



IMCO

INTERNATIONAL CONFERENCE ON
TONNAGE MEASUREMENT OF SHIPS, 1969
General Committee

SUMMARY RECORD OF THE TWELFTH MEETING

held at Church House, Westminster, London, S.W.1,
on Monday, 16 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/C.3/1,
TM/CONF/C.1/WP.14 and WP.15) (continued)

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The CHAIRMAN suggested that the Committee examine the Drafting Committee's text article by article. In particular, the words and expressions placed between square brackets had to be decided. Every effort should be made to avoid, as far as possible, engaging in any further discussion of points which had already been settled. In any case, in accordance with Rule 26 of the Rules of Procedure of the Conference, a two-thirds majority was required before the General Committee could reconsider any of its decisions.

Preamble; Article 1 - General Obligations under the Convention

The Preamble and Article 1 were approved without objection.

Article 2 - Definitions

Paragraphs (1), (2) and (3)

The paragraphs were approved without objection.

Paragraph (4)

Mr. MADIGAN (UK), Chairman of the Drafting Committee, explained that that Committee had placed the word "overall" in brackets at the request of a few of its members who had thought that, having regard to the discussions in the Technical Committee, it might be better to use the term "moulded".

Mr. MURPHY (USA) and Mr. PROSSER (UK) considered that the word "overall" was a general term that was quite appropriate in the case in point.

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The CHAIRMAN proposed that the brackets around the word "overall" should be removed.

It was so decided.

Paragraph (4) was approved.

Paragraph (5)

Mr. MARINI (Italy) recalled that he had proposed that the expression "commerical capacity" should be replaced by "useful capacity", which was more appropriate in a convention of a technical and not a commercial character. He wished to repeat his proposal.

Mr. DARAM (France) endorsed the proposal. Discussion in the plenary and in the Technical Committee had shown that the use of the concept of "commercial capacity" was open to objection since that concept varied with other factors, such as the ship's speed.

Mr. HINZ (Federal Republic of Germany) likewise supported the Italian proposal.

Mr. NICHOLSON (Australia) did not think the expression "useful capacity" was satisfactory.

The CHAIRMAN put the Italian proposal to the vote.

The Italian proposal was adopted by 12 votes to 5.

Paragraph (5), thus amended, was approved.

Paragraph (6)

Mr. GERDES (Netherlands) introduced his proposed amendment (TM/CONF/C.1/WP.15) concerning the former paragraph (7), which had become paragraph (6) in the text approved by the Drafting Committee. Having reviewed the definitions in the general context of the Convention and being anxious to ensure uniformity of measurement in the future, the Netherlands

delegation proposed that the words "for each Contracting Government" should be deleted. There was a danger that that provision might act as an inducement to States to delay adherence to the Convention.

Mr. PROSSER (UK) seconded the Netherlands proposal.

Mr. DARAM (France) observed that the Netherlands representative's objection no longer held good since the text which had been proposed by France had been included in Article 3, paragraph (2), sub-paragraph (a).

Mr. WIE (Norway) agreed with that interpretation. However, he would not oppose the deletion of the words to which the Netherlands representative objected.

It was decided by 20 votes to none to re-examine the definition of "new ship" in paragraph (6).

The Netherlands proposal to delete the words "for each Contracting Government" was approved by 15 votes to 3.

Mr. BACHE (Denmark) asked the Chairman of the Drafting Committee whether that Committee had considered transferring to the definition of "new ship" the last phrase in Article 3, paragraph (2), sub-paragraph (a).

Mr. MADIGAN (UK), Chairman of the Drafting Committee, thought that point fell rather within the province of Article 3.

Mr. HINZ (Federal Republic of Germany) considered that the phrase in question would be out of place in Article 2.

Paragraph (6), thus amended, was approved.

Paragraphs (7), (8) and (9)

These paragraphs were approved without objection.

Article 2, thus amended, was approved.

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Article 3 - Application

Paragraph (1)

Paragraph (1) was approved without objection.

