



## ORGANIZACION HIDROGRAFICA INTERNACIONAL

ESTA CIRCULAR REQUIERE SU VOTO

Dossier del BHI No. S1/0015

**CIRCULAR No. 02/2009**  
**12 de Enero del 2009**

### PROTOCOLO DE ENMIENDAS A LA CONVENCION DE LA OHI

Referencia: Circular del BHI No. 57/2007 del 21 de Junio.

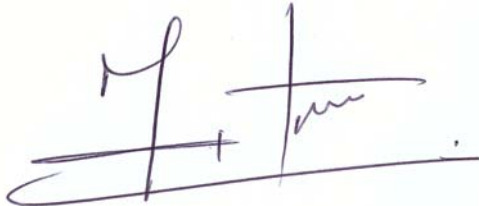
Estimado(a) Director(a),

1. Un Protocolo de Enmiendas a la Convención de la OHI fue adoptado en la 3ª Conferencia Hidrográfica Internacional Extraordinaria (3ª CHIE), que se celebró en Mayo del 2005. Nos preguntamos si los Estados que se han incorporado a la Organización después de la 3ª CHIE tienen derecho o no a votar sobre el Protocolo, de acuerdo con el Artículo XXI(3) de la Convención de la OHI. La pregunta específica es si el requerimiento de una mayoría de los dos tercios, según el Artículo XXI(3) de la Convención de la OHI, se refiere a aquellas Partes Contratantes que tenían derecho a votar en la fecha en que se adoptó la Decisión, durante la 3ª CHIE o, en fecha posterior, a un número de Estados, que podría ser superior ya que se incorporaron nuevos Estados Miembros a la Organización. El Artículo XXI(3) de la Convención de la OHI no está claro a este respecto, y no existe ningún caso similar en el pasado al que poder hacer referencia.
2. El Comité Directivo solicitó al Comité Legal Consultivo (LAC) que considerase este tema, al mismo tiempo que el procedimiento que sigue la Organización en su definición de la mayoría de los dos tercios, requerida para la aceptación de nuevos Estados Miembros, bajo el Artículo XX de la Convención de la OHI. La práctica de la OHI en cuanto a la mayoría de los dos tercios, en el marco del Artículo XX, ha sido determinar que el número total de Estados Miembros es la cantidad de Estados en el momento en el que el Gobierno de Mónaco recibe una solicitud y descontar de ese número aquellos Estados Miembros que, en ese momento, tengan sus derechos suspendidos, según el Artículo XV de la Convención de la OHI. El Comité Directivo solicitó también al LAC que estudiase el procedimiento que debería seguirse cuando el número de la mayoría de los dos tercios no sea un número entero. Si este número no es un número entero, la práctica de la OHI es redondearlo al siguiente número entero superior si el primer decimal es una cifra igual o superior a cinco y redondearlo hacia abajo si es una cifra inferior a 5.
3. En el **Anexo A** se adjunta la carta de respuesta del Presidente del LAC, con recomendaciones. Deberá observarse que estas recomendaciones son el resultado de un consenso de los miembros del LAC. En el **Anexo B** se adjunta la Resolución Administrativa T6 propuesta: "Practical Implementation of Voting Processes" (*Implementación Práctica de los Procesos de Votación*), que expone los procedimientos recomendados por el LAC para determinar la mayoría

de los dos tercios, para la implementación de los Artículos XX y XXI(3) de la Convención de la OHI, así como el procedimiento utilizado para redondear la cifra hacia arriba o hacia abajo.

4. Le rogamos que complete la Papeleta de Voto que se adjunta en el **Anexo C** y que la devuelva al Bureau **no más tarde del 25 de Febrero del 2009**. De acuerdo con el párrafo 6 del Artículo VI de la Convención de la OHI, se requiere una mayoría simple de todos los Estados Miembros, para la aceptación de la Resolución propuesta. De aprobarse, la Resolución Técnica entrará en vigor a partir de esta fecha.

En nombre del Comité Directivo  
Atentamente,

A handwritten signature in purple ink, consisting of a stylized 'M' followed by a horizontal line and a vertical line, with a flourish underneath.

Vice-Almirante Alexandros MARATOS  
Presidente

- Anexo A: Carta del Presidente del LAC (*en Inglés*);
- Anexo B: Resolución Administrativa propuesta T6 (*en Inglés*);
- Anexo C: Papeleta de Voto.

**Vice Admiral Alexandros Maratos**  
**President**  
**International Hydrographic Organisation**

Dear Admiral Maratos,

I refer to your email of 11 June 2008.

The Legal Advisory Committee (LAC) has considered your further questions relating to the reference currently before it. Two further submissions (Canada and UK) have been received and these are enclosed for your assistance.

The members of the LAC have generously responded in providing learned and considered views on the reference. Those responses have addressed a range of legal and practical issues.

The LAC has agreed by consensus that the most effective way to assist the IHO is by recommending the legal approach which provides the most effective operational solution for the IHO.

The LAC recognises that there are sound legal arguments for retaining the currently applying differing voting methods in relation to Articles XX and XXI of the Convention. However, there are also well based arguments, both legal and practical, for adopting a more consistent approach. The legal and practical arguments are explored further below in this submission.

