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IMCO

INTERNATIONAL CONFERENCE ON TONNAGE MEASUREMENT OF SHIPS, 1969

SUMMARY RECORD OF THE TENTH PLENARY MEETING

held at Church House, Westminster, London, S.W.1,
on Thursday, 19 June 1969, at 2.35 p.m.

President:	Admiral E.J. ROLAND (USA)
Secretary-General:	Mr. Colin GOAD
Executive 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 9 - ADOPTION OF THE FINAL ACT OF THE CONFERENCE
AND ANY INSTRUMENTS, RECOMMENDATIONS AND
RESOLUTIONS RESULTING FROM ITS WORK
(TM/CONF/C.1/5; TM/CONF/C.1/9;
TM/CONF/18; TM/CONF/19; TM/CONF/24;
TM/CONF/28 (continued)

Draft Text of Articles of an International Convention on Tonnage
Measurement of Ships, 1969 (TM/CONF/C.1/5)(concluded)

Article 16

Paragraph (1)

Mr. FILA (Poland) said that unfortunately, the General Committee had rejected a proposal to use the same wording in Article 16 as appeared in Article 10 of the 1960 Safety Convention. His delegation, like many others, believed that the draft Convention under consideration ought to be universal and that all States whatever their political and economic systems should be able to accede to it on equal terms. Accordingly, he proposed the insertion of the words "or other international treaties" after the words "International Court of Justice" in paragraph (1).

Mr. BEVANS (USA) opposed the Polish amendment on the ground that it referred to the "all States formula" which was a political issue outside IMCO's purview. IMCO should use the traditional clause for international conventions negotiated under United Nations auspices. Neither IMCO nor its Secretariat were competent to determine which entities were States.

The Polish amendment, if adopted, would render Article 16 unworkable, since the United Nations Secretary-General had clearly stated several times that he would require precise instructions from the General Assembly for deciding which entities, not States Members either of the United Nations or of the Specialized Agencies, were in fact States. A declaration

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in the same sense had been made by the Secretary-General of IMCO at the Facilitation Conference in 1965. The Polish amendment could only entail a long and possibly bitter discussion, thereby frustrating the purpose of the Conference, which was to prepare a widely acceptable Convention on tonnage measurement.

Mr. OSMAN (United Arab Republic) supported the Polish amendment though it was not entirely satisfactory. However, it was a step in the right direction.

Mr. GLUKHOV (USSR), supporting the Polish amendment, pointed out that the IMCO Council and Assembly were competent to decide which entities were States entitled to sign, accept or accede. International instruments were adopted by the Organization as such and not by its executive head, so the United States representative's argument was unconvincing.

Mr. PROSSER (UK) opposed the Polish amendment for the reasons given by the United States representative. The Secretary-General of IMCO should not be asked to take political decisions which, in any case, he was not empowered to do under the IMCO Convention.

Mr. DOINOV (Bulgaria), supporting the Polish amendment, said it was consistent with the purpose of the draft Convention, namely, the introduction of a new uniform system that would be applied as widely as possible throughout the world.

Mr. CHU (China) opposed the Polish amendment. A similar proposal had been rejected by a decisive vote in the General Committee.

Mr. KIM (Republic of Korea) fully endorsed the United States representative's argument.

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Mr. COLOVIĆ (Yugoslavia) said that he was in favour of the Polish amendment because a restriction on the rights of non-Member States of the United Nations and its Specialized Agencies to accede to international instruments violated the principle of universality and the rules of international law. To debar existing States recognized by many others was discriminatory, and he could not vote for Article 16 as it stood.

The PRESIDENT put the Polish amendment to Article 16, paragraph (1) to the vote.

The amendment was rejected by 25 votes to 7.

Article 16 as a whole was adopted without change.

Article 17

Paragraph (1)

Mr. de JONG (Netherlands) introducing his delegation's amendment to Article 17, paragraph (1) (TM/CONF/24) explained that the amendment was necessary because the proposed wording for that paragraph was obscure as world tonnage was not clearly defined. Instead, therefore, of a percentage of an undefined world fleet, a fixed figure of 10 million gross tons would seem to his delegation to be preferable. The number of governments specified was too high as it would enable a small number of States to prevent the Convention from coming into force.

Mr. ROCQUEMONT (France) said that inevitably the wording of Article 17, paragraph (1) must be approximate until the draft Convention came into force. There was no exact parallel in any other international instrument. The figure of 65 per cent was based on statistics derived from Lloyd's Register. So far no delegation had objected to it on legal grounds, in spite of the fact that there was as yet no universal criterion for defining gross tonnage.

