



INTERNATIONAL CONFERENCE ON
SAFETY OF LIFE AT SEA, 1974
Agenda item 7

IMCO

CONSIDERATION OF A DRAFT INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974

Comments on proposed amendments to Articles of the 1960 Safety Convention

Submitted by the Governments of France, the Netherlands,
the United Kingdom and by the International Chamber of Shipping

The following are comments by the Governments of France, the Netherlands and the United Kingdom and by the International Chamber of Shipping (ICS) with regard to the draft Articles of the Convention, as submitted to the Conference under document SOLAS/CONF/4. Where these comments accompany proposals for alterations of the draft texts of Articles of the Convention, such proposed alterations are given separately at Annex for the sake of convenience.

FRANCE

1. Article IX - sub-paragraph 2(f)(ii)

Alternative I

The text within square brackets enables each Contracting State to set aside the tacit approval procedure in respect of amendments to the Annex to the Convention. This would have the disadvantage of absolutely certain delay in the coming into force of amendments to the Annex in some States, for a considerable time therefore, the amendments would only be implemented by a limited number of States, and there would be no benefit from the advantages offered by the simplified procedure for accepting amendments which is so desirable as regards the Annex.

Alternative II

The text of sub-paragraph (ii-bis) reduces the disadvantages of Alternative I, because it sets a time limit of three years after which States which have chosen to set aside the tacit acceptance procedure may not prevent the particular amendment being put into force in regard to itself.

On the other hand, there is a serious gap in this Alternative, because a State which gives notification that it has adopted the express acceptance procedure cannot subsequently, when the prescribed time limit has elapsed, declare that it does not accept the amendment because its parliament has refused to consent. This State would thus be deprived of the procedure for objecting, unless the text within square brackets in sub-paragraph (g)(ii) is retained.

Article IX, paragraph 8

The French Government has always opposed the "important nature" of an amendment, which is contrary to the principle of the sovereignty of States and does not correspond to the provisions of Article 40 of the Vienna Convention on the Law of Treaties, which reflects the present state of international law on this point.

THE NETHERLANDS

1. Amendments after consideration by the Organization (Article IX, paragraph 2)(a) Adoption

The amendment procedure envisaged in sub-paragraphs (b), (c) and (d), takes place within an organ of IMCO, the Maritime Safety Committee (MSC). This implies in the opinion of the Netherlands Government, that the procedure should form a balance between the rights of a member of the MSC who is not a Contracting Government, and the rights of the Contracting Governments, whether or not members of the MSC. These rights are kept well balanced, if a member of the MSC who is not a Contracting Government, can vote on a proposed amendment, but if the votes of the Contracting Governments are decisive. Now even if all IMCO-members are soon admitted as members of the MSC, the above-mentioned balance will not necessarily be ensured.

In view of the foregoing it is proposed that the words at the end of sub-paragraph (b), "and approval where appropriate", be deleted, since, at least in the present situation, members of the MSC who are not Contracting Governments, could block a proposal for an amendment.

Also in view of the foregoing sub-paragraph (d) is not quite acceptable, since it deprives a member of the MSC who is not a Contracting Party, from its voice in the MSC. Therefore the following two solutions are proposed:

- (i) That the text be decided upon within the MSC by a majority of two-thirds, including two-thirds of the Contracting Governments.
- (ii) That the text be decided upon within the MSC indeed, but that the question of the MSC members who are non-Contracting Governments is left open.

Proposed texts of sub-paragraph (d) are set out in the Annex.

(b) Acceptance and entry into force

Once the text of an amendment has been adopted, there are different procedures to follow as regards the acceptance of the amendment depending on whether it relates to the Convention itself, an Annex or an Appendix.

Amendments to the Convention itself are accepted by express approval. With regard to amendments to an Appendix sub-paragraph (f)(iii) provides for the so-called tacit acceptance procedure.

With regard to amendments to an Annex sub-paragraph (f)(ii) provides also for the tacit acceptance procedure, but leaves open the possibility of the explicit acceptance procedure.

Keeping in mind that one of the objects of revising the Convention is to arrive at a procedure that will meet the desire for a more rapid acceptance and entry into force of amendments to the Annexes and Appendices to the Convention, the provisions for accepting amendments to the Annexes as described in sub-paragraph (f)(ii) do not entirely meet that objective and it would therefore be better to drop this option.

The text in the Annex is a proposal for a new sub-paragraph (f)(ii), in which the above suggestions relating to sub-paragraph (d) have also been incorporated.

The portion in square brackets in sub-paragraph (f)(ii), Alternative I, should be dropped, even if (f)(ii) of the draft is retained, since it affects the system of tacit approval even more. Moreover, uncertainty arises as to the acceptance of amendments: must such notification be deemed to be an objection that impede the acceptance of the amendment?

