



IMCO

INTERNATIONAL CONFERENCE ON
TONNAGE MEASUREMENT OF SHIPS, 1969
General Committee

SUMMARY RECORD OF THE TENTH MEETING

held at Church House, Westminster, London, S.W.1,
on Thursday, 12 June 1969, at 10.10 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 3 - CONSIDERATION AND PREPARATION OF THE DRAFT
TEXT OF ARTICLES OF A CONVENTION ON TONNAGE
MEASUREMENT (TM/CONF/6; TM/CONF/C.1/WP.9;
TM/CONF/C.1/WP.11; TM/CONF/C.2/WP.34)
(continued)

Article 10 (continued)

The CHAIRMAN reminded the Committee that it had still to take a decision on the Norwegian proposal to add to Article 10 a second paragraph corresponding to that set out on pages 23-24 of TM/CONF/4.

Mr. GERDES (Netherlands) said that after consideration his delegation had decided that it could no longer support the proposal.

Mr. UTTLEY (UK) said his delegation had also, upon reflection, concluded that the proposed addition was unnecessary.

Mr. FLEISCHER (Norway) said that in view of the lack of support from the Committee his delegation was willing to withdraw its proposal.

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Mr. BEVANS (USA) said that TM/CONF/C.1/WP.9 contained a new version of the United States recommendation regarding the uses of gross and net tonnage, expressed simply and in general terms. It emphasized that the Conference wished to give guidance to users of gross and net tonnage with a view to facilitating application of the Convention, and indicated the desirability of taking into account current practice when selecting a parameter in order to cause as little economic disruption to world shipping as possible. He pointed out that the first sentence of the Recommendation was to be deleted.

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Mr. GERDES (Netherlands), Mr. FLEISCHER (Norway), Mr. KASBEKAR (India), Mr. SUZUKI (Japan) and Mr. PROSSER (UK) supported the proposed Recommendation.

Mr. DARAM (France) said his delegation could also support it, on condition that in line 7, page 2 of the French text, the words "prennent en considération" were substituted for "s'interrogent sur".

Baron de GERLACHE de GOMERY (Belgium) supported the proposed recommendation with the same reservation.

Mr. NICHOLSON (Australia) pointed out that since regulations in fact formed part of conventions, the phrase "conventions and legislation" would be preferable to "conventions and regulations". He further pointed out that tonnage was used by authorities for other purposes than calculating charges: it was used, for example, in estimating limitation of shipowners' liability.

Mr. KENNEDY (Canada) did not think the text of the recommendation implied that the use of tonnage by authorities for other purposes than charges was omitted from its scope.

Mr. PROSSER (UK) shared that view.

Mr. BEVANS (USA) suggested that it would meet the first Australian point if the word "laws" was added after "conventions" in the first sentence (the original first sentence having been deleted).

Mr. DARAM (France) did not favour the use of the word "laws", which might be understood to refer to domestic legislation.

Mr. MARINI (Italy) felt a point of substance was involved. As he understood it, the aim of the recommendation was in fact to urge governments to take any necessary measures to achieve consistency between the Convention and their own domestic legislation in regard to gross and net tonnage.

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Mr. NICHOLSON (Australia) shared that view.

Mr. BACHE (Denmark) suggested that to emphasize the difference between international and national legislation, the word "national" should be inserted before "regulations" in the first sentence.

Mr. MARINI (Italy) asked whether the phrase between square brackets "commercial capacity" had been used in order to bring the Recommendation into line with the wording of Article 2.

Mr. BEVANS (USA) pointed out that by deleting the first sentence of the original draft his delegation had divorced the recommendation entirely from Article 2; it now related to the Convention as a whole and not to any particular Article. He confirmed that "laws" implied national legislation. He stressed that the proposed text was only a recommendation, intended as guidance for Contracting Governments and national authorities; his delegation could agree to modify the wording so long as the substance was retained.

The CHAIRMAN invited the Committee to vote on the United States proposed Recommendation (TM/CONF/C.1/WP.9), with the original first sentence deleted and the word "laws" inserted after "conventions" in the following sentence.

The Recommendation was adopted by 23 votes to none.

TM/CONF/C.2/WP.34

The CHAIRMAN drew the Committee's attention to TM/CONF/C.2/WP.34, the text of a regulation concerning the change from closed to open shelter-deck condition prepared by the Technical Committee. The General Committee was required to decide whether the regulation should be transferred, as a whole or in part, to the Articles of the Convention and, if it so decided, to provide the text to be included in the Articles. He invited comments.