Paragraph (2)

Mr. GERDES (Netherlands) asked why the Drafting Committee had replaced the expression "The Regulations contained in Annex I" (TM/CONF/C.1/WP.11) by the words "The present Convention".

Mr. MADIGAN (UK), Chairman of the Drafting Committee explained that, after having made a careful study of the matter, that Committee had taken the view that there was no need to make a distinction between the Regulations in the Annex and the Articles. It had felt that the General Committee had in fact intended that both the Regulations and the Articles should apply to the ships concerned.

Mr. GERDES (Netherlands) referred to the precedent established by the Convention on Load Lines (Article 4). It seemed to him that the idea had been to exclude existing ships, not from the application of the Convention, but only from that of the tonnage regulations.

Mr. KASBEKAR (India) said that he was convinced by the explanation given by the Chairman of the Drafting Committee. The expression "the present Convention" was the more appropriate.

Mr. HINZ (Federal Republic of Germany) asked whether it was quite clear that paragraphs (1) and (2) of Article 3 were not mutually exclusive.

Mr. MADIGAN (UK), Chairman of the Drafting Committee, observed that the provisions of Article 3 should always be interpreted with due regard to the exceptions specified in Article 4. He did not think that there could be any ambiguity whatsoever as to the type of ships concerned.

Sub-paragraph (a)

Mr. MADIGAN (UK), speaking on behalf of his delegation, drew the Committee's attention to the desirability of revising the wording of that sub-paragraph in the interests of conformity with the rest of the text. The addition of the words "including those which come under the flag of a Contracting Government by change of nationality", very rightly approved by the Committee on the proposal of the French delegation, had lost its importance because of the amendment which had been made in the definition of new ships. Should not that phrase be deleted, even if doing so entailed the incorporation of additional clarification in paragraph (3) of the same Article? The Committee might perhaps refer that question back to the Drafting Committee.

The CHAIRMAN considered that the Committee would save time by settling that question itself and at once.

Mr. DARAM (France) thought the existing wording was very clear. The added words ("including those which come under the flag ...") could apply only to new ships.

Mr. GERDES (Netherlands) thought that the Committee should itself settle the matter. He approved Mr. Madigan's suggestion. The new definition of "new ship" given in Article 2, paragraph (6) rendered unnecessary the clause which had been introduced into Article 3, paragraph (2), sub-paragraph (a).

Mr. NADEINSKI (Committee Secretary) pointed out that when the General Committee had first examined that question, it had envisaged the case of a transfer of a ship to the flag of a non-Contracting State as well as to that of a Contracting State. The amendments made to Article 2 did not cover the former case.

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Mr. HINZ (Federal Republic of Germany) thought that there was no longer any need for the clause introduced into paragraph (2)(a), since the Committee had corrected the definition of "new ship" by deleting the words "for each Contracting Government" in Article 2, paragraph (6).

The Committee decided by 15 votes to 1 to delete the words "including those which come under the flag of a Contracting Government by change of nationality".

Sub-paragraph (b)

Mr. WIE (Norway) considered that the criterion of an alteration of 10 per cent of the gross tonnage was scarcely applicable in practice. It would be better to leave the decision to the competent Administration.

Mr. GERDES (Netherlands) shared that view.

Mr. MARINI (Italy) recalled that the Technical Committee had dealt with the question of alterations in its Regulation 5. The Regulations and the Articles should be brought fully into harmony.

Mr. MILEWSKI (Poland) feared that the discussion would become very prolonged and confused if decisions taken earlier were again called into question.

By 15 votes to 5, the Committee decided to re-examine sub-paragraph (b).

Mr. WIE (Norway) proposed that sub-paragraph (b) should be redrafted to read: "(b) existing ships which undergo alterations or modifications which the Administration considers as an important variation of their existing gross tonnage".

Mr. GERDES (Netherlands) and Mr. CONTOGEOORGIS (Greece) supported that amendment.

