e., whereby the amendments enter into force by a particular date, unless a specified number of the Member States notify their objection prior to that date. This procedure has been used, in various forms, in a number of international conventions.

In general, the procedure has been restricted to amendments to provisions in the "technical annexes" to conventions. In recent years this technique has been successfully used to amend specific provisions in a treaty, such as those containing limits to be periodically updated. Amendments to the main articles are brought into force through the normal procedure which requires "explicit" acceptances by a specified majority of Member States.

Furthermore, "tacit acceptance" is also used in cases where there is an enabling provision in the parent treaty for the use of tacit acceptance procedures. In other words, the procedure is justified by the fact that the Member States are presumed to have agreed to the use of "tacit acceptance" when they express their consent to be bound by the parent treaty.

There is nothing in international treaty law to prevent the use of tacit acceptance procedures or to limit its use to technical provisions or to cases where the parent treaty explicitly provides for the use of such procedure.

A recent example of the use of the procedure to bring substantive provisions into force at an early date by tacit acceptance, despite the absence of an enabling provision in the parent treaty concerns the International Convention on the Establishment of an International Fund for Oil Pollution Damage, 1971. It became necessary to terminate the Convention expeditiously. Amendments to the Convention for that purpose could only be adopted at a conference convened by the International Maritime Organization (IMO), with no other procedures being laid down. A Protocol was adopted by such a conference, providing that the Convention should cease to be in force in certain circumstances. The Protocol would be deemed to have been accepted and to enter into force unless objections were made by not less than one-third of the Parties within a specified period. Parties which declared that they did not wish to be bound by the Protocol would be deemed to have denounced the Convention.

In the case of the IHO Convention, it is considered that tacit acceptance could not apply to the proposed amendments referred to in Section 1 above, because of the explicit provisions of Article XXI.

When a treaty amendment has entered into force pursuant to a tacit acceptance procedure, it takes effect *definitively* unless and until further amended. This contrasts with provisional application, which is an *interim* procedure, which comes to an end when the formal requirements for entry into force of the amendment is achieved.

Article XXI.3 of the IHO Convention explicitly provides for amendments to be accepted by a qualified majority of the Parties. A decision by the Conference to implement amendments could not override the necessity of obtaining such acceptances. Therefore, the amendments could be applied provisionally, but not implemented by tacit acceptance.

## 5 Procedural Considerations

A number of procedural aspects need to be addressed if it is decided to use provisional application to implement the IHO amendments prior to their formal entry into force.

### (i) Form of Decision

Once the Conference has decided to adopt the amendments, it should take a further decision or decisions to implement the amendments pending and subject to their formal entry into force in accordance with Article XXI.3. The implementation could take effect immediately, or it could take effect at a specified future date.

An example of such a decision, based on the precedents of some of the IGOs referred to above, would be:

*“The Conference, having adopted the amendment to [Article XX] further decides that the amendment will be applied provisionally, with [immediate effect] [effect from a (specified) date], pending and subject to the entry into force of the amendment in accordance with Article XXI.3 of the Convention”.*

If some Parties have difficulties with the use of the terminology “provisional application”, the decision could use alternative language to the effect that the amendment would be *“implemented [with immediate effect] or [with effect from a specified date]*. The legal effect of this alternative language would be the same as if “provisional application” was used. This alternative terminology was used in the Inmarsat case, as referred to above.

***It may be also necessary for the Conference to make a formal acknowledgement relative to the restraints imposed on some Member States on acceptance of provisional application under their national laws.***

Some Governments are unable to vote in favour of a provisional application decision, unless either (a) the procedure has already been explicitly set down in the parent convention to which such Governments are a Party), or (b) the decision receives the prior approval by the legislature or another arm of government.

The experience of IGOs described in Section 4 above demonstrates that while this is an obstacle to the taking of provisional application decisions, procedures are available to overcome the problem.

In the Inmarsat and Eutelsat restructuring, a number of Parties supported politically the immediate implementation of the amendments. They were unable to vote in favour of provisional application but wished to refrain from obstructing a decision on the matter.

The provisional application decision was therefore accompanied by an express acknowledgement by the Assembly about the need for consistency of the decision with the national laws of each Party. The text of the wording is set out below. This became known as a “subordination clause”, i.e. subordinating the decision to national law requirements at the national level. In the Inmarsat case, the clause read:

*“The Assembly also noted: ‘that, in accordance with such decision, Parties will conduct themselves, in their relationships with each other, the Organization and the Company, within the limits allowed by their national constitutions, laws and regulations”.*

A similar acknowledgement was adopted by the Eutelsat Assembly, and it was also used in the case of the 1994 Agreement Relating to the Implementation of Part XI of the UN Convention on the Law of the Sea of 1982, referred to above.

This acknowledgment by the Assemblies reflected the practice of other IGOs. It had the practical effect of enabling the amendments to take effect on the international law plane, while permitting individual Parties to continue to participate in the Organization, consistently with their national law, even if the amendments had not yet been accepted in their national law. In this respect, it is relevant that the amendments did not impose additional financial or other obligations on the Member States which may have required approval under their national law.