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Mr. QUARTEY (Ghana) thought more discretion should be left to Administrations where changes of net tonnage were concerned. It was not practicable to legislate for every possible circumstance that might lead an owner to change the net tonnage of his ship, and he did not think Administrations should be bound by the detailed provisions set out in paragraph (3) and the exceptions listed under sub-paragraphs (i) to (iv).

Mr. GERDES (Netherlands) pointed out that the provisions of the Convention were equally valid internationally whether they came under the heading of the Regulations or of the Articles. Since the determination of tonnage was dealt with in the Regulations, there should be no objection to including the proposed text there.

Mr. MUENCH (Israel) said that, as a naval architect, he was puzzled by the meaning of the word "real" in paragraph 3(ii). Concerning paragraph 34(ii), he suggested that it might be appropriate for the Committee to bring the text in line with that of paragraph (1) of Article 10 (page 6 of TM/CONF/C.1/WP.11), since both provisions appeared to have the same intention.

Mr. NADEINSKI (Committee Secretary) pointed out that the Articles of the Convention covered legal and administrative arrangements; the general provisions included provisions covering the issue of certificates. Since a change of net tonnage involved a change of certificate, it would seem logical to include some reference to it in the appropriate Article. He recalled that the same problem had arisen at the Load Line Conference, when it had been decided to transfer to the Articles a number of general provisions that had been in the Regulations.

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Mr. BEVANS (USA) said he too was disturbed at the use of the word "real" which he felt might cause legal difficulties. He thought that the provision under discussion was best left in the Regulations, where it would be less likely to be overlooked by those responsible for applying the Convention. To include it among the Articles would disrupt the structure of the Convention as a whole.

Mr. FLEISCHER (Norway) supported that view.

Mr. HINZ (Federal Republic of Germany) agreed with the two previous speakers. The proposed Regulation 5 dealt with highly technical matters and applied, moreover, only to a limited number of cases; it would be wrong to include it in the Articles, which were more general in scope.

Mr. DARAM (France) agreed. He shared the United States dislike of the word "real", which he felt suggested a possibility of abuse by implying changes of ownership that were not genuine.

Mr. VAUGHN (Liberia) also objected to that word. He was familiar with the phrase "change in beneficial ownership", but realized that change of trade might not necessarily mean a change of beneficial ownership. To use the phrase "real change of ownership" did not, however, solve the difficulty.

Mr. GLUKHOV (USSR) agreed that the proposed Regulation was too detailed and technical to be included in the Articles; a better place for it would be in the Annex. The word "real" in paragraph (3)(ii) should be referred back to the Technical Committee for reconsideration and possible deletion.

Mr. MUENCH (Israel) also thought the text belonged in the Regulations, but thought some reference should be made

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to it in the Article relating to validity of certificates in order to make fully clear that change of tonnage necessitated the issue of a new certificate.

Mr. KASBEKAR (India) and Mr. MARINI (Italy) shared that view.

Mr. BACHE (Denmark) explained that the word "real" in paragraph (3)(ii) of the text put forward by the Technical Committee for Regulation 5 (TM/CONF/C.2/WP.34) was meant to exclude the case where a shipping company formed a company within a group of independent companies under common management, as illustrated - for example - by the same funnel mark, and where a ship was transferred from one of the companies to another. It was virtually impossible to find wording satisfactory to lawyers to cover the point.

Mr. GERDES (Netherlands) said that in that case the word "real" was superfluous.

Mr. VAUGHN (Liberia) agreed that the word "real" must be dropped. Administrations issuing the certificates would not be in a position to determine whether a change in ownership had been real or not.

Mr. NICHOLSON (Australia) observed that, as paragraph (3) provided for a twelve-month time lag which was a comparatively short period, paragraph (3)(ii) could be dropped altogether without such an omission being unduly burdensome for shipowners.

Mr. KASBEKAR (India) favoured the deletion of the word "real" because it was for the Administrations themselves to ascertain whether or not there had been a genuine registered transfer of ownership. The point was important for purposes of determining liability.

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Mr. VAUGHN (Liberia) pointed out that a time lag of twelve months might be too long for a buyer needing a ship quickly.