Mr. DARAM (France) feared that the freedom accorded to the Administration to assess the fundamental character of the alterations might give rise to disparities which would stand in the way of the satisfactory application of the Convention.

Mr. BACHE (Denmark) supported the amendment. However, he did not think that there was any need to refer specifically to the Administration which, unless otherwise stated, was quite naturally responsible for doing whatever was necessary to ensure the application of the Convention.

Mr. PROSSER (UK) recalled that the existing text had been adopted on the initiative of his delegation. But, having regard to the discussion in the Technical Committee, he would raise no objection to Mr. Wie's amendment, which accorded with the spirit in which that Committee had drawn up the Regulations.

The amendment proposed Norway was adopted by 16 votes to 8.

Sub-paragraph (c)

Sub-paragraph (c) was approved without objection.

Sub-paragraph (d)

Mr. PROSSER (UK) proposed awaiting the discussion on Article 17 (Coming into force) before filling in the blank in square brackets.

Mr. GERDES (Netherlands) and Mr. MILEWSKI (Poland) endorsed that proposal.

It was so decided.

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Mr. PROSSER (UK) introduced the amendment proposed by his delegation (TM/CONF/C.1/WP.14) to the former paragraph (3), which had become paragraph (2). That amendment would consist of the addition of the following phrase to sub-paragraph (d):

"except that such ships, apart from those mentioned in (b) and (c) of this paragraph, shall retain their then existing tonnages for the purpose of the application to them of relevant requirements under other International Conventions."

The aim was to reduce to a minimum any disruption of the economic balance of the shipping industry.

Mr. KASBEKAR (India) seconded that proposal.

It was decided by 21 votes to none to consider the United Kingdom Proposal.

Mr. MURPHY (USA) proposed inserting the word "existing" between the words "other" and "International".

Mr. PROSSER (UK) accepted that modification.

Mr. DARAM (France) proposed the following wording:

"except that such ships, apart from those mentioned in (b) and (c) of this paragraph, shall retain their then existing tonnages for the purposes of the application to them of the provisions of other existing International Conventions."

Mr. OSMAN (United Arab Republic) seconded that proposal.

The United Kingdom amendment, thus amended, was approved by 22 votes to none.

Paragraph (2) as amended was approved.

Paragraph (3)

Paragraph (3) was approved without objection.

Article 4 - Exceptions

Mr. CONTOGEOGRIS (Greece) proposed the addition of a sub-paragraph (c) to paragraph (1), stipulating that the Convention did not apply to ships which normally plied between ports of their own country and only occasionally undertook voyages abroad. He had in mind more particularly pleasure yachts.

Mr. GERDES (Netherlands) pointed out that the Committee had already considered that case, more especially in connexion with Article 5.

Mr. KASBEKAR (India) was of the opinion that national legislation could perfectly well deal with the problems raised by cases such as the representative of Greece had in mind.

There being no support for the amendment proposed by the representative of Greece, it was considered to be rejected.

Article 4 was approved.

Article 5 - Force Majeure

Article 5 was approved without objection.

Article 6 - Determination of tonnages

Mr. DARAM (FRANCE) proposed redrafting the heading in the French version to read: "Détermination des jauges" (previously "Détermination de la jauge").

It was so decided.

The two sets of square brackets round "gross and net tonnages" were removed.

Article 6, as amended, was approved.

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Article 7 - Issue of Certificates

Mr. MADIGAN (UK) said that the article "the" should be inserted in the English version of paragraph (1) before the words "gross and net tonnages".

In addition, speaking as Chairman of the Drafting Committee, he informed the Committee that in Articles 7, 9 and 11, it had been decided to leave certain words between square brackets, pending knowledge of the Technical Committee's decision on the form of the certificate or certificates.

Mr. NADEINSKI (Committee Secretary) stated that, so far as he knew, the Technical Committee had decided that there would be only one certificate.

Mr. DARAM (France) suggested that, in that case, the heading of Article 7 in the French text should be amended accordingly, so that it would be in the singular.