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Mr. NADEINSKI (Executive Secretary) said that he had pointed out in the General Committee that no other Convention for which IMCO was a depositary contained a similar clause. However, the statistical data issued by Lloyd's Register had been used for calculating percentages of gross world tonnage in the Regulations for Preventing Collisions at Sea. The provisions of the IMCO Convention concerning elections to the Council and to the Maritime Safety Committee and those relevant to calculating budgetary contributions, were also based on national gross tonnages derived from Lloyd's Register. Presumably the Conference would wish to follow the same course, unless it decided otherwise.

Mr. de JONG (Netherlands) pointed out that there was no information available on the merchant fleet tonnages of certain countries. For that reason a fixed figure would have been preferable, but he would not press his amendment.

Article 17 was adopted without change.

Article 18

Paragraphs (1) and (2)

Paragraphs (1) and (2) were adopted without change.

Paragraph (3)

Mr. BLOEMBERGEN (Netherlands) proposed the deletion of the words "of the present Convention" at the end of paragraph (3)(d) as they were superfluous.

Mr. ROCQUEMONT (France) supported the Netherlands amendment.

The Netherlands amendment was adopted by 5 votes to 4.

Paragraph (3), as amended, was adopted.

Paragraphs (4), (5) and (6)

Paragraphs (4), (5) and (6) were adopted without change.

Article 18 as a whole was adopted.

Article 19

Paragraph (1)

Paragraph (1) was adopted without change.

Paragraph (2)

Mr. NADEINSKI (Executive Secretary) said that, in order to conform to United Nations practice, the Secretariat wished to suggest an editorial change whereby the words "the deposit of an instrument with" would be substituted for the words "a notification in writing addressed to" and the word "denunciation" substituted for the word "notification" in paragraph (2).

Mr. MURPHY (USA) said that he had no objection to such a modification if it would bring the wording of Article 19 up to date.

Mr. ROCQUEMONT (France) observed that the point had not been discussed in the General Committee, the members of which might have been better qualified to judge the comparative merits of the two alternative wordings. As far as his own delegation was concerned, its expert on "public" international law had already left London.

The PRESIDENT put to the vote the modification suggested by the Secretariat.

The modification was adopted by 32 votes to one.

Paragraph (2), thus modified, was adopted.

Paragraph (3)

Mr. NADEINSKI (Executive Secretary) pointed out that a consequential amendment would have to be made in paragraph (3). The words "instrument of denunciation" should be substituted for the word "notification".

It was so decided.

Article 19, as a whole and as amended, was adopted.

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Article 18, paragraph (6)

Mr. NADEINSKI (Executive Secretary) said that in view of the changes accepted in Article 19, another consequential amendment would have to be made in Article 18, paragraph (6). The words "the deposit of an instrument with" should be substituted for the words "a notification in writing to".

It was so decided.

Article 18, as thus further amended, was adopted.

Article 20

Paragraph 1(1)(a)

Mr. BACHE (Denmark) asked whether any change should be made in paragraph 1(1)(a) which referred to a notification in writing.

Mr. NADEINSKI (Executive Secretary) said that in the past notifications in writing had been accepted because, within the Organization, the procedure in respect of territories for whose external relations an administering authority or a Contracting Government was responsible was regarded as less formal.

Article 20 was adopted without change.

Articles 21 and 22

Articles 21 and 22 were adopted without change.

Final paragraphs (TM/CONF/C.1/5, page 17)

The final paragraphs were adopted without change.

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Annex I - Regulations for determining Gross and Net Tonnages of Ships (TM/CONF/C.1/9)

Regulation 1

Regulation 1 was adopted without change.

Regulation 2

Paragraphs (1) - (3)

Paragraphs (1) to (3) were adopted without change.

Paragraph (4)(a)

Paragraph (4)(a) was adopted without change.

Paragraph (4)(b)

Mr. ROCQUEMONT (France) said that in the General Committee his delegation had announced its intention of submitting a new draft for the introductory wording of paragraph 4(b), (TM/CONF/C.1/SR.15, page 7). He thought the wording approved by the General Committee was difficult to understand. He believed many delegations shared that view. The French delegation had therefore proposed a new text (TM/CONF/19) which involved no substantive changes.

Mr. PROSSER (UK) said that the text proposed by the French delegation was an improvement on the wording before the Conference. His delegation therefore supported the French proposal.