Mr. KENNEDY (Canada) said that Article 10 might be regarded as incomplete; but as the clauses in Regulation 5 were, on the whole, technical in character, it would be more convenient for Administrations to leave them among the Regulations.

The word "real" would have to be dropped from paragraph (3)(ii) because the purpose of that clause was to try and eliminate, or at least reduce, a practice which had made the "delta" mark scheme so unsatisfactory for port authorities. Indeed, the whole clause, if retained, might give results as equally undesirable as that scheme.

Mr. MUENCH (Israel) said that after an informal discussion between the Italian delegation and his own, they had concluded that the only Article that would be affected by the new Regulation 5, paragraph (3) would be Article 10 on the Cancellation of Certificate. The Technical Committee had not yet decided on what should be the variable parameter; so for the time being, he proposed that in Article 10, paragraph (1) of the text agreed by the General Committee (TM/CONF/C.1/WP.11), the words "construction or capacity" be replaced by the words "construction, capacity, load line or draught".

Mr. QUARTEY (Ghana) proposed that the time lag in Regulation 5, paragraph (3) be reduced to six months. The proposed period of twelve months was far too long and would encourage an undesirable contrivance of the kind that the Canadian representative had mentioned. The clause would certainly impose hardship on shipowners operating along the west coast of Africa.

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Mr. TORKILDSEN (Norway) and Mr. KASBEKAR (India) supported the proposal by Ghana.

Mr. OLAYINKA (Nigeria) also supported the proposal because of the fluctuations in the carrying capacity of vessels trading in seasonal areas.

The CHAIRMAN said that the period specified in Regulation 5, paragraph (3) had been fully discussed in the Technical Committee, so the question should not be re-opened in the General Committee at that stage. Delegations could always revert to it in plenary meeting. Accordingly, he invited representatives to confine their comments to the Israeli Proposal.

Mr. HINZ (Federal Republic of Germany) said that he could agree as to the substance of the Israeli representative's argument but could not accept his proposed amendment because Article 10, paragraph (1) specified the conditions when an International Tonnage Certificate would be automatically cancelled. A new paragraph (4) would have to be added to that Article stipulating that, if a new certificate had been issued upon a change in net tonnage, in accordance with the provisions of Regulation 5, the old certificate ought to be withdrawn by the Administration.

Mr. NADEINSKI (Committee Secretary) reminded the Committee that it was already behind schedule. Final approval of the draft Articles must be completed by Monday 16 June to give time for the plenary to finish its work by 20 June, so that the final texts could be prepared.

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Mr. MARINI (Italy) observed that the Israeli representative had sought to meet the point made by the Secretary earlier in the discussion. The proposal by the representative of the Federal Republic of Germany would affect the general structure of Article 10. The new text of Regulation 5 now made a reference to the load line of a ship or draught necessary in Article 10, paragraph (1). However, the words to be inserted in square brackets would have to be left in abeyance pending the Technical Committee's decision on parameters.

Mr. UTTLEY (UK) said that the proposal made by the representative of the Federal Republic of Germany might unduly complicate matters. Perhaps his point could be met by inserting the words "gross or net tonnage" in the square brackets left blank in the text of Article 10, paragraph 1, on the assumption that those would be the parameters decided upon by the Technical Committee.

Mr. DARAM (France) emphasized that Article 10, paragraph 1 should be as general as possible. Detailed rules ought to be in the Regulations.

Mr. HINZ (Federal Republic of Germany) pointed out that the clause in Article 10, paragraph (1) in fact dealt with the misuse of certificates, whereas the clauses in Regulation 5 were intended to set out in orderly fashion the processes to be followed if load lines or permitted draught were altered and the methods by which Administrations would determine for how long the old tonnages would apply. An assigned load line or permitted draught could not be altered without a change of certificate, and it would be impracticable to require three different certificates over the twelve-month period.

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Mr. GERDES (Netherlands) said that it was obvious that a new certificate should be issued whenever a change of tonnage took place. He was therefore sympathetic towards the Israeli proposal, although he appreciated the point made by the representative of the Federal Republic of Germany. A possible solution to the problem would be to complete Article 10(1) by inserting the words suggested by the United Kingdom representative which, in his opinion, covered the cases of change of load line and draught, and would therefore accommodate both the Israeli and Federal German points of view. That solution would be acceptable to his delegation, but it could also agree to the Israeli proposal as it stood.

