



IMCO

INTERNATIONAL CONFERENCE ON TONNAGE MEASUREMENT OF SHIPS, 1969

General Committee

SUMMARY RECORD OF THE SIXTH MEETING

held at Church House, Westminster, London, S.W.1.,
on Friday, 6 June 1969 at 9.30 a.m.

Chairman:	Mr. R. 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 and Corr.1.

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AGENDA ITEM 6 - ANY OTHER MATTERS REFERRED TO THE COMMITTEE:

Consideration of proposed definitions of gross and net tonnage submitted by the United States (TM/CONF/C.1/2; TM/CONF/WP.5)

The CHAIRMAN drew the Committee's attention to the proposed definitions of gross and net tonnage (TM/CONF/C.1/2) submitted by the United States delegation with a view to implementing the Conference's instructions (TM/CONF/WP.5) to the General Committee to prepare a draft recommendation expressing the Conference's understanding of the uses of tonnages. He invited the authors of TM/CONF/C.1/2 to comment on that document.

Mr. MURPHY (USA) recalled that, on 3 June, the Conference in a plenary session had considered it advisable to define its objective in drawing up certain parameters, so as to leave users in no doubt about the intentions of the authors of the Convention. The document prepared by his delegation aimed at providing the information that was desirable if the Conference's work was to be correctly interpreted and its results satisfactorily applied. In the view of the United States delegation, the paper might serve as a basis for a general discussion which would reveal the reactions of the countries represented at the Conference and lead to the preparation of a text which would perhaps come closer to meeting their wishes, and would be submitted to the Conference at a plenary meeting. Since the draft text of Articles 10 and 11 provided for the automatic acceptance by the authorities of the Contracting Countries of the certificates drawn up in accordance with the new formulae, it was essential to make quite clear to all concerned the meaning of the parameters on which those certificates were based and the way in which they were expected to be applied.

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Mr. DARAM (France) was of the opinion - and his view, moreover, was in conformity with the instructions of the plenary Conference - that the explanatory text should take the form of a recommendation annexed to the Final Act of the Conference and not of an addition to Article 2 of the Convention. The aim of the Conference was indeed to draw up an international treaty which would serve as a tool; it could only make recommendations as to the uses of that tool, uses which it hoped would be as numerous and as extensive as possible.

As for the text itself, the French delegation thought it was too rigid and wished to see it made more flexible. To apply it in its existing form might necessitate modification of some national laws, which might cause the countries in question to hesitate to ratify the Convention. Moreover, had the words: "charges", "taxes", "dues" and "tolls" the same meaning in all the countries taking part in the Conference?

Mr. KASBEKAR (India) supported the French representative's first comment; the text should take the form of a recommendation to be expressed in the Preamble to the Final Act or in an Annex, but not as provisions to be included in Article 2.

In general, he approved of the definitions proposed by the United States delegation, but did not fully understand subparagraph 6(c). It seemed to him that the calculation of all charges should be made on the basis of net tonnage.

Mr. PROSSER (UK) considered that the document proposed by the United States representative was a very useful basis for discussion. As did the previous speakers, he considered it more advisable and more in conformity with the Conference's instructions that the definitions should be the subject of a recommendation annexed to the Final Act rather than an integral part of an Article.

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In the same spirit, and so as to lessen the somewhat rigid nature of the text submitted, he proposed saying, in each of the two paragraphs, that gross (or net) tonnage "should be accepted as ..." and not that it "meant"; adding in sub-paragraph 6(b) the word "relevant" before the words "conventions and regulations"; and, in paragraph 7, deleting sub-paragraphs (a) (b) and (c) and stating merely: "... the fixing of taxes".

Mr. GERDES (Netherlands) welcoming the discussion which he considered very timely, recalled the Conference's precise instructions which called for a "recommendation" and supported the views expressed by the representatives of France and the United Kingdom.

Mr. LEVY (Israel) wholeheartedly supported the United Kingdom representative's proposals.

Mr. KENNEDY (Canada) said that, although he had at first been surprised by the form in which TM/CONF/C.1/2 had been drawn up, he had been reassured by the explanations given by the United States representative. He welcomed the discussion which, in his opinion, must not stray from the idea of making merely recommendations. He fully understood the concern felt by some States, which feared that a failure to state exactly how the parameters fixed by the Conference were to be used, would lead to abuse. However, he believed those fears to be largely without foundation, seeing that the said parameters would automatically be used fairly and from the standpoint of their technical value. He instanced his own country, where consumer associations would not fail to exert pressure on the Government if the port authorities sought to fix dues at an unreasonable level which would weigh heavily on imported produce.

