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EXTRACTS FROM THE REPORTS OF THE AD HOC WORKING GROUP ON THE
REVISION OF THE 1960 SAFETY CONVENTION AND OF THE
MARITIME SAFETY COMMITTEE

Note by the Secretariat

The Maritime Safety Committee of IMCO at its thirtieth session, when considering the report of the second session of the Ad Hoc Working Group on the Revision of the 1960 Safety Convention, agreed inter alia that views expressed in the Committee and in the Ad Hoc Working Group in respect of the draft texts of amendments to the 1960 Safety Convention^{1/} would be useful to governments invited to the Conference. Attached hereto for information are extracts from the relevant parts of the reports of the Ad Hoc Working Group on the Revision of the 1960 Safety Convention (SOLAS II/6) and of the Maritime Safety Committee (MSC XXX/17).

^{1/} These proposed texts are circulated under SOLAS/CONF/4, SOLAS/CONF/4/1 and SOLAS/CONF/4/2.

EXTRACT FROM THE REPORT OF THE SECOND SESSION OF THE
AD HOC WORKING GROUP ON THE REVISION OF THE
1960 SAFETY CONVENTION
(SOLAS II/6)

ARTICLES

8. In considering the draft text of the Article on amendments, the Working Group decided to use as a basis the text of Article 16 of the 1973 Pollution Convention, since in the view of the majority it reflected the latest opinions of governments on this subject. It was the general view of the Working Group that this text with certain amendments could be made applicable to the Safety Convention in general. Some delegations felt, however, that whilst agreeing that the corresponding provisions of the 1973 Pollution Convention should be taken into account, not all of them were necessarily appropriate for an International Convention directed towards the saving of life and, in particular, inclusion of certain provisions of Article 16 of the 1973 Pollution Convention would not result in an improved and accelerated amendment procedure for the Safety Convention.

9. The Working Group agreed in principle that:

- (a) the most appropriate body to consider amendments should be the Maritime Safety Committee with full participation of Contracting Governments whether or not they are IMCO Members;
- (b) such amendments should be adopted by Contracting Governments only; and
- (c) since all Contracting Governments would be entitled to participate when the proposed amendments are considered and, finally, to vote on them, consideration and adoption by the Assembly becomes no longer necessary.

In this connexion the Working Group noted that the fifth extraordinary Assembly will consider the proposed amendments to the IMCO Convention to make the Membership of the Maritime Safety Committee open to all IMCO Members.

10. With respect to paragraph 9 above, it was noted that provisions which restrict the voting in the Maritime Safety Committee to Contracting Governments only could be in conflict with Article 43(a) of the IMCO Convention. This difficulty could be overcome either:

- (a) by entrusting the adoption of amendments to the Maritime Safety Committee with the participation of all Contracting Governments whether or not they are IMCO Members; or
- (b) by amending Article 43(a) of the IMCO Convention so that the Maritime Safety Committee can operate under different voting procedures when adopting amendments; or
- (c) by adopting the approach taken by the 1973 Pollution Convention that the formal adoption of amendments should be performed by a separate body composed exclusively of Contracting Governments immediately following consideration by the Maritime Safety Committee.

11. The Working Group decided to proceed on the basis of approach (c) above.

12. Some delegations felt that the approach set out in paragraph 10(c) should not necessarily be the only approach on which the adoption of amendments should be based. Consideration should be given to alternative approaches based on concepts which are reflected in other technical Conventions, such as the Convention on International Regulations for Preventing Collisions at Sea, 1972, and the International Convention on Safe Containers, 1972.

13. The Working Group decided to draw the particular attention of the MSC to the practical implications of proposed amendment procedures on the future work of the MSC insofar as it might involve convening different committees to deal with amendments to different conventions.

14. Some delegations expressed their opposition to that part of sub-paragraph (2)(f)(ii) of draft Article IX which permitted the adoption of the explicit acceptance procedure, on the grounds that since no amendment to the 1960 Safety Convention made under that procedure has come into force, a similar outcome could be expected in the case of any amendment to the 1974 Convention attempted under that procedure.

15. The Working Group discussed at some length whether, in the case of tacit acceptance of amendments to the Annex, provisions should be included allowing a Government to make a declaration that its express approval was necessary before such amendment entered into force for that Government. Two views were expressed on this subject:

