

MARITIME SAFETY COMMITTEE  
108th session  
Agenda item 19

MSC 108/19/3  
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## ANY OTHER BUSINESS

### Considerations regarding approval of IMO unified interpretations and its effect on the workload of the Committee and its subsidiary bodies

Submitted by IACS

#### SUMMARY

*Executive summary:* This document discusses the approach by IACS to the development and submission to IMO of unified interpretations (UIs) and opines that approval of IMO UIs by "consensus" as opposed to by "unanimity" offers tangible benefits to IMO and the shipping industry in achieving their common goal of safe shipping, in a universal and uniform manner, as well as assisting the Organization with managing its workload.

*Strategic direction, if applicable:* Not applicable

*Output:* Not applicable

*Action to be taken:* Paragraph 19

*Related documents:* MSC 107/20; C 129/15(c)/1 and C 129/6

#### Introduction

1 The Maritime Safety Committee, at its 107th session, considered two separate issues which, in the opinion of IACS, are linked when it comes to the outcome of the consideration of draft UIs.

2 The first issue was raised during the approval of the draft UI of SOLAS regulation II-1/26.2 on single essential propulsion components agreed by SSE 9; specifically, the Committee discussed whether unanimity should be required for the approval of a draft UI, taking into account that its previous practice had been to approve UIs only if there was unanimous support.

3 The Committee noted the information provided by the Director of the Legal Affairs and External Relations Division that the hierarchy of legal weight for interpretive instruments for treaties is guided by the Vienna Convention on the Law of Treaties (VCLT). The Director advised that an amendment to a treaty carries more legal weight than a UI. In this regard, the

Director noted that amendments to mandatory international instruments under IMO, such as SOLAS, usually required a two-thirds majority for entry into force, and not unanimity. The Director considered that requiring unanimity for the approval of IMO UIs (which had lower legal weight than treaties) by the Committee would therefore be somewhat illogical in light of the hierarchy in the VCLT, given that amending a mandatory IMO instrument did not require unanimity.

4 Following consideration, the Committee requested the Secretariat to provide legal advice to MSC 108 on how to approach the approval of UIs when there was no unanimity, for consideration under the agenda item "Any other business" (MSC 107/20, paragraphs 14.42 to 14.44).

5 The second issue was the workload of the Committee and its subsidiary bodies on which the Committee agreed to pursue the proposals by its Chair (MSC 107/20, paragraph 17.68), in particular:

- "1 a relevant working group should be established at MSC 108 to conduct a holistic review of the workload of the Committee and sub-committees and provide recommendations on matters such as:
  - .1 the future process for considering and approving new outputs;
  - .2 prioritization of outputs;
  - .3 possible mechanisms to manage the workload of the sub-committees; and
  - .4 any other related matters to ensure the sustainability of the workload of Committee and sub-committees;
- .2 to request the Secretariat to provide an analysis of the relevant outputs to MSC 108 for consideration and action, as appropriate; and..."

## Discussion

6 Before the year 2020, IACS used to submit its UIs to the relevant sub-committees as resolutions adopted by IACS, indicating the effective date. That effective date was set well in the future to allow the review of IACS-adopted UIs by those sub-committees. In its submission, IACS used to inform IMO Member States that the UI concerned would be applied from an effective date unless a Member State indicated to IACS or its recognized organizations (ROs) its objection in writing, meaning that that UI would not be applied to ships flying the flag of that particular Member State.

7 The submission of IACS-adopted UIs had a number of objectives:

- .1 to respect the prerogative of flag States to agree to the interpretations of regulations which they adopted at IMO and to adhere to that similar provision appearing in agreements between flag States and ROs (e.g. paragraph 5.2 of annex of MSC-MEPC.5/Circ.16);

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- .2 to inform Member States of existing IACS-adopted UIs to understand their opinion (e.g. if there are any comments or objections which should be considered by IACS), with a view to possibly:
    - .1 removing the IACS-adopted UI;
    - .2 revising the IACS-adopted UI;
    - .3 keeping the IACS-adopted UI, however noting the objection of a particular Member State and expecting its written communication to IACS or to its ROs regarding non-application to ships flying its flag; or
    - .4 in case of IMO approving a UI under the cover of an IMO circular, updating IACS-adopted UI with the text of the IMO circular making its application mandatory for IACS members' classed ships, unless ROs are advised otherwise in writing by a particular State for ships flying its flag.

8 Because sub-committees exercised the approach of unanimity, a number of interpretations were rejected when only one Member State objected. Recently, some sub-committees started to explore such objections on their technical merits in working groups or correspondence groups resulting in agreed interpretations, albeit not necessarily as originally submitted. However, that approach, while showing positive results in sub-committees, when reaching the stage of the consideration by a committee, still has the potential for the dismissal of the broadly supported draft UI, for the sole reason of lacking unanimity in the committee.