He concluded that the proposed definitions should be studied as a recommendation, and in the spirit of the Preamble to the Convention.

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Mr. MILEWSKI (Poland) endorsed the proposals of the United Kingdom representative.

Mr. DUBCHAK (USSR) considered that, prior to any consideration of the substance of the document, the Committee ought first to decide whether the text was to be embodied in the Convention or included in an annex as a recommendation. His delegation favoured the latter course.

Mr. WIE (Norway) wholly approved the spirit in which the Conference in plenary session had expressed its wish to explain the decisions it had taken. In the main, he agreed with Mr. Kennedy's observations: the more equitable and practical the parameters agreed on by the Conference, the more widely implemented the Convention would be. He remarked that, in Norway, gross tonnage was currently used for the calculation of most charges and dues. He would not wish his country to be placed in a difficult position if, faithfully applying clauses relating to the use of net tonnage, it was to find that many other countries were not carrying out the provisions of the Convention. In that connexion, he recalled the unfortunate precedent of the decisions taken on the tonnage mark scheme.

Mr. SUZUKI (Japan) considered it essential to keep net tonnage as a parameter, having regard to the way in which current procedures varied from country to country. He agreed with the views expressed by the representatives of France and the United Kingdom. Definitions of the use to be made of parameters should remain sufficiently flexible and should take the form of a recommendation. His Government was convinced that it was net tonnage which best expressed the revenue-earning capacity of the ship, and that the best way to calculate it was to measure passenger spaces and certain cargo spaces.

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For the time being it was difficult to make a thorough study of the proposal by the United States, given the stage reached in the work of the Technical Committee. He pointed out that the main object of the Conference was to standardize tonnage measurement systems by drawing up a Convention which would be accepted by a large number of countries. In that spirit, and considering the great delicacy of the questions raised by some of the items - the one under discussion and also, for instance, Articles 3, 4, 17 and 18 - he hoped delegations would continue to exchange views until they reached compromise solutions which could be more widely accepted.

Mr. HINZ (Federal Republic of Germany) considered that, at the present stage of the Conference's work, the Committee could hardly go beyond a very general discussion of the United States document. He felt that, in accordance with the instructions of the plenary, there could be no question of presenting the document in any form other than that of recommendations. How could one expect to incorporate in one or two paragraphs of an article provisions which were so important that their mandatory nature might make some States hesitate to ratify? Many governments did not at present have the legal means to impose specific taxation arrangements on the port authorities of their countries, nor did they wish to have them.

The best way of ensuring widespread implementation of the Convention was undoubtedly to draw up useful parameters.

Mr. PROSSER (UK) stated that his country's Government and Parliament did not possess the necessary powers to impose on port authorities procedures such as those envisaged in the United States document. That was why he was anxious to see them adopted as recommendations and not as articles of the Convention with mandatory effects.

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The CHAIRMAN said that most of the speakers had stressed the advisability of following exactly the instructions of the plenary, which had envisaged recommendations and not provisions incorporated in the text of the Convention.

Mr. MURPHY (USA) welcomed the discussion, which his delegation had in fact hoped to provoke when proposing its text. He agreed that the instructions given by the Conference had referred to recommendations, but he pointed out that those instructions were not the outcome of a formal decision taken on the basis of a vote. It was the United States delegation which had in fact taken the initiative; what it had had in mind was a text which was more binding than a recommendation. That was why it had felt free to frame the text in the form which it deemed to be the most effective. His concern for precision had been increased by the information given on the general trend of the procedures followed by port authorities, which were gradually changing over from net tonnage to gross tonnage, and on the application of the open shelter-deck concept exclusively to net tonnage in respect of new ships. It was important that users should know the exact intentions of the authors of the Convention.

He would repeat that his delegation did not ask for an immediate decision on the form or on the substance of its draft. Its main concern was to ascertain the views of the countries represented at the Conference.

Mr. BEVANS (USA) stressed that the question of uniformity must be continually borne in mind. It was for the sake of uniformity that Articles 10 and 11 imposed certain obligations on the Contracting States. If, as he had heard it said at the plenary and at the present meeting, certain States were not prepared to insist on port authorities respecting the certificate, one might wonder what was the point of drawing up a convention.