- (a) Some delegations held the view that such a provision would enable Governments to deal with the situation where there was possible delay in completing the necessary legislative measures without having to lodge an objection to amendments. Concern was expressed that without the inclusion of some provision of this nature, States whose legislatures could not act to approve an amendment within the specified period would be forced to object merely for this reason and not because they objected to the substance of the amendment. This could result in the failure to accept an amendment which was favoured in substance by most States;
- (b) On the other hand, other delegations considered that the dangers of offering a choice, as provided for by the words in square brackets in draft Article IX(2)(f)(ii), lay in the possibility that an amendment could come into force in the absence of a blocking minority, whilst a majority of Contracting Governments would not need to implement it because they had opted for the express approval procedure. This would be of special significance in the case of an amendment which would be costly to implement and where shipowning countries could gain a commercial advantage for their shipping by delaying their approval indefinitely. These delegations recognized the difficulties of speeding up established domestic constitutional procedures in order to give effect to international requirements and noted that the draft Article IX in SOLAS I/5, agreed at the first meeting of the Ad Hoc Group, provided that a Contracting Government might exempt itself from giving effect to an amendment for a specified period from its entry into force. They felt that this would have been a better proposal to put before the SOLAS Conference, as being more likely to provide improved and accelerated amendment procedures.

As opinion on this issue was divided, the Working Group decided that a provision allowing for such express approval should be retained in the text within square brackets, leaving the final decision to the Conference.

16. Several delegations proposed the inclusion of a provision on "amendments of an important nature" on the lines of Article IX(e) of the 1960 Safety Convention. Other delegations expressed opposition to any provision of this nature, since in their view it would be contrary to the principles contained in international treaties and would violate the sovereign rights of States. An opinion on this subject was also divided, the Working Group decided to include, within square brackets, an appropriate draft for consideration by the Conference.

Coming into force (Article XI)

17. The Group considered several alternative conditions for the coming into force of the Convention, but decided that there was no need to change paragraph (a) of Article XI. It realized, however, that this was an important matter which would require further consideration at the Conference as a number of possible alternatives could be envisaged.

Reservations

18. The Working Group noted that according to the Vienna Convention on the Law of Treaties, the absence of a provision on reservations would permit any Contracting Government to make a reservation on any part of the Convention. Some delegations expressed the view that no reservation should be allowed in respect of a technical Convention of this kind. Some other delegations, however, felt that complete prohibition of reservations might impede speedy entry into force of the Convention but thought that any reservation should be confined to certain specified provisions, which, in any case, should not include provisions relating to the issue and acceptance of ship's certificates.

19. The Working Group agreed that some provisions dealing with reservations should be included in the Convention. However, it was decided not to include a draft text, but rather to bring the matter to the attention of the Conference for consideration.

Certification and control

20. The Working Group considered the suggestion that Regulations 17, 19 and 20 of Chapter I concerning certification, control and privileges should be transferred to the Articles. Although some delegations were in favour of such transfer in view of the importance of these provisions, the majority felt that this might cause more extensive re-arrangements of the Articles and Regulations. After discussion the Working Group concluded that these Regulations should remain in Chapter I.

REGULATIONS

Chapter II, Regulation 8

21. The Working Group recognized that the provisions of this Regulation were not entirely consistent with the requirements of the 1973 Pollution Convention, but decided not to amend it, as this was outside its terms of reference.

Chapter II bis

22. The draft text of Chapter II bis was examined in detail by a drafting group of fire protection experts during the session. The Working Group confirmed that the final draft incorporates all the amendments and new Regulations on tankers adopted by the Assembly without any substantive change.

23. In connexion with Chapter II bis the Working Group considered the following recommendations by the Sub-Committee on Fire Protection:

- (a) throughout the Regulations only metric units should be used;
- (b) the final draft of Regulation 8 of Chapter II bis might include a footnote to the effect that the use of steam as a fire extinguishing medium in cargo spaces of cargo ships should be discontinued; and
- (c) references to certain Recommendations adopted by the Assembly should be included in the relevant Regulations of the draft Convention in the form of footnotes in the same manner as the 1973 Pollution Convention.

24. The Working Group, having considered the recommendations of the drafting group, agreed as follows:

- (a) Concerning the present draft of Chapter II bis, in Parts A to D metric units should be stated first followed by the British units in brackets. However, in Part E of that Chapter, only metric units should be stated. The length units should be expressed in metres and millimetres only. In the present text of all other Chapters, the sequence of units should be unchanged. The Secretariat was requested to prepare a paper for the Conference listing all figures quoted in Chapter II bis both in metric and British units as the case may be, together with proposals for rounding-off metric figures where necessary.

- (b) There should be no footnotes in Regulation 8 concerning the provisions for steam as a fire extinguishing medium in cargo spaces of cargo ships.
- (c) With regard to the present provisions relating to tonnage openings which appear in new Regulations 37(c) and 52(f)(iii)(1), it was noted that in practice these requirements would be redundant in view of the Recommendation on the Treatment of Shelter-Deck and other "Open" Spaces (A.48(III)) and, further, that no such provisions were included in Part H of Chapter II adopted by the Assembly (A.122(V)). Although tonnage openings would not be desirable from the safety point of view, the Working Group decided not to delete the relevant provisions as they might not be a purely drafting point. It was agreed, however, that the matter should be brought to the attention of the Conference for final decision.
- (d) All Recommendations and Guidelines adopted by the Assembly related to the various provisions of the 1960 Safety Convention should be listed with cross references to the appropriate Regulations of the Convention. This list should be included in a Resolution recommended for adoption by the Conference. The Secretariat was requested to prepare the draft Resolution and the list of Recommendations and Guidelines for consideration by the Conference.