The CHAIRMAN proposed that Article 7 should be approved with the two amendments proposed, and with the removal of the square brackets hitherto retained.

Article 7, as amended, was approved without objection.

Article 8 - Issue of Certificates by another Government

Paragraph (1)

The square brackets were removed in line 2.

Paragraph 1, as amended, was approved without objection.

Paragraph (2)

Baron de GERLACHE de GOMERY (Belgium), seconded by Mr. DARAM (France), pointed out that to bring the French text into line with the English, the words "la jauge" printed between brackets in the last line should be replaced by "les jauges".

It was so decided.

The square brackets in line 2 (line 3 of the French text) were removed.

Mr. MADIGAN (UK) wondered whether it might not be better to await the outcome of the Technical Committee's discussion before approving the paragraph as a whole.

The CHAIRMAN said that the Secretariat would take account of the decisions of the Technical Committee.

Paragraph (2) was approved without objection.

Paragraph (3)

Mr. MADIGAN (UK) stated that, in the English version of Article 11, the Drafting Committee had decided to substitute the word "validity" for the word "force". Logic required that the same change should be made in paragraph (3) of Article 8.

Paragraph (3), thus amended, was approved without objection.

Paragraph (4)

Paragraph (4) was approved without objection.

Article 8, as amended, was approved.

Article 9 - Form of Certificate

Article 9 was approved without objection; the letter "s" and the square brackets around it being removed in all cases.

Article 10 - Cancellation of Certificate

The heading of the Article was altered to the singular in the French version.

Paragraph (1)

Mr. MURPHY (USA) said he was afraid that, as drafted, the paragraph might entail the cancellation of a certificate in cases where the situation could have been remedied in some simpler way.

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He instanced a ship carrying unauthorized cargo, when it would be easier to remove the cargo than to issue a new certificate. To overcome that disadvantage, his delegation proposed to replace the words "shall be cancelled" in line 3 by the words "may be cancelled".

Mr. CONTOGEOORGIS (Greece) and Mr. NICHOLSON (Australia) supported that proposal.

Mr. QUARTEY (Ghana) suggested that the point raised by the United States delegation would be better met by substituting another word for the word "arrangement" in line 5.

Mr. DARAM (France) opposed the proposal made by the United States representative since, from the legal standpoint, it would be at variance with the provisions approved for Article 3, paragraph 2(b).

Mr. HINZ (Federal Republic of Germany) did not think that the case mentioned by the United States representative really came within the terms of Article 10. That Article was in fact concerned solely with the permanent structural features of the ship and had nothing to do with the cargo.

Mr. GERDES (Netherlands) considered that, even in the case mentioned, the Administration should be able to cancel the certificate if, for example, the ship declined to abandon its unauthorized cargo. The requirement prescribed in that paragraph should therefore be retained.

The CHAIRMAN called for a vote on the suggestion that the terms of paragraph (1) should be reconsidered.

That suggestion was rejected by 12 votes to 11.

Mr. MADIGAN (UK) said that the Drafting Committee had taken the view that in regard to the passage left blank at the end of

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the paragraph, the directives given by the General Committee were not sufficiently precise and that it was for that Committee to take a decision.

The CHAIRMAN proposed that the square brackets, should be removed and that paragraph (1) should end with the words "a change of gross or net tonnage".

That proposal was adopted without objection.

Paragraph (1), as amended, was approved without objection.

Paragraph (2)

Paragraph (2) was approved without objection.

Paragraph (3)

Following on an exchange of views between Mr. GERDES (Netherlands) and Mr. MADIGAN (UK), Mr. NADEINSKI (Committee Secretary) explained that the wording used for that paragraph in TM/CONF/C.3/1 was based on a version which the General Committee had already revised (TM/CONF/C.1/WP.13).

Paragraph (3) was approved without objection.

Article 10, as amended, was approved without objection.

The meeting rose at 12.40 p.m.