



IMCO

INTERNATIONAL CONFERENCE ON
TONNAGE MEASUREMENT OF SHIPS, 1969
General Committee

SUMMARY RECORD OF THE ELEVENTH MEETING

held at Church House, Westminster, London, S.W.1,
on Friday, 13 June 1969, at 9.10 a.m.

Chairman: Mr. P. VANCRAEYNEST (Belgium)
Vice-Chairman: Mr. P. NIKOLIĆ (Yugoslavia)
Committee Secretary: Mr. V. NADEINSKI

A list of participants is given in TM/CONF/INF.1/Rev.2 & Corr.1.

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AGENDA ITEM 3 - CONSIDERATION AND PREPARATION OF THE DRAFT
TEXT OF ARTICLES OF A CONVENTION ON TONNAGE
MEASUREMENT (TM/CONF/6; TM/CONF/C.1/WP.11;
TM/CONF/C.2/WP.34) (continued)

TM/CONF/C.2/WP.34 (continued)

The CHAIRMAN drew the Committee's attention to sub-paragraphs (i) to (iv) of Regulation 5(3). He suggested that the Committee comment separately on the different sub-paragraphs and take them up in the order (i), (iii), (ii) and (iv).

It was so decided.

Sub-paragraph (i)

No comments.

Sub-paragraph (iii)

The CHAIRMAN drew attention to the fact that sub-paragraph (iii) might be intended to refer to the same kind of alterations or modifications as Article 3(3)(b). He suggested that the Committee might consider that possibility, and the related question of whether the two texts should be brought into line.

Mr. NADJINSKI (Committee Secretary) pointed out that the Technical Committee had, since the preparation of TM/CONF/C.2/WP.34, decided that net tonnage should be based on certain volumes. That decision might entail revision of the sub-paragraph at present under discussion.

Mr. KENNEDY (Canada) said that, on the basis of the text before the Committee, he was strongly in favour of the wording of the Regulation being brought into line with that of the Article.

Mr. NICHOLSON (Australia) and Mr. KASBEKAR (India) supported the Canadian view.

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Mr. WIE (Norway) said that another reason for not insisting on identical wording was that in sub-paragraph (iii) it was a question of net tonnage, whereas in the Article it was a question of gross tonnage.

Mr. BEVANS (USA) said that he had heard no objection to the wording of sub-paragraph (iii). The Committee should therefore express approval of it.

Mr. MARINI (Italy) suggested that the Committee should refer the matter to the Technical Committee for reconsideration in the light of the latter's decision on the method of determining net tonnage, with a request that the Technical Committee examine the whole question in the light of Article 3(3)(b).

Mr. MUENCH (Israel) proposed that the Technical Committee be asked to reconsider sub-paragraph (iii) with a view to deciding whether it should be brought into line with Article 3(3)(b) or whether, for particular reasons, the two texts should continue to be differently worded.

It was so decided.

Sub-paragraph (ii)

Mr. KENNEDY (Canada) said that the length of the period stipulated in Regulation 5(3) might need consideration in connexion with sub-paragraph (ii). The question of time was relevant in the case of a change of ownership where no change of flag was involved. He suggested that the Committee should discuss the time limit as well as the wording of the sub-paragraph itself.

It was so decided.

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Mr. DARAM (France) proposed that sub-paragraph (ii) should be deleted. It represented an incentive to shipping companies to consolidate with a view to facilitating inter-group transfers for the purpose of obtaining reduced net tonnages. That would have adverse repercussions on port authorities' income and on ships' crews, who might find themselves deprived of employment because of a change of ownership. But his proposal in no way aimed at discouraging genuine mergers between shipping companies in the interests of more rational management and greater economy.

Mr. NICHOLSON (Australia), Mr. GLUKHOV (USSR), Mr. GERDES (Netherlands) and Mr. FILA (Poland) supported the French proposal.

Mr. KASBEKAR (India) said that sub-paragraph (ii) should be retained, although the word "real" was of no significance and could well be deleted. Since the legislation of most countries provided for transfers of ownership, it could safely be left to Administrations to decide what was meant by change of ownership. Changes of ownership would take place anyway, and the same facilities should be available to an owner making a bona fide purchase of a ship which remained under the same flag as to the new owner of a vessel which was transferred to another flag.

The question of time was a commercial and not a technical point, and it was therefore proper for the Committee to consider it. What was permitted after twelve months could equally well be permitted after six months. A reduction in the period of delay to six months would meet the needs of countries possessing fleets in which frequent changes were necessary from one type of shelter-deck condition to another. He therefore proposed that the word "twelve" in Regulation (5)3 be replaced by the word "six".

Mr. QUARTEY (Ghana), MR. WIE (Norway), Mr. BORG (Sweden) and Mr. OLAYINKA (Nigeria) endorsed the views expressed by the Indian representative and supported his proposal.

Mr. MARINI (Italy) said that he thought that the Committee was competent to make changes of form such as the deletion of the word "real", but not a change of substance of the kind involved in the deletion of the whole sub-paragraph. All it could do in that connexion was to refer the matter to the Technical Committee for reconsideration.