25. Some delegations suggested that, in view of the difficulties of translating the term "II bis" in certain languages, the present Chapter II should be renumbered Chapter II/1 and Chapter II bis should become Chapter II/2. The Working Group agreed that the matter should be brought to the attention of the Conference.

EXTRACT FROM THE REPORT OF THE THIRTIETH SESSION OF
THE MARITIME SAFETY COMMITTEE
(MSC XXX/17)

91. The Committee considered the points raised by the Ad Hoc Working Group, in respect of the proposed text of Article IX on amendment procedures, together with comments and proposals submitted to the Committee by the United Kingdom and the USSR as outlined in documents MSC XXX/10/1 and MSC XXX/10/2.

92. The Committee concurred with the view of the Soviet Union that the Maritime Safety Committee should play a major role in developing proposed amendments to the Safety Convention and, in order to clarify such role of the Committee, it was agreed to amend Article IX(2)(b) of the draft text to read as follows:

"(b) any amendment proposed and circulated as above shall be submitted to the Maritime Safety Committee of the Organization for consideration and approval where appropriate;"

with an appropriate footnote to the draft paragraph to the effect that the additional words have been inserted by the Committee for clarification.

93. The Soviet delegation also proposed that since in its view the body for the final adoption of amendments should be a Conference of Contracting Governments, the following text should be considered as an alternative to the draft text of Article IX(2)(d):

"(d) Amendments shall be adopted by a two-thirds majority of those present and voting in a Conference of Contracting Governments which shall be convened by the Organization in conjunction with regular sessions of its Assembly provided that amendments have been circulated by the Secretary-General to all Contracting Governments at least six months prior to their consideration by the Conference."

94. In addition, the Soviet delegation, concurring with the views expressed in paragraph 12 of SOLAS II/6, proposed that consideration should be given to

adopting approach (a) set out in paragraph 10 of SOLAS II/6 which was in line with the amendment procedures adopted in the Convention on International Regulations for Preventing Collisions at Sea, 1972 and the International Convention for Safe Containers, 1972. As a consequence that delegation proposed that the following single paragraph should be considered as another alternative to the draft text of Article IX(2)(d) and (e):

"(d) amendments adopted by a two-thirds majority of those present and voting in the proceedings of the Maritime Safety Committee as specified in sub-paragraph (c) above shall be communicated to all Contracting Governments for acceptance;"

Both of the above proposals received support by some delegations, and the Committee agreed that these proposed alternative texts should be submitted to the Conference.

95. The United Kingdom delegation, supporting the views expressed in paragraphs 14 and 15(b) of SOLAS II/6, opposed the existing text of Article IX(2)(f)(ii) which contained provisions to enable the application of the present express acceptance procedure to an amendment to the Annex and to allow Contracting Governments to opt for the express approval procedure. In its view, the introduction of such provisions would cause a serious hindrance to expediting the bringing into force of amendments to the 1974 Convention and hence would defeat the main objective of the 1974 Safety Conference as envisaged by Assembly Resolution A.304(VIII). That delegation proposed that the following alternative text of Article IX(2)(f)(ii) should be presented to the Conference so that the Governments participating in the Conference may be able to study in advance both alternatives in depth:

"(f)(ii) An amendment to the Annex shall be deemed to have been accepted at the end of a period of not less than one year, or at the end of a longer period if determined by a two-thirds majority of those present and voting in the Committee of Contracting Governments 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, whichever condition is first fulfilled, notify the Organization that they object to the amendment.

(ii-bis) Any Contracting Government may, before the date set for acceptance, 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 decided otherwise by a two-thirds majority of those present and voting in the Committee of Contracting Governments at the time of its adoption."

96. The above United Kingdom proposal received substantial support by delegations. Other delegations, however, held a different point of view and expressed doubts on the substance of the United Kingdom proposal. As for the procedure, they indicated that the draft text of Article IX contained in the Report of the Working Group should not be amended, although they agreed that the United Kingdom proposal should be reflected adequately in the Summary Records and in the Report of the Maritime Safety Committee. After discussion and by a vote of 9 in favour, 2 against and 3 abstentions, the Committee decided that the draft text of Article IX(2)(f)(ii) should contain two alternative texts, one prepared by the Ad Hoc Working Group and the other proposed by the United Kingdom and an appropriate footnote be added to the effect that the latter alternative text has been inserted by the Committee.