9 After several rejections of submitted UIs due to the lack of unanimity, the only remaining route to initiate the work on resolving the considered lack of clarity in application of IMO regulations is to propose a new output.

10 Over the past three years, in order to simplify the internal IACS processes due to those rejections, IACS has been submitting interpretations for consideration of sub-committees in their draft form, i.e. not yet adopted as IACS resolutions. Whilst this has improved IACS internal process, it did not help IMO's workload, as evidenced below.

11 IACS has reviewed the statistics of the most recent three years as related to submissions under the standing agenda item on unified interpretations of Sub-Committees (SSE 7, SSE 8, SSE 9, SDC 7, SDC 8, SDC 9, CCC 7, CCC 8, NCSR 7 and NCSR 9) and proposals of new outputs to the Committee (MSC 102, MSC 104 and MSC 107), resulting in the following findings:

- .1 out of all 57 documents submitted under the agenda item on UIs, 45 documents were by IACS, representing 80% of them;
- .2 out of all 61 proposals submitted to MSC 102, MSC 104 and MSC 107 under the agenda item "Work programme", 11 new output proposals were developed by IACS together with co-sponsors, representing 18% of all proposals or one fifth of the Committee's workload; and
- .3 out of those 11 proposals, 8 proposals were from the rejected IACS UI submissions, representing 13% of the proposed Committee's workload.

12 In addition to the workload from those submissions, when considering rejecting the proposed IMO UI on the basis of the lack of unanimity, it should be kept in mind that the pursuit of an interpretation aims to have a near-immediate effect, while outright rejection of it, because of one or two objections, results in an output proposal to develop changes to the regulation, which will take potentially up to five years to affect ships. That time frame can be longer as outputs will not be automatically turned into agenda items of sub-committees. Also, the temporal situation could be exacerbated in case of SOLAS and safety related codes (with a few exceptions) where the four-year amendment cycle is usually required.

13 In the 2022-2023 biennium, IACS, alone or with co-sponsors, submitted 152 documents (C 129/15(c)/1), the bulk of them under the agenda item on UIs. Those documents contributed to the overall growing number of submissions as discussed in document C 129/6 (paragraph 31) on the workload of the Secretariat with respect to document management and translation, i.e. "...showing a clear increasing trend over the last decade, which also impacts on the technical divisions who provide technical support to the meetings programme. While this has been absorbed to date through efficiencies in process and technology and previous budget documents, there will come a point at which the workload will require additional institutional resources to deliver".



**Figure 1: Document processing and translation workloads**  
(pages received and translated 2014-2022)

14 With the adoption of new instruments for the safety of decarbonization and digitalization, the need to have clarity in the regulations is likely to produce more interpretations (depending on how prescriptive those instruments will be). Therefore, the sustainability of the current unwritten approach to require unanimity of approval of IMO UIs may be questioned regarding its benefit of achieving the result of the uniformity of implementation.

## Proposals

15 IACS is of the view that the approval of IMO UIs by consensus, as with the approval of any other recommendation considered by IMO, i.e. not by unanimity, will improve the process and the quality of decisions, will increase uniformity of application of IMO instruments and promptly resolve differences of application by the maritime community. This approach will not impact the right of a Member State to provide different instructions to its ROs to apply to ships flying its flag.

16 In case a Member (flag) State disagrees with the approved IMO UI, its objection should be recorded in the Committee's report. For transparency and reference, the objections could be assembled in a GISIS module.

17 Considering heavy agendas of sub-committees, to help with achieving the most positive effect, IACS is ready to work with the IMO Secretariat on the prioritization of proposed IMO UIs which are submitted to any one session, thereby allowing the most urgent/impactful UIs to be processed at the meeting, leaving others to be addressed elsewhere, e.g. by correspondence groups.

18 Further, IACS considers that the approved IMO UIs should have a "shelf-life"; at the time of their approval, the aim should be to follow up with the consolidation (at the right time) of IMO UIs into respective amendments to the relevant mandatory instrument. Good examples of that approach are the current outputs to review and update the IGC Code and SOLAS regulation II-2/9. A way of capturing that process would need to be devised and may form part of MSC-MEPC.1/Circ.5/Rev.5 on *Organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies*.

#### **Action requested of the Committee**

19 The Committee is invited to consider the foregoing, the proposals in paragraphs 16 to 19 and positively consider changing its unwritten approach to approval of UIs away from unanimity towards consideration of proposals on their technical merits.

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