The Netherlands Government fully supports the proposal contained in sub-paragraph (f)(ii-bis) of Alternative II.

In the light of the above, sub-paragraph (g) needs some alteration. The proposed new text of this sub-paragraph is given in the Annex.

Also in the light of the foregoing the portion, "of express approval", in paragraph 7 should be deleted.

2. Calculation of the periods for acceptance as given in paragraphs 2(f)(ii) and 2(f)(iii)

It is proposed that at an appropriate place provision should be made that the periods for acceptance in the above given paragraphs will be calculated from the date on which an amendment is circulated by the Organization to all Contracting Governments for acceptance. The proposed amendments to sub-paragraph (f)(ii) are given in the Annex.

3. New Annexes

It is considered desirable that a provision be included in this Article concerning new Annexes to draw up, the procedures for the formulation, acceptance and entry into force of which would have to be the same as those for the formulation, acceptance and entry into force of amendments to the Convention itself. The proposed text is given in the Annex.

UNITED KINGDOM

1. The United Kingdom recalls that by Resolution A.304(VIII) the Assembly decided that the principal objective of the International Conference should be to replace the existing 1960 Safety Convention by a new Convention, substantially in conformity with the technical provisions of the 1960 Convention. The new Convention would incorporate:

- (a) provisions for rapid entry into force of the Convention;
- (b) improved and accelerated amendment procedures;
- (c) amendments to the 1960 Convention which have already been adopted by the Assembly; and
- (d) new Regulations which are recommended by the Assembly for inclusion in the new Convention.

2. The United Kingdom wishes to reiterate its view that the incorporation of improved and accelerated amendment procedures in the new Convention is of paramount importance. The United Kingdom has no alterations of substance to suggest to the technical Annex, the contents of which have already been recommended through the channels of the Organization as laid down in the IMCO Convention; and considers that the Conference would not be the appropriate forum for settling any new technical proposals.

3. The United Kingdom submission to the Conference which follows deals exclusively with amendment procedures, recognising that satisfactory amendment procedures will enable the Safety Convention to keep pace with modern needs, after allowing due consideration within the organs of the Organization.

Amendment procedures

4. The Conference will recall that the amendment procedures provided in the 1960 Convention for amending the Annex to that Convention have failed to result in any amendments taking effect despite the fact that many had been agreed by the Organization. The reason was that insufficient acceptances were received under the explicit approval procedure in that Convention.

5. The principal objective of the 1974 Conference is therefore to provide a new procedure offering more likelihood that amendments to the Annex will take effect once they have been approved.

6. During preparatory work for the Conference there appeared to be general agreement that the 1960 explicit approval procedure should be replaced by a tacit approval procedure by which an amendment would take effect in the absence of objections from more than one third of the Contracting Governments; but there have appeared to be some differences of opinion on the detailed implementation of the principle. This submission attempts to resolve some of these differences and to put forward a proposal which meets some of the objections to the two alternative proposals before the Conference.

7. The two alternative proposals appear in the Draft Convention under sub-paragraph 2(f)(ii) of Article IX.

Alternative I

8. Alternative I would enable the Committee of Contracting Governments to adopt the 1960 explicit approval procedure instead of the new tacit procedure on any occasion that it so wished. The United Kingdom sees no purpose in

offering this choice; the principal objective of the 1974 SOLAS Conference is to replace the 1960 procedure, and on past experience use of the latter would hold up amendments in the same way as in the past.

9. Alternative I also includes a proposal in square brackets, the effect of which is to allow any contracting Government to apply an explicit approval procedure to itself unilaterally, whilst other Governments apply the tacit procedure. The effect of this procedure could well be - albeit unintentionally - to bestow a trading advantage on any Government which adopted it, since it would enable indefinite deferment of the implementation of a costly amendment; whilst countries which had not adopted this option would be obliged to implement the amendment promptly under the tacit procedure (unless one third of Contracting Governments had objected). It is suggested that as a consequence, few, if any, countries would wish to risk not choosing this unilateral option. If every country chose this option the amendment would still 'take effect', without any country being under an obligation actually to implement it. It is submitted that far from being an improvement on the 1960 procedures, this would be a retrograde step.