To assist the IHO the LAC's recommendations, in short form, are set out below:

#### **Recommendation 1**

That the International Hydrographic Conference may decide, by simple majority vote of the Member Governments represented at the Conference, that in order to determine the date of entry into force of any amendment to the Convention, the expression "approval by two-thirds of the Contracting Parties", in paragraph 3 of Article XXI of the Convention shall be interpreted as meaning two-thirds of the Contracting Parties entitled to vote at the time of the approval by the Conference.

#### **Recommendation 2**

That the International Hydrographic Conference may decide in rounding up or down results of voting calculations the IHO to adopt the standard practice known as Symmetric Arithmetic Rounding or Round-Half-Up (Symmetric Implementation):

- Decide which is the last digit to keep.
- Increase it by 1 if the next digit is 5 or more (rounding up)
- Leave it the same if the next digit is 4 or less (rounding down)

## **Discussion**

### **Recommendation 1**

There is a consensus position within the LAC that the view expressed by Germany as follows is the better legal view as to the interpretation of Article XXI:

“The two-thirds requirement of notifications of approval for the entry into force of amendments in Article XXI paragraph 3 of the current version of the IHO Convention relates to all Contracting Parties at any date after the Conference that has adopted the amendments, and therefore includes all countries acceding to the Convention at a later date.”

That interpretation is clearly the fairest. It is the most democratic as it allows parties joining after the Conference, and which will be bound by the amendment, to register their vote.

Canada and Germany have also expressed the view that States denied “rights and benefits” pursuant to Article XV should be considered in determining the two-thirds under Article XXI(3) of the Convention. However, they may not propose amendments or notify their approval. This view is based on the sound legal argument that those suspended States will nevertheless be bound by the amendment.

However, the LAC must take account of the practical difficulties of the situation. In that regard there is the difficulty that the IHO applies a different method of determination under Article XX. Under that provision the two-thirds is calculated against the number of Member Governments determined at the time of application but does not include States denied rights and benefits. It is apparently a long standing practice. There is no doubt that such practice is lawful. Paragraph 3(b) of Article 31 of the Vienna Convention on the Law of Treaties (the Vienna Convention) clearly establishes that “...subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation” shall be taken into account in interpreting the treaty.

The method used in relation to Article XX is simpler as the total number of Member Governments remains stable until the required number is reached.

The United Kingdom points out that the method adopted for Article XX has the effect of creating two classes of members – those entitled to vote and those not entitled to vote. If the method were adopted for Article XXI similar considerations would apply. Apart from States denied rights under Article XV States joining after the vote of the Conference could not vote and nor would they be counted in determining the two-thirds majority.

There is a consensus emerging in the LAC that consistency in interpretation between the Articles is a preferable position. I consider that there is also a consensus view emerging that the simpler method is preferred. Thus, I take the view and recommend to the IHO that the voting method currently utilised for Article XX be also utilised for Article XXI.

I now turn to consider how the IHO may implement the change. The treaty is silent on determining the applicable interpretation of a provision. However, it is clear in paragraph 3(a) of Article 31 of the Vienna Convention that parties to a treaty may enter into an agreement regarding the interpretation of that treaty or the application of its provisions. Accordingly, at the International Hydrographic Conference a Resolution may be presented, negotiated and voted

upon regarding the interpretation of Articles XX and XXI. It is common practice to agree on the interpretation of treaty provisions by way of Resolution (see e.g. Resolution 4.1 on the Interpretation of Article 10bis of the Ramsar Convention, which concerns the entry into force of amendments to that Convention).

## **Recommendation 2**

There is no legal prescription as to the correct method to round off votes. Similarly the Convention is silent on the issue. In these circumstances the LAC recommends that the IHO adopts the common international standard practice known as Symmetric Arithmetic Rounding or Round-Half-Up (Symmetric Implementation):

- Decide which is the last digit to keep.
- Increase it by 1 if the next digit is 5 or more (rounding up)
- Leave it the same if the next digit is 4 or less (rounding down)

The LAC recognises that there is validity to the view that rounding down could result in determination of less than a two-thirds majority (e.g. 47.33 being two-thirds is rounded down to 47 which is technically .33 less than the specified two-thirds). In the circumstances the LAC considers that the issue should be determined by a vote of the Conference.

## **General Comment**

The LAC recognises that the above recommendations represent a consensual approach to the issues and therefore Member Governments may propose alternative approaches. The forthcoming 4<sup>th</sup> Extraordinary International Hydrographic Conference would provide an opportunity for discussion of such proposals.

Yours sincerely

Ken Pogson

Chairman

Legal Advisory Committee

**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), 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 naturally 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.

Dossier del BHI No. S1/0015

**Anexo C a la Circular  
del BHI No. 02/2009**

**PAPELETA DE VOTO**

*(a devolver al BHI antes del 25 de Febrero del 2009  
E-mail: info@ihb.mc - Fax: +377 93 10 81 40)*

**Estado Miembro:** .....

**Contacto:** .....

**E-mail:** .....

1. "¿Está de acuerdo con la Resolución Administrativa T6, tal y como está indicada en el Anexo B de esta Circular No. 02/2009?"

SI

NO

**Comentarios:** .....

.....  
.....  
.....  
.....

**Nombre/Firma:** ..... **Date:** .....