

UKHO review of paper submitted to IRCC about RHCs

1. Introduction

The focus of the paper submitted by Brazil, Canada, USA and IHO-S is the status of RHCs. This raises concerns to UK as we believe that it has not addressed the intent of the Assembly action that led to the paper, and that it has overstepped the remit of IRCC.

UK believes that whatever the outcome of discussions at IRCC the paper needs to be re-profiled to appropriately address the Assembly action, or to be re-phrased as a proposal to Council to raise at Assembly.

UK is yet to determine its position on whether RHCs should be part of the IHO, but given the importance of RHC membership to qualifying for a seat on IHO Council, a closer union would seem sensible.

2. Background

The following has been submitted to IRCC10 to be held 4-6 June 2018

IRCC10-06.2	Draft revised IHO Resolution 2/1997 (BRA, CAN, USA, Sec.) Annex A Annex B
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Annex A to the paper above is the proposed new draft of 2/1997

Annex B 'proposes an IRCC document on the *Roles and Responsibilities of Regional Hydrographic Commission Chairs* as a consequence of the revised text of Annex A.

Paper IRCC10-06.2 has arisen from action:

IRCC9/30 - *to review the IHO Resolution 2/1997 as amended Establishment of Regional Hydrographic Commissions, and submit to the IRCC at its 10th meeting.*

This in turn was in relation to Assembly decision A-1/5 on Pro-9

Decision A-1/5 – section o): 'tasked the IRCC to include a revision of IHO Resolution 2/1997 as amended (*Establishment Of Regional Hydrographic Commissions - RHC*) in its Work Plan and report to the Council.'

Pro-9: (full text at annex A)

PROPOSAL:

In order to reflect the new structure of the IHO as defined in the amendments to the Convention on the IHO and the other Basic Documents of the IHO that entered into force on 8 November 2016, the Assembly is requested to agree to:

- a. The editorial amendments to IHO Publication M-3 - *Repertory of IHO Resolutions*, 2nd Edition - 2010, Updated to July 2015, as set out in Annex A to this Proposal, and
- b. The development of substantive amendments according to the proposals set out in Annex B.

As articulated in the explanatory note of Pro-9: 'The second level [of a two-level approach] addresses several substantive amendments that reflect the requirements of the new organizational framework and other recent developments and that have a significant impact on the content or scope of the relevant resolutions. These substantive amendments are identified in Annex B with proposals for revised texts or for further work as appropriate.'

As far as UK is aware, the aforementioned 'new organisational framework' has had no bearing on the status of RHCs.

The relevant section of PRO-9 Annex B is as follows:

ESTABLISHMENT OF REGIONAL HYDROGRAPHIC COMMISSIONS (RHC)	2/1997 as amended	69/2010	T1.3
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Purpose: to ensure consistency with article 8 of the new General Regulations.

Procedure: IRCC to include the revision of the resolution in its Work Plan and report to the Council.

Article 8 of General Regulations is about Regional Hydrographic Commissions (text at Annex B).

3. Argument

Article 8 (see annex B) of General Regulations states that:

‘Regional Hydrographic Commissions (hereinafter RHCs) are regional bodies, established by Member States and recognized by the Assembly’

There is no suggestion within Article 8 that RHCs are part of the IHO. To the contrary, Article 8 emphasises that RHCs have their own membership, and that RHCs are established by agreement of their members.

This is currently at odds with IHO Resolution 2/1997 which includes in its open paragraph the statement: ‘As part of the IHO, the RHC shall ...’

Pro-9 to Assembly 1, stated that the purpose of a review of 2/1997 was to ‘ensure consistency with Article 8.’ UK contends that an area of inconsistency between Article 8 and Res 2/1997 is the assertion in 2/1997 that RHCs are part of the IHO, whereas Article 8 implies that RHCs are not part of the IHO, albeit working within the IHO context as stated in Article 8.

The UK is concerned that a key tenant of the proposed revision of IHO Resolution 2/1997 is the assumption that RHC’s are part of the IHO. Throughout this document the language used to define the relationship between the IHO and RHCs has changed from ‘advisory’ to ‘instructional’ and the statement “As part of IHO, RHCs shall” is now stated twice.