Mr. L. SPINELLI (Italy) agreed that the text proposed by France was an improvement. He nevertheless wished to point out that under paragraph (5) of the French proposal, certain spaces would be included among the enclosed spaces by virtue of the second sentence and yet would continue to be designated as excluded spaces because of the first sentence. He therefore proposed

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the addition of the words "shall be called enclosed spaces and" after the word "three conditions" in the second sentence of the paragraph (5) proposed by France.

Mr. GUPTA (India) said that he was uncertain as to the interpretation of the second sentence of what would become paragraph (4).

Mr. ROCQUEMONT (France) said that the sentence to which the Indian representative had referred was to be seen in the light of the principle that certain spaces were initially assumed to be enclosed spaces. Under the French proposal, paragraph (4) would first reflect that presumption; paragraph (5) would then deal with certain spaces - what he would call "suspect" spaces - which, although presumed by their nature to be enclosed, would be excluded from being considered as enclosed spaces: those were the spaces enumerated in what would become sub-paragraphs (a) to (e), which merely repeated the earlier text. Those spaces could become enclosed by virtue of their fittings even though their position might exclude them from consideration as enclosed spaces.

Mr. NADEINSKI (Executive Secretary) suggested that the objection raised by Italy could be met by the substitution of the words "shall be treated as" for the words "must be included in the" in the fourth and fifth lines of the paragraph (5) proposed by France. He also suggested that in the first line of that paragraph the Conference might substitute the words "of this paragraph" for the word "hereunder", and that in the third line it might replace the full stop by a semicolon, and then substitute the words "provided that" for the word "Nevertheless" at the beginning of the following sentence.

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Mr. ROCQUEMONT (France) said that his delegation could agree to the change suggested by the Executive Secretary for the first line of its proposed paragraph (5). With regard to the modification suggested in the third line, his delegation would prefer the second sentence to remain separate, so as not to weaken the force of the paragraph. With respect to the change suggested in the fourth and fifth lines, his delegation preferred the wording proposed by Italy.

Mr. de JONG (Netherlands) said that his delegation had no objection to the wording proposed by France or to the changes suggested in that wording, except that it would prefer the words "shall not be considered as enclosed spaces" in the second line of the proposed paragraph (5) to be replaced by the words "shall not be included in the volume of enclosed spaces". The reason was that a space of the kind defined in sub-sub-paragraph (iv), even though an excluded space, should not be called an open space, because if it was, spaces in superstructures near it could be called excluded spaces.

Mr. PROHASKA (Denmark) said that in principle he supported the French proposal, although the text would be clearer if it first referred to spaces with openings and enumerated the three conditions, and then defined excluded spaces. He also felt that a less negative formulation was desirable. He suggested that an informal group should prepare a new text for consideration by the Conference, and that the discussion of paragraph 4(b) should be adjourned until the text was available.

It was so decided.

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Paragraph (5)

Paragraph (5) was adopted without change.

Paragraph (6)

Mr. PROHASKA (Denmark) proposed the addition, at the end of the paragraph, of wording to the effect that the permanent marking should consist of the letters "CC". Those letters would have the advantage of expressing not only the English term "cargo compartment" but also the French term "cale à cargaison".

Mr. MURRAY SMITH (UK) said that a universally acceptable system of marking cargo spaces would be very desirable if the prospective Convention came into force. His delegation could agree to the use of the letters "CC".

Mr. ROCQUEMONT (France) drew attention to his delegation's proposal concerning the definition of water-ballast spaces (TM/CONF/28). Unless that definition was adopted, a space which was a water-ballast space could be used for cargo. The question was bound up with the marking of cargo spaces. If a satisfactory decision was taken on the matter of marking, it might not be necessary to press for the definition which his delegation had proposed in TM/CONF/28.

Mr. MURPHY (USA) said that his delegation was opposed to the inclusion in the Convention of any definition of non-cargo spaces. The essence of the prospective Convention was the measurement of cargo spaces; the text need not therefore concern itself with non-cargo spaces. The paragraph was complete as it stood, although his delegation would have no objection to provision for a uniform international marking system.

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The PRESIDENT noted that no formal proposal had been made with regard to a system of marking.

Mr. MURRAY SMITH (UK) formally proposed that the words "with the letters CC" should be added at the end of the paragraph. He thought that such a stipulation would make the definition proposed by France superfluous.

Mr. ERIKSSON (Sweden) said that the form of marking proposed by the Danish and United Kingdom representatives would serve no useful purpose; shipowners would mark cargo spaces in such a way that it would be impossible to find the letters.