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Mr. KENNEDY (Canada) said that he well understood the concern expressed by the two representatives of the United States, but recalled that at no time had there been any question of making uniformity of application of the chosen parameters an objective. It was clear that, if they were realistic, the parameters would be applied automatically. The increasing trend at the present time towards the use of gross tonnage for calculating taxes and dues stemmed from the fact that net tonnage no longer bore any relation to reality. Hence the unit of measurement chosen would have to be sufficiently reasonable for port authorities to be induced to use it in preference to any other parameter.

Mr. PROSSER (UK) asked the United States representative whether, in his country, port charges and other dues were controlled by the executive or legislature.

Mr. BEVANS (USA) replied that such was not the case at the present time, but that measures would be taken to secure such control if the formula proposed by his delegation was accepted.

In devising that formula, the United States delegation had sought to take due account of the concepts contained by implication in Articles 10 and 11, and had based its proposals directly on the provisions of the Convention for the Safety of Life at Sea and the Convention on Load Lines, which envisaged the possibility of submitting the ship to a complete inspection. The use to which the certificate could be put should be made clear, and a recommendation would hardly be sufficient.

Mr. MURPHY (USA) pointed out that the expression "to provide a basis for" which had been used in paragraphs 6 and 7 of the American proposal should, in his opinion, provide all the flexibility desirable. It was true that dues were sometimes calculated on the basis of values other than tonnage; but if

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the Convention succeeded in producing a definition of gross and net tonnage which was acceptable to governments, it would be necessary to provide for the means of implementing the system in a uniform manner and to prevent port authorities from using other values.

Mr. WIE (Norway) approved of the principle defended by the United States representatives, which aimed at providing all government signatories to the Convention with the means of compelling port authorities to carry out the provisions of Article 2.

Mr. VAUGHN (Liberia) also supported that view. It seemed illogical to define parameters without giving any indication of the objective that it was hoped to reach by the use of those parameters.

Mr. BACHE (Denmark) stressed that it was essential to maintain a certain flexibility, particularly as far as passenger ships were concerned. As had been suggested at the meetings of the Technical Committee, there were various ways in which such flexibility could be achieved: for instance, special arrangements, not necessarily linked to tonnage, could be entered into between the ports and passenger ships.

Mr. HINZ (Federal Republic of Germany) returned to a point raised by Mr. Bevans. According to the latter, Articles 10 and 11 would be meaningless if port authorities were not obliged to accept the certificate as a basis for the assessment of harbour dues. However, even if the Convention did not contain provisions obliging port authorities to use the chosen parameters as the basis of their calculations, it was important to ensure that, if they decided to do so, they should then be obliged to accept the certificate and should not be able to proceed to measure the ship again. The question was, then, whether port authorities

would or would not use the parameters chosen. At the present time the unit chosen throughout almost the whole world was either gross or net tonnage; it was thus obvious that the parameters which the Conference was trying to define would indeed correspond to reality.

Mr. GERDES (Netherlands) said he was sympathetic to the arguments put forward by the two United States representatives. From a more juridical point of view, he wished to make two comments on the aims of the Convention. The main aim should be a uniform system; the Netherlands delegation did not think that the aim of the discussion had ever been to ensure the legal protection of economic interests - a thing which it would be very difficult to achieve. Even if they succeeded in defining that concept, it would be impossible to define a standard on the basis of which it could be calculated. It was true that in conventions concerning shipowners' liabilities, for example, net tonnage was generally used as a parameter for limiting liability for possible damages; but that would not imply that tonnages were specially determined in their interests. Defining the use of gross or net tonnage by limiting the purposes would never be possible, since the use of either gross or net tonnage was left to the interests concerned. As the Canadian representative had said, if the definition of a satisfactory parameter was achieved, then - and only then - would uniformity be possible and it would be achieved automatically.

As far as the implementation of the Convention was concerned, the Netherlands Government was firmly opposed to the idea of compelling port authorities, as that would be contrary to the autonomy of ports.

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Mr. PROSSER (UK) said that he understood the logic of Mr. Bevans' reasoning but was afraid that, if his arguments were accepted, there would be a danger of governments postponing ratification of the Convention until they were in a position to compel port authorities to observe its provisions, and that was a situation which should obviously be avoided. If the United States delegation insisted that its proposed definitions should appear in Article 2, perhaps a distinction could be made between that part of the proposal which defined gross tonnage and net tonnage which might then appear in Article 2, and that part which dealt with the uses of tonnage which could be included as a recommendation outside the actual Convention.