The issue of whether RHC’s are part of the IHO has been discussed at many IHO Conferences. The current wording for the IHO Resolution 2/1997 was drafted at the 15th IHC in 1997 and the statement “As part of IHO, the RHC shall” therein, has prompted the clarification of RHC status with respect to the IHO at the 2005, 2007 and 2009 International Hydrographic Conferences.

In particular, the US submitted Pro-15 to EIHC4 (2009) PRO-15 ‘REGIONAL HYDROGRAPHIC COMMISSIONS AS BODIES OF THE INTERNATIONAL HYDROGRAPHIC ORGANIZATION’. This gave rise to the following comments:

In order to contribute to discussion of this proposal, the IHB makes the following comments:

- *The issue of whether RHCs should become bodies of the IHO was discussed at length during the meetings of the SPWG. This was required in order for the SPWG and LEX to properly and correctly draft the new and amended Articles of the Convention and General Regulations. New Article 8 of the amended General Regulations, concerning the RHCs, was drafted and agreed based on this decision;*
- *The decision regarding the status of RHCs presented and accepted at the 2005 and 2007 Conferences was that “RHCs should be recognized by the Assembly, without formally becoming organs of the IHO”;*
- *If it is now accepted that the RHCs should become bodies of the IHO, further consideration will be required regarding their formal status and relationship with the Organization and whether the new and amended Articles of the IHO Convention, the General Regulations and Technical Resolution 1.3 require further amendment.*

UK understands the aims of PRO 15 with respect to the relationship between the RHCs and the IHO, particularly in view of the increasing importance of RHCs in the work of the IHO, and the fact also that a significant percentage of the Council in future will be there as specific representatives of RHCs rather than a member of Council based on hydrographic interest (tonnage), and so can see the sense of more directly “wiring RHC” into the structure as proposed.

UKHO also notes the extensive discussions which took place over a number of years in IHO fora, particularly SPWG, during development of the new Convention and associated Basic Documents. If further discussion reaches the conclusion that circumstances have now changed, then it has to be appreciated that there are matters which the IHO cannot action by itself. Principal among these is that RHCs are international organizations in their own right. This means that they cannot become constituent parts of the IHO unless they agree to disband themselves (the various statutes and conventions that currently regulate operation of RHCs would need to be set aside) and submit to the IHO’s Convention. General Regulations and Rules of Procedure of the IHO, and those documents themselves would, almost certainly, need to be amended accordingly. The IHO has no coercive power by which it could compel any RHC to become a part of it.

The outcome of discussions at EIH4 was as follows:

Rear Admiral (Ret.) ANDREASEN (United States of America) recalled that when the Regional Hydrographic Commission (RHC) concept had originated several decades earlier, RHCs were the product of voluntary cooperation between Member States, with each RHC establishing its statutes independently of the IHO, and membership in them had also been voluntary. RHCs were not at present “bodies of the IHO”, and participation was not open to all Member States, whereas official IHO meetings were open to the whole of the membership.

In the view of the United States, the RHCs had become important elements in the operation of the IHO and the time had come for them to be included within the Organization. They played a significant role in the IHO Capacity Building Programme, were formally included in the IHO Work Programme, and would serve as the regional basis for determining the two-thirds membership of the proposed new IHO Council. They were not however formally part of the IHO for the purposes of international funding organizations or the transfer of funds related to capacity-building initiatives. Nevertheless, in the light of a negative response by Member States to Proposal 15, and an observation received from the United Kingdom delegation that the IHO had no authority to impose the integration of RHCs into the IHO, his delegation was withdrawing Proposal 15.

Taking a different approach to the integration of RHCs into the Organization, his delegation suggested that the IHO could develop standardized statutes, which any RHC might adopt if it wished voluntarily to become an integral part of the Organization. His country would produce an initial draft of a possible version of statutes of that kind.

The Conference took note of the withdrawal of Proposal 15.