Mr. QUARTEY (Ghana) suggested that it might meet the Swedish objections if the dimensions of the letters "CC" were indicated in the definition.

Mr. PROHASKA (Denmark), in reply to the point raised by the Swedish representative, said the marking could in fact be important in cases where a surveyor suspected that a ship was using for cargo, compartments not certified for that purpose. To overcome the problem of finding small markings when re-measuring, he suggested that the letters should be required to be not less than 3 inches (75 millimetres) in height.

Mr. MURRAY SMITH (UK) proposed that the amendment he had put forward earlier be expanded to read "... with the letters CC. Such letters shall be so positioned that they are readily visible, and are at least 10 centimetres in height".

Mr. PROHASKA (Denmark) suggested some editorial changes to the amendment proposed by the United Kingdom. He proposed that the last sentence of paragraph (6) should be further amended to read:

"Such cargo spaces shall be certified by permanent marking with the letters CC (cargo compartment), to be so positioned

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that they are readily visible, and not to be less than 100 millimetres (4 inches) in height".

The PRESIDENT put to the vote the United Kingdom proposal, as further amended by the Danish representative.

The amended United Kingdom proposal was adopted by 37 votes to none.

The PRESIDENT invited comments on the French proposal to add to paragraph (6), a sub-paragraph defining water-ballast spaces (TM/CONF/28).

Mr. GUPTA (India) strongly supported the proposal. It was important for water-ballast spaces to be identified so that Administrations could check on them if they so wished.

The PRESIDENT put the French proposal to the vote.

The French proposal was rejected by 23 votes to 11.

Paragraph (6), as amended, was adopted.

Paragraph (7)

Adopted without change.

Regulation 3

The PRESIDENT drew attention to a proposal submitted by the Netherlands delegation for reconsideration of the open shelter-deck concept for gross tonnage (TM/CONF/18).

Mr. de JONG (Netherlands) said his delegation proposed introducing a correction factor into the formula for gross tonnage which would prevent a serious imbalance between future gross and net tonnages of open shelter-deck ships and ships with increased freeboard. There was a danger that the new tonnage measurement rules would decrease the safety of small ships by encouraging owners to build such ships with the minimum freeboard, whereas large container ships would tend to be constructed with

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a low depth value and with high deck cargoes, or would be built as awning deck ships. The diagrams attached to the Netherlands paper, in which the proposed correction was applied to 70 ships, showed that the resulting gross tonnage figures would still be slightly above existing figures. Adoption of the Netherlands proposal would result in simplification, since the formulae for gross and net tonnage would be very nearly the same.

The PRESIDENT recalled that the plenary had already decided (as was pointed out in the Netherlands paper) not to apply the open shelter-deck concept for gross tonnage. The Netherlands proposal would therefore require a decision by the Conference to re-open consideration of that question.

Mr. PROSSER (UK) thought the Netherlands proposal was a very serious one, which could determine the success or failure of the whole Conference. It would mean a reconsideration of the fundamental basis of the proposals now coming before the plenary as a result of weeks of work in committee, and would make it impossible to produce a Convention that would be ready for signature on the date agreed. He sympathized with those who had supported the shelter-deck concept in the initial stages, but pointed out that his delegation had been willing to compromise in the interests of reaching an agreement that would be acceptable to the majority. At the present stage it was essential to limit discussion to proposals approved in committee if any progress was to be made. The United Kingdom delegation therefore would vote against the amendment proposed by the Netherlands and also against a French proposal concerning a new formula for net tonnage.

Mr. ROCQUEMONT (France) pointed out that there was no parallel between the Netherlands proposal and his delegation's proposal, since the latter did not call in question decisions taken earlier by the Conference. He suggested that the French proposal should be considered first; the Conference should then

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decide whether or not to discuss the Netherlands proposal. This latter might well become superfluous, should the French proposal be adopted.

Mr. QUARTEY (Ghana) asked whether the basis for the Netherlands proposal was the decision by the Technical Committee to base net tonnage not on displacement, as the plenary had decided on 3 June, but on volume of cargo spaces.

Mr. de JONG (Netherlands) said his delegation did not wish to re-open the question of net tonnage, but to revise the approach to gross tonnage. If that were not done he feared the Convention might never be enforced.

Mr. CONTOGEOORGIS (Greece) supported the Netherlands proposal.

The PRESIDENT put to the vote the Netherlands proposal to re-open consideration of the open shelter-deck concept for gross tonnage.

The proposal was rejected by 26 votes to 4.

Regulation 3 was adopted.

The meeting rose at 5.35 p.m.