



SUB-COMMITTEE ON STABILITY AND
LOAD LINES AND ON FISHING VESSELS
SAFETY
51st session
Agenda item 6

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**DEVELOPMENT OF OPTIONS TO IMPROVE EFFECT ON SHIP DESIGN AND
SAFETY OF THE 1969 TM CONVENTION**

Report of the drafting group

GENERAL

1 The Drafting Group on the 1969 TM Convention met from 15 to 17 July 2008 under the chairmanship of Mr. K. Metselaar (Netherlands).

2 The group was attended by representatives from the following Member Governments:

AUSTRALIA
BAHAMAS
CHINA
GERMANY

MARSHALL ISLANDS
NETHERLANDS
UNITED STATES

and by observers from the following non-governmental organizations in consultative status:

INTERNATIONAL CHAMBER OF SHIPPING (ICS)
INTERNATIONAL TRANSPORT WORKERS' FEDERATION (ITF)

TERMS OF REFERENCE

3 Taking into account the comments made and decisions taken in plenary, the drafting group was instructed to:

- .1 prepare text outlining the outcome of the Sub-Committee's consideration of options to improve the effect on ship design and safety of the 1969 TM Convention, based on document SLF 51/6 and taking into account SLF 51/6/1, for reporting to MSC 85;
- .2 prepare justification for amending the 1969 TM Convention to include tacit acceptance of amendments procedure, with a view to endorsement by MSC 85;

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- .3 prepare terms of reference for a correspondence group to continue work on the existing work programme item, if extended by MSC 85; and
- .4 submit a report by Friday, 18 July 2008.

OUTCOME OF THE SUB-COMMITTEE'S CONSIDERATION OF OPTIONS

4 The group, as instructed, prepared a summary text outlining the numerous comments made during the debate, including the Sub-Committee's subsequent decisions, taking into account documents SLF 51/6 and SLF 51/6/1. The aforementioned text is set out in annex 1 for consideration by the Sub-Committee.

JUSTIFICATION FOR AMENDING THE 1969 TM CONVENTION

5 The group, as instructed, prepared a justification for amending the 1969 TM Convention to allow for tacit acceptance procedure for amendments, which is set out in annex 2 for consideration by the Sub-Committee.

TERMS OF REFERENCE FOR THE CORRESPONDENCE GROUP

6 Recalling that the Sub-Committee had agreed to the re-establishment of the Correspondence Group on Development of options to improve effect on ship design and safety of the 1969 TM Convention, if extension of the work programme item was endorsed by MSC 85, the group prepared the following terms of reference:

“Taking into account the potential effects on safety, ship design, human factors, economic and other operational considerations, the correspondence group is instructed to:

- .1 further develop and evaluate the options in document SLF 51/6, taking into account documents SLF 51/6/1 and relevant documents from previous sessions;
- .2 further develop and evaluate subsequent options which may be identified during this work;
- .3 identify the added value of the options, as appropriate;
- .4 make recommendations, as appropriate; and
- .5 submit a report to SLF 52.”

ACTION REQUESTED OF THE SUB-COMMITTEE

- 7 The Sub-Committee is invited to:
- .1 consider the summary of discussion prepared by the group and take action as appropriate (paragraph 4 and annex 1);

- .2 consider the justification prepared by the group regarding tacit acceptance procedure for amendments and take action as appropriate (paragraph 5 and annex 2); and
- .3 approve the terms of reference for the correspondence group (paragraph 6).