Mr. MUENCH (Israel) said that his delegation shared the views expressed by the French representative. Port authorities might be suspicious of the whole Convention if it permitted rapid conversion procedures. He agreed with the Italian representative about the extent of the Committee's competence.

Mr. VAUGHN (Liberia) said that he agreed with the Italian and Indian representatives and supported the Indian proposal. The French approach failed to recognize the economic factor involved in the sale of vessels. There was little likelihood of abuse as the result of the inclusion of sub-paragraph (ii) in the Convention.

Mr. QUARTEY (Ghana) said that he shared the Italian view of the Committee's competence. On the substance of the matter, it was up to Administrations to discover whether or not a change of ownership was real. He suggested that the Technical Committee should be asked to include in the Regulation a proviso which, by leaving the matter to Administrations' discretion, would prevent any abuse of sub-paragraph (ii). That would be preferable to deleting the sub-paragraph, which would have the effect of penalizing bona fide new owners and artificial new owners indiscriminately.

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Mr. DOINOV (Bulgaria) supported the French proposal and said that the deletion of sub-paragraph (ii) was within the Committee's competence. The retention of the sub-paragraph would amount to discrimination in favour of bigger shipowners.

Mr. HINZ (Federal Republic of Germany) said that he too considered that national Administrations were best placed to distinguish between a bona fide and an artificial change of ownership. The word "real" should therefore be deleted.

Mr. KENNEDY (Canada) said that a matter of substance was involved, not a technical point. It was very much the concern of the Committee to evolve not merely a Convention which was acceptable to the Conference but an instrument which IMCO could display to all concerned as the embodiment of the fundamental principles which the Conference was convened to express. Sub-paragraph (ii) was an inducement to the development of companies of convenience. The plenary had reached a tentative decision that steps should be taken to prevent the abuse of any provisions included in the Convention for the benefit of shelter-deck vessels. A very real principle was involved, and the Committee should not hesitate to defend it.

Mr. VAUGHN (Liberia) said that he thought the possibility of abuse was being over-emphasized. The Committee must be wary of elaborating a Convention which gave undue consideration to port authorities and neglected the legitimate interests of shipowners. They were entitled to some profit from the sale and operation of their vessels.

Mr. BORG (Sweden) said that he was opposed to the deletion of the entire sub-paragraph, although he could agree to the removal of the word "real", because a new owner must have the right to decide under what load line his vessel was to sail.

Mr. BEVANS (USA) said that the matter was one for the General Committee to decide. His delegation recognized the problem of artificial changes of ownership. That type of abuse should be discouraged, and the twelve-month period of delay was a satisfactory method of doing so. To leave the matter to the discretion of Administrations was not sufficient, because they would find it difficult to decide what was a real change of ownership. He did not think that the existence of a twelve-month period of delay would represent a hardship to shipowners. His delegation was therefore opposed to any reduction in the length of that period and it supported the proposal to delete sub-paragraph (ii).

Mr. MADIGAN (UK) agreed with the views expressed by the United States representative. Sub-paragraph (ii) should be deleted and the time limit of twelve months retained. The existence of a shorter period of delay would mean that changes could be made too frequently. He hoped that there was no question of acceptance of the proposal to delete sub-paragraph (ii) being conditional upon agreement to a reduction in the period of delay.

Mr. QUARTEY (Ghana) stressed that there was no intention that the deletion of sub-paragraph (ii) should be tied to the reduction of the time-limit in question from twelve months to six months; the two points were not related. The term "seldom" was a relative one. Some ships, such as shelter-deckers, were specially built to utilize the facilities existing under the present tonnage regulations; and since the Ghanaian fleet consisted entirely of shelter-deckers, engaged in seasonal trade, his delegation was particularly interested in the question. In his view, a reduction to six months would do no

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harm at all. As far as other ships were concerned, alterations were in fact seldom made, but for shelter-deckers they were a matter of business.

Mr. GERDES (Netherlands) fully agreed with the United Kingdom representative that the twelve-month time-limit should be retained. The Conference had decided that there should be a period after which the switch from higher to lower tonnage would become applicable, though the number of months had not been specified; he felt, however, that six months was not sufficient for port and harbour authorities to make the necessary calculations on which to base charges. It was most important for those authorities to have a clear view of the parameters of the ships for which dues were to be assessed.

Mr. KASBEKAR (India) said that his proposal to reduce the twelve-month time-limit to six months was not intended to compensate for the deletion of sub-paragraph (ii). He had made the proposal for economic reasons, because a twelve-month period would not suit certain types of ship. The word "real" in sub-paragraph (ii) was the difficulty, because it was an obstacle to providing exemption in cases of change of ownership; his proposal for a reduction of the time-limit to six months would serve the purpose originally intended in that sub-paragraph.

Mr. QUARTEY (Ghana) disagreed with the Netherlands representative that port authorities would have difficulties regarding charges of tonnage; only two sets of tonnages were required, and it was already normal for two to be produced in the case of shelter-deckers. The only problem lay with Administrations, which would have the task of issuing new certificates.