### (ii) Majority Required

Under the IHO Convention, Article VI.5, Conference decisions are taken by a simple majority of Member Governments represented at the Conference, except where the Convention provides otherwise.

Article XXI.2 requires that amendment proposals shall be decided upon by a two-thirds majority of the Member Governments represented at the Conference.

Under Article XXI.3, an amendment enters into force for all Contracting Parties three months after approvals by two thirds of the Contracting Parties have been received by the Depositary.

There is no explicit authority in Article XXI for provisional application, but the Conference has *inherent* authority to adopt such a decision, if it considers this to be necessary for the fulfilment of the Organization's purposes .

It is of political and practical importance that the provisional application decision be widely supported by the membership. In the absence of explicit authority in the Convention for provisional application, the most satisfactory solution would be for the Conference to take the decision unanimously or at least by consensus. A unanimous vote by the Conference may be very difficult to achieve, because not all Parties may attend, or they may not have authority to vote in favour of such a decision.

A decision by consensus would overcome these difficulties, as demonstrated by the State practice referred to in Section 4. In this respect, consensus would mean that no objection to the decision would be raised by any Member Government represented at the Conference. Consensus decision making has become an important practice in the supreme organs of IGOs, resulting partly from the growth in membership, and the difficulties of obtaining affirmative votes of qualified majorities even if there is no basic objection by large numbers of Member States to the substance of the proposals.

However, it is the practice of the Organization for all Conference decisions to be taken by a vote, in accordance with the voting rules set forth in the IHO Convention and its Rules of Procedure. This would not legally preclude a decision being taken by consensus, but the Conference may not wish to change its practice.

If voting is used for the provisional application decision, it would be preferable, for practical and political reasons, that a majority of at least two thirds all the Contracting Parties approve the decision. As the approval of two-thirds of all the Contracting Parties is required for the amendment to enter into force, a similar majority at the Conference gives rise to the expectation that two-thirds of the Parties will formally approve the amendments under Article XXI.3.

If that cannot be achieved, the decision should at least be taken by two thirds of the Member Governments represented at the Conference, i.e the same majority as is required for approval of the amendments themselves at the Conference.

In either case, no votes should be cast opposing the provisional application decision. Those Parties who are subject to a restraint under their national law or policy from voting in favour of a decision on provisional application, should at least be encouraged to abstain from casting a negative vote. The reason for this is that, as provisional application is not explicitly provided for in Article XX1, a decision taken by the Conference to that effect, which is actively opposed by even one Member Government, may be vulnerable to legal action to invalidate the decision.

### **(iii) Consultations with Parties**

It is very important to gain the support of the IHO Member Governments for the proposed amendments, and to the proposed provisional application decision well before the dates of the Conference. This is to ensure that the issues are fully understood and that their Representatives come to the Conference with authority to support the provisional application proposal in the event of a vote, or to abstain if they cannot actively support it. If it is decided to proceed by way of consensus, the Representative should not raise any objection.

## **7 Conclusions**

1. The Conference has inherent authority to decide that the amendment to Article X.2 of the IHO Convention, approved at its XIIIth Session, and the proposed amendments to Articles XX and XX1, shall be applied provisionally, pending and subject to their formal entry into force in accordance with Article XX1.3, if it considers that it is necessary to do so to fulfil the purposes of the Organization under contemporary conditions.

2. The authority of the Assembly, as the supreme organ of the IHO, to take this decision derives from international treaty law, and is confirmed by State practice in similar decisions of the supreme organs of a number of intergovernmental organizations. The decision to apply the amendments provisionally may take effect immediately, or on a subsequent date to be fixed by the Conference.

3. In the absence of explicit provision for provisional application in the I.H. Convention, it would be preferable for the decision to be supported by the membership as a whole, either by a unanimous vote or a consensus decision. Alternatively, it would be politically and practically desirable for the decision to be taken by the Conference, either by affirmative vote of two-thirds of the Contracting Parties or, failing that, by two-thirds of the Member Governments represented at the Conference. It would also be desirable for Governments, which were unable to support actively a decision on provisional application under their national laws either to raise no objections to a consensus decision, or to abstain in the event of a vote being taken.

4. In order to assist a number of Member Governments to satisfy their national constitutional requirements relative to approval of amendments to international treaties, it is recommended that the Conference also notes that the provisional application decision would not have the effect of requiring such Governments to Act inconsistently with their national laws.

5. It is of importance to observe that most IHO Member Governments, are also Members of the ITU, Inmarsat and Intelsat, and they have, accordingly, participated in, or acquiesced in, provisional application decisions taken by those organizations in respect of substantial amendments to their constituent instruments.

6. It is recommended that detailed consultations be conducted with Member well prior to the Conference in order to assist them with respect to the application of the doctrine of provisional application, and to try to ensure that their Representatives have full authority at the Conference to participate in the relevant decision.

Signed

David Sagar  
(Date)