Mr. DARAM (France) explained that for his delegation the question was simpler, as the formula proposed by the United States tallied with the legal obligations which existed in France, where an annual tax was calculated on the basis of gross tonnage while port charges and dues were levied on the basis of net tonnage. The French delegation's objections in regard to the proposal, therefore, were not made because it was out of line with French national legislation, but as a matter of principle. In his view, the problem was wrongly posed, since the use to which the Convention was put would of itself sanction the definitions which the United States proposal sought to introduce: if the parameter was simple and reasonable and enabled ships to be easily and fairly compared, its use would spread rapidly and automatically. If on the contrary the parameters chosen were too complex, shipowners and shipbuilders would find loop-holes and turn to other parameters, and the situation would be exactly the same as at present.

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Mr. MURPHY (USA) said he would like more time to think over all that had been said; he therefore proposed that the item under discussion be reconsidered at a later stage. He also stressed the advisability of changing the existing wording of Articles 10 and 11, the provisions of which were linked to the content of his delegation's proposal.

Mr. KENNEDY (Canada) wondered whether, rather than trying to define concepts of gross and net tonnage, it might not be better to speak of "tonnage" in a more general fashion, indicating that it was calculated in such a way as to provide a basis for the different calculations referred to in paragraphs 6 and 7, sub-paragraphs (a), (b) and (c) of the United States proposal. In that way, the main features of the proposal could be adopted, while the differing views which had been brought to light in the course of the debate would be taken into account. According to whether the Committee decided to include some such text in Article 2 or in a recommendation, the words "tonnage shall be accepted" or "tonnage should be accepted" would be used.

It was decided to defer consideration of Agenda item 6.

AGENDA ITEM 3 - CONSIDERATION AND PREPARATION OF THE DRAFT TEXT
OF ARTICLES OF A CONVENTION ON TONNAGE
MEASUREMENT (TM/CONF/6 AND TM/CONF/C.2/WP.12)
(continued)

Article 4 - Ascertainment of Tonnages (concluded)

The CHAIRMAN drew the attention of delegates to TM/CONF/C.2/WP.12 in which the Technical Committee set out the results of its deliberations concerning the length of ships, the definition of which was to be identical with that contained in the International Convention on Load Lines, 1966.

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The General Committee would no doubt wish to amend paragraph (1)(b) of Article 4 of the Convention (TM/CONF/6, page 14) in order to take account of the Technical Committee's decision (TM/CONF/C.2/WP.12, page 1, paragraph 2(ii)).

It was so decided.

Mr. MURPHY (USA) pointed out that if the definition of length were to be completely identical with that contained in the International Convention on Load Lines, paragraph (1)(b) of Article 4 should be amended to read as follows: "ships of which overall length is less than 15 metres or 49 feet."

The CHAIRMAN stated that that would be done.

Article 4 as a whole was approved.

Article 2 - Definitions (continued)

The CHAIRMAN said that in order to take account of the Technical Committee's decisions, the Committee should add the definition of length set out in paragraph 2(ii) of TM/CONF/C.2/WP.12.

Mr. NADEINSKI (Committee Secretary) drew attention to a purely drafting amendment to be made to the English version only.

The CHAIRMAN, in reply to a question by Mr. MURPHY (United States), said that the Technical Committee had stated in paragraph 3 of its interim report (TM/CONF/C.2/WP.12) that it might be necessary to define moulded depth.

Paragraph (4)

The CHAIRMAN said that the definition of "new ships" in the original draft was identical to that in the 1966 Convention on Load Lines. France and Sweden had submitted amendments proposing that the date of reference should be the date of the signing of the building contract and not the date of the laying of the keel, which, in the light of technological advances, was probably no longer a suitable criterion.

Mr. VAUGHN (Liberia) pointed out that it was not essential to abide by the definition in the 1966 Convention which was prompted by safety considerations that did not apply in the present case. From the point of view of the application of regulations for tonnage measurement, on the other hand, the order stage was more important than the construction stage. He also reminded members that consideration of Article 17 had been postponed, so that the question of entry into force had not been decided. He was not sure that the proposed period of six months would be sufficient.

Mr. PROSSER (UK) thought the most important thing was that shipbuilders should have sufficient warning of the new regulations. In that respect, the original draft presented no difficulties from the practical point of view, because the date of the coming into force of the Convention would be universally known. He therefore advocated the adoption of the original text.

Mr. DARAM (France) stood by his delegation's proposal.

Mr. WIE (Norway) said he would have preferred a more specific definition as follows: "'new ship' means a ship which is delivered by its builders, taken over by the owners, and for which a valid International Tonnage Certificate (1969) is issued on or after the date of coming into force of the present Convention". However, he was prepared to support the original draft.