Mr. DARAM (France) proposed that the wording of Article 10(1) should be amended to the effect that: "An International Tonnage Certificate (1969) shall cease to be valid and shall be cancelled by the Administration if a change of gross or net tonnage takes place upon the conditions laid down in this Convention or its Annexes."

Mr. MUENCH (Israel) said that although the Israeli and Italian delegations welcomed the intention behind the French proposal, they could not agree with the way in which it was formulated. It could be construed as pointing primarily to Regulation 5(3); if it did, it was too limited in scope, because that provision covered only one set of circumstances in which a vessel's tonnage had to be changed. The purpose of his own delegation's proposal for Article 10(1) was to introduce a provision stipulating all the circumstances in which a change of tonnage had to take place. The French proposal was worded too vaguely to achieve that purpose.

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Mr. HINZ (Federal Republic of Germany) said that the French proposal was worded so broadly that it could be taken as a basis for invalidating virtually any tonnage certificate. Article 10 should be left as it was; he was opposed to amending it in any way that implied a reference to Regulation 5, which was purely for the guidance of ship measurement authorities in the determination of tonnages. He doubted in fact whether there was any relationship between Regulation 5 and Article 10.

Mr. MARINI (Italy) said that in his view Regulation 5 and Article 10 were related.

Mr. VAUGHN (Liberia) agreed with the representative of the Federal Republic of Germany that it would be difficult to accept the Israeli proposal on account of the twelve-month period of inapplicability stipulated in Regulation 5(3). He thought that the substance of the Israeli proposal would be catered for if the words "alterations incapacity" in Article 10(1) were construed as including alterations in load line or draught. That interpretation seemed possible.

Mr. KENNEDY (Canada) noted that the opposition of the Federal German and Liberian delegations to the Israeli proposal arose from the exception represented by the twelve-month period laid down in Regulation 5(3). The difficulty might therefore be solved by adding the words "subject to any exceptions provided in the Regulations annexed" after the word "Administration" in Article 10(1). He proposed that the paragraph be amended accordingly.

Mr. QUARTEY (Ghana) agreed with the representative of the Federal Republic of Germany that Article 10 and Regulation 5 were unrelated. The former concerned the invalidation of a certificate when certain physical alterations took place, whereas the latter covered a different kind of operation such as the

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conversion of a vessel from the open shelter-deck type to the closed shelter-deck type.

Mr. BEVANS (USA) said that he also took the view that Article 10 and Regulation 5 should not be regarded as inter-dependent. Regulation 5 simply prevented an owner from obtaining a new tonnage certificate for twelve months, whereas Article 10 was concerned with the circumstances in which a certificate was to be cancelled.

Mr. GERDES (Netherlands) welcomed the Canadian suggestion. It was a compromise which preserved the advantages of the Israeli proposal while disposing of the objection raised by the Federal Republic of Germany.

Mr. DARAM (France) withdrew his delegation's proposal.

Mr. HINZ (Federal Republic of Germany) accepted the Canadian proposal as a satisfactory means of reconciling his delegation's point of view with that of the Israeli delegation.

Mr. VAUGHN (Liberia) agreed with the previous speaker. He suggested that, in the interests of accuracy, the Israeli proposal should be amended to provide for the addition of the words "assigned load line or permitted draught" after the word "capacity," in Article 10(1) instead of the words "load line or draught".

It was so decided.

The CHAIRMAN invited the Committee to approve wording for Article 10, paragraph (1), reading: "An International Tonnage Certificate (1969) shall cease to be valid and shall be cancelled by the Administration, subject to any exceptions provided in the Regulations annexed, if alterations have taken place in the arrangements, construction, capacity, assigned load line or permitted draught of the ship such as would necessitate a change of [.....]".

The Chairman's proposed wording for Article 10(1) was approved by 27 votes to none.

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In reply to a question put by Mr. GERDES (Netherlands), Mr. NADEINSKI (Committee Secretary) said that all the Articles approved by the Committee would be perused and, if necessary, modified by the Drafting Committee. The General Committee would then re-examine them to ensure that the Drafting Committee had not made any changes of substance, after which the Articles would be considered by the plenary.

The texts of the Regulations, Final Act and any Recommendations would be subject to the same procedure.

The meeting rose at 1 p.m.