4. Comment

- i. Given the importance of RHC membership to qualify for a seat on IHO Council, a closer union would seem sensible. Any consideration of such a change needs to be appropriately proposed, with pros and cons, for discussion at the appropriate level. A decision for change would be required at IHO Assembly and by each RHC.
- ii. UK supports the approach suggested by US at EIH4 in 2009, that ‘*the IHO could develop standardized statutes, which any RHC might adopt if it wished voluntarily to become an integral part of the Organization*’.
- iii. Article 8, being part of IHO General Regulations, has precedence over 2/1997. As such RHCs are not part of the IHO, and relevant resolutions (such as 2/1997) should reflect this.

- iv. Paper IRCC10-06.2 has not resolved inconsistencies between Article 8 and Res 2/1997 relating to whether RHCs are part of the IHO, but has reinforced a view that RHCs are part of the IHO and is thus even more inconsistent with Article 8.
- v. IRCC cannot approve changes to 2/1997 that are not consistent with Article 8.
- vi. A proposal to invite RHCs to become part of the IHO would require approval of Assembly and amendment of Article 8.
- vii. The action requested of IRCC in paper IRCC10-06.2A to endorse the revised text of IHO Resolution 2/1997 is beyond the remit of IRCC as it is counter to Article 8.
- viii. Based on the above, UK request that whatever the outcome of discussions at IRCC the paper needs to be re-profiled to appropriately address the Assembly action, or to be re-phrased as a proposal to Council, to raise the issue of the status of RHCs within the IHO at Assembly.

ANNEX A – Pro-9 to IHO Assembly (by IHO Secretariat)**Proposals - A.1/G/02/Rev.1****PRO-9 - REVISE IHO PUBLICATION M-3 – REPERTORY OF IHO RESOLUTIONS**

Submitted by: IHO Secretariat (Secretary-General)

Reference: IHO Publication M-3 - *Repertory of IHO Resolutions*, 2nd Edition - 2010, Updated to July 2015

PROPOSAL:

In order to reflect the new structure of the IHO as defined in the amendments to the Convention on the IHO and the other Basic Documents of the IHO that entered into force on 8 November 2016, the Assembly is requested to agree to:

- a. The editorial amendments to IHO Publication M-3 - *Repertory of IHO Resolutions*, 2nd Edition - 2010, Updated to July 2015, as set out in Annex A to this Proposal, and
- b. The development of substantive amendments according to the proposals set out in Annex B.

EXPLANATORY NOTE:

1. IHO Publication M-3 contains the repertory of IHO resolutions. The current edition is the 2nd Edition, 2010, updated to July 2015.
2. The implementation of the new structure of the IHO, as defined by the Protocol of amendments to the Convention on the IHO approved by the 3rd Extraordinary International Hydrographic Conference in 2005 (EIHC-3) and the other new Basic Documents of the IHO approved by the 17th International Hydrographic Conference in 2007 (IHC-17), and that entered into force on 8 November 2016, has an impact on a number of resolutions that need to be updated accordingly.
3. After a review of Publication M-3, the IHO Secretariat (Secretary-General) proposes a two-level approach.
4. The first level consists of straightforward editorial amendments reflecting the changes in the nomenclature of the Organization (for example the change from Conference to Assembly) and other similar minor, non-substantive adjustments. These proposed amendments are set out in Annex A.
5. The second level addresses several substantive amendments that reflect the requirements of the new organizational framework and other recent developments and that have a significant impact on the content or scope of the relevant resolutions. These substantive amendments are identified in Annex B with proposals for revised texts or for further work as appropriate.

Annex B – Article 8 from General Regulations of the IHO**Regional Hydrographic Commissions****ARTICLE 8**

- (a) Regional Hydrographic Commissions (hereinafter RHCs) are regional bodies, established by Member States and recognized by the Assembly to improve regional co- ordination, enhance exchange of information and foster training and technical assistance.
- (b) RHCs recognized by the Assembly are listed in the Annex to these General Regulations.
- (c) RHCs shall be established by an agreement of their members.
- (d) RHC membership may include full members and associate members, both willing to contribute to the objectives of the Organization in the region concerned.
- (e) Full membership is reserved for Member States within the region. (f) Associate membership is available to:
- (i) other Members States; and
 - (ii) States of the region who are not Member States.
- (g) Other States and international organizations active in the region concerned may be invited by the RHC to participate as observers.
- (h) RHCs shall assess regularly the hydrographic capacity and requirements within their region.