Mr. KASBEKAR (India), Mr. OSMAN (United Arab Republic), Mr. GLUKHOV (USSR) and Mr. SUZUKI (Japan) concurred with the United Kingdom representative in favouring the adoption of the original draft, which reproduced the definition used in the Load Line Convention.

Mr. MILEWSKI (Poland) agreed, adding that the laying of the keel did, in fact, denote the start of the construction of the ship.

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Mr. GERDES (Netherlands) also supported the views of the United Kingdom representative and observed that the words "for each Contracting Government", which figured in the 1966 Convention, should be added at the end of paragraph (4) of the draft article.

The CHAIRMAN noted that there was no support for the amendment proposed by France, and that Norway was prepared to accept the views of the majority.

He put to the vote the text of paragraph (4) as it appeared in the original draft, with the addition of the words "for each Contracting Government".

Paragraph (4), thus amended, was approved by 29 votes to one.

Paragraph (5)

Paragraph (5) was approved unopposed.

Article 3 - Application (continued)

The CHAIRMAN opened the discussion on paragraphs (3) and (4), consideration of which had been adjourned.

Mr. QUARTEY (Ghana) said that the terms "gross tonnage" and "net tonnage" were used too vaguely in the Convention in general. Those concepts should be well defined.

Mr. GERDES (Netherlands), supported by Mr. SUZUKI (Japan) and Mr. WIE (Norway) urged the Committee to defer once again the examination of paragraphs (3) and (4) of Article 3 until the Technical Committee had reached a firmer decision on the substance of the questions.

Mr. DARAM (France) was also in favour of deferring the discussion. The amendment proposed by France (TM/CONF/6, page 10) dealing with new ships changing nationality, the special economic situation of existing ships and the definition of the concept of

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"structural alteration or modification", depended entirely on the decisions which would be taken by the Technical Committee.

Mr. PROSSER (UK) was ready to agree to postponing any decision on paragraphs (3) and (4) of Article 3. As, however, the discussion on the United States proposal on the use of tonnages (TM/CONF/C.1/2) had proved valuable, he would propose that the Committee should proceed immediately to an exchange of views on the two fundamental points, namely, methods of application to existing ships and coming into force.

Mr. VAUGHN (Liberia) supported that proposal.

It was so decided.

Mr. PROSSER (UK) considered that the two problems - existing ships (Article 3) and coming into force (Article 17) should be considered together. On the one hand, it was essential that the Convention should only come into force when ratified by States which represented a clear majority not only of participants in the Conference but also of world tonnage. On the other hand, a number of difficulties which arose from the situation in regard to existing ships would be eliminated if it were made clear that the new regulations would not apply to those ships for a fairly long time. Those two conditions would both be fulfilled if the Convention came into force, say, two years after the date on which twenty or twenty-five States, fifteen of which each had a tonnage of at least one million tons, had ratified the Convention and if it applied to existing ships after a certain number of years.

Mr. HINZ (Federal Republic of Germany) supported the views of the United Kingdom representative. He referred to the amendment put forward by his delegation (TM/CONF/6, page 9) which proposed that the period during which existing ships would have the right to retain their previous tonnages should be limited to about twenty-five years.

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Mr. MURPHY (USA) thought that it was essential and possible to arrive at a tonnage measurement system under which values as close as possible to existing tonnages would be obtained, so that the economic balance of the shipping industry would be upset as little as possible. Such a solution would have three advantages: it would facilitate and speed up the coming into force of the Convention; it would secure the support of States representing both the majority of participants and the majority of world tonnage; and it would enable the Convention to be applied to all ships, new and existing, whereas any solution envisaging a different treatment might give rise to confusion in both cases.

Mr. DARAM (France) referred to the declaration which appeared in that connexion in paragraph 3 of the first report of the Technical Committee to the Conference (TM/CONF/C.2/4). If, as a result, the Committee decided upon a formula which made it possible for the new values to be brought close to the existing values, it would then also be possible to bring closer together the dates of entry into force of provisions applicable to the two types of ships.

Mr. GLUKHOV (USSR) said his position was similar to that of the United States representatives.

Mr. PROSSER (UK) welcomed the interesting discussion. The crux of the matter was that the adoption of a tonnage measurement system which was radically different from the existing provisions carried the assumption that its application would be postponed for a long time in the case of existing ships. If the opinion prevailed that the new system should be applied speedily to those ships, a less revolutionary solution would have to be adopted. It would be useful to find out more about the attitudes of the delegations in that respect.

The discussion of Article 3 was adjourned.

The meeting rose at 12.40 p.m.