Mr. SUZUKI (Japan) agreed with the United Kingdom representative that the period of twelve months should be retained and that sub-paragraph (ii) should be deleted.

The CHAIRMAN pointed out that the Rules of Procedure required the Committee to vote first on the proposal furthest removed in substance from the original text. He accordingly invited the Committee to vote on the French proposal that sub-paragraph (3)(ii) should be deleted.

The French proposal was adopted by 15 votes to 11.

The CHAIRMAN next invited the Committee to vote on the Indian proposal to reduce the time-limit specified in line 10 of paragraph (3) from twelve months to six months.

The Indian proposal was rejected by 17 votes to 7.

Sub-paragraph (iv)

Mr. KASBEKAR (India) suggested that in sub-paragraph 3(iv) the phrase "such, for example, as the pilgrim trade" should be deleted, as the pilgrim trade was of very limited extent and duration. He pointed out that the question was being considered by the ad hoc Sub-Committee on Revision of Simla Rules set up by the Maritime Safety Committee.

Mr. QUARTEY (Ghana) thought the phrase could be retained; it was only intended as an example of one kind of special trade in which passenger ships might be employed.

Mr. MADIGAN (UK), in reply to a question from the Australian representative, said the clause had been inserted into sub-paragraph (3)(iv) by the Technical Committee at the express request of the Indian representative, who had felt that that form of words was best fitted to cover the consideration being given elsewhere in IMCO to rules for ships engaged in special trades. The clause therefore represented the precise intention of the Technical Committee and should be retained.

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Mr. MUENCH (Israel) agreed, adding that the clause had been modelled on a similar exemption clause in the 1960 Safety Convention.

Mr. KASBEKAR (India) withdrew his proposal.

The CHAIRMAN said the Committee had now completed its consideration of TM/CONF/C.2/WP.34 in accordance with the request from the Technical Committee set out in paragraph 2(a) - (c) of that document. It had not found it necessary to recommend that any part of the Regulation be transferred to the Articles. He suggested that the Secretariat be asked to report the Committee's decision concerning sub-paragraph (3)(ii) of the Regulation to the Technical Committee.

It was so decided.

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Article 8

Mr. DARAM (France) drew attention to his delegation's proposal for amendment of Article 8 (page 22 of TM/CONF/6). The text adopted by the Committee for that Article left certain problems unsolved, because at the time it had been discussed the Committee had not known what the Technical Committee's decisions would be. He was concerned that the main purpose of the French amendment, which was to make it possible for Administrations to ensure that charges levied either on the basis of the old or of the new figures were identical, should be taken into account when the Drafting Committee came to consider Annex II.

The CHAIRMAN said the French representative's intervention would be included in the Summary Record.

Article 10 - Cancellation of Certificate

Mr. MADIGAN (UK) proposed reopening discussion of paragraph (3) of Article 10, the provision covering transfer of a ship to the flag of another Contracting Government. He strongly supported the spirit of that provision but felt it would lead to difficulties in practice, since as it stood it was mandatory and required the old certificate to remain in force for three months, whereas a new owner might quite properly wish to have the tonnage changed. He suggested that the phrase "or until the Administration issues another International Tonnage Certificate (1969) to replace it, whichever is the earlier" should be added at the end of the first sentence.

Mr. GERDES (Netherlands), Mr. NICHOLSON (Australia) and Mr. MILEWSKI (Poland) supported that suggestion.

Mr. WIE (Norway) thought that the point would be covered if the word "may" was substituted for "will" in line 3 of paragraph (3).

Mr. MADIGAN (UK) did not think that would be sufficient, because the intent was to oblige the new Contracting Government to accept the old tonnage certificate until, within three months, a new certificate was issued giving either the same set of tonnages or a different set of tonnages if the circumstances of the ship permitted it. The Convention did in fact provide for tonnages to be changed immediately on transfer in certain countries.

Mr. HINZ (Federal Republic of Germany) shared that view. As co-sponsor of the original paragraph (3), he recalled that the intention had been to benefit the owner by not having the old certificate cease to be valid on transfer, and by making it possible to obtain a more advantageous International Tonnage Certificate immediately. He suggested that the proposed addition be referred to the Drafting Committee.

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Mr. KASBEKAR (India) preferred the paragraph to remain unchanged.

Mr. BACHE (Denmark) pointed out that while the phrase "will remain in force" might have legal validity, in practice a ship would probably have to wait several months in port where a transfer of flag had taken place before obtaining a new certificate. He suggested that it would avoid costly delays for owners if provision was made for entering a provisional declaration on the old certificate to the effect that the ship had been transferred to another flag.

Mr. NADEINSKI (Committee Secretary) drew the Committee's attention to the fact that, according to the Rules of Procedure, it was required to take a formal decision to re-open discussion on a question that had already been decided.

The CHAIRMAN invited the Committee to vote on the United Kingdom proposal to re-open discussion of Article 10.

The United Kingdom Proposal was adopted by 21 votes to none.

The CHAIRMAN invited the Committee to vote on the United Kingdom amendment to Article 10(3).

The United Kingdom amendment was adopted by 21 votes to none.

The meeting rose at 11 a.m.