Alternative II

10. Alternative II was originally put forward in an attempt to devise a procedure which would both avoid the disadvantages outlined above of Alternative I and yet provide the necessary flexibility for the tacit approval procedure. The United Kingdom is aware that Alternative II gave certain countries cause for concern during the preparatory work for the Conference, partly because of possible difficulties envisaged with regard to sovereignty, and partly because they wanted to be sure that adequate time was allowed to complete essential domestic constitutional procedures before Governments could give effect to approved amendments. The United Kingdom has recently had further consultations with a number of interested Governments in an effort to see whether those difficulties could be overcome. These consultations have tended to confirm that the principal problem is the time which may be allowed for completion of domestic constitutional procedures, and that the issue of sovereignty need not be an obstacle, bearing in mind the provision in sub-paragraph 2(e)(ii).

New UK proposal

11. In the light of these discussions, the United Kingdom wishes to submit a new draft of sub-paragraph 2(f) of Article IX, as given in the Annex. In this new draft the periods for the various stages of the tacit amendment procedure are in square brackets, and, if the general approach proves acceptable, the Conference will wish to consider what periods would be most appropriate. The draft also provides that, whatever periods are eventually agreed, a two thirds majority in the adopting body can vary them to take account of any special circumstances.

12. A number of other countries are also understood to be of the view that the tacit procedure is not appropriate for certain regulations in Chapter I, e.g. those dealing with control. The United Kingdom Government appreciates their arguments and recognises that in some other Conventions some of those provisions are included in the Articles. Furthermore none of Chapter I is concerned with technical matters of the kind for which speedy amendment procedures are so desirable. The United Kingdom Government would be prepared to exclude Chapter I from the tacit procedure and the proposed draft in the Annex provides for this.

13. The United Kingdom has taken the view that if Alternative I were to find favour with the Conference, it would be necessary to incorporate an 'important nature' provision in the amendment procedures, in order to prevent possible abuse of the unilateral explicit approval option. In that event the present provision in sub-paragraph (8) of draft Article IX would need some modification. However, it is understood that a number of other countries object in principle to 'important nature' provisions, and the United Kingdom would be prepared to see the 'important nature' provision dropped from this Convention if a satisfactory tacit approval procedure can be agreed: that is one which requires every participating Government (other than those which reject an amendment under sub-paragraph 2(g)(ii) of draft Article IX) to implement within a reasonable time limit all amendments approved by the adopting body. Paragraph 4 of draft Article IX, taken in conjunction with the proposals in Alternative II or the United Kingdom proposal attached would appear to provide a sufficient sanction on countries which had not accepted amendments which come into force.

Conclusion

14. The United Kingdom submits the draft sub-paragraph 2(f) for consideration by the Conference, and subject to a satisfactory tacit approval procedure being agreed, would suggest the deletion of the 'important nature' provision now appearing in sub-paragraph 8 of draft Article IX.

INTERNATIONAL CHAMBER OF SHIPPING

1. Article IX - paragraph 2(f)(ii)

The ineffectiveness of the amendment procedure contained in Article IX of the 1960 SOLAS Convention is well-known; sub-paragraph (d) of that Article requires acceptance of amendments by the express approval of two-thirds of Contracting Governments. It will be appreciated that of the upwards of 50 of such amendments adopted at respective sessions of the IMCO Assembly (usually unanimously) and some as long ago as 1966, none have yet entered into force.

ICS submits that in consequence safety would have been seriously prejudiced but for the voluntary action taken by many shipowners of a large number of flags, in anticipating such amendments, without having any knowledge of when, if ever, they would enter into force.

Shipowners have found that the existing uncertainty prevents effective forward planning and causes practical inconvenience; moreover, it may be agreed that the inefficiency of the present procedure tends to penalise responsible shipowners.

For the foregoing reasons, ICS expresses the strong hope that the Conference will accept Alternative II of sub-paragraph (f)(ii) of Article IX, including sub-paragraph (ii-bis). ICS submits that the latter provision which permits a two-year period of grace, will afford Contracting Governments adequate time to complete necessary legislation.

ICS believes that reaching agreement on Alternative II is one of the most important objectives for the Conference.

ICS ventures to submit that when this subject is under consideration at the Conference, full weight should be given to the practical considerations, taking into account that the SOLAS Convention is essentially technical in nature.

2. Article on 'Reservations'

ICS submits that when dealing with matters of safety, the rights of a Contracting Government to an international Convention to make reservations in respect of the acceptance of that Convention should be clearly defined.

In respect of 'SOLAS 74', ICS proposes that reservations on technical regulations and on Articles I-VIII and X-XII (inclusive) should not be permitted.

Accordingly, ICS submits that the draft Article XV given in the Annex should be considered by the Conference, with a view to its adoption. Its text has been modelled on Article XIV ('Reservations') in the International Convention for Safe Containers (CSC), adopted at the UN/IMCO Conference at Genova, done on 2 December 1972.