ANNEX 1

**SUMMARY OF THE PLENARY DISCUSSION FOR INCLUSION IN THE
SUB-COMMITTEE'S REPORT TO THE COMMITTEE***“Consideration of the options for improving the 1969 TM Convention*

1 In considering documents SLF 51/6 (Australia) and SLF 51/6/1 (Germany), the Sub-Committee noted the following general comments made during the debate:

- .1 a considerable body of work had been provided in documents SLF 51/6 (Australia) and SLF 51/6/1 (Germany) which still needs in-depth technical evaluation and that the options proposed are not exhaustive and subsequent options, if raised, should also be given due consideration;
- .2 the issues to be discussed during necessary further evaluation of the options should be undertaken in a holistic manner with regard to safety issues, the economic impact on the maritime industry and human factors;
- .3 some types of ships may be adversely affected by the incentive to reduce freeboard at the possible expense of enhanced safety;
- .4 it might be possible to implement some of the proposed options without requiring a change to the Convention;
- .5 some options will require amendments to the Convention in order to be implemented and, therefore, consideration should be given to developing tacit amendment procedures to allow for greater flexibility to respond to the needs of industry;
- .6 it would be preferable to develop tacit amendment provisions first and then finalize the in-depth technical evaluation of the options for incorporation at a later date; and
- .7 that frequent revisions to the Convention, resulting from the greater flexibility afforded by tacit acceptance procedures, may have a detrimental effect with regard to its consistent application.

2 Having considered the above comments, the Sub-Committee agreed that, in order to remove the aforementioned disincentives for improved safety and provide greater flexibility to incorporate future amendments, a way for adoption of amendments via tacit acceptance procedure should be developed as an immediate first step.

3 In addition, the Sub-Committee agreed that an in-depth technical evaluation of the proposed options referred to in paragraph 1.1 should be undertaken in parallel, taking into account any further options that may be proposed.”

ANNEX 2

**JUSTIFICATION FOR AMENDING THE 1969 TM CONVENTION
TO INCLUDE A TACIT ACCEPTANCE PROCEDURE FOR AMENDMENTS*****“Options for amending the 1969 TM Convention***

1 The Sub-Committee, in considering the options for amending the 1969 TM Convention, recalled that during development of this work it became evident that implementation of options requiring amendments to the 1969 TM Convention, or any future amendments to that Convention, was difficult because of the lack of an efficient mechanism in the 1969 TM Convention for amending it and that it was desirable to introduce such a mechanism.

2 The Sub-Committee also noted that amendments to the 1969 TM Convention would facilitate resolution of the difficulties posed in applying the Convention in a uniform and transparent manner to ship types that were not prevalent when the Convention was adopted and might obviate the need for a large number of uniform interpretations, disseminated by means of TM circulars. This problem is applicable to many ship types, including:

- .1 open-top containerships;
- .2 offshore supply vessels;
- .3 ro-ro vessels, especially car carriers;
- .4 submersible heavy lift vessels; or
- .5 the many novel types developed since the enforcement of the Convention.

3 In considering the above points, the Sub-Committee discussed three options to incorporate the tacit acceptance procedure for amendments into the 1969 TM Convention, as follows:

- .1 adoption of a Protocol to the Convention, which would require the convening of a diplomatic conference;
- .2 using the existing unanimous acceptance provision specified in Article 18(2) of the Convention; and
- .3 using the explicit acceptance procedure specified in Articles 18(3) and 18(4).

4 Regarding the option to adopt a Protocol to the Convention, the Sub-Committee noted the oral information provided by the Secretariat that, in order to hold a diplomatic conference in the next biennium, MSC 85 would have to endorse the Sub-Committee’s recommendation so that the Council could incorporate the necessary funds in the next biennium’s budget, for approval at the next session of the Assembly in 2009.

5 In considering the merits of the above options, the Sub-Committee noted the following:

- .1 with regard to option 1, implementation of a Protocol to the Convention would be quicker than the other options, however, two regimes would exist, with differing parties to the Convention and the Protocol and there are budgetary considerations associated with its facilitation;

- .2 with regard to option 2, it would only take three years for the amendments to enter into force if this option is used, and there are no associated budgetary considerations, however, it is dependent upon there being no objections; and
- .3 with regard to option 3, it would require acceptance of the amendments by two-thirds of the Contracting Governments to the Convention if this option is used and it may take many years before this condition is met.

6 In noting which of the above options to pursue, the Sub-Committee invited the Committee to consider the options and to take action as appropriate.

7 The Sub-Committee, in view of the above developments, invited MSC 85 to extend the target completion of the existing work programme item to 2011.”
