

AMENDMENTS TO THE CONVENTION ON THE
INTERNATIONAL MARITIME ORGANIZATION

JUNE 19, 1998.—Ordered to be printed

Mr. HELMS, from the Committee on Foreign Relations,
submitted the following

REPORT

[To accompany Treaty Doc. 104-36]

The Committee on Foreign Relations, to which was referred Amendments to the Convention on the International Maritime Organization, adopted on November 7, 1991, and November 4, 1993, having considered the same, reports favorably thereon with one declaration and one proviso, and recommends that the Senate give its advice and consent to the ratification thereof as set forth in this report and the accompanying resolution of ratification.

I. PURPOSE

The Amendments are intended to make permanent the Facilitation Committee of the International Maritime Organization, and expand the size of the Council of the Organization.

II. BACKGROUND

In 1948, twenty nations, including the United States, negotiated a convention to establish the Intergovernmental Maritime Consultative Organization (IMCO). The United States ratified the Convention in 1950, and IMCO came into being on March 17, 1958, after ratification or accession by the requisite 21 states (including 7 that each had a total tonnage of at least one million gross tons of shipping). Article 45 of the Convention contemplated that the organization would become a Specialized Agency of the United Nations, and an agreement to that effect was formalized by the UN General Assembly in 1948 and by the first IMCO Conference in 1959. In 1982, the organization changed its name to the International Maritime Organization (IMO).

The Convention set forth a number of broad purposes for the IMO:

- to facilitate cooperation among participating governments in regulating shipping engaged in international trade;
- to encourage the adoption of high standards in matters relating to maritime safety and efficiency of navigation;
- to encourage the removal of discriminatory restrictions affecting international shipping; and
- to consider any other matter referred to it by any organ or Specialized Agency of the UN.

The Convention provided that the IMO would be a consultative and advisory organization and would pursue its goals by means of making recommendations, drafting conventions, facilitating consultations, providing technical assistance, and performing such other functions as may be placed upon it by other international agreements. The Convention also provided that the IMO, upon the request of one of its Members, could attempt to resolve disputes concerning unfair restrictive shipping practices.

The policy-making body of the IMO is the Assembly, which consists of all Member states. The Assembly meets biennially and approves the organization's budget and work program, elects the Council, and makes recommendations to the Member states on matters within the IMO's scope. The Council, in turn, acts for the IMO between Assembly sessions; it originally consisted of 16 Member states with major interests in international shipping and international seaborne trade. Finally, as originally adopted, the Convention established a Maritime Safety Committee as a standing committee of the IMO with a membership of 14 States.

A number of amendments to the IMO Convention have been adopted since the organization came into being, many of them relating to the size of its governing bodies and to institutionalizing its functions. In 1967 the size of the Council was increased from 16 to 18 states and a criterion was added that the Council be representative of all major geographic areas of the world. In 1968 the membership of the Maritime Safety Committee was increased from 14 to 16 states and a similar criterion regarding geographic representation was added. In 1978 the Council was again expanded, from 18 to 24 states, and the membership of the Maritime Safety Committee was increased to include all of the Member states. In 1982 several broader amendments entered into force:

- the name of the organization was changed to the International Maritime Organization;
- its purposes were expanded to include the prevention and control of marine pollution from ships and legal matters relating to all of its purposes;
- its functions were broadened to include the performance of duties assigned to it by other international instruments relating to maritime matters; and
- two additional standing committees were created—a Legal Committee and a Marine Environment Protection Committee, each consisting of all of the Members of the IMO.

Finally, in 1984 the IMO Convention was amended to delete the provision that limited the IMO to an advisory and consultative role (Article 2); to increase the size of the Council from 24 states to 32; to create a Technical Cooperation Committee as a standing commit-

tee; and to expand the IMO's role as the Specialized Agency of the UN for shipping to include the effect of shipping on the marine environment. The Technical Cooperation Committee consists of all of the Members of the IMO and is responsible for carrying out technical cooperation projects funded by other agencies of the UN and such other matters as are entrusted to it by the Assembly or Council or under other international agreements.

The IMO now has 155 Member States. Over the course of its existence it has recommended and seen the entry into force of more than 40 conventions relating to such matters as safety of life at sea, marine pollution, and liability for damages; and it has initiated numerous measures concerning the training and certification of crews, global search and rescue systems, and maritime administration. The United States contributes \$1 million a year to the IMO, which is less than five percent of its budget, and is represented on the Council by the Coast Guard.

III. SUMMARY

The proposed treaty amends the IMO Convention in two areas. First, the amendments would increase the size of the Council, this time from 32 Members to 40. This expanded membership would, as has long been the case, be apportioned among the states with the largest interest in providing international shipping services (10 states), those with the largest interest in international seaborne trade (10 states), and others with a special interest in maritime transport or navigation whose election will ensure the representation of all of the major geographic areas of the world (20 states). The United States is currently a member of the Council.

Secondly, the proposed amendments would institutionalize the Facilitation Committee (an *ad hoc* committee until now) by making it one of the five standing committees of the IMO. Like the other standing committees, the Facilitation Committee would be comprised of all of the Members of the IMO. Within the framework of the purposes and functions of the IMO, it would have responsibility for all matters concerning the facilitation of international maritime traffic and would submit its reports and recommendations to the Council. The President's transmittal letter on the amendments describes the Committee's functions as streamlining "the procedures for the arrival, stay and departure of ships, cargo and persons in international ports."

IV. ENTRY INTO FORCE AND TERMINATION

A. ENTRY INTO FORCE

The proposed amendments would enter into force one year after 103 members of the 155 Party membership have deposited their instruments of ratification of the amendments.

B. TERMINATION

The proposed amendments could be terminated through termination of membership in the underlying Convention.

V. COMMITTEE ACTION

The Committee on Foreign Relations held a public hearing on the proposed treaty on Wednesday, May 13, 1998. The hearing was chaired by Senator Hagel. The Committee considered the proposed treaty on Tuesday, May 19, 1998, and ordered the proposed treaty favorably reported by voice vote, with the recommendation that the Senate give its advice and consent to the ratification of the proposed treaty subject to one declaration and one proviso.

VI. COMMITTEE COMMENTS

The Committee on Foreign Relations recommends favorably the proposed treaty. On balance, the Committee believes that the proposed treaty is in the interest of the United States and urges the Senate to act promptly to give its advice and consent to ratification. Consideration of the Amendments was noncontroversial.

One issue that did arise during consideration was whether an increase in the size of the IMO's Executive Body, the Council, would hinder its operation. The State Department asserted that "this relatively modest increase in size based as it is on the stake that countries have in international maritime commerce is something that reflects our interest and would contribute to the effectiveness of the organization." The Committee defers to the State Department in this analysis, but would caution against any additional amendments to increase the Council's size. The Committee is concerned that additional membership could make the Council unwieldy and ineffective.

VII. EXPLANATION OF PROPOSED TREATY

For a detailed article-by-article analysis of the proposed treaty, see the letter of submittal from the Secretary of State, which is set forth at pages v–vii of Treaty Doc. 104–36.

VIII. TEXT OF THE RESOLUTION OF RATIFICATION

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Amendments to the Convention on the International Maritime Organization, adopted on November 7, 1991, and November 4, 1993 (Treaty Doc. 104–36), subject to the declaration of subsection (a), and the proviso of subsection (b).

(a) DECLARATION.—The advice and consent of the Senate is subject to the following declaration:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(b) PROVISIO.—The resolution of ratification is subject to the following proviso, which shall be binding on the President:

SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