Proposed changes to the draft text of Articles of the 1974 Safety Convention (SOLAS/CONF/7)

1. Article IX, sub-paragraph 2(b)
(The Netherlands) Delete the words "and approval where appropriate" at the end of the sub-paragraph.
2. Article IX, sub-paragraph 2(d)
(The Netherlands) Substitute the existing text by one of the following:
 - "(d) amendments shall be adopted by a two-thirds majority of those present and voting in the Maritime Safety Committee and such majority shall include a two-thirds majority of the Contracting Governments present and voting."
 - "(d) Adoption of an amendment shall require the approval of at least two-thirds of the Contracting Governments present and voting."
3. Article IX, sub-paragraph 2(f)
(United Kingdom) Substitute the existing text by the following:
 - "(f) an amendment shall be deemed to have been accepted in the following circumstances:
 - (i) an amendment to an Article of the Convention or to Chapter I of the Annex to the Convention shall be deemed to have been accepted on the date on which it is accepted by two-thirds of the Contracting Governments;
 - (ii) an amendment to the Annex to the Convention other than Chapter I shall be deemed to have been accepted at the end of [one year] from the date on which it is notified to Contracting Governments for acceptance, or at the end of a different period if determined by a two-thirds majority of those present and voting in the [adopting body] at the time of its adoption, unless within that period not less than one-third of the Contracting Governments, or Contracting Governments the combined merchant fleets of which constitute not less than fifty per cent of the gross tonnage of the world's merchant fleet, notify the Organization that they object to the amendment;

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- (iii) any Contracting Government may, before the date set for entry into force, give notice to the Organization that it exempts itself from giving effect to the amendment for a period not exceeding [two years] from the date of entry into force of that amendment; provided that the effect of any such notification shall not be to extend the period for which a Government may delay giving effect to an amendment beyond [three years] from the date on which the amendment is notified to Contracting Governments for acceptance, unless a two-thirds majority of those present and voting in the [adopting body] at the time of the adoption of the amendment decide that a different period may be authorised."

Article IX, sub-paragraph 2(f)(ii)
(The Netherlands)

Substitute the existing text by the following:

- "(ii) An amendment to an Annex shall be deemed to have been accepted at the end of a period of twelve months or at the end of a longer period if so determined at the time of its adoption [by a two-thirds majority of those present and voting in the Maritime Safety Committee, and if such majority includes a two-thirds majority of the Contracting Governments present and voting] [by at least two-thirds of the Contracting Governments present and voting], unless within that period an objection is communicated to the Organization by not less than one-third of the Contracting Governments or by the Contracting Governments the combined merchant fleet of which constitutes not less than fifty per cent of the gross tonnage of the world's merchant fleet, whichever condition is first fulfilled;"

Article IX, sub-paragraph 2(g)
(The Netherlands)

Substitute the existing text by the following:

- "(g) (i) An Amendment to an Article of the Convention accepted in conformity with the provisions of sub-paragraph (f)(i) above shall enter into force six months after the date of its acceptance with respect to the Contracting Governments which have declared that they have accepted it;

(ii) An amendment to an Annex or an Appendix accepted in conformity with the provisions of sub-paragraph (f)(ii) or (f)(iii) above shall enter into force six months after its acceptance with respect to all the Contracting Governments with the exception of those which, before the date of its acceptance, have made a declaration to the effect that they do not accept it."

6. Article IX, paragraph 7
(The Netherlands)
7. Article IX, paragraph 8
(United Kingdom)
8. Article IX
(The Netherlands)
9. Articles of the Convention
(International Chamber of
Shipping)

Delete the words "of express approval" in the first line.

Delete this paragraph.

Add the following new paragraph:

"The adoption, acceptance and entry into force of a new Annex shall be subject to the same procedures as apply to the adoption and entry into force of an amendment to an Article of the Convention."

Add the following new draft Article:

"Draft Article XV

Reservations

- (a) Reservations to the present Convention shall be permitted, excepting those relating to the provisions of Articles I - VIII, X - XII and of the present Article and of those contained in the Annex or Appendices, on condition that such reservations are communicated in writing to the Organization and, if communicated before the deposit of the instrument of ratification, acceptance, approval or concession, are confirmed in that instrument. The Secretary-General shall communicate such reservations to all States referred to in Article X.

- (b) Any reservations made in accordance with sub-paragraph (a):
 - (i) modifies for the Contracting Party which made the reservation the provisions of the present Convention to which the reservation relates to the extent of the reservation; and
 - (ii) modifies those provisions to the same extent for the other Contracting Parties in their relations with the Contracting Party which entered the reservation.
 - (c) Any Contracting Party which has formulated a reservation under sub-paragraph (a) may withdraw it at any time by notification to the